

## **Article III – Requirements Each State Must Accept to Participate**

### **Draft 4/28/09**

#### **Rule 327.5. Direct Mail Definition**

**A. “Direct mail”** is defined in Part I of the Library of Definitions. The definition of “direct mail” applies only for purposes of determining proper sourcing of “direct mail,” and determining whether delivery charges or its components may be excluded from the sales price of “direct mail.” The sourcing provisions for “direct mail” are in Sections 313 and 313.1, and additional information is found in Rule 313.1. The definition of “delivery charges for direct mail” is found in Part I of the Library of Definitions, and additional information is found in Rule 327.4. Definitions of the terms “advertising and promotional materials” and “other direct mail,” used throughout the Agreement, are found in Section 313.C.

1. A product meets the definition of “direct mail” if:
  - a) the product is printed materials or the service of printing materials;
  - b) the printed material is delivered or distributed via United States mail or other delivery service by the seller to a mass audience or to addressees on a mailing list at the direction of the purchaser;
  - c) the costs of the product is not billed to the recipients,
  - d) multiple items of the same printed materials are not delivered or shipped to a single location. “Multiple items” means duplicate copies of the same printed materials And
  - e) the product does not include the development of billing information or the provision of any data processing services that is more than incidental.
  
2. A product that meets the definition of “direct mail” may include free product samples and other marketing materials supplied by the purchaser for inclusion with the printed materials in the packages or mailings, provided the recipients are not charged for the items in the packages or mailings.

Example 1. Company A sells men's clothing and markets its products through catalogs and an Internet website. Customer orders a sweater that will be shipped using a courier service. Company A includes with the package containing the sweater one of its catalogs and other promotional materials.

Because Customer is being billed for the sweater, the catalog and other promotional materials included in the package do not qualify as direct mail.

Example 2. Company B is a hair products company that just released a new shampoo product. As part of a nationwide campaign to inform the public about its new shampoo, it acquires a mailing list of potential customers and hires a company that does printing and mailing to mail printed promotional materials to all of the people on the mailing list. Included with the promotional materials is a free sample of the shampoo. The promotional materials qualify as direct mail because the recipient is not billed for the sample of the shampoo.

3. For purposes of this definition, “printed material or the service of printing materials” includes, but is not limited to, items such as catalogs, brochures, newsletters, stockholder reports, coupon booklets and other printed items for delivery or distribution by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser. This includes sales characterized under state law as the sale of a service only if the service is part of printed material that otherwise meets the definition of “direct mail.”

Example 1. A purchaser contracts with a service provider to perform data processing services that includes the retrieval, development and summarization of transaction data, print billing invoices, preparing the invoices for mailing, and delivering them to the U. S. Postal Service or other delivery service for delivery to the address on each invoice. Each envelope is mailed to a residential address and contains an invoice and an advertising insert. This does not constitute the sale of “direct mail.”

- B. “Direct mail” does not include multiple copies of the same printed materials that are intended for distribution to a mass audience when the retail sale of such product is delivered or shipped to a single address or to the purchaser’s location(s). A pallet, box or other container of multiple copies of the same printed material delivered to a single address as required by the purchaser does not constitute “direct mail.” Separate, non-duplicative pieces of printed materials that are bundled or combined in a single envelope, packet, wrap or mailing to an addressee are not considered “multiple items delivered to a single address” for purposes of the exclusion from the definition of “direct mail.”

Example 1. A printer produces 1,000 copies of a form letter, each personalized with customer information. Under the contract, the printer is required to shrink-wrap the pallet and release the statements to the custody of a third party mailing service provider selected by the purchaser. The purchaser has contracted separately with the mailing service provider to fold, insert the form letters into envelopes, and mail them. This printed material is not “direct mail” because the seller/printer is not delivering or distributing the printed material to a mass audience or to addressees on a mailing list at the direction of the purchaser.

Example 2. A printer produces 100,000 advertising flyers for a purchaser. For this print job, the purchaser requires the printer to ship 1,000 copies of the flyer to each of the purchaser’s 100 stores situated in various states. The purchaser will make these flyers available to their customers as they enter the store. The flyers shipped to the purchaser’s stores are not “direct mail,” because multiple items of the same printed material are delivered or shipped to a single address and because the printed materials are delivered to and billed to the recipient (purchaser).

Example 3. A printer produces 100,000 copies of an advertising brochure for a purchaser. The printer ships the brochures to the purchaser’s headquarters. The purchaser then repackages the brochures into 1,000 packages containing 100 brochures each and mails each of the packages to the individual members of its sales force. The flyers do not constitute “direct mail” when shipped from the printer to the purchaser or when shipped from the purchaser to its sales force, because they are multiple items of the same printed material delivered to a single address.

- C. The definition of “direct mail” is not intended to be a product definition as evidenced by the fact that the definition is found in Part I, Administrative Definitions, rather than the Part II, Product Definitions, of the Library of Definitions in the Agreement. States are not prohibited from exempting from tax some products that meet the definition of “direct mail” while imposing tax on other products that meet the definition of “direct mail.” For example, a state may impose sales and use tax on charges to print newsletters and at the same time exempt charges to print advertising materials. Both of these examples result in the creation of printed material that is included within the definition of “direct mail” provided the seller mails or distributes the printed materials via United States mail or other delivery service to a mass audience or to addressees on a mailing list as provided in the definition of “direct mail.”