

ORDER NO. 1803

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

Before Commissioners:

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

Rules for Market Tests of  
Experimental Products

Docket No. RM2013-5

NOTICE AND ORDER OF PROPOSED RULEMAKING  
ESTABLISHING RULES FOR MARKET TESTS OF  
EXPERIMENTAL PRODUCTS

(Issued August 9, 2013)

I. INTRODUCTION

The Commission proposes to establish rules governing market tests of experimental products to implement the requirements of the standards for market tests established by Congress in 39 U.S.C. 3641.

II. STATUTORY AUTHORITY

The Postal Accountability and Enhancement Act (PAEA)<sup>1</sup> authorizes the Postal Service to conduct market tests of experimental products. See 39 U.S.C. 3641(a)(1).

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<sup>1</sup> Pub. L. No. 109-435, 120 Stat. 3198 (2006).

Such tests are not subject to 39 U.S.C. 3622, 3633, or 3642, or regulations promulgated thereunder. *Id.* 3642(a)(2). An experimental product may not be tested unless it satisfies each of the following conditions:

- (1) Significantly different product.— The product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test.
- (2) Market disruption.— The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns (as defined under subsection (h)).
- (3) Correct categorization.— The Postal Service identifies the product, for the purpose of a test under this section, as either market-dominant or competitive, consistent with the criteria under section 3642(b)(1).

39 U.S.C. 3641(b).

The Postal Service must file notice with the Commission and publish the notice in the *Federal Register* at least 30 days before initiating a market test. *Id.* 3641(c)(1). The notice must describe the nature and scope of the market test and explain why the Postal Service believes that the market test is covered by section 3641. *Id.* 3641(c)(1)(A) and (B). The duration of a market test of an experimental product may not exceed 24 months unless the Commission grants an extension. *Id.* 3641(d). The Commission may, upon written application from the Postal Service filed no less than 60 days prior to the termination of the market test, extend the market test duration up to an additional 12 months “[i]f necessary in order to determine the feasibility or desirability of a[n] [experimental] product.” *Id.* 3641(d)(2).

In general, an experimental product may only be tested if “total revenues that are anticipated, or in fact received, by the Postal Service do not exceed \$10,000,000 in any year,” subject to adjustments for inflation. *Id.* 3641(e)(1). The Commission may exempt the market test from this \$10 million amount limitation (as adjusted for inflation) as long as revenues from the experimental product do not exceed \$50 million in any year, subject to adjustments for inflation. *Id.* 3641(e)(2). The exemption request shall be

approved if the Commission determines that the experimental product is: (1) likely to benefit the public and meet an expected demand; (2) likely to contribute to the financial stability of the Postal Service; and (3) not likely to result in unfair or otherwise inappropriate competition. *Id.*

The PAEA authorizes the Commission to cancel a market test or take other appropriate action if it determines that the market test fails, with respect to any particular product, to meet one or more requirements of section 3641. *Id.* 3641(f). All dollar amounts contained in section 3641 must be adjusted by the change in the Consumer Price Index (CPI) for the applicable year, as determined under regulations of the Commission. *Id.* 3641(g). Lastly, section 3641(h) directs the Commission to define “small business concern” consistent with the requirements of section 3 of the Small Business Act.

The proposed rules balance the Commission’s oversight authority over market tests with the Postal Service’s need for flexibility to expand the scope of its products. The proposed rules also reflect the lessons learned since the passage of the PAEA, during which time the Postal Service has conducted eight market tests of experimental products.<sup>2</sup> The Commission reviewed and approved each one, finding each of them consistent with 39 U.S.C. 3641. A summary review of these tests is provided as Attachment to this Order.

### III. DISCUSSION OF THE PROPOSED RULES

In this section, the Commission describes the proposed rules, including what each rule seeks to accomplish. The purpose of this discussion is to assist commenters in determining the nature of each proposed regulation and the rationale behind it. The discussion of the proposed rules fall under nine broad categories: (1) use of fiscal year,

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<sup>2</sup> A ninth market test is currently pending before the Commission. See Docket No. MT2013-2, Order No. 1771, Notice and Order Concerning Market Test of Experimental Product—International Merchandise Return Service—Non-Published Rates, July 3, 2013.

(2) notice requirements, (3) Commission review and action, (4) duration and extension, (5) cancellation, (6) dollar amount limitation and exemption, (7) adjustment for inflation, (8) data collection and reporting requirements, and (9) definition of “small business concern.”

#### A. Use of Fiscal Year

The PAEA states that except in subchapters I and IV of chapter 36, “year,” as used in chapter 36, means a fiscal year. 39 U.S.C. 102(10). 39 U.S.C. 3641 is located in subchapter III of title 39. Thus, the Commission interprets “year” in section 3641 and the proposed rules to mean “fiscal year.” This interpretation is consistent with the text of section 3641, which lists certain periods of time in months to distinguish them from fiscal years. For example, section 3641(d) states “24 months” and “12 months” instead of “2 years” and “1 year,” respectively.

Under this interpretation, “the 2-year period preceding the start of the test” in 39 U.S.C. 3641(b)(1) refers to the two fiscal years preceding the start of the market test. See proposed rule 3035.3(a)(1). For purposes of applying the \$10 million and \$50 million amount limitations in section 3641(e) and (g), revenues shall be measured for each fiscal year (or part thereof) following the date of implementation of the market test.

#### B. Notice Requirements

Proposed rule 3035.2 requires the Postal Service to provide advance notice of its intent to initiate a market test by filing notice with the Commission at least 30 days before the market test begins. This proposed rule codifies the statutory notice requirement in 39 U.S.C. 3641(c). Proposed rule 3035.3 sets forth the contents of the notice.

Over the past nine market tests, the Postal Service has developed filings that include most of the information required for the notice initiating a market test. For

example, in Docket No. MT2013-1, the Postal Service submitted a notice that described the nature and scope of the experimental product and set forth the reasons why the market test was covered by section 3641.<sup>3</sup> It explained how the experimental product was significantly different from any recent Postal Service offering, would not create market disruption, and was correctly categorized as competitive (section 3641(b)). *Id.* at 5-6. It also provided a data collection plan. *Id.* at 6-8.

The items listed above are contained in proposed rule 3035.3. In general, the proposed rule does not require the Postal Service to provide more information than it currently does for market tests. The only additions are rules requiring the Postal Service to identify the beginning and end dates of the market test and estimate, for each fiscal year of the market test, the total revenue that is anticipated by the Postal Service. Proposed rule 3035.3(b)(2), (4). The rules also direct the Postal Service to describe the geographic market(s) in which the market test will be conducted.

These items are necessary to ensure compliance with 39 U.S.C. 3641(d) and (e). Identifying the beginning and end dates of the market test ensures that the market test will not exceed 24 months in duration, unless a request for extension is filed. 39 U.S.C. 3641(d). Describing the geographic market(s) in which the market test will be conducted is consistent with the Commission's authority to "limit the amount of revenues the Postal Service may obtain from any particular geographic market as necessary to prevent market disruption...." *See id.* 3641(e)(1). Providing the total revenues anticipated by the Postal Service for each fiscal year of the market test will ensure that the revenues from the market test remain within applicable statutory dollar amount limitations. *See id.* 3641(e).

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<sup>3</sup> Docket No. MT2013-1, Notice of the United States Postal Service of Market Test of Experimental Product-Metro Post-and Notice of Filing Material Under Seal, October 12, 2012, at 2-7.

### C. Commission Review and Action

Once the Postal Service files notice of a market test, the Commission will establish a docket, promptly publish a notice in the *Federal Register*, and post the filing on its website. Proposed rule 3035.4. The Commission will then review the notice for consistency with section 3641 and either allow it to proceed, provide the Postal Service an opportunity to cure any defects, order that the market test not go into effect, or direct other action as the Commission considers appropriate. Proposed rule 3035.5.

The Postal Service must keep the Commission apprised of any changes to the market test to ensure continued consistency with the requirements of 39 U.S.C. 3641. To that end, proposed rule 3035.6(a) requires the Postal Service to immediately notify the Commission of any material changes made to the market test. These changes may include adjustments to prices, geographic scope, or termination date. Depending on the nature of the change, the Commission may, in its discretion, notice the filing and provide interested persons with an opportunity for comment.

### D. Duration and Extension

Proposed rules 3035.10 and 3035.11 set forth requirements regarding the duration of market tests. Market tests in general may not exceed 24 months in duration. Proposed rule 3035.10. Consistent with section 3641(d)(2), the Postal Service may request an extension for up to an additional 12 months, if necessary to determine the feasibility or desirability of a product being tested. Proposed rule 3035.11(a). A request for extension must be filed at least 60 days before the market test is scheduled to terminate. *Id.*; 39 U.S.C. 3641(d)(2).

The Postal Service previously filed requests for extensions in Docket Nos. MT2009-1, MT2011-1, MT2011-2, and MT2013-2.<sup>4</sup> In each case, the Postal Service failed to provide the requisite 60-day notice. The 60-day notice is a statutory requirement that provides time for the Commission to evaluate the merits of the request for extension. All future requests for extension must be filed in conformance with the 60-day deadline.

Proposed rule 3035.11(b) sets forth the filing requirements for requesting an extension. A request for extension must list the new end date for the market test and explain why an extension is necessary to determine the feasibility or desirability of the experimental product. The request for extension must both calculate the total revenue received by the Postal Service from the market test and estimate the additional revenue anticipated by the Postal Service for each fiscal year (or part thereof) prior to the conclusion of the extension period of the market test. These proposed rules will help ensure that the market test does not exceed applicable dollar amount limitations in 39 U.S.C. 3641(e).

#### E. Cancellation

39 U.S.C. 3641(f) provides the Commission with statutory authority to cancel a market test at any time if it “determines that a market test under this section [3641] fails, with respect to any particular product, to meet 1 or more of the requirements of this section....” A cancellation of a market test must “be made in accordance with such procedures as the Commission shall by regulations prescribe.” 39 U.S.C. 3641(f). These procedures, which are set forth in proposed rule 3035.12, require the Postal Service to demonstrate a market test's continued compliance with the statute and

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<sup>4</sup> Docket No. MT2009-1, Motion of the United States Postal Service for Temporary Extension of Collaborative Logistics Market Test, April 26, 2011; Docket No. MT2011-1, Motion of the United States Postal Service for Temporary Extension of Alternate Postage for Greeting Cards Market Test, November 21, 2012; Docket No. MT2011-2, Motion of the United States Postal Service for Temporary Extension of Gift Cards Market Test, June 18, 2013; Docket No. MT2013-2, IMRS-NPR Notice at 6.

Commission's rules. The proposed rule recognizes that the Postal Service may cancel a market test.

F. Dollar Amount Limitations and Exemption

Proposed rules 3035.15 and 3035.16 contain requirements regarding the dollar amount limitations for market tests set forth in 39 U.S.C. 3641(e) and 3641(g). Under 39 U.S.C. 3641(e)(1), an experimental product may only be tested if total revenues that the Postal Service anticipates or receives do not exceed \$10 million in any fiscal year, as adjusted for inflation (\$10 Million Adjusted Limitation). Proposed rule 3035.15(a) codifies this requirement.

Under 39 U.S.C. 3641(e)(2), the Commission may exempt a market test from the \$10 Million Adjusted Limitation if total revenues anticipated or received do not exceed \$50 million in any fiscal year, as adjusted for inflation (\$50 Million Adjusted Limitation). Proposed rule 3035.16(a) codifies this requirement. Section III.G, below, explains how the \$10 Million and \$50 Million Adjusted Limitations are calculated.

The Postal Service previously filed requests for exemption from the \$10 Million Adjusted Limitation in Docket Nos. MT2011-1, MT2011-3, and MT2013-1.<sup>5</sup> To ensure that the Commission has sufficient time to consider the request, the Postal Service must file its request for exemption at least 45 days before it expects to exceed the \$10 Million Adjusted Limitation. Proposed rule 3035.16(e).

Proposed rule 3035.16(f) contains the filing requirements for the request for exemption. Consistent with 39 U.S.C. 3641(e)(2)(A)-(C), the request for exemption shall explain how the experimental product is likely to benefit the public, meet an

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<sup>5</sup> Docket No. MT2011-1, Notice of the United States Postal Service of Market Test of Experimental Product – Alternate Postage Payment Method for Greeting Cards, November 8, 2010, at 12; Docket No. MT2011-3, Request of the United States Postal Service for Exemption from Revenue Limitation on Market Test of Experimental Product – Every Door Direct Mail Retail, November 18, 2011; Docket No. MT2013-1, Notice of the United States Postal Service of Market Test of Experimental Product – Metro Post – and Notice of Filing Material Under Seal, October 12, 2012, at 7.

expected demand, contribute to the Postal Service's financial stability, and not result in market disruption. Proposed rule 3035.16(f)(1). The requirements in proposed rules 3035.16(f)(2) and (3) help ensure that applicable dollar amount limitations will not be exceeded.

Under 39 U.S.C. 3641(e)(1), the Commission "may limit the amount of revenues the Postal Service may obtain from any particular geographic market as necessary to prevent market disruption...." 39 U.S.C. 3641(e)(1). This authority is codified in proposed rule 3035.17. To carry out this authority, proposed rule 3035.20(c) authorizes the Commission to require the Postal Service to report the total revenue anticipated or received from the market test for specified geographic markets.

Proposed rule 3035.18 requires the Postal Service to file its request to offer the experimental product as a permanent product sufficiently in advance to preclude the possibility that the applicable Adjusted Limitation would be breached. The intent is to afford the Commission and interested persons sufficient time to consider the Postal Service's request, filed pursuant to 39 CFR 3020 subpart B, so that, in particular, the \$50 Million Adjusted Limitation is not exceeded.

#### G. Adjustment for Inflation

39 U.S.C. 3641(g) requires the \$10 million and \$50 million amount limitations in 39 U.S.C. 3641(e) to be adjusted for inflation. The \$10 million and \$50 million amount limitations must be adjusted by the change in CPI "[f]or purposes of each year following the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a)[.]" 39 U.S.C. 3641(g). As noted in Section III.A, "year" is construed as "fiscal year." The "first report to the Postal Regulatory Commission under section 3652(a)" refers to the Postal Service's Annual Compliance Report (ACR). The deadline for the first ACR was December 28, 2007,

during fiscal year 2008.<sup>6</sup> Thus, the \$10 million and \$50 million amount limitations must be adjusted by the change in CPI for each year beginning after fiscal year 2008.

The steps for calculating the \$10 Million Adjusted Limitation and \$50 Million Adjusted Limitation are listed in proposed rules 3035.15(d) and 3035.16(c). These proposed rules model the Commission's price cap rules regarding the calculation of the annual limitation. See 39 CFR 3010.21(b) and 3010.22(b). The first step in the proposed rules is to calculate a simple average Consumer Price Index—All Urban Consumers (CPI-U) index for fiscal year 2008. Fiscal year 2008 is used to meet the requirements of 39 U.S.C. 3641(g) as discussed above. A simple (moving) average is used rather than a point-to-point calculation to smooth out short-term fluctuations in the CPI-U. Because fiscal year 2008 runs from October 2007 through September 2008, the CPI-U values for those months are added together and divided by 12 to obtain the Base Average of 214.5.

The next step in proposed rules 3035.15(d) and 3035.16(c) also involves calculating a simple average CPI-U index for each subsequent fiscal year to obtain the Recent Average. For example, the simple average CPI-U to be applied in fiscal year 2015 would be calculated by summing the 12 monthly CPI-U values from October 2013 through September 2014 and dividing the sum by 12. Finally, the annual limitation for the current fiscal year is calculated by multiplying either \$10 million or \$50 million by the Recent Average divided by 214.5. Because these rules are designed to calculate dollar amount limitations, the resulting number is rounded to the nearest dollar.

#### H. Data Collection and Reporting Requirements

Proposed rule 3035.20 lists the data collection and reporting requirements for each market test. The Commission has required the Postal Service to report data on

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<sup>6</sup> Docket No. ACR2007, United States Postal Service FY 2007 Annual Compliance Report, December 28, 2007.

costs, revenues, and volumes periodically in each of the past eight market tests, and the Postal Service has suggested data collection plans in previously-submitted filings.<sup>7</sup>

Proposed rule 3035.20(a) requires that data collection reports include revenue by fiscal quarter, attributable costs incurred, and a quantification of start-up costs incurred. The Commission recently required the Postal Service to report some of this information in Docket Nos. MT2012-1 and MT2013-1. Order No. 1035 at 6-7; Order No. 1539 at 12. The Commission may require the Postal Service to provide other information in its data collection reports as appropriate. Proposed rule 3035.20(b).

39 U.S.C. 3641(e)(1) requires the Commission to ensure that total revenues that are anticipated or received by the Postal Service from an experimental product do not exceed the \$10 Million Adjusted Limitation, unless an exemption is granted. In carrying out this responsibility, the Commission “may limit the amount of revenues the Postal Service may obtain from any particular geographic area to prevent market disruption....” 39 U.S.C. 3641(e)(1). To that end, the Commission may require the Postal Service to report revenues for specified geographic markets to evaluate the potential impact of a market test in those areas. See proposed rule 3035.20(c).

Proposed rule 3035.20(d) requires the results of the market test data collection to be filed by the Postal Service within 40 days after each fiscal quarter ends. This requirement, which is consistent with current practice, informs the Commission and the public of the status of the market test.<sup>8</sup> Consistent with 39 U.S.C. 3652(c) and 39 CFR 3050.21(h), information on each market test conducted during the fiscal year must be filed in the ACR. Proposed rule 3035.20(e).

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<sup>7</sup> See, e.g., Docket No. MT2013-2, IMRS-NPR Notice at 8.

<sup>8</sup> See Docket No. MT2012-1, Order Approving Market Test of First-Class Tracer, December 9, 2012, at 6-7 (Order No. 1035); Docket No. MT2013-1, Order Approving Metro Post Market Test, November 14, 2012, at 12 (Order No. 1539).

### I. Definition of “small business concern”

The Postal Service may conduct market tests of experimental products as long as the product offering does not “create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns....” 39 U.S.C. 3641(b)(2).<sup>9</sup> The PAEA requires the Commission to define “small business concern” in conformance with the requirements of section 3 of the Small Business Act. 39 U.S.C. 3641(h).

The Small Business Act states that a small business concern “shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation....” 15 U.S.C. 632(a)(1). Small Business Administration regulations define “business concern” as “a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.” 13 CFR 121.105.

SBA regulations state that federal agencies promulgating regulations relating to small businesses usually use SBA size criteria. 13 CFR 121.903(a). Consistent with this practice and section 3641(h), the definition in proposed rule 3001.5(v) contains the requirements of section 3 of the Small Business Act as well as regulations promulgated by the SBA.<sup>10</sup> These requirements are listed in proposed rule 3001.5(v)(1) through (5).

To qualify as “small,” a business concern must, among other things, meet the criteria and size standards listed in the SBA’s small business size regulations. See 13 CFR part 121. SBA’s size standards determine whether a business concern is “small” based on the maximum number of employees or annual receipts. *Id.* 121.201. The SBA matches small business size standards to industries described in the North

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<sup>9</sup> Likewise, in proceedings to modify the market dominant and competitive product lists, due regard must be given to “the likely impact of the proposed action on small business concerns....” 39 U.S.C. 3642(b)(3)(C).

<sup>10</sup> See 15 U.S.C. 632(a)(1); 13 CFR part 121.

American Industry Classification System (NAICS), which classifies businesses according to the type of economic activity. *Id.* 121.101. For example, these industries include the Postal Service, Couriers and Express Delivery Services, and Local Messengers and Local Delivery. *Id.* 121.201. Further guidance on the types of businesses that comprise each industry and their primary activities or services is available on the NAICS web site at [www.naics.com/search.htm](http://www.naics.com/search.htm).

When determining the impact of a market test on small business concerns, the Postal Service would first identify the types of businesses that may be affected by the market test. Second, the Postal Service would determine whether these businesses qualify as “small business concerns” under proposed section 3001.5(v) based on SBA size standards. Third, the Postal Service would analyze the impact of the market test on qualifying small business concerns and provide that analysis in its notice initiating the market test to establish that “[t]he introduction or continued offering of the experimental product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns....” 39 U.S.C. 3641(b)(2); proposed rule 3035.3(a)(2).

This framework was followed recently in Docket No. MT2013-1 involving the Metro Post market test. Couriers and express delivery service companies were identified as the types of business that may be affected by the market test.<sup>11</sup> The SBA categorizes couriers and express delivery companies as “small” if they met the criteria in proposed rule 3001.5(v) and if they have 1,500 or fewer employees. 13 CFR 121.201. The Postal Service then analyzed the impact of the Metro Post market test on these small business concerns. See Response to CHIR No. 1 at 5.

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<sup>11</sup> Docket No. MT2013-1, Response of the United States Postal Service to Chairman’s Information Request No. 1, October 25, 2012 (Response to CHIR No. 1).

#### IV. SECTION-BY-SECTION ANALYSIS

The following is a section-by-section analysis of the proposed rules that contains brief descriptions of the contents of each rule.

*Section 3001.5 Definitions.* This proposed rule creates a definition of “small business concern” consistent with the requirements of 39 U.S.C. 3641(h).

*Section 3035.1 Applicability.* This proposed rule states that the rules in this part apply to market tests of experimental products pursuant to 39 U.S.C. 3641.

*Section 3035.2 Advance notice.* This proposed rule requires the Postal Service to provide 30 days advanced notice of its intent to initiate a market test.

*Section 3035.3 Contents of notice.* This proposed rule lists the items that must be included in the Postal Service’s notice initiating a market test.

*Section 3035.4 Review.* This proposed rule requires the Commission to establish a docket for each market test initiated under Part 3035, promptly publish a notice in the *Federal Register*, and post the filing on its website. The proposed rule lists the items that must be provided in the notice.

*Section 3035.5 Commission action.* This proposed rule provides for the Commission’s review of the Postal Service notice for compliance with 39 U.S.C. 3641.

*Section 3035.6 Changes in market test.* This proposed rule requires the Postal Service to immediately notify the Commission of any material changes made to the market test. It authorizes the Commission, in its discretion, to notice the filing and provide an opportunity for comment.

*Section 3035.10 Duration.* This proposed rule states that a market test is limited to 24 months in duration unless the Postal Service requests an extension.

*Section 3035.11 Extension of test.* This proposed rule enables the Postal Service to request an extension of the duration of a market test. It lists the

requirements for requesting an extension and provides for Commission review of the request for extension for consistency with 39 U.S.C. 3641.

*Section 3035.12 Cancellation of market test.* This proposed rule enables either the Postal Service or the Commission to cancel a market test. The proposed rule lists the options the Commission may pursue based upon its review.

*Section 3035.15 Dollar amount limitation.* This proposed rule states that an experimental product may only be tested if total revenues that are anticipated or received by the Postal Service do not exceed the \$10 Million Adjusted Limitation in any fiscal year. The proposed rule lists the steps for calculating the \$10 Million Adjusted Limitation.

*Section 3035.16 Exemption from dollar amount limitation.* This proposed rule enables the Postal Service to request an exemption from the \$10 Million Adjusted Limitation as long as it does not exceed the \$50 Million Adjusted Limitation in any fiscal year. The proposed rule lists the steps for calculating the \$50 Million Adjusted Limitation, as well as the items that must be included in the request for exemption. It requires the Postal Service to file the request for exemption at least 45 days before it expects to exceed the \$10 Million Adjusted Limitation. It provides for Commission review of the request for exemption for consistency with 39 U.S.C. 3641.

*Section 3035.17 Prevention of market disruption.* This proposed rule authorizes the Commission to limit the amount of revenues the Postal Service may obtain from any particular geographic market to prevent market disruption.

*Section 3035.18 Filing for permanent product status.* This proposed rule states that if the Postal Service decides to make an experimental product permanent, it must file a notice sufficiently in advance so that the market test does not exceed the \$10 Million Adjusted Limitation or any authorized adjusted limitation in any fiscal year.

*Section 3035.20 Data collection and reporting requirements.* This proposed rule requires the Postal Service to describe plans for monitoring the performance of the

market test. It identifies items that must be included in data collection reports. The proposed rule authorizes the Commission to request additional information or data and to require the Postal Service to report the revenues for specified geographic markets. It requires the Postal Service to file results of the market test data collection within 40 days (or such other time the Commission may prescribe) after the close of each fiscal quarter during which the market test is offered. Information on each market test conducted during the fiscal year must be filed in the ACR.

#### V. OPPORTUNITY TO COMMENT

Interested persons may comment on the Commission's proposed rules governing market tests of experimental products. Comments are due within 30 days of the date of publication of this notice in the *Federal Register*. Reply comments are due within 20 days of the date for submission of initial comments.

Pursuant to 39 U.S.C. 505, Anne J. Siarnacki is designated as the Public Representative in this proceeding to represent the interests of the general public.

#### VI. ORDERING PARAGRAPHS

*It is ordered:*

1. Docket No. RM2013-5 is established for the purpose of receiving comments on the Commission's proposed rules governing market tests of experimental products.
2. Interested persons may submit comments no later than 30 days from the date of publication of this notice in the *Federal Register*.
3. Interested persons may submit reply comments no later than 20 days from the date for submission of initial comments.

4. Pursuant to 39 U.S.C. 505, Anne J. Siarnacki is appointed to serve as Public Representative in this proceeding.
5. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove  
Secretary

## **PART 3001—RULES OF PRACTICE AND PROCEDURE**

### **§ 3001.5 Definitions**

Section 3001.5 is amended by adding the following definition at the end thereof:

- (v) *Small business concern* means a for-profit business entity that:
- (1) Is independently owned and operated;
  - (2) Is not dominant in its field of operation;
  - (3) Has a place of business located in the United States;
  - (4) Operates primarily within the United States or makes a significant contribution to the United States economy by paying taxes or using American products, materials, or labor; and
  - (5) Together with its affiliates, qualifies as “small” in its primary industry under the criteria and size standards established by the Small Business Administration in 13 CFR 121.201, as amended, based on annual receipts or number of employees.

## **PART 3035—RULES FOR MARKET TESTS OF EXPERIMENTAL PRODUCTS**

A new Part 3035, Rules for Market Tests of Experimental Products, is adopted as follows:

### **§ 3035.1 Applicability.**

The rules in this part apply to market tests of experimental products pursuant to 39 U.S.C. 3641.

### **§ 3035.2 Advance notice.**

The Postal Service shall file notice with the Commission of its determination to initiate a market test at least 30 days before initiating the market test.

**§ 3035.3 Contents of notice.**

Notices of proposed market tests shall include:

- (a) The basis for the Postal Service's determination that the market test is governed by 39 U.S.C. 3641, which shall:
  - (1) Describe, from the viewpoint of mail users, how the experimental product is significantly different from all products offered by the Postal Service within the 2 fiscal years preceding the start of the market test;
  - (2) Establish that the introduction or continued offering of the experimental product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns; and
  - (3) Identify the experimental product as either market dominant or competitive for purposes of the market test.
- (b) A description of the nature and the scope of the market test that:
  - (1) Demonstrates why the market test is not inconsistent with the requirements of 39 U.S.C. 3641;
  - (2) Identify the beginning and ending dates of the market test;
  - (3) Describes the geographic market(s) where the market test may be conducted;
  - (4) Estimates the total revenue that is anticipated by the Postal Service for each fiscal year of the market test, including available supporting documentation;
  - (5) Provides proposed Mail Classification Schedule Language; and

- (6) Includes a plan for monitoring the performance of the market test, including a description of the specific data items to be collected, as required by 39 CFR 3035.20.

**§ 3035.4 Review.**

The Commission will establish a docket for each market test initiated under this Part 3035, promptly publish a notice in the *Federal Register*, and post the filing on its website. The notice shall:

- (a) Describe the general nature of the proceeding;
- (b) Refer to the legal authority under which the proceeding is to be conducted;
- (c) Identify an officer of the Commission to represent the interests of the general public in the docket;
- (d) Specify a period for public comment; and
- (e) Include such other information as the Commission deems appropriate.

**§ 3035.5 Commission action.**

The Commission shall review the Postal Service notice together with any comments for initial compliance with the statutory requirements of 39 U.S.C. 3641, and:

- (a) Find that the market test is consistent with the requirements of 39 U.S.C. 3641; or
- (b) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies; or
- (c) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and order that the market test not go into effect; or

- (d) Direct other action as the Commission may consider appropriate.

**§ 3035.6 Changes in market test.**

(a) The Postal Service shall immediately notify the Commission of any material changes made to the market test, including, without limitation, adjustments to prices, geographic scope, or termination date.

(b) The Commission may, in its discretion, notice the filing and provide an opportunity for comment.

**§ 3035.10 Duration.**

A market test may not exceed 24 months in duration unless the Postal Service requests an extension under 39 CFR 3035.11.

**§ 3035.11 Extension of test.**

(a) The Postal Service may request an extension of the duration of a market test, not to exceed an additional 12 months, if necessary to determine the feasibility or desirability of a product being tested. The Postal Service must file a written request for extension with the Commission at least 60 days before the market test is scheduled to terminate.

(b) The request for extension shall:

- (1) Explain why an extension is necessary to determine the feasibility or desirability of the experimental product;
- (2) List the new end date for the market test;
- (3) Calculate the total revenue received by the Postal Service from the market test for each fiscal year the market test has been in operation;
- (4) Estimate the additional revenue that is anticipated by the Postal Service for each fiscal year prior to the conclusion of the extension

period of the market test, including available supporting documentation;  
and

(5) Provide any additional information necessary for the Commission to evaluate the continued consistency with the requirements of 39 U.S.C. 3641.

(c) The Commission shall review the Postal Service request for extension to ensure that an extension is necessary in order to determine the feasibility or desirability of the experimental product and:

(1) Find that the extension is consistent with the requirements of 39 U.S.C. 3641; or

(2) Find that the extension is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;

(3) Find that the extension is inconsistent with the requirements of 39 U.S.C. 3641 and deny the extension; or

(4) Direct other action as the Commission considers appropriate.

#### **§ 3035.12 Cancellation of market test.**

(a) The Postal Service may cancel a market test at any time. It shall file notice of cancellation with the Commission within 10 days of cancelling the market test.

(b) Pursuant to 39 U.S.C. 3641(f), the Commission may direct the Postal Service to demonstrate that the market test continues to meet the requirements of 39 U.S.C. 3641 and the Commission's rules. The Commission, in its discretion, may provide an opportunity for comments.

(c) Based upon its review, the Commission may:

(1) Find that the market test is consistent with the requirements of 39 U.S.C. 3641; or

- (2) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies; or
- (3) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and cancel the market test; or
- (4) Direct other action as the Commission may consider appropriate.

**§ 3035.15 Dollar amount limitation.**

(a) An experimental product may only be tested if total revenues that are anticipated or received by the Postal Service do not exceed \$10,000,000 in any fiscal year, as adjusted for the change in the Consumer Price Index, as specified in 39 CFR 3035.15(d) (\$10 Million Adjusted Limitation). Total revenues anticipated or received may exceed the \$10 Million Adjusted Limitation in any fiscal year if an exemption is granted pursuant to 39 CFR 3035.16.

(b) The Consumer Price Index, as specified in 39 CFR 3010.21(a) and 3010.22(a), is applicable for calculations under this part.

(c) For each fiscal year, the \$10 Million Adjusted Limitation shall reflect the average CPI result during the previous fiscal year calculated as described in 39 CFR 3035.15(d). The Commission shall publish this figure on its website at <http://www.prc.gov>.

(d) The calculation of the \$10 Million Adjusted Limitation involves the following steps. First, a simple average CPI-U index was calculated for fiscal year 2008 by summing the monthly CPI-U values from October 2007 through September 2008 and dividing the sum by 12 (Base Average). The resulting Base Average is 214.5. Then, a second simple average CPI-U index is similarly calculated for each subsequent fiscal year by summing the 12 monthly CPI-U values for the previous fiscal year and dividing the sum by 12 (Recent Average). Finally, the annual limitation for the current fiscal year

is calculated by multiplying \$10,000,000 by the Recent Average divided by 214.5. The result is expressed as a number, rounded to the nearest dollar.

(e) The formula for calculating the \$10 Million Adjusted Limitation is as follows:  $\$10 \text{ Million Adjusted Limitation} = \$10,000,000 * (\text{Recent Average}/214.5)$ .

### **§ 3035.16 Exemption from dollar amount limitation.**

(a) The Postal Service may request an exemption from the \$10 Million Adjusted Limitation by filing a written request with the Commission. In no instance shall the request for exemption exceed the market test dollar amount limitation of \$50,000,000 in any fiscal year, as adjusted for the change in the Consumer Price Index, as specified in 39 CFR 3035.16(c) (\$50 Million Adjusted Limitation).

(b) For each fiscal year, the \$50 Million Adjusted Limitation shall reflect the average CPI result during the previous fiscal year calculated as described in 39 CFR 3035.16(c). The Commission shall publish this figure on its website at <http://www.prc.gov>.

(c) The calculation of the \$50 Million Adjusted Limitation involves the following steps. First, a simple average CPI-U index was calculated for fiscal year 2008 by summing the monthly CPI-U values from October 2007 through September 2008 and dividing the sum by 12 (Base Average). The Resulting Base Average is 214.5. Then, a second simple average CPI-U index is similarly calculated for each subsequent fiscal year by summing the 12 monthly CPI-U values for the previous fiscal year and dividing the sum by 12 (Recent Average). Finally, the annual limitation for the current fiscal year is calculated by multiplying \$50,000,000 by the Recent Average divided by 214.5. The result is expressed as a number, rounded to the nearest dollar.

(d) The formula for calculating the \$50 Million Adjusted Limitation is as follows:  $\$50 \text{ Million Adjusted Limitation} = \$50,000,000 * (\text{Recent Average}/214.5)$ .

(e) The Postal Service shall file its request for exemption at least 45 days before it expects to exceed the \$10 Million Adjusted Limitation.

(f) The request for exemption shall:

- (1) Explain how the experimental product will:
    - (i) Benefit the public and meet an expected demand;
    - (ii) Contribute to the financial stability of the Postal Service; and
    - (iii) Not result in unfair or otherwise inappropriate competition.
  - (2) Calculate the total revenue received by the Postal Service from the market test for each fiscal year the market test has been in operation; and
  - (3) Estimate the additional revenue that is anticipated by the Postal Service for each fiscal year prior to the conclusion of the extension period of the market test, including available supporting documentation;
- (g) The Commission shall review the request for exemption for consistency with the statutory requirements of 39 U.S.C. 3641 and:
- (1) Find that the exemption is consistent with the requirements of 39 U.S.C. 3641;
  - (2) Find that the exemption is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;
  - (3) Find that the exemption is inconsistent with the requirements of 39 U.S.C. 3641 and deny the exemption; or
  - (4) Direct other action as the Commission may consider appropriate.

### **§ 3035.17 Prevention of Market Disruption.**

Notwithstanding the \$10 Million Adjusted Limitation or any adjustment granted pursuant to 39 CFR 3035.16, the Commission may limit the amount of revenues the Postal Service may obtain from any particular geographic market as necessary to prevent market disruption as defined in 39 U.S.C. 3641 (b)(2).

**§ 3035.18 Filing for permanent product status.**

If the Postal Service determines to make an experimental product permanent, it shall file a notice, pursuant to 39 CFR 3020.30, sufficiently in advance so that the market test does not exceed the \$10 Million Adjusted Limitation or any authorized adjusted limitation in any fiscal year.

**§ 3035.20 Data collection and reporting requirements.**

(a) A notice of a market test shall describe plans for monitoring the performance of the market test, including plans to collect volume, revenue, and other data. Data collection reports shall include, at a minimum:

- (1) The revenue by fiscal quarter received to date by the Postal Service from the market test;
- (2) Attributable costs incurred in conducting the market test, including administrative and ancillary costs;
- (3) A quantification of start-up costs incurred to date associated with the market test.

(b) The Commission may request additional information or data as it deems appropriate.

(c) To assess the potential impact of a market test in a particular geographic market, the Commission may require the Postal Service to report the revenues from the market test for specified geographic markets.

(d) The Postal Service shall file the results of the market test data collection within 40 days after the close of each fiscal quarter during which the market test is offered, or such other period as the Commission may prescribe.

(e) The Postal Service shall file in its Annual Compliance Report information on each market test conducted during the fiscal year pursuant to 39 CFR 3050.21(h).

## Summary of Market Tests

### A. Docket No. MT2009-1

In Docket No. MT2009-1, the Commission authorized a market test of Collaborative Logistics, an experimental product.<sup>1</sup> Collaborative Logistics involves the “transportation of an article or multiple articles on a pallet or other unit load, on a space-available basis, in postal transportation.” *Id.* at 3. The market test began on May 6, 2009 and was set to expire on May 6, 2011.

On April 26, 2011, the Postal Service filed a motion for temporary extension.<sup>2</sup> The Commission granted in part the Postal Service’s request to extend the Collaborative Logistics market test until September 2011, when the Postal Service would file a request to make Collaborative Logistics a permanent product.<sup>3</sup> Ultimately, the Postal Service did not file this request due to its financial condition, operations concerns, and changes in organizational structure.<sup>4</sup> It terminated the market test effective September 19, 2011. *Id.*

### B. Docket No. MT2010-1

In Docket No. MT2010-1, the Commission approved the Samples Co-Op Box market test on May 5, 2010.<sup>5</sup> The Samples Co-Op Box is a parcel box containing an assortment of product samples from multiple consumer packaged goods companies.

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<sup>1</sup> Docket No. MT2009-1, Order No. 211, Order Concerning Collaborative Logistics Market Test, May 7, 2009.

<sup>2</sup> Docket No. MT2009-1, Motion of the United States Postal Service for Temporary Extension of Collaborative Logistics Market Test, April 26, 2011, at 1.

<sup>3</sup> Docket No. MT2009-1, Order No. 742, Order Granting In Part Temporary Extension of Collaborative Logistics Market Test, June 3, 2011, at 2, 5.

<sup>4</sup> Docket No. MT2009-1, Notice of the United States Postal Service of Termination of Market Test, August 19, 2011, at 1.

<sup>5</sup> Docket No. MT2010-1, Order No. 452, Order Approving Samples Co-Op Box Market Test, May 5, 2010, at 2.

*Id.* at 2. The Postal Service partnered with a company that would prepare Samples Co-Op Boxes for mailing, execute the mailing, and conduct market research. *Id.* The Postal Service did not charge a fee for delivering the co-op boxes. *Id.* The market test consisted of “one mailing of several hundred thousand co-op boxes to consumers in two test markets.” *Id.* The market test was completed within one week. *Id.*

On December 23, 2010, the Postal Service filed a request to modify the Mail Classification Schedule by adding Parcel Select Contract 1 with StartSampling, Inc. to the competitive product list.<sup>6</sup> Parcel Select Contract 1 was for the licensing and distribution of the “Sample Showcase” co-op box, which was a follow up to the Samples Co-Op market test. *Id.* at 1. The Commission approved the request on March 1, 2011.<sup>7</sup>

C. Docket No. MT2011-1

In Docket No. MT2011-1, the Commission authorized a 24-month market test for Alternate Postage Payment Method for Greeting Cards.<sup>8</sup> This product enables individuals to mail greeting cards without affixing postage. *Id.* at 2. The Commission also granted the Postal Service an exemption from the \$10 million amount limitation, as adjusted for inflation. *Id.* at 7.

The Alternate Postage Payment Method for Greeting Cards market test began on January 2, 2011 and was set to expire on January 2, 2013.<sup>9</sup> On November 21, 2012,

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<sup>6</sup> Docket No. MC2011-16 and CP2011-53, Request of the United States Postal Service to Add Parcel Select Contract 1 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, December 23, 2010.

<sup>7</sup> Docket No. MC2011-16 and CP2011-53, Order No. 686, Order Approving Parcel Select Contract 1 Negotiated Service Agreement, March 1, 2011. The Commission also approved an amendment to the prices for Parcel Select Contract 1. Docket No. MC2011-16 and CP2011-53, Order No. 699, Order Approving Amendment to Parcel Select Contract 1 Negotiated Service Agreement, March 18, 2011.

<sup>8</sup> Docket No. MT2011-1, Order No. 617, Order Approving Market Test of Alternate Postage Payment Method for Greeting Cards, December 21, 2010.

<sup>9</sup> Docket No. MT2011-1, Motion of the United States Postal Service for Temporary Extension of Alternate Postage for Greeting Cards Market Test, November 21, 2012, at 1.

the Postal Service moved to extend the market test for an additional 12 months.<sup>10</sup> The Commission granted the motion on December 13, 2012. *Id.* at 4.

D. Docket No. MT2011-2

In Docket No. MT2011-2, the Commission conditionally approved the Gift Cards market test on April 28, 2011.<sup>11</sup> The market test enabled customers to purchase a gift card loaded with a specified sum of money that may be sent through the mail. *Id.* at 1. The Commission authorized the market test to proceed subject to the condition that the sale of gift cards be limited to Postal Service retail facilities, including its website. *Id.* at 2.

The market test began on June 27, 2011, and was set to expire on June 27, 2013.<sup>12</sup> On June 18, 2013, the Postal Service moved to extend the market test through the end of January 2014. *Id.* The Commission granted the motion on July 19, 2013.<sup>13</sup>

E. Docket No. MT2011-3

The Postal Service began offering Every Door Direct Mail—Retail (EDDM-R) as an experimental product once the Commission authorized the market test in Docket No. MT2011-3.<sup>14</sup> EDDM is a Standard Mail product that removes barriers to entry for

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<sup>10</sup> Docket No. MT2011-1, Order No. 1577, Order Granting Motion Concerning Market Test, December 13, 2012, at 2.

<sup>11</sup> Docket No. MT2011-2, Order No. 721, Order Authorizing Gift Card Market Test, April 28, 2011.

<sup>12</sup> Docket No. MT2011-2, Motion of the United States Postal Service for Temporary Extension of Gift Cards Market Test, June 18, 2013.

<sup>13</sup> Docket No. MT2011-2, Order No. 1781, Order Granting Extension of Gift Card Market Test, July 19, 2013.

<sup>14</sup> Docket No. MT2011-3, Order Approving Market Test of Experimental Product—Marketing Mail Made Easy, March 1, 2011 (Order No. 687). On April 1, 2011, the Postal Service notified the Commission that it changed the name of the experimental product to EDDM-R. Docket No. MT2011-3, Notice of Market Test Name Change from Marketing Mail Made Easy to Every Door Direct Mail Retail or EDDM Retail, April 1, 2011.

small- and medium-size businesses that would otherwise use the mail. Order No. 687 at 2. It includes, among other things, local entry and payment, a maximum number of 5,000 pieces per delivery unit, a waiver of all permit and mailing fees, and simplified qualification and preparation requirements. *Id.* at 1-2. Pieces are priced using the Standard Mail Commercial Saturation Flats pricing schedules. *Id.* at 2.

The EDDM-R market test began on March 31, 2011. Notice at 1. In January 2012, the Commission granted the Postal Service's request for an exemption from the \$10 million amount limitation, as adjusted for inflation.<sup>15</sup> On July 10, 2012, the Postal Service filed a request to modify the Mail Classification Schedule by adding EDDM-R to the market dominant product list.<sup>16</sup> The Commission found that the Postal Service's request met the statutory requirements in 39 U.S.C. 3642 and approved the request on September 7, 2012.<sup>17</sup> The market test ended on January 26, 2013.<sup>18</sup>

F. Docket No. MT2011-4

In Docket No. MT2011-4, the Commission authorized the Mail Works Guarantee market test on May 16, 2011.<sup>19</sup> For this market test, the Postal Service and each participant jointly develop a unique set of metrics to measure the effectiveness of a particular direct mail campaign. *Id.* at 3. The Postal Service plans to provide assistance to the mailer in developing its direct mail and in benchmarking and

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<sup>15</sup> Docket No. MT2011-3, Order No. 1164, Order Granting Request for Exemption from Annual Revenue Limitation, January 23, 2012.

<sup>16</sup> Docket No. MC2012-31, Request of the United States Postal Service to Add Every Door Direct Mail – Retail to the Mail Classification Schedule, July 10, 2012. 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.

<sup>17</sup> Docket No. MC2012-31, Order No. 1460, Order Approving Addition of Postal Services to the Mail Classification Schedule Product Lists, September 7, 2012.

<sup>18</sup> Docket No. MT2011-3, EDDM-R Data Collection Report Fiscal Year 2013, Quarter 1 and Quarter 2 (through January 26, 2013), March 15, 2013 (EDDM-R FY 2013 Data Collection Report).

<sup>19</sup> Docket No. MT2011-4, Order No. 730, Order Approving Mail Works Guarantee Market Test, May 16, 2011.

measuring the test metric. *Id.* To safeguard participants, the Postal Service offers a postage back guarantee of up to \$250,000 per participant if a campaign fails to achieve the pre-established metric, as verified by the Postal Service. *Id.*

The market test began on June 14, 2011.<sup>20</sup> During the first year of the test, no customers committed to using the mail in a way that would qualify for the market test guarantee. *Id.* at 1. The market test terminated effective January 8, 2013. *Id.*

G. Docket No. MT2012-1

The Commission approved the proposed experimental product identified as First-Class Tracer on December 9, 2011.<sup>21</sup> The market test consists of providing customers a means to track the transportation and processing of single-piece First-Class Mail. *Id.* at 1. The First-Class Tracer is a barcode that the mailer affixes to a single-piece of First-Class Mail. *Id.* at 3. The mailer keeps a portion of the label that includes a tracking number and a QR code. *Id.* This enables the mailer to check the status of the mail piece by either entering the tracking number on the USPS.com website or by scanning the QR code with a mobile device. *Id.* The market test began on December 10, 2011 with 50 test locations, and is ongoing.<sup>22</sup>

H. Docket No. MT2013-1

In Docket No. MT2013-1, the Commission approved the market test of the experimental product Metro Post on November 14, 2012.<sup>23</sup> Metro Post is “a package

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<sup>20</sup> Docket No. MT2011-4, Notice of the United States Postal Service of Termination of the Market Test, January 8, 2013.

<sup>21</sup> Docket No. MT2012-1, Order No. 1035, Order Approving Market Test of First-Class Tracer, December 9, 2011.

<sup>22</sup> Docket No. MT2012-1, First-Class Tracer Data Collection Report FY12, Q1-4 and FY13, Q1-2, April 19, 2013.

<sup>23</sup> Docket No. MT2013-1, Order No. 1539, Order Approving Metro Post Market Test, November 14, 2012.

delivery service that will provide customers with same-day delivery from participating locations within a defined metropolitan area.” *Id.* at 1. The Postal Service plans to enter into relationships with up to ten qualifying online e-commerce companies to offer same-day local delivery. *Id.* at 2. Buyers may request same-day delivery by using a qualifying online e-commerce platform, purchasing items at participating retail stores, or visiting a participant’s website to purchase items. *Id.* at 3. The daily cut-off times for making purchases will occur between 2:00 p.m. and 3:00 p.m., and same-day delivery will occur between 4:00 p.m. and 8:00 p.m. *Id.*

The Commission also granted the Postal Service an exemption from the \$10 Million Adjusted Limitation. *Id.* at 10. The market test began on December 12, 2012 and is ongoing.

I. Docket No. MT2013-2

On July 1, 2013, the Postal Service filed a notice announcing its intent to conduct a market test of a competitive experimental product called International Merchandise Return Service – Non-Published Rates (IMRS-NPR).<sup>24</sup> IMRS-NPR items consist of returned merchandise that consumers purchased through online retailers in the United States. *Id.* at 2. IMRS-NPR will enable foreign consumers to create return labels and postage payment to return products back to the United States. *Id.* The consumer can create his or her own shipping label and send it to the merchant through the consumer’s postal channel. *Id.* The market test proposal is currently pending before the Commission.

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<sup>24</sup> Docket No. MT2013-2, Notice of the United States Postal Service of Market Test of Experimental Product – International Merchandise Return Service – Non-Published Rates (IMRS-NPR) and Notice of Filing IMRS-NPR Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, July 1, 2013.