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39 CFR Parts 3001 and 3050
Periodic Reporting Rules; Final Rule

POSTAL REGULATORY COMMISSION

39 CFR Parts 3001 and 3050

[Docket No. RM2008–4; Order No. 203]

Periodic Reporting Rules

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a set of rules to address the need for periodic reports from the Postal Service. Adoption of these rules will facilitate accountability and transparency of Postal Service operations, consistent with a new postal law. This document incorporates a revision to an internal reference in the rules. This revision was identified in a recent notice.

DATES: Effective June 4, 2009.

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SUPPLEMENTARY INFORMATION: *Regulatory History,* 73 FR 53324 (September 15, 2008).

I. Introduction

Under the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3218 (2006), the Postal Regulatory Commission was given enhanced information gathering and reporting responsibilities. To implement its information gathering and reporting functions under the PAEA, the Commission issued its Notice of Proposed Rulemaking Prescribing Form and Content of Periodic Reports on August 22, 2008 (Order No. 104).

Initial comments on these proposed rules were filed by seven participants.[1] Reply comments were filed on November 14, 2008 by eight participants.[2] Comments were generally supportive of the proposed rules as appropriate and reasonable requirements on which to base financial reporting under the new regulatory regime under the PAEA. The Postal Service commends the rules for leaving the existing financial reporting structure essentially intact while adapting it from a subclass-based format to a product-based format. It notes that the fundamental building blocks of cost reporting will remain the same, separating accrued costs into segments, applying variability studies to form pools of attributable costs, and using data collection systems to distribute those pools to products, as summarized in the Cost and Revenue Analysis (CRA) Report and the Cost Segments and Components (CSC) Report. Costs avoided by worksharing and other characteristics will continue to be estimated, for the most part, by down-flow models supplemented by special studies. Postal Service Comments at 1–2.

The Postal Service also commends the rules for giving appropriate recognition to the transitional status of data reporting, providing a flexible approach for converting from subclass- to product-based reporting, and integrating negotiated service agreement (NSA) data into the larger reporting system. *Id.* The Postal Service concludes that overall the proposed new rules establish ''a workable framework for the ACR and periodic reporting.'' *Id.* at 2. Some participants argue that a few of the proposed rules should be pared back until experience indicates that there is a need for more robust versions of the rules while other participants argue that the proposed rules need to be made more robust in some respects. Comments are discussed in the context of the specific proposed rule to which they apply.

II. Proposals To Revise Specific Reporting Rules

A. Proposed Rule 3050.1 (Definitions)

Definition of ''Analytical Principle.'' Proposed rule 3050.1 defines certain terms used in the periodic reporting rules. Proposed paragraph (c) of this section defines ''analytical principle'' as:

> A particular economic, mathematical, or statistical theory, precept, or assumption applied by the Postal Service in producing a periodic report to the Commission.

Valpak argues that this definition is too narrow. Noting that the Commission considers a change in the specification of a regression model to be a change to an ''analytical principle,'' Valpak argues that a regression analysis ''may be viewed as a tool or a technique, or even a method, but it is not commonly understood to be a 'theory,' 'precept,' or 'assumption.' '' Valpak Comments at 21. Valpak's argument is supported by the Public Representative. Public Representative Reply Comments at 17.

The Commission believes that the ambiguity that Valpak and the Public Representative perceive is resolved when the definition of ''analytical principle'' in final rule 3050.1(c) is read together with the definition of ''quantification technique'' in final rule 3050.1(f). Final rule 3050.1(f) reads:

> *Quantification technique* refers to any data entry or manipulation technique whose validity does not require the acceptance of a particular economic, mathematical, or statistical theory, precept, or assumption. A change in quantification technique should not change the output of the analysis in which it is employed.

Together, the definitions of ''analytical principle'' and ''quantification technique'' divide the data manipulation techniques used to produce the Postal Service's periodic reports into two categories—those whose validity requires acceptance of a causal theory, and those whose validity does not.

Explanatory terms are included in a regression equation because they are assumed to ''explain,'' or partially cause, the phenomenon being measured. Because explanatory terms are assumed to influence the phenomenon being measured (or are being tested to see if they do), they fit the definition of ''analytical principle.'' In contrast, choosing a standard statistical package, such as SAS or STATA, to fit the regression equation to the data (using the standard mathematical formula for calculating least squares) does not depend on any assumption about what causes the phenomenon being measured and should not affect the result. The statistical package chosen to run the regression, therefore, fits the definition of ''quantification technique.'' This should clarify how the definitions in final rule 3050.1 fit together as a comprehensive whole. Because the Commission does not believe that the definition of ''analytical principle'' in § 3050.1(c) needs to be modified, it declines to accept Valpak's proposal.

[1] Comments of the Department of Defense in Docket No. RM2008–4, filed on October 15, 2008 (DOD Comments); Initial Comments of the Public Representative (Public Representative Comments); Initial Comments of the Greeting Card Association (GCA Comments); Initial Comments of Time Warner Inc. in Response to Order No. 104 (Time Warner Comments); Initial Comments of the United States Postal Service in Response to Order No. 104 (Postal Service Comments); Valpak Direct Marketing Systems, Inc. and Valpak Dealer's Association, Inc. Initial Comments Regarding Proposed Rules Prescribing Form and Content of Periodic Reports (Valpak Comments); and Initial Comments of Major Mailers Association (MMA Comments), filed on October 16, 2008.

[2] Reply Comments of Time Warner Inc. in Response to Order No. 104 (Time Warner Reply Comments); Reply Comments of the Public Representative (Public Representative Reply Comments); Reply Comments of United Parcel Service on Notice of Proposed Rulemaking Prescribing Form and Content of Periodic Reports (UPS Reply Comments); Reply Comments of Magazine Publishers of America, Inc., Alliance of Nonprofit Mailers and American Business Media (MPA/ANM/ABM Reply Comments); Reply Comments of Pitney Bowes Inc. (Pitney Bowes Reply Comments); Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments Regarding Proposed Rules Prescribing Form and Content of Periodic Reports (Valpak Reply Comments); and Reply Comments of the United States Postal Service in Response to Order No. 104 (Postal Service Reply Comments), all filed on November 14, 2008.

Definition of the term ''product.'' Proposed rule 3050.1 defines terms that are of unique relevance to part 3050 of the Commission's rules. The Public Representative argues that the definitions contained in proposed rule 3050.1 should be consistent with and not redundant of those found in § 3001.5—the main definitional section of the Commission's rules. He notes, in particular, that the term ''product'' is defined in proposed rule 3050.1 and in § 3001.5, and that the definitions are not precisely the same. The Commission agrees that the term ''product'' does not need to be defined in its periodic reporting rules. Accordingly, it has eliminated the term ''product'' from the definitions provided in final rule 3050.1.

Definitions of ''Annual Report'' and ''section 3652 report.'' Proposed rule 3050.1(e) defined the term ''Annual Report'' as ''the report that section 3652 of the Postal Accountability and Enhancement Act requires the Postal Service to provide to the Commission each year.'' In its discussion of revisions to § 3050.20, *infra,* the Commission observes that the analysis that § 3050.20 requires the Postal Service to provide is meant to implement § 3652 of the PAEA. Generally, § 3652 requires the Postal Service to analyze how rates and service in the previous year complied with the requirements of title 39 of the United States Code.

The comments received concerning proposed rule 3050.20 have persuaded the Commission that instead of ''Annual Report,'' its periodic reporting rules need to employ two standard references to the annual reports that the Postal Service is required to file with the Commission—one broader than the term ''Annual Report,'' and one that is slightly more narrow. Where a broader definition is intended, the final rules use the phrase ''annual periodic reports to the Commission.'' Where the narrower definition is intended, the final rules use the phrase ''section 3652 report.'' That phrase, however, will be used to encompass all of the Postal Service reports required by § 3652 except for the program performance reports referenced by § 3652(g). Those reports are also required to be reported at the time that the Postal Service files its comprehensive statement with Congress. *See* 39 U.S.C. 2804(a) and 2401(e). To avoid redundant reporting, ''section 3652 report'' is understood to exclude program performance reporting under §§ 2803 and 2804. *See* final rule 3050.1(g).

B. Proposed Rule 3050.2 (Corrections and Changes in Input Data or Quantification Techniques)

Proposed rule 3050.2 requires that the Postal Service document its periodic reports. Paragraph (a) requires it to list and explain corrections, changes in input data, and changes in quantification techniques made since the report was last filed. Paragraphs (b) and (c) require the submission of workpapers and spreadsheets that meet certain standards. Paragraph (d) allows portions of the documentation required by ''this section'' that are not time critical to be filed up to two weeks late if the Postal Service gets advance approval of the Commission.

Delayed filing of documentation. Valpak observes that it is less appropriate to file the material required by paragraph (a) 2 weeks later than the other material required by proposed rule 3050.2. The Commission agrees. Final rule 3050.2 applies the deferral option only to paragraphs (b) and (c).

Tracking the impact of errors. Valpak argues that where errors have been corrected, the impact of the correction could be masked by other changes in the relevant periodic report. It argues that proposed rule 3050.2 would lead to more transparency if it were to state:

> Corrections should be presented in a manner that permits replication of the calculation both before, and after, correction of the error.

Id. at 22.

The Postal Service argues that complying with the proposed requirement might be a straightforward exercise if a model with an error consisted of a single spreadsheet. The spreadsheet program would allow the program to be run both with the error and with the error corrected. It points out, however, that where there is an elaborate set of linked models, as occurs in the CRA, complying with the proposal might require a large number of time-consuming model runs if there were multiple errors whose impact needed to be separately demonstrated. Under this circumstance, the Postal Service argues that complying with the proposal would be a large waste of effort and resources. Postal Service Reply Comments at 7–8. The Commission agrees. Accordingly, it declines to adopt the revision to proposed rule 3050.2 that Valpak proposes.

Duty to explain variations in results that exceed a quantitative threshold. MMA argues that the Postal Service's choices of what input data to use can be as significant in their impacts as what analytical methods the Postal Service chooses to apply to data. As an illustration, it complains that the Postal Service's insistence on using theoretical Delivery Point Sequencing (DPS) percentages rather than actual DPS percentages has had a major impact on the cost of the kind of mail that it sends. It notes that proposed rule 3050.2 would require the Postal Service to identify input data or quantification techniques and to list any corrections that it has made since a periodic report was last submitted and to explain the change or correction. The listing and explanation are to be provided when the Postal Service submits the relevant periodic report. It argues that where the impact of such changes is sufficiently large, this proposed procedure is inadequate. It proposes that there be an opportunity for advance review of changes to input data, quantification techniques, or corrections that impact avoided costs by more than 0.1 cent. MMA Comments at 2–4. It argues that this issue will grow with the adoption of the Intelligent Mail barcode. *Id.* at 4–5.

The Postal Service opposes the proposal, arguing that it is impossible to identify the complete set of input changes that cause changes to cost avoidance estimates in excess of a particular threshold until the workshare models are finalized. It asserts that there is ''virtually no lag time between finalization of the workshare models and filing of the ACR.'' Postal Service Reply Comments at 22. The Commission accepts the Postal Service's representation that there is not a sufficient interval between the finalization of its avoided cost model results and the filing of its § 3652 report to accommodate MMA's proposal.

Valpak offers a related proposal. It asks that the Postal Service be required to identify and explain its § 3652 report results that are anomalous from a logical perspective, and to explain results that change a product's unit attributable costs from year to year by more than the change in the Consumer Price Index plus or minus 5 percent. Otherwise, Valpak states, in the brief time available to mailers, they ''would need to search for such peculiarities on their own and, even if found, mailers would be left wondering about the relevant facts and their significance, because they would have received no explanation from the Postal Service.'' Valpak Comments at 20.

The Postal Service responds by arguing that the definition of a logical anomaly is too subjective to serve as a workable rule. It also argues that the plus-or-minus 5 percent standard for variations in unit attributable costs is too objective; that is, it cannot be varied for small mail classes whose unit cost

results vary substantially due to the problem of small sample size. It also questions the value of pursuing such details of cost analysis in a price cap regulatory regime. Postal Service Reply Comments at 7.

The Commission urges the Postal Service to include in its § 3652 report, to the maximum extent possible, explanations of both logical anomalies and unusually large swings from year to year in its unit attributable cost results. Nevertheless, it declines to adopt a quantitative threshold triggering this obligation as arbitrary. It also agrees that logical anomalies are too subjective to serve as a workable rule. It, therefore, declines to adopt periodic reporting rules with quantitative thresholds as Valpak requests.

C. Proposed Rule 3050.3 (Confidential Treatment of Periodic Reports)

Part 3007, proposed in Docket No. RM2008–1, would implement the provisions of the PAEA that generally authorize the Postal Service to designate information in the periodic reports that it provides to the Commission as confidential within the meaning of 5 U.S.C. 552(b) or as commercially sensitive within the meaning of 39 U.S.C. 410(c). *See* 39 U.S.C. 3654(f). Proposed part 3007 would resolve the issue of how information so designated could be made public. The Commission contemplates initiating a series of rulemakings designed to identify in part 3050 specific categories of information that would be presumptively confidential and specific categories of information that presumptively would not, as a guide to future submissions by the Postal Service and third parties.

D. Proposed Rule 3050.11 (Procedures for Changing Accepted Analytical Principles)

Proposed rule 3050.11 sets forth procedures governing Commission review of a petition or notice of proceeding to change an accepted analytical principle. It would evaluate proposals to change accepted analytical principles under the informal rulemaking procedures of 5 U.S.C. 553. The proposed rule would allow the Commission, its Public Representative, the Postal Service, or private parties, to file a petition or notice of proceeding to change accepted analytical principles used in the Postal Service's annual reports to the Commission. The rule goes on to identify content that the petition should contain and the procedures to be followed in obtaining additional information that would support the petition.

Methodological rulemakings initiated by the Commission. Valpak points out that proposed rule 3050.11 would allow the Commission to institute this process on its own behalf although the rule has provisions with respect to the content of the instituting document and the procedures for gathering supporting information that are explicitly related only to ''petitions.'' It correctly observes that this leaves it unclear whether these provisions are meant to apply to proceedings begun by the Commission on its own initiative. Valpak Comments at 14. To remove this ambiguity, final rule 3050.11 explicitly relates these provisions not just to a ''petition,'' but to a ''notice of proceeding'' issued by the Commission.

Methodological rulemakings initiated by a Public Representative. Proposed rule 3050.11 lists a ''Public Representative'' among those who would be authorized to petition for a rulemaking to change an accepted analytical principle. Valpak notes that the current Commission practice is to appoint public representatives only after a formal docket has been established. It says ''[i]n such a situation, it is unclear whether anyone among the Commission's rotating Pubic Representatives could initiate a change in an 'accepted analytical principle.' '' Valpak Comments at 24. The Public Representative makes a related recommendation that a public representative should be appointed in a methodology rulemaking immediately after the Commission has concluded that a petition should move from the evaluation stage (*see* paragraphs (a) and (b) of proposed rule 3050.11) to the notice of proposed rulemaking stage (*see* paragraph (c)(2) of proposed rule 3050.11). Public Representative Comments at 7.

The Commission appoints a public representative in every proceeding. 39 U.S.C. 505. Thus, the public will be represented in strategic rulemakings as described in this order. Furthermore, public representatives are appointed in Annual Compliance Determination (ACD) dockets as well as dockets established to consider rate and classification adjustments. A public representative in any such proceeding could determine that petitioning to initiate a rulemaking would be an appropriate exercise of responsibility.

Discovery. Paragraph (b) of proposed rule 3050.11 provides:

> To better evaluate a petition to change an accepted analytical principle, the Commission may order that it be made the subject of discovery. By request of any interested person, or on its own behalf, the Commission may order that the petitioner and/or the Postal Service provide experts on the subject matter of the proposal to participate in technical conferences, prepare statements clarifying or supplementing their views, or be deposed by officers of the Commission.

This paragraph allows the Commission to make a petition for a methodological rulemaking the subject of discovery at its discretion. Valpak argues that ''optional discovery provides neither protection nor due process.'' Valpak Comments at 33. It comments that:

> This provision implicitly assumes that the Commission will be able to decide on its own, from the face of a petition to change, whether mailers should have the due process right to investigate the proposed change. But such an assumption is unlikely to be accurate. Mailers often focus on changes which appear significant to them, giving greater attention to details than the Commission staff can devote to the issues and consequences presented by such changes. Moreover, not all weaknesses are apparent of the face of each proposal.

Id. Accordingly, Valpak contends that discovery should be provided for as of right. It recommends that this be accomplished by applying the formal hearing procedures of part 3001, subpart A, of the Commission's rules to methodological rulemakings. *Id.* at 12.

As explained in Order No. 104 at 30–35, the Commission has drafted proposed rule 3050.11 to accommodate methodological rulemakings that run the gamut from broad surveys of the Postal Service's need for new data and research into analytical issues (which Order No. 104 labels ''strategic rulemakings'') to narrow relatively minor methodological changes that could be placed on a ''fast track'' to be evaluated in time to incorporate them into the next section 3652 report. Where technical issues are complex or controversial, technical conferences are likely to be the first procedure authorized as a vehicle for interested parties to identify issues that need to be explored. Where technical conferences demonstrate a need for follow up in more depth, discovery requests will be entertained and, very likely, granted. Where proposed methodological changes are relatively minor and non-controversial, and time is of the essence, however, making discovery a ''right'' could take away the Commission's ability to adapt review procedures to fit the underlying issues presented. This could ultimately hinder, rather than improve, the compliance review process if it results in a diversion of the technical resources of all concerned from more pressing issues. The Postal Service generally agrees. Postal Service

Reply Comments at 4–6. For these reasons, final rule 3050.11 retains the Commission's discretion to order discovery in evaluating petitions for review of changes in analytical principles.

''Missing role of other parties.'' In Valpak's comments on paragraph (b) of proposed rule 3050.11, the topic heading ''Missing Role of Other Parties'' appears. Valpak Comments at 26. Under that heading, Valpak notes that paragraph (b) authorizes the Commission to ''order'' the ''petitioner'' and/or the ''Postal Service'' to provide experts on the subject matter of the petition ''to participate in technical conferences, prepare statements * * * or be deposed.'' *Id.*

Valpak complains that ''there is no express authority in this rule for expert testimony to be filed by other parties.'' *Id.* From the fact that the rule does not *require* the expert testimony of third parties, Valpak seems to conclude that the rules do not *permit* such testimony. To remedy this alleged defect, it proposes that the language of paragraph (b) be expanded from ''the Commission may order that the petitioner and/or the Postal Service'' to ''the Commission may order that the petitioner, any interested persons, and/or the Postal Service [provide experts to participate in the process.]'' *Id.* at 27.

As Valpak recognizes, the Commission does not have the authority to order experts employed by third parties to participate in a methodological rulemaking. Therefore, the fact that § 3050.11 does not do so should not give rise to any inference that third-party experts would not be permitted to participate in the petition evaluation stage of a rulemaking. Such participation will be encouraged, but the Commission does not believe that it is something that it can require. As the Commission noted in its notice of proposed rulemaking in this docket, it views collaboration as the ideal approach to the development and evaluation of analytical principles in postal ratemaking. *See* Order No. 104 at 30–31.

Referring to the procedures that it had to follow in vetting analytical issues under the Postal Reorganization Act (PRA), the Commission made the following observation:

> [T]he Commission was required to resolve an analytical issue by accepting or rejecting competing analyses submitted by opposing witnesses. * * * In almost all cases, analyses were presented as *faits accomplis,* with no opportunity for input or feedback from either the Commission or interested third parties. The process was cumbersome and the results were often less than satisfactory.

Id. at 30. Valpak reads this comment as a Commission preference for a procedure that ''eliminates all counter-proposals'' to those contained in a petition. Valpak Comments at 32, n.13. Valpak contends:

> The new process is likely to be more satisfactory only if various parties (i) are allowed to, and (ii) do, participate vigorously in the proposed process, from the outset. Otherwise, Postal Service studies will go largely unchallenged, and the Commission will be unaided by input from the parties.

Id.

The Commission agrees that broad and vigorous public participation is beneficial. The Commission believes this goal can be more fully realized by expanding the informal rulemaking process. In ''on the record'' hearings under the PRA, the Commission was required to choose one from among what typically was a very limited set of models that was sponsored ''on the record'' by the Postal Service or an intervenor. Any correction of a model, or synthesizing of competing models that the Commission tried to do to support a decision, was likely to be challenged as procedurally infirm because it was not ''sponsored by a witness on the record.'' The PAEA, on the other hand, allows methodological issues to be resolved through informal rulemakings which allow collaborative research and multi-party input. That is the Commission's goal in conducting methodological rulemakings under § 3050.11.

Deposing witnesses. Among other things, paragraph (b) of proposed rule 3050.11 provides that the petitioner or the Postal Service provide witnesses on the subject matter of the petition to be ''deposed by officers of the Commission.'' Valpak associates the term ''depose'' with adversarial interrogation. It asserts that if the Commission's officers were to depose witnesses, it would put them in the untenable position of being both litigators and decision-makers.

To call informal rulemaking such as that which proposed rule 3050.11 would authorize ''litigation'' mischaracterizes that process. Nevertheless, it may be beneficial to replace the phrase ''deposed by officers of the Commission'' with the phrase ''or answer questions posed by the Commission or its representatives'' as the Postal Service proposes. *See* Postal Service Reply Comments at 9. This should eliminate the inference that Valpak draws. Final rule 3050.11 incorporates that change.

Oral input. Valpak notes that proposed rule 3050.11 gives the Commission discretion to prescribe the form of input (oral or written) that it will receive from interested parties. It does this at two points in the informal rulemaking process. In paragraph (a)(2), it allows the petitioner to request access to Postal Service data to support its petition, and gives the Commission discretion to require that the Postal Service's answers or objections be presented orally or in writing. In paragraph (c)(1), the rule allows interested parties to comment on any notice of proposed rulemaking that is issued based on a petition to change accepted analytical principles. It gives the Commission discretion to require that their comments be made orally as well as in writing. Valpak Comments at 24–25.

Valpak argues that requiring a petitioner to make its requests for Postal Service data to support its petition orally (paragraph (a)(1)) and requiring interested parties to comment on notices of proposed rulemaking orally (paragraph (c)(1)) ''almost certainly would add confusion to a proceeding and, possibly, would restrict the due process rights of interested parties'' because the answers could address ''some of the most complex, sometimes arcane, and significant matters that come before the Commission.'' *Id.* at 25. It also argues that oral comments presented by lawyers would rarely be as useful as ''thoughtful, written commentary.'' *Id.,* n.11. It requests that the discretion to require oral rather than written responses be eliminated from the two paragraphs referenced above. *Id.* at 25–26.

The answer to Valpak's concerns is that where complex or arcane matters are under review, the Commission is likely to reflect those considerations in its decision, and allow comments to be submitted in written form. While it might share Valpak's skepticism of the value of oral comments presented by attorneys, the Commission notes that oral comments on technical matters could be presented by technical experts. The Commission notes that 5 U.S.C. 553(c) affords interested persons a right to submit written comments in rulemakings covered by its procedures. Accordingly, the Commission has revised proposed rule 3050.11(c) [3] to provide interested persons with the right to submit written comments in response to a notice of proposed rulemaking issued under § 3050.11. Final rule 3050.11, however, preserves the Commission's discretion to require answers or objections to data requests

[3] Proposed rule 3050.11(c) has become final rule 3050.11(d).

made under § 3050.11(a)(2)[4] to be oral or in writing. This will allow the Commission to adjust procedures and review periods to fit the issues presented by a particular petition.

Notice of pending studies. The purpose of proposed rule 3050.11 is to provide for the input of mailers and the Commission before the Postal Service settles upon the analytical principles that it will apply in its annual reports to the Commission. Valpak argues that the rule will not be effective in accomplishing that purpose unless it requires the Postal Service to notify mailers and the Commission of special studies that are intended to result in changes to accepted analytical principles while those studies are still in their formative stage. *Id.* at 30–35. It proposes that the Postal Service be required to publish a ''short status report'' on all special studies that it proposes or are already underway, regardless of whether they would have to be submitted as § 3050.11 proposals. It proposes that the list be updated quarterly, and include the ''unit within the Postal Service'' that is responsible for conducting the study, the study's beginning date, current status, and expected completion date, and the analytical principles that the study ''may affect.'' *Id.* at 35.

The Postal Service considers adding such a requirement to § 3050.11 as impractical, burdensome and unnecessary. It argues that it has little incentive under the current regulatory system to keep its pending special studies secret until completed. It asserts that:

> The Commission has ample authority to discourage such inclinations simply by rejecting the resulting methodologies when the Postal Service 'unveils' its proposals. Consequently, not wishing to waste time, effort, and money, the Postal Service is not going to proceed with major new studies in the PAEA regulatory environment without engaging in what it believes will be deemed by the Commission to be an appropriate amount of prior consultation. This entire portion of the Valpak comments is written as if Valpak did not bother to read the Commission's careful discussion of Strategic Rulemakings. Order No. 104 at 32–33.

Postal Service Reply Comments at 10–11 (footnote omitted).

The Postal Service validly comments that strategic rulemakings are intended to provide mailers and the Commission with a description of its plans for new special studies and status reports on any special studies that are already underway. This is because a strategic rulemaking's main task is to obtain an overview of the Postal Service's research efforts, take inventory of its research needs, and set priorities for future research. In the interim between strategic rulemakings, the Postal Service is expected to keep mailers and the Commission current on major special studies, planned or pending, that are expected to lead to proposed changes in the analytical principles that it will use to prepare its annual reports to the Commission. If its voluntary efforts to provide mailers and the Commission notice of its plans for special studies should falter, the Commission could always reconsider Valpak's proposal to make notice mandatory.

Advance review of changes to data reporting systems. The periodic reporting rules proposed by the Commission make an important distinction between analytical principles and mere quantification techniques. Analytical principles are methods that reflect a theory, precept, or assumption about causation. Changing analytical principles can be expected to change the results of an analysis. Quantification techniques, in contrast, are the mechanics of calculating numbers that are theory neutral. The classic example would be multiplying two numbers with a hand calculator versus multiplying the same two numbers with a slide rule. The technique used should not change the result. *See* proposed rules 3050.1 and 3050.2. The Commission's periodic reporting rules are designed to allow the Commission and the public to review changes to analytical principles before they are applied by the Postal Service to estimate its financial results. These rules intend to make this a manageable task by exempting mere quantification techniques from advance review and acceptance by the Commission.

In Order No. 104, the Commission used a number of examples designed to illustrate the distinction between analytical principles, for which advance review is required, and quantification techniques, for which advance review is unnecessary. The Postal Service questions the appropriateness of several of these examples.

One example used was a major change that the Postal Service recently made to the way that it collects Mail Processing Data System (MODS) data. MODS data is primarily used by postal managers to estimate plant workload so that the manager can adjust his staffing to match that workload. MODS data has long played a central role in modeling volume-variable mail processing costs, distributing those costs to subclasses, and in determining mail processing productivities in cost avoidance models.

For decades, the Postal Service has relied on calculating First Handled Pieces (FHP) from MODS data as a proxy for how much volume was being handled by each processing plant. Finding a valid plant-wide estimate of FHP required that collection mail be weighed and the weight converted to the equivalent of pieces. This process was cumbersome, time consuming, and became less accurate if conversion factors were not updated. Nevertheless, for decades FHP has been the only reasonable proxy for plant-level volume that is available for modeling the volume variability of mail processing labor costs.

Without knowing how much volume is coming in to mail processing plants, there is little chance of accurately estimating the share of the nearly $22 billion of variable mail processing costs for which each product is responsible. If the Postal Service cannot successfully model how different products incur different shares of system mail processing costs, it cannot know how profitable its various products are at the rates it has chosen. Not surprisingly, to lose the empirical basis for modeling how mail processing costs are caused is of concern to the Commission, which is charged by the PAEA with the responsibility of determining cost estimation methods.

The Postal Service emphasizes that MODS is a management data system first, and a ratemaking data system second. It asserts that this makes it inappropriate for the Commission to require advance review of its decisions about how and when this data collection system should be modified. Postal Service Comments at 30–31.[5]

Time Warner expands on the theme that the Commission should play a more passive role in the decisions that are made to modify the Postal Service's basic data collection systems. It extends that theme to data systems, like the IOCS, that were established primarily for ratemaking purposes. Time Warner argues that there are myriad minor changes to the IOCS that the Postal Service implements at the beginning of each fiscal year, and that it would be burdensome and unnecessary for the Postal Service to have to get advance

[4] Proposed rule 3050.11(a)(2) has become final rule 3050.11(b)(2).

[5] It is worth pointing out that it is the Postal Service that has made the decision to have MODS perform dual service as both a management data system and a data system that plays a central role in ratemaking. To find mail processing volumes, it could have chosen to establish a data system that is designed primarily as a ratemaking data system comparable to the In-Office Cost System (IOCS) or the City Carrier Cost System (CCCS). As long as it has made this choice, it should recognize that it has made the Commission and the mailing public a stakeholder in the way that MODS is administered.

approval in an informal rulemaking before implementing most of these changes. As a substitute for that approach, Time Warner makes this proposal:

> A sounder, more moderate approach would be for the Postal Service, at the beginning of each fiscal year, to announce changes it is making in the instructions to IOCS data collectors and for interested parties to have an opportunity at that time to petition for the initiation of a rulemaking proceeding to review changes that seem questionable. Advance knowledge of the changes in format and content of the IOCS sample data would facilitate analysis by the Commission and interested parties of such data when it becomes available after the fiscal year is ended.

Time Warner Reply Comments at 4–5 (footnote omitted).

The procedure that Time Warner describes seems to be similar to the one in proposed rule 3050.2 for handling changes made by the Postal Service in the quantification techniques that it uses. In that proposed rule, the change is listed and briefly described after the Postal Service has already incorporated it into its analysis and it is, for all practical purposes, a *fait accompli.*

A procedure of this kind is appropriate for quantification techniques that have changed because quantification techniques are, by definition, not supposed to affect the results of an analysis. Changes to a basic data system such as IOCS, however, could affect the results of an analysis that relies on IOCS data. For that reason, if the Postal Service plans myriad minor changes to the IOCS or other basic data systems used in ratemaking, the Postal Service should treat them as changes to analytical principles and solicit public comment on them early enough that revisions can be made, if needed, without jeopardizing the planned implementation date for the changes. Accordingly, the proposal of Time Warner is not accepted.

E. Proposed Rule 3050.12 (Obsolete Special Studies)

Proposed rule 3050.12 was inspired by some recent examples of cost estimates with important rate consequences that were significantly inaccurate because the Postal Service had relied on a one-time study or one-time data collection effort that had become grossly non-representative with the passage of time. An example is the bundle-flow model that the Postal Service continued to use for Periodicals. It reflected a flat-processing environment that had largely disappeared roughly 5 years before the Postal Service began a field study to update the bundle-flow model to reflect post-AFSM 100 bundle flows. Another example is the Barcode Sorter accept rate for letters, which has a major impact on estimates of avoided costs for workshared letters. Nearly a decade passed before the Postal Service updated an accept rate that was originally based on a special survey.[6] Proposed rule 3050.12 would have required the Postal Service to list such one-time studies or one-time data collection efforts that it relies on to produce its annual periodic reports to the Commission and the study's completion date. The proposed rule would have required the Postal Service to either certify that each one-time study on which it continues to rely still reflects the current operating environment or provide a timetable for updating the study so that it does. The proposed rule included a presumption that a one-time study or data collection effort that is more than 5 years old is obsolete. It also included liberal waiver provisions. *See* Order No. 104 at 36, 43.

Even though one-time cost variability and cost avoidance studies are not routinely updated, the Postal Service asserts that they are ''tied to'' basic data reporting systems that are updated every year, thus minimizing the need for the proposed rule. Postal Service Comments at 15–16. It also argues that the proposed rule would be burdensome and unworkable.

To make that case, it focuses on cost avoidance models that underlie the calculation of worksharing discounts. It asserts that it would be impractical to list such models and identify the completion date of each because it continually refines such models in minor ways which, it claims, would make it difficult to determine their vintage. *Id.* at 15–20. It says that cost avoidance models ''have evolved over decades of postal litigation and incorporate new data as possible.'' *Id.* at 18. For example, ''wage rates, total mail processing costs by shape, piggyback factors, MODS data, and other inputs to these models are updated every year.'' It then asks ''[w]hat is the date that the Commission will use as a reference? * * * If one input in a study is more than five years old, is the study presumed to be obsolete?'' *Id.* It argues that such difficulties make it prudent to make proposed rule 3050.12 a mere placeholder, to be available when the need for such a rule becomes more compelling. *Id.* at 14–15, 17.

The Postal Service's argument that the vintage date of cost avoidance models is difficult to identify is essentially a ''straw man.'' It works only if one chooses to disregard the clearly drawn distinction in these periodic reporting rules between changed analytical principles on the one hand, and mere updating of input data on the other. *See* Order No. 104 at 27–29. The string of examples cited by the Postal Service all fall clearly into the latter category and, therefore, would not have a bearing on the ''completion date'' of a cost avoidance model. Postal Service Comments at 18. The completion data of a cost avoidance model is determined by the analytical method on which it is based. As Order No. 104 explains, changed analytical principles are those that change a causal theory or assumption. With respect to cost avoidance models, this would include a change in the underlying operations that are being modeled, piggybacking a type of cost for the first time, a redefined MODS pool, a new CRA adjustment factor, or a new density study. The Commission's recent experience with cost methodology rulemakings has demonstrated that the distinction between changing the analytical principles underlying cost models and updating the data that are input to those models is comprehensible and workable.

The Commission, however, recognizes that the Postal Service's technical staff has limited time and resources to devote to the problem of updating the cost studies. Final rule 3050.12, therefore, is revised to impose the minimum reporting requirement that will still give the Commission a systematic indicator of the potential scope of the problem of reliance on obsolete special studies. Only paragraph (a) of the proposed rule (*see* Order No. 104 at 43) is retained in final rule 3050.12. It now requires the Postal Service to list each special study relied on to produce its annual periodic reports to the Commission and its completion date. It requires the Postal Service to indicate whether the special study still reflects current operating conditions and procedures. It also requires the Postal Service to annually update the list. This will indicate to the Commission and the postal community where potential obsolescence problem areas might be.

In paring back the requirements of § 3050.12, the Commission accepts the suggestion of the Postal Service (Postal Service Comments at 17 and Time Warner (Time Warner Reply Comments at 2–3) that the problem of what to do about obsolescent special studies be addressed as part of a ''strategic rulemaking'' such as that described in Order No. 104 at 32. A strategic

[6] The same data are now collected automatically and routinely updated.

rulemaking would be one designed to make a comprehensive evaluation of the costing research needed by the Postal Service, prioritize those needs, and reach a consensus within the postal community on a timetable for achieving them.

F. Proposed Rule 3050.13 (Explanation of Changes Made to Accepted Analytical Principles)

Proposed rule 3050.13(a) states:

> At the time the Postal Service files its Annual Report, it shall include a brief narrative explanation of any changes to accepted analytical principles that have been made since the most recent Annual Compliance Determination was issued, and the reasons that those changes were accepted.

Valpak proposes adding to the proposed rule a requirement that the Postal Service provide a table of analytical principles that have been changed since the last section 3652 report, that specifies the docket in which the change was approved, and estimates the effect of the change using current-year data. Valpak comments that the latter requirement would be especially useful since the analytical principle would have been approved on the basis of the previous year's data. Valpak Comments at 36–37.

The Postal Service vigorously objects to adding the latter requirement. It emphasizes that Valpak is proposing that the Postal Service be required to run multiple versions of the current-year models for each approved change, one version with the change, and one version without. The Postal Service argues that this would be a waste of effort because these changes would have all been approved in advance.

The Commission agrees with the Postal Service that the benefit of requiring this information is limited since the analytical principles will have already been approved in an informal rulemaking. The burden on the Postal Service could be substantial, however, if it were required to run its current-year model multiple times in the very brief period that it has to prepare its section 3652 report for the previous year. *See* Postal Service Reply Comments at 13–14. Because the burden appears to outweigh the benefit, the Commission declines to adopt the change proposed by Valpak.

Paragraph (b) of proposed rule 3050.13 stated that the Postal Service's annual report was subject to proposed rule 3050.2. Proposed rule 3050.2 requires the Postal Service to identify changes in input data, quantification techniques, and corrections of errors in its periodic reports. Since the section 3652 report is a periodic report, the Commission concludes that paragraph (b) of this section is superfluous. Accordingly, paragraph (b) of this section has been deleted from final rule 3050.13.

G. Proposed Rule 3050.14 (Reporting the CRA in a More Disaggregated Format)

Proposed rule 3050.14 states that the Postal Service's Cost and Revenue Analysis (CRA) report shall be presented in a format that reflects the current Mail Classification Schedule, but should also be presented in an alternative, more disaggregated format that is capable of reflecting the classification structure that was in effect prior to the adoption of the PAEA. The purpose is to report data in a way that can serve as building blocks. This would allow the data to be structured to coincide with historical data, which would facilitate analysis of trends in postal finances and operations and support model building with the use of time series and panel data. It would also accommodate future changes in the Mail Classification Schedule without destroying the usefulness of historical data for analysis and modeling going forward. The alternative, disaggregated format is illustrated by the Appendix to Order No. 104 entitled ''Products and Categories.'' A comparable Appendix accompanies this order.

The Public Representative proposes that the Commission clarify the status of the Appendix. He argues that it should be made a formal appendix to part 3050 of the Commission's rules for inclusion in the Code of Federal Regulations (CFR), or that the Appendix be issued as a guidance document, consistent with OMB Bulletin 07–02, 72 FR 3432 (January 25, 2007). Otherwise, he says, the mailing public might be unaware of the alternative information that it contains. Public Representative Comments at 8.

The Commission believes that it would be inappropriate to make the Appendix a formal appendix that would appear in the CFR because it would be too cumbersome to update, should that become necessary. The Commission, however, will consider making it a guidance document.

The Postal Service suggests that the Commission make minor refinements to the categories of international mail listed in the alternative reporting format in the Appendix, ''Products and Categories,'' accompanying Order No. 104. Postal Service Comments at 41. The Postal Service proposes that product names in the Appendix conform to the new product names that it gave to its ''rebranded'' outbound international mail products on May 14, 2008. *See* 72 FR 16604 (April 4, 2007). The Postal Service also seeks to update the Appendix to reflect the elimination of outbound economy mail services that use surface transportation. *Id.* Additional refinements requested include the use of a consistent naming convention for reporting purposes, and the elimination of reporting categories for which ''neither revenue nor cost information exists.'' *Id.* at 43.

Most of the Postal Service's suggested refinements are adopted in the revised Appendix. However, the Commission adds certain inbound Special Services categories for which data should be reported. The revised Appendix replaces ''International First-Class Mail'' and ''International Priority Mail'' with the rebranded names ''First-Class Mail International'' and ''Priority Mail International,'' respectively. The revised Appendix also removes references to ''surface'' under First-Class Mail International for outbound single-piece letters, flats, IPPs, and parcels, and outbound single-piece cards.[7] However, the revised Appendix shows that data for ''air'' and ''surface'' categories should be reported under ''Inbound Single-Piece Mail (Letter Post)'' because air and surface were not eliminated as service offerings for inbound First-Class Mail International.

In keeping with the rebranded naming of outbound mail products, the Commission adds a reporting requirement for Global Express Guaranteed (GXG) and Express Mail International (EMI) under ''Outbound International Expedited Services'' in the Competitive Products section of the Appendix. This added reporting requirement is consistent with the Postal Service's existing reporting of GXG and EMI in the FY 2007 and FY 2008 International Cost and Revenue Analysis (ICRA) reports.

The revised Appendix adopts a consistent, new naming convention for reporting data related to outbound and inbound international mail. The new naming convention preserves the Commission's proposed reporting of disaggregated cost, volumes, and revenue data separately by terminal dues regime. *See* Order No. 104 at 18. The new naming convention also simplifies reporting by reducing the number of categories, primarily for inbound single-piece mail. Thus, the following naming convention is

[7] The acronym ''IPPs,'' or irregular parcels and pieces, refers to parcels that ''do not meet the dimensional criteria of machinable parcels and other parcels that cannot be processed by parcel sorters.'' Glossary of Postal Terms, Publication 32, May 1977 (Updated With Revisions through July 5, 2007) at 56.

adopted: Target System Countries at UPU rates, Transition System Countries at UPU rates, Subject to Agreement, Canada, Other.

The new naming convention is applicable to First-Class Mail International, outbound single-piece letters, flats, IPPs, and parcels, outbound single-piece cards, and inbound single-piece mail (*i.e.*, ''letter post'') separately for inbound air and surface letter post; and Priority Mail International for outbound Priority Mail subject to terminal dues. For Inbound Air Parcel Post, the naming convention replaces ''At Non-UPU Rates'' with ''Subject to Agreement.''

The new naming convention reference ''Subject to Agreement'' throughout the revised Appendix is intended to encompass the separate reporting of data by negotiated agreements that are both bilateral and multilateral in nature.[8] In this regard, ''Canada'' is listed for the relevant products and categories of mail covered by an existing bilateral agreement, while ''Other'' is intended as a placeholder for reporting data in response to future bilateral or multilateral agreements.

International Ancillary Services is currently defined as a product on both the market dominant and competitive product lists. Among the component categories of that product are Inbound International Return Receipt and Inbound International Insurance. The FY 2008 ICRA includes line items for these services as well, although no revenue or cost information is reported.[9] The Postal Service asserts that these categories should be dropped from the Appendix because revenue and cost information for them ''does not exist.'' Postal Service Comments at 43–44. As long as these categories remain components of International Ancillary Services, and appear as line items in the ICRA, the Commission prefers that they appear in the alternative format as well. If there is no data to report, the Postal Service may enter an ''N/A'' notation.

At the Postal Service's request, the Appendix is revised to include ''Inbound International Delivery Confirmation'' as a reporting category for data on ''revenue from the delivery confirmation surcharge for [inbound] Xpresspost and Expedited Services [from] Canada.'' *Id.* at 44.

Pitney Bowes proposes that the Commission attach a 3-year sunset provision to the Appendix, following up on the Commission's remark in Order No. 104 at 16, that the alternative format might not be needed after a few transitional years. The Commission prefers to watch events unfold to see how quickly the Mail Classification Schedule stabilizes, after which it will make a decision about the usefulness of the alternative format in the longer run.

H. Proposed Rule 3050.20 (Compliance and Other Postal Service Analyses)

Time Warner provides several intricate arguments in support of what it terms ''a relatively clear-cut jurisdictional issue'' that it sees in § 3050.20 as originally proposed. Time Warner Comments at 13. At the center of its discussion is concern over the types of circumstances where Commission action might be appropriate in response to a finding of ''noncompliance'' under 39 U.S.C. 3653(b). While some of Time Warner's arguments are unpersuasive, the Commission finds that the language of proposed rule 3050.20 should be modified to eliminate confusion in this area.

The Commission finds misguided Time Warner's suggestion that the Postal Service is not required to develop and implement rates that comply with the rate policies of § 3622. *Id.* at 9–10. The PAEA provides an integrated set of policy guidelines for the Postal Service to follow in setting rates. Although the Commission is responsible for reviewing the Postal Service's performance, most commenters believe that the initial responsibility for balancing and achieving these policies is, and should be, with the Postal Service rather than the Commission.

Section 3622(a) does direct the Commission to establish, and when necessary revise, a system of ratemaking to foster achievement of the requirements, objectives, and factors spelled out in subsequent paragraphs. Order No. 43 implemented such a system, directing that the Postal Service accompany each planned rate increase with a demonstration of compliance with those policies. *See* 39 CFR 3010.14.

However, even if no regulations had been implemented by the Commission, the Governors would have to establish rates that comply with the policies of § 3622. 39 U.S.C. 404(b) only authorizes the Governors to establish rates that are in accordance with the policies of chapter 36 of title 39 of the United States Code.

Time Warner contends that the concept of ''compliance'' is not easily applicable to such things as objectives and factors, which by their nature must be weighed and balanced. To ease concerns over the potential misuse of the Commission's broad remedial powers, Time Warner requests a Commission statement on how or when it might find the Postal Service to be not in compliance with such subjective terms. The Commission believes that Time Warner's request is well intentioned, but this rulemaking is not an appropriate vehicle for such a discussion.

The Postal Service joins Time Warner in arguing that it should not have to analyze the extent to which it has achieved its program performance goals established under §§ 2803 and 2804 as part of the compliance analysis required by proposed rule 3050.20. It argues that these sections already require the Postal Service to discuss its performance goals and evaluate its achievement of those goals in the comprehensive statement that it is required to file with Congress by 39 U.S.C. 2401(e). When evaluating whether the Postal Service has met its program performance goals, the Postal Service argues, it is the Commission's duty to review the Postal Service's comprehensive statement. Postal Service Comments at 49.

Sections 2803 and 2804 require the Postal Service to evaluate the degree to which its individual programs have met their objectives, by quantitative criteria where possible. The comprehensive statement that the Postal Service must file with Congress under § 2401(e) includes these program performance evaluations. Those evaluations, if done properly, would allow the Commission to determine whether the performance goals established under §§ 2803 and 2804 have been met. Because it is redundant, the requirement in proposed rule 3050.20 that the Postal Service analyze whether it has met the program performance goals established under §§ 2803 and 2804 has been deleted from final rule 3050.20. The Commission does this on the understanding that the Postal Service's comprehensive statement filed under § 2401(e) will be sufficiently specific and concrete to allow the Commission to make an informed determination as to whether the Postal Service has met the performance goals established for specific programs, as §§ 2803 and 2804 contemplate.

Section 3653(d) authorizes the Commission annually to make ''recommendations'' to the Postal Service ''related to the protection or promotion of public policy objectives set out in this title.'' This authorization is broader in subject matter than the Postal Service's comprehensive statement, which is limited to an analysis of how the Postal Service's

[8] For purposes of this category, the term ''multilateral'' refers to an agreement other than the multilateral agreement of the UPU convention.

[9] FY 2008 ICRA Report, December 29, 2008, worksheet tab A Pages (md) and A Pages (c).

programs have met the public policy objectives of § 101 of title 39 of the United States Code. Because it is not redundant of the analyses required in the Postal Service's comprehensive statement, the requirement in proposed rule 3050.20 that the Postal Service analyze how its products (individually or collectively) have promoted the public policy objectives of title 39 remains in final rule 3050.20.

Section 3653 allows the Commission the latitude to evaluate compliance ''for products individually or collectively.'' This language appears to authorize the Commission to determine what level of disaggregation makes sense when analyzing compliance with a particular criterion derived from the statute. The Commission believes that it will be beneficial to harmonize the analyses required of the Postal Service under proposed rule 3050.20 with the evaluations that § 3653 authorizes the Commission to make. Therefore, the Commission revises the language of final rule 3050.20 to allow the Postal Service to analyze whether its products have complied with a particular statutory goal, objective, or mandate, both at the individual product level, or for products collectively, where analysis at that level is appropriate.

The Commission agrees with Time Warner that using the term ''compliance'' in the title of proposed rule 3050.20 does not appropriately describe the task it assigns to the Postal Service—to analyze how its products have promoted the public policy objectives of title 39 of the United States Code. The Public Representative agrees. *See* Public Representative Reply Comments at 3. The solution is to broaden the title of proposed rule 3050.20. Final rule 3050.20 is now entitled ''Compliance and other analyses in the Postal Service's section 3652 report to the Commission.'' This broadened title indicates that an analysis can be required annually by § 3050.20 without constituting a ''compliance'' issue. In this regard, the Commission notes that the set of rules adopted in this docket are generally referred to as ''periodic reporting rules'' rather than ''compliance rules'' because they are intended to provide the information needed for all reports that the Commission is obligated by the PAEA to produce, whether or not they are compliance related.

Special reporting requirements for products out of compliance. Valpak proposes to amend proposed rule 3050.20 to require the Postal Service to provide supplemental information about products that ''do not comply with all applicable provisions of PAEA.'' For such products, it proposes that the rule:

> i. Require the Postal Service to explain the most important circumstances underlying the failure to meet the applicable provisions of PAEA;
>
> ii. Explain what steps the Postal Service plans to take to bring the products into full compliance with PAEA; and
>
> iii. Indicate the time frame within which the Postal Service contemplates * * * achieving full compliance.

Valpak Comments at 39.

For example, for a product that failed to cover its costs, Valpak would require the Postal Service to (1) explain why it did not cover its costs; (2) explain what steps the Postal Service plans to take to ensure that it will cover its costs; and (3) indicate when it expects those steps to bring the product's revenues above costs. Valpak argues that unless proposed rule 3050.20 is strengthened in this way, neither mailers who are cross-subsidizing such products, nor the Commission, will know how to respond to the failure of a product to comply with the requirements of the PAEA. *Id.* at 39–40.

The Postal Service responds only briefly to Valpak's proposal. It notes that Valpak would have the Postal Service give public notice in proposed rule 3050.20 of forward-looking remedial steps. It argues that such requirements are not appropriate for that rule since it is intended to implement a section of the PAEA (3652) that is focused on the past year. Postal Service Reply Comments at 14 and n.7.

MPA/ANM/ABM criticize Valpak's proposal as one that misconstrues the role that § 3622(c)(2) plays in the statutory structure. (Section 3622(c)(2) requires each ''class or type'' of mail to cover its attributable costs.) Though § 3622(c)(2) is characterized in the PAEA as a ''requirement,'' the coalition argues that it is little more than advisory in nature, since the price cap overrides it and all other objectives and factors that are found in the statute. They argue that failing to comply with an objective or factor in the course of complying with a more important one (the cap) does not give rise to a Postal Service obligation to explain anything in the context of compliance analysis.[10] The coalition, however, considers it ''not unreasonable'' for the Commission to add a new paragraph (k) to proposed rule 3050.21 requiring the Postal Service to:

> [p]rovide an explanation when revenues for a mail class or service do not cover attributable costs, and provide any other explanation that the Postal Service believes will be helpful to clarify how the Postal Service has considered the objectives of 39 U.S.C. § 3622(b) and the factors of 39 U.S.C. 3622(c).

MPA/ANM/ABM Reply Comments at 4.

With respect to a product with a history of non-compliance with some requirement of the PAEA, the Commission agrees with Valpak that it would be helpful in the compliance review process to know what the Postal Service considers to be the causes of that product's non-compliance, what the Postal Service plans to do to bring that product into compliance, and how long it expects that process to take. In the Commission's view, providing such information with the section 3652 report itself would greatly benefit the review process. As the Commission observed in its FY 2007 ACD at 91:

> The Postal Service should support its annual report with more complete explanations, and discuss data which may be perceived as anomalous, such as large variations in unit costs. With only 90 days available for the Commission to make its findings and even less time for interested parties to analyze the data and submit comments, it is crucial to the process that the data filed by the Postal Service is accompanied by accurate descriptions and a thorough analysis.

To encourage the Postal Service to provide a more thorough analysis of high priority topics relating to whether particular products have met particular standards articulated in the PAEA, the Commission has added paragraph (c) to final rule 3050.20. That paragraph provides:

> (c) [The Postal Service] shall address such matters as non-compensatory rates, discounts greater than avoided costs, and failures to achieve stated goals for on-time delivery standards, particularly where the Commission observed and commented upon the same matter in its Annual Compliance Determination for the previous year.

This provision reflects the revision by Valpak to proposed rule 3050.20 in the sense that it establishes a specific duty to include in the section 3652 report an analysis of results for products that do not satisfy certain provisions of the PAEA.

The Commission is mindful of the burdens that the Postal Service faces in preparing its section 3652 report and, therefore, the duty that it imposes on the Postal Service is narrower than that which Valpak's proposal would have imposed. Rather than require the Postal

[10] The coalition does not address scenarios in which a type of mail service does not cover its costs even though it, or the ''class'' to which it belongs, has cap room. Congress, however, contemplated scenarios under which a ''loss-making'' product could be out of compliance with the PAEA. *See* 39 U.S.C. 3662(c).

Service to explain the reasons that an outcome did not meet a particular standard of the PAEA, its plans for curing that deficiency, together with an expected timetable, it merely requires the Postal Service to ''address'' a very brief list of outcomes that do not satisfy a particular, objective PAEA standard.

The purpose of the provision is essentially to provide interested persons and the Commission with salient information when a particular PAEA standard is not satisfied by a particular result involving a particular product. The breadth of the explanations will vary with each factual situation. Paragraph (c) is framed in a manner that does not require a conclusion that a product that fails to comply with some statutory policy does or does not ''comply'' with the PAEA as a whole. It merely calls for relevant facts in those instances in which certain PAEA standards were not satisfied. Because the Commission has added paragraph (c) to final rule 3050.20, it declines to adopt Valpak's proposed revision of proposed rule 3050.20 or the related suggestion by MPA/ANM/ABM to revise proposed rule 3050.21.

I. Proposed Rule 3050.21 (Period for Measuring Institutional Cost Contribution of NSAs)

Proposed rule 3050.21(f) prescribed the reporting requirements for market dominant NSAs. Among other things, the proposed rule requires the Postal Service to report results for the NSA's contract year where that does not correspond to a fiscal year. The Postal Service observes that:

> it may also be possible to devise a means of conducting contribution assessments based directly on the fiscal year. If so, NSA data linked to the fiscal year would be more amenable to integration with the rest of the fiscal year reporting presented in the ACR. Therefore, the Postal Service requests that the proposed rule be amended to allow it the option to report on either a fiscal year basis or on the most recent year of operation. Building this flexibility into the rule could result in reporting procedures that are more efficient for both the Postal Service and the Commission.

Postal Service Comments at 36 (footnote omitted).

The Commission agrees with the goal expressed by the Postal Service of being able to report NSA results in a way that can be synchronized with the fiscal year report for the rest of the system. The problem appears to be that the Postal Service has not yet found a way to do that without sacrificing the accuracy of the resulting estimates.

In library reference USPS–FY08–30, the Postal Service provides financial results for NSAs that were active in FY 2008. Consistent with its proposal, the Postal Service provided volume data on a fiscal year basis. The analysis that used this volume information is, however, a flawed method of analyzing the compliance of volume-based NSAs with § 3622(c)(10) because it does not compare apples to apples. The Commission has approved application of a price elasticity test to NSAs as an objective way to measure the net contribution from any discount offered. The purpose of the elasticity test is to develop a meaningful before-rates forecast to measure possible revenue leakage from the discount. Applying the elasticity test to fiscal year volumes that do not align with the discount schedule, however, severs the connection between discounts and volumes, making any net contribution analysis meaningless. This approach creates a before-rates volume that does not correspond to any discount earned. The disconnect between contract years and fiscal years prevents a meaningful estimate of the net institutional cost contribution of NSAs. Accordingly, the Commission defers the Postal Service's proposal until it can demonstrate that it has found a way to adjust data for NSAs that are out of phase with the fiscal year to a fiscal-year basis without substantially distorting the resulting estimates.

J. Proposed Rule 3050.25 (Volume and Revenue Data)

Proposed rule 3050.25 identifies the data reports that the Commission needs to estimate volumes and revenues, such as the Revenue, Pieces, and Weight System (RPW) reports, the Quarterly Statistics Reports, and the billing determinants. The Postal Service objects only to the proposal that it provide billing determinants on a quarterly basis. It explains that meeting this requirement would require added expense to generate special weight reports and other input data that it now generates only annually. It argues that the added expense is not warranted in view of the limited benefits of this requirement. *Id.* at 37–39.

Time Warner supports the Postal Service's comments in this regard. It points out, however, that most of the volume and mail characteristic data on bulk mail comes from electronically filed reports by bulk mailers. It suggests that quarterly billing determinants for bulk mail classes could be produced at little additional expense, with the understanding that revisions might need to be made to the results at the end of the year. It says that such information might provide useful indications ''of the extent to which mailers are taking advantage of the various worksharing discounts offered by the rate structure[,]'' which ''might indicate the cost trends to anticipate for the various classes of mail.'' Time Warner Reply Comments at 5–6.

The Commission proposed that the Postal Service provide quarterly billing determinants primarily as an aid to analyzing the consistency of proposed rates with the price cap constraint. Because rate increases under the current calendar are out of phase with the annual billing determinant data, quarterly data are helpful in isolating what revenue changes are the result of changes in rates. The Commission believes that the benefits of this form of reporting outweigh its burdens, absent a more definitive estimate of the extra time and resources that providing quarterly billing determinants would entail. Therefore, final rule 3050.25 requires the Postal Service to provide billing determinants quarterly within 40 days of the close of the quarter. Annual billing determinants are required to be broken out by quarter as well.

Additionally, it would be extremely helpful if the Postal Service could develop billing determinant data separated between periods when different sets of rates were in effect. The Commission requests that, if possible, the Postal Service provide this information on a voluntary basis.

An example of the separation that the Commission requests is the set of new market dominant prices that will go into effect on May 11, 2009, roughly in the middle of the third quarter of FY 2009. If the Postal Service were able to separate the quarterly data between pre-May 11 and post-May 11 revenue and volume information, the Commission would be able to develop a set of volume weights that correspond to the periods in which different prices were in effect. These weights could be used to develop weighted-average-rates per piece by class for comparison with the planned weighted-average-rate per piece by class, developed using historic billing determinant data in accordance with the Commission's rules in Docket No. R2009–2. Of course, data for one part of a quarter would not be sufficient for such a comparison, but since the rates generally stay in effect for a year, the Commission and the public, by virtue of the periodic reporting rules, would eventually have access to data for a full year reflecting one set of rates.[11]

[11] The Commission is not asking the Postal Service to make this separation in billing determinant data to reflect new price categories, new discounts, or new surcharges. The post-implementation data can be compared with the pre-

Continued

These data would prove useful for the evaluation of the efficacy of the price cap. They would be particularly useful 7 years from now when the Commission must re-evaluate the current system of ratemaking. *See* 39 U.S.C. 3622(d)(3).

Although the Postal Service implements price changes for competitive products at a different time of year and although these prices are not subject to the price cap, competitive product billing determinants split between the pre- and post-rate implementation date would also be helpful. It would enable the Commission to evaluate more accurately the effects of price changes on the financial condition of the Postal Service and how such pricing activities help the Postal Service meet the requirements of 39 U.S.C. 3633(a).

K. Proposed Rule 3050.26 (Demand Elasticity and Volume Forecasting)

The proposed periodic reporting rules would have required the Postal Service to provide econometric estimates of demand elasticity for all postal products accompanied by the underlying econometric models and input data sets used. The provision establishing these requirements was proposed rule 3050.26. To accommodate the Postal Service's internal operational preferences, proposed rule 3050.26 requires that this information be filed with the Commission by January 20 of each year. Proposed rule 3050.26 is not associated specifically with the Postal Service's section 3652 report. The specific information items (other than avoided cost information) that the Commission deems necessary for it to carry out the compliance analysis required of it by § 3653 are found primarily in proposed rule 3050.21. For the sake of completeness, the requirement that the Postal Service provide a demand elasticity estimate for each postal product was included there as well. *See* Order No. 104, proposed rules 3050.21(f) and (g), at 45–46.

The Postal Service points out that proposed rules 3050.21(f) and (g) are redundant of proposed rule 3050.26, but require the same demand information to be filed with the Commission several weeks in advance of January 20 in late December of each year. It urges the Commission to resolve this redundancy in favor of the January 20 due date incorporated in proposed rule 3050.26. Postal Service Comments at 29. We accept the Postal Service's suggestion, and delete the references to demand elasticities from final rule 3050.21.

Explanatory narrative. The Postal Service emphasizes that it includes an explanatory narrative of its methods for estimating demand in its January 20 filing under proposed rule 3050.26 (even though that proposed rule did not explicitly require a narrative explanation of methods). It then notes that proposed rule 3050.60(f) requires a brief narrative explanation of how the estimates in the most recent ACD were calculated and the reasons that particular analytical principles were followed (due on July 1 of each year). *Id.* at 24–25.

Based on the Commission's narrative in Order No. 104, the Postal Service correctly concludes that the Commission had intended the term ''analytical principle'' to be broad enough to encompass the analytical principles used in econometric models of demand. The Postal Service argues that the brief narrative explanation of analytical principles underlying its demand analysis that proposed rule 3050.60(f) would require is redundant of the narrative explanation that it provides to the Commission in January of each year under proposed rule 3050.26. It urges the Commission to interpret proposed rule 3050.60(f) as not requiring a brief narrative explanation of analytical principles used in estimating demand elasticities. *Id.* at 29–30.

The Commission had intended the brief narrative explanations called for by proposed rule 3050.60(f) as explanations ''in a nutshell'' similar to those traditionally provided in Library Reference 1 in rate cases under the PRA. The main value of a set of such explanations of methods is that they would serve as a quick guide to the non-expert in understanding the arcane world of postal cost, volume, and revenue analysis. Therefore, it is not entirely accurate to characterize the § 3050.60(f) narrative as redundant of the more technical and detailed narrative that the Postal Service provides in January under proposed rule 3050.26. The Commission believes that this ''quick guide'' is quite helpful in making postal analysis more accessible to the lay public, and that this is as true of demand analysis as of other kinds of analysis. It therefore continues to interpret final rule 3050.60(f) [12] as applicable to analytical principles underlying the Postal Service's estimates of demand elasticity. Because a ''nutshell'' explanation is all that is expected, it is unlikely to significantly add to the Postal Service's reporting burden.

Advance review of analytical principles underlying demand and volume forecasting models. With respect to demand elasticity estimates, the Postal Service's major criticism is not redundancy, but the Commission's inclusion of demand elasticity estimates in its requirement that analytical principles used in its periodic reports be reviewed in advance by the Commission and the public. *See* proposed rule 3050.11. The Postal Service argues that the econometric models that it uses to estimate demand elasticity and to forecast volume are not like econometric models that it uses to estimate volume-variable costs. It asserts that the former are respecified, reworked, or tweaked almost every time that new input data are used. Accordingly, it argues, it is impractical for it to subject such frequent model revisions to advance review in a rulemaking context, as proposed rule 3050.11 would apparently require. *Id.* at 22–29. Although it concedes that demand elasticities play an important role in evaluating rates under the PAEA, it asserts that the Commission does not have authority to ''dictate'' the methods by which it forecasts volumes comparable to what it arguably had under the PRA since the evaluations that the Commission is obligated to make are primarily retrospective. *Id.* at 26. It, therefore, asks that analytical principles that underlie its volume and demand models be exempt from advance review.

The Postal Service contends that the goals of advance review could largely be served by the opportunity that the Commission would have to react to the Postal Service's demand modeling and volume forecasting methods, either in the course of the ACD or at another time of the Commission's choosing. It states that it would remain receptive to Commission input as to how such modeling could be improved. *Id.* at 29.

The Commission agrees with the Postal Service that its mandate to review analytical principles that the Postal Service uses to model demand elasticity and to forecast volume is not ''parallel'' with its mandate to review analytical principles that the Postal Service uses to estimate its costs. Its mandate to review

implementation data based on current reporting techniques. For example, the quarterly data that will include volume and revenue data subject to the planned Intelligent Mail barcode (IMb) discount will not require separate reporting for the IMb discount because no corresponding revenue and volume will exist in the quarter until the discount goes into effect. Thus, any data that are reported for the IMb discount can only reflect the effect of the new discount. However, if the level of that discount is subsequently changed, the quarterly data would have to be separated between the two discount regimes for accurate comparisons of actual weighted-average-rate per piece with planned weighted-average-rate per piece.

[12] Proposed rule 3050.60(f) has become final rule 3050.60(g).

cost principles is based directly on the language of § 3652(a)(1) that the Postal Service shall analyze ''costs, revenues, rates, and quality of service, using such methodologies as the Commission shall by regulation prescribe * * *.'' Its mandate to review the analytical principles used to estimate demand elasticities arises from its duty to evaluate rates and service in terms of the many objectives and factors of the PAEA that implicitly incorporate elasticity of demand. *See* Order No. 104 at 10–11. Elasticity of demand also provides essential evidence of ''market power,'' which is the root concept underlying the Commission's determinations under § 3642 that certain products be given market dominant or competitive product status under the PAEA.

The Commission's mandate to review analytical principles underlying volume forecasting arises where forecasting volumes is an intermediate step in estimating unit attributable costs or unit revenues.[13] Even though the Commission does not have rate design or revenue requirement responsibilities that require it to use the kind of roll forward that was part of formal rate cases under the PRA, it still has a need for volume forecasts to carry out some of its responsibilities. One is to review the compliance of rates proposed by the Postal Service with the price cap. Where, as in the last general rate adjustment, the Postal Service proposed rate increases for some products to take effect later than others, an accurate estimate of the revenue likely to be earned requires a product-level volume forecast. Volume forecasts are also needed to accurately assess whether revenues for specific competitive products with low profit margins are likely, at proposed rates, to remain above their attributable costs. In this regard, the Postal Service has voluntarily provided 1-year volume projections for a number of its competitive products at new rates to allow the Commission to more accurately verify the likelihood that they will, in fact, recover their costs in the coming year. Finally, in establishing service standards under § 3691, the Postal Service, in consultation with the Commission, is directed to take into account, among other things, ''mail volume and revenues projected for future years[.]'' *See* 39 U.S.C. 3691(c)(4).

In addition to the role that the Commission plays in evaluating rates and service, the Commission has the duty to calculate the cost (understood as profit impact) of the various Universal Service Obligation (USO) mandates. Estimating the costs for at least two of these mandates—Nonprofit Mail discounts and uniform rates for First-Class Mail—requires analysis of volume effects. Volume forecasts are also a necessary part of an analysis of the Postal Service's near-term financial outlook, which is relevant to the Commission's duties under § 3651 to assess the degree to which the modern system of rate regulation is achieving the objectives of §§ 3622 and 3633. The need for volume forecasts to adequately discharge this duty is obvious from the current alarm shared by the postal community over dramatic volume declines experienced and expected in the current fiscal year. The extent of near-term volume declines, current and expected, is highly relevant to a § 3651 assessment, as is the method by which those volume declines have been estimated.

Finally, volume forecasts can play an important role in the remedial phase of compliance review under §§ 3653(c) and 3662(c). For example, in its FY 2007 ACD, the Commission found that the performance of several loss-making products was not consistent with all of the applicable provisions of the PAEA. It did not take remedial action because new rates had already been recommended for those products before the issuance of the ACD. In that situation, volume and cost projections are needed to determine whether or not the new rates are likely to bring the affected products back above attributable costs. Because of their value in accomplishing the tasks described above, and because they are so closely related to the Postal Service's econometric model of demand elasticity, the Commission has added to final rule 3050.26 the requirement that the Postal Service provide its volume forecasting model and underlying documentation in January of each year.

As explained above, the Commission has a number of legitimate needs for estimates of demand elasticity and for volume forecasts, and to be able to evaluate the methods used to do them. That review, however, should interfere as little as possible with postal management's administration of its volume forecasting capability. Accordingly, the Commission will not require advance review of the methods by which the Postal Service estimates demand elasticity or forecasts volumes. To that end, final rule 3050.10 has been revised to make it clear the analytical principles that the Postal Service applies in estimating demand elasticities or forecasting volumes need not be reviewed in advance by the Commission.[14]

Current-year roll forward. The Public Representative proposes that the periodic reporting rules include a requirement that the Postal Service provide a current-year financial forecast. He notes that § 3651 requires the Commission to evaluate its own operations, including ''the extent to which regulations are achieving the objectives under sections 3622 and 3633, respectively.'' (Emphasis omitted.) Public Representative Comments at 3. He emphasizes that the task assigned to the Commission is to evaluate the current, rather than the past, success of its regulations in achieving their objectives. To do this effectively, he argues, it would be helpful to have information about the current year as well as historical information. He notes that the objectives of §§ 3622 and 3633 referred to in § 3651 primarily address rate, classification, service, and other issues that Congress expects the Commission to assess on a current basis, including whether products cover their attributable costs and whether competitive products are contributing an appropriate share to institutional costs. With respect to the latter assessment, he notes, § 3633 requires the Commission to take into account ''prevailing,'' as opposed to past, conditions in the market. He argues that to adequately meet the mandate of § 3651, current as well as historical data would be required. *Id.* at 3–4. He argues that such projections will highlight any unusual trends expected in product costs, and allow the public to better determine whether particular products are likely to cover their attributable costs. *Id.* at 5. He assumes that the Postal Service projects costs and revenues for the current year as part of the process of selecting new rates and to meet numerous other management needs. Therefore, he argues, providing a current-year financial roll forward is unlikely to add significantly to the Postal Service's reporting burden. *Id.*

[13] Volume information (with respect to market dominant products) is also mentioned in section 3652(a)(2) as within the Commission's purview.

[14] The Postal Service conjectured that the Commission viewed the presence of the term ''elasticity of demand'' in proposed rule 3050.11(a)(1) as the basis of its authority to require advance review of the analytical principles that it applies in estimating demand elasticities. It, therefore, requested that that term be deleted from proposed rule 3050.11. A close reading of that provision reveals that it is one item in a list of types of *impact* that the Postal Service should estimate (where feasible) that would arise from adopting a proposed change in an analytical principle. However, to remove any ambiguity about the Commission's intentions in this regard, that term has been removed from final rule 3050.11(a)(1) (renumbered as final rule 3050.11(b)(1)).

The Public Representative's logic is sound concerning the Commission's need for a current-year financial projection. A current assessment of the extent to which the Commission's regulations are achieving the objectives of §§ 3622 and 3633 would appear to require the best available data about the current as well as past years. Although the Public Representative is somewhat vague about the benefits of having a current-year projection to help the Commission in its evaluation, his general point is well taken. In its discussion of demand and volume forecasting, the Commission explained how having near-term cost and volume projections would improve its ability to carry out a number of specific tasks that have been assigned to it by the PAEA.

The Postal Service, however, takes issue with the Public Representative's assumption that providing the equivalent of a current-year roll forward would impose little added burden. It states that it ''does not routinely run its rate case roll-forward model, and there is no other way to get the set of comprehensive cost projections at the product and the rate category level that the PR describes.'' Postal Service Reply Comments at 20. It cautions that ''the Commission should [not] blithely add preparation and documentation of a roll-forward model to the already crushing list of activities which the Postal Service must complete in 90 days following the end of the fiscal year* * *.''

Although the Commission is sympathetic to the Postal Service's burden argument, it would prefer to have a better grasp of exactly how much extra time and resources would be required to provide a roll forward for the current year. The Commission believes that the benefits of being able to predict the net revenue effect of the Postal Service's proposed rates before it proposes them each year would be of substantial value to postal management. At the same time, it would be of significant benefit to the Commission in being able to more accurately evaluate the consistency of those rates with the price cap. Although a current-year roll forward would have these potentially important benefits, as discussed above, it is not clear at this time that it would outweigh the risk that this added requirement might be more than the Postal Service can handle in the very brief window available to it to produce the section 3652 report each year. Therefore, the Commission declines to adopt the Public Representative's proposal for a comprehensive roll forward for the current year at this time.

L. Proposed Rule 3050.28 (Monthly and Pay Period Reports)

Proposed rule 3050.28 deals with monthly and pay period reports. It would require that the Postal Service provides, among others things, the National Consolidated Trial Balance and the Revenue and Expense Summary. The Postal Service was originally opposed to providing them, presuming that its enterprise-wide public disclosure obligations were co-extensive with those of the private sector. *Id.* at 39–41. The Postal Service has since publicly provided similar, but somewhat less detailed information. That information, under the title ''Monthly Summary Financial Report'' has been added to the list of reports required by final rule 3050.28. The form in which that information will be reported accompanies the text of the final rule.

M. Proposed Rule 3050.30 (Universal Service Obligation)

Proposed rule 3050.30 would have required a set of data that was designed to facilitate modeling of the cost of various USO mandates. It included mail flow volumes by product between each pair of mail processing facilities. It also would have included costs, work hours, and CCCS/RCCS volumes by sampled product, route, facility, and ZIP Code. In addition, it would have included for sampled city routes, actual and possible deliveries by type, actual and possible stops by type, collection boxes, number of businesses served, and miles. Roughly comparable data would have been required for sample rural routes.

The general objection of the Postal Service to this proposed rule was that the USO studies underway were not yet complete (as of the October filing date for reply comments in this docket), and that it would be easier to isolate a set of data essential to costing the various USO mandates after the results of those studies were in. It reasons that the methodologies to be applied should be settled upon before the data is collected or reported.[15] *Id.* at 5–8.

Although this was an appropriate argument at the time, the USO studies conducted on behalf of both the Postal Service and the Commission have since been submitted and follow-up comments received. *See* Docket Nos. PI2008–3 and PI2009–1. This circumstance allows the Commission to form at least preliminary judgments about what data are likely to play an important role in estimating the costs of the various USO mandates. The Commission is aware, however, that issues of what data can reasonably be made available, and the costs and benefits of doing so, are complex and nuanced. The Postal Service recommends that when the studies are complete, that it, the Commission, and interested parties confer on what methodologies are appropriate to develop the annual USO cost estimates, what input data would be needed to apply those methodologies, and what data are already available or obtainable at reasonable cost. *Id.* at 5–6.

The Commission accepts the Postal Service's recommendation. It will retain proposed rule 3050.30 as a placeholder, as the Postal Service requests. It will institute a separate informal rulemaking docket to determine what data should be reported to allow the Commission to annually estimate the cost of the various USO mandates.

N. Proposed Rules 3050.40 and 3050.41 (SEC-Type Financial Reports)

Section 3654 of the PAEA requires the Postal Service to file with the Commission certain standard financial reports the Securities and Exchange Commission (SEC) normally requires publicly traded corporations to file, including the Form 10–K and the Form 10–Q. Section 3654 articulates the requirement in considerable detail. In an attempt to make the Commission's periodic reporting rules a comprehensive reflection of the reporting requirements that the PAEA imposes on the Postal Service, proposed rule 3050.40 essentially restates the SEC-style reporting requirement found in § 3654. Proposed rule 3050.41 restates the audit requirements of that section.

The Postal Service argues that § 3654 is detailed and unambiguous and should be regarded as definitively expressing its obligation to furnish the Commission with SEC-style reports. Therefore, it argues, there is no need for an implementing regulation. It urges the Commission to make proposed rule 3050.40 a placeholder to be available in the event that the Postal Service's reporting should be shown to be inaccurate or in need of modification. *Id.* at 9–14. In the event that the Commission decides to retain a detailed counterpart of § 3654 in its periodic reporting rules, the Postal Service provides alternative language as Attachment A to its initial comments.

The Commission agrees that § 3654 makes the SEC-style reporting required of the Postal Service explicit in most respects, and that it is not of critical

[15] While this is generally a prudent approach, a countervailing consideration is that where there is a lack of relevant data, that lack of data has a tendency to drive the selection of the method used.

importance that a detailed counterpart appear in the Commission's periodic reporting rules. However, both the Commission and the Postal Service support minor modifications of the manner in which these requirements are stated, which makes it beneficial to restate the requirements in the Commission's rules. There is also some value in collecting all of the Postal Service's obligations to report information to the Commission in one place to simplify the task of those interested in tracking compliance with those obligations.

Accordingly, final rule 3050.40 restates the Postal Service's SEC-style reporting obligations essentially as they appear in § 3654. One minor difference is that § 3654(a)(2) is omitted from the Commission's rule. This is done to accommodate the Postal Service's concern that it not be defined as a ''registrant'' for purposes of determining what SEC reports it is obligated to file. Some aspects of some of those reports are highly specific to entities that have the legal status of private corporations and are inapplicable to the Postal Service because it does not share that legal status. Another minor difference is that the Commission includes a requirement that when the Postal Service receives the pension and post-retirement health obligation information specified in § 3654(b)(1) from the Office of Personnel Management that it furnish copies of that information to the Commission.

O. Proposed Rules 3050.50 et seq. (Service Performance)

Section 3691 of title 39 of the United States Code requires the Postal Service, in consultation with the Commission, to establish and maintain a set of service standards for market dominant products. That section provides explicit statutory objectives for the service standards adopted, and requires a service performance measurement system in which the Commission plays a role. It also authorizes complaints under § 3662 for violations of the regulations that implement these service standards and performance measurement systems.

The Commission is deferring consideration of data reporting on service quality. Proposed rules 3050.50 *et seq.* are ultimately intended to describe the service performance information that would be required to implement the relevant provisions of the PAEA. A separate rulemaking docket will be initiated shortly to develop these reporting requirements.

P. Proposed Rule 3050.60 (Master List of Handbooks, Etc.)

Proposed rules 3050.60(a) through (c) would require the Postal Service to provide a master list of publications, handbooks, and data collection forms at the beginning of each fiscal year in hard copy and in electronic form. Data collection forms and corresponding training manuals would be provided ''when changed.''

The Postal Service argues that the proposed rules should only require a comprehensive set of these materials initially, and further materials in all the categories listed only ''when changed.'' It also alleges that providing electronic versions of all such materials could be a significant burden. *Id.* at 47–48. The Commission incorporates these suggestions in final rules 3050.60(b) through (d). It also limits the requirement that these items be provided in electronic format to those already in that format.

Q. Standardized Narrative Explanations

Valpak observes that various rules proposed in this docket imply a need for a narrative explanation of lesser or greater elaboration. It argues that such narrative explanations should be standardized. It proposes that the Commission express a uniform standard as a definitional rule. The definition it advocates reads as follows:

> Rule 3050.1a. Full and detailed explanation. Where the rules in this Part require the Postal Service to file or otherwise submit an explanation, including the explanatory reports, analyses, lists, estimates, and other such items required by the various rules in Part 3050, the Postal Service shall provide a narrative setting forth a full and detailed explanation, providing the information requested, such as how the items in question were calculated and/or determined, how they differ from such items in the immediately preceding report of the same type, and how they comply with the requirements of the law and/or those imposed by the Commission.

Valpak Comments at 16–17. The Public Representative generally supports Valpak's proposal. Public Representative Reply Comments at 16–17.

Providing full and detailed explanations everywhere an explanation would be helpful is ordinarily a laudable goal. Imposing a one-size-fits-all standard in the context of the periodic reporting rules, however, would tend to work at cross-purposes with these rules.

In drafting these periodic reporting rules, the Commission is mindful that the need for detailed explanations differs markedly from one report to another, and that the time available to produce detailed explanations differs dramatically from one report to another as well. For example, the ratemaking schedule that has been adopted under the PAEA puts the Postal Service under considerable strain to produce its annual section 3652 report. It has 90 days to prepare its CRA, apply the results of associated special studies, and to analyze the significance of the overall results. Rather than impose an obligation on the Postal Service to provide detailed explanations on every aspect of its section 3652 report, it would be more productive to allow the Postal Service to focus on the main issues that its report raises, and treat those in some depth.

Valpak itself has suggested that for any rate or service that has not complied with the standards of title 39 in the review year, the Postal Service should provide an explanation of the causes, the remedy that it plans to pursue, and the expected time frame for bringing the rate or service into compliance. This is an example of where the Postal Service's limited time in preparing a section 3652 report should be focused. The standard that Valpak proposes would interfere with this kind of prioritization.

The Commission views flexibility in the nature of the narrative required as one of the strengths of its periodic reporting rules. Some of the periodic reports required by the Commission are intended to elicit only brief, simplified explanations to orient the lay public, rather than in-depth, technical explanations of things that are not in controversy and, if required, are likely to divert resources from more important work. A good example is final rule 3050.60(f) which requires the Postal Service to submit the equivalent of the ''Library Reference 1'' quick guide that was traditionally submitted in PRA rate cases.[16]

Final rule 3050.2(a) is another good example. It requires the Postal Service to list corrections that it has made and input data and quantification techniques that have changed since the pertinent periodic report was last submitted, together with ''a brief narrative explanation of each listed change.'' The Commission regards this requirement as reasonable because the narrative explanation only requires a

[16] Because the section 3050.60(f) narrative is meant to serve as a ''Cliffs Notes'' for the lay public seeking to understand postal costing, it would not have to be comprehensively redone each year. It would have to be updated only where accepted analytical principles have changed. This is consistent with what Pitney Bowes recommends. *See* Pitney Bowes Reply Comments at 3.

''bare bones'' explanation sufficient to give the public and the Commission notice of the reason for the change, rather than an in-depth discussion or defense of the change.

In fashioning the periodic reporting rules, the Commission contemplates that in-depth technical or theoretical explanations will be reserved for the contexts in which they are most needed. Those would include the informal rulemakings where new analytical principles are evaluated, and the compliance review period where significant compliance issues have been identified. To keep the flexibility to adapt narrative explanations to the context in which they arise, the Commission believes it best not to impose the same standard on each. For that reason, the Commission declines to adopt Valpak's proposal.

III. Indirectly Related Proposals

A. Substantive Proposals

The Appendix to this order contains an illustrative alternative format for the CRA that breaks out costs, volumes, and revenues for products and for rate categories. The rationale for requiring this more detailed alternative format was provided in Order No. 104 at 16–17. Time Warner notes that for Outside County Periodicals, there have been distinct rate categories added for bundles, sacks, and pallets. It suggests that it is both feasible and desirable to further disaggregate the Outside County data in the Appendix by bundle, sack, and pallet. It argues that CRA costs could be disaggregated to this level by simply re-tabulating IOCS data that is already routinely gathered. It argues that this disaggregation of CRA costs would provide ''better guidance for rate setting, as well as better guidance for possible cost reductions'' within the Periodicals class. Time Warner Comments at 14–15.

The Postal Service opposes this proposal. It validly observes that changing the source of the estimates for the costs of bundles, sacks, and pallets would constitute a change in analytical principles, and, therefore, should be handled in an informal cost methodology rulemaking under the procedures outlined in proposed rule 3050.11. Postal Service Reply Comments at 25. For that reason, the Commission declines to adopt Time Warner's proposal.

Time Warner also suggests that because the alternative format illustrated in the Appendix is highly disaggregated, particularly with respect to international mail, some data might suffer from small-sample variation. To overcome this problem, it suggests that the data for small-volume categories be averaged over several years. This, too, would constitute a change in analytical principles. Time Warner Comments at 14. The Commission declines to adopt it in the context of this rulemaking for the same reason.

B. Procedural Proposals

Discovery. None of the rules proposed by the Commission in this docket involved altering the procedures by which the Postal Service's section 3652 report is reviewed. Nevertheless, a number of procedural proposals have been offered for the Commission's consideration, primarily by Valpak. Some of these proposals have been endorsed by the Public Representative.

Valpak argues that the procedures for reviewing the Postal Service's section 3652 report do not provide enough opportunity for private parties to participate effectively. Given the paucity of explanatory narrative in the report itself, Valpak contends that the Commission should adopt rules that expressly allow private parties to engage in discovery against the Postal Service. It makes the same recommendation with respect to informal rulemakings in which proposals to change analytical principles are reviewed. It suggests that this be accomplished by making the formal hearing procedures described in part 3001, subpart A applicable to annual compliance review. Valpak Comments at 14–15.

Time Warner responds that Valpak suffers from an illusion that the procedural due process rights that were guaranteed in rate hearings under the PRA were carried forward by Congress in the PAEA. It contends that Congress purposely omitted from the PAEA any right to a ''hearing on the record'' with its attendant rights of discovery, cross-examination, testimony, and briefs. It asserts that with respect to compliance review, the only procedure that the PAEA guarantees third parties is an opportunity to comment on the Postal Service's section 3652 report. It likewise asserts that no procedural due process rights attach to an informal rulemaking reviewing changes to analytical principles other than the right to comment. Time Warner Reply Comments at 14–16.

The Postal Service opposes Valpak's proposal as well. It emphasizes that the Commission is allowed only 90 days to review its section 3652 report and third parties have considerably less than that to prepare their comments if they are to be meaningfully reviewed by the Commission. It argues that this schedule is so compressed that the Commission must screen third-party discovery requests so that the limited resources of its technical staff are available to respond to issues that the third parties and the Commission collectively view as of the highest priority. It contends that it should only be obligated to respond to discovery requests to the extent that they are reflected in Commission information requests. It concludes that the Commission should have the discretion to follow a similar approach in conducting methodological rulemakings where there is a need to expedite the process. Postal Service Reply Comments at 4–6.

The Commission agrees with the Postal Service that the extremely compressed time schedules under which compliance review must be conducted, and under which some methodological rulemakings might have to be conducted, make it prudent for the Commission to retain the discretion to screen the kind and amount of discovery to which the Postal Service must respond. The Commission also agrees with Valpak and others that effective third-party participation in both compliance review and methodology review is extremely important. The Commission concludes that these rules will allow it to most effectively utilize the limited time and technical resources available to investigate the most pressing postal issues that arise in both annual compliance reviews and from methodological research.

Period allowed for comments in compliance review. Section 3653 requires the Commission to provide parties to a compliance review proceeding an opportunity for comment on the Postal Service's section 3652 report. The period allowed for comment is not prescribed by the Commission's rules. On an *ad hoc* basis, the Commission afforded 30 days for initial comments and 15 days for reply comments in the first two compliance review cycles.

Valpak argues that the Commission should adopt procedural rules governing compliance review, and that those rules should allow 45 days for initial comments and 15 for reply comments. It says that this would provide a more reasonable time for interested parties to review the complex documentation that accompanies the Postal Service's section 3652 report, and still leave the Commission with enough time to take the comments of the public into account in its determination. Valpak Comments at 13.

The Commission appreciates how challenging it is to evaluate the complex documentation that the Postal Service files supporting its section 3652 report.

The Commission, however, has found that the comment periods that have been established in the notices issued in the first two compliance review dockets have not provided it with any leeway in the amount of time that it has reserved to itself to draft and issue its Annual Compliance Determination. It, therefore, declines to act on Valpak's suggestion.

Appendix [Illustrative list referred to in part II.G. of **SUPPLEMENTARY INFORMATION**.]

Products and Categories

Market Dominant Products

Domestic First-Class Mail:
- Single-Piece:
- Letters
- Flats
- Parcels
- Total Single-Piece Letters, Flats & Parcels

Presort:
- Letters
- Flats
- Parcels
- Total Presort Letters, Flats & Parcels

Automation:
- Letters
- Flats
- Parcels
- Total Automation Letters, Flats & Parcels
- Total Letters, Flats & Parcels
- Single-Piece Cards
- Presort Cards
- Automation Cards
- Total Cards
- Total Domestic First-Class Mail

First-Class Mail International:

Outbound Single-Piece Letters, Flats, IPPs, and Parcels:
- Target System Countries at UPU Rates
- Transition System Countries at UPU Rates
- Subject to Agreement
- Canada
- Other
- Total Outbound Single-Piece Letters, Flats, IPPs, and Parcels

Outbound Single-Piece Cards:
- Target System Countries at UPU Rates
- Transition System Countries at UPU Rates
- Subject to Agreement
- Canada
- Other
- Total Outbound Single-Piece Cards
- Total Outbound Single-Piece Mail

Inbound Single-Piece Mail (Letter Post):

Air:
- Target System Countries at UPU Rates
- Transition System Countries at UPU Rates
- Subject to Agreement
- Canada
- Other

Surface:
- Target System Countries at UPU Rates
- Transition System Countries at UPU Rates
- Subject to Agreement
- Canada
- Other
- Total Inbound Single-Piece Mail
- Total International First-Class Mail
- Total First-Class Mail

Periodicals:
- Within County
- Outside County:
- Regular Rate
- Nonprofit
- Classroom
- Total Outside County
- Total Periodicals

Standard Mail:
- Regular Presort Mail:
- Letters
- Flats
- Parcels
- Not-Flat Machinables
- Total Regular Presort Mail

Regular Automation Mail:
- Letters
- Flats
- Total Regular Automation Mail
- Total Regular Mail

Nonprofit Presort Mail:
- Letters
- Flats
- Parcels
- Not-Flat Machinables
- Total Nonprofit Presort Mail

Regular Automation Mail:
- Letters
- Flats
- Total Nonprofit Automation Mail
- Total Nonprofit Mail
- Total Regular and Nonprofit Mail

Enhanced Carrier Route Mail:
- Basic Presort Letters
- High Density Letters
- Saturation Letters
- Total Enhanced Carrier Route Letters
- Basic Presort Flats
- High Density Flats
- Saturation Flats
- Total Enhanced Carrier Route Flats
- Basic Presort Parcels
- High Density Parcels
- Saturation Parcels
- Total Enhanced Carrier Route Parcels
- Total Enhanced Carrier Route Mail

Nonprofit Enhanced Carrier Route Mail:
- Basic Presort Letters
- High Density Letters
- Saturation Letters
- Total Non-enhanced Carrier Route Letters
- Basic Presort Flats
- High Density Flats
- Saturation Flats
- Total Non-enhanced Carrier Route Flats
- Basic Presort Parcels
- High Density Parcels
- Saturation Parcels
- Total Non-enhanced Carrier Route Parcels
- Total Nonprofit Enhanced Carrier Route Mail
- Total ECR and Non-ECR Mail
- Total Standard Mail

Package Services:
- Single-Piece Parcel Post:
- Intra-Bulk Mail Center
- Inter-Bulk Mail Center
- Total Single-Piece Domestic Parcel Post
- Inbound Surface Parcel Post (at UPU Rates)
- Total Single-Piece Parcel Post
- Bound Printed Matter:
- Bound Printed Matter Flats:
- Nonpresorted
- Presorted
- Carrier Route
- Total Bound Printed Matter Flats
- Bound Printed Matter Parcels:
- Nonpresorted
- Presorted
- Carrier Route
- Total Bound Printed Matter Parcels
- Total Bound Printed Matter
- Media Mail:
- Single Piece
- Presorted
- Total Media Mail
- Library Rate:
- Single Piece
- Presorted
- Total Library Mail
- Total Media and Library Mail
- Total Package Services
- USPS Penalty Mail
- Free-for-the-Blind Mail
- Negotiated Service Agreements (NSAs) (list each separately):
- Total Negotiated Service Agreement Mail
- Total Market Dominant Mail
- Special Services:
- Ancillary Services:
- Address Correction
- Applications and Mailing Permits:
- First-Class Mail Presort Fee
- Standard Mail Mailing Fee
- Total Applications and Mailing Permits
- Package Services Mailing Fees:
- Bound Printed Matter Destination Entry Mailing Fee
- Library Mail Presort Mailing Fee
- Media Mail Presort Mailing Fee
- Total Package Service Fees
- Parcel Return Service Fees:
- Account Maintenance Fee
- Permit Fee
- Total Parcel Return Service Fees
- Parcel Select Destination Entry Mailing Fee
- Periodicals Mailing Fees:
- Original Entry Fee
- Reentry Fee
- Additional Entry Fee
- News Agent Registry Fee
- Total Periodicals Mailing Fees
- Permit Imprint Fee
- Business Reply Mail:
- Per-Piece Fee
- Permit/Account Maintenance Fees
- Total Business Reply Mail
- Bulk Parcel Return Service:
- Per-Piece Fee
- Account Maintenance Fee
- Permit Fee
- Total Bulk Parcel Return Service
- Certified Mail
- Certificate of Mailing
- Collect-on-Delivery
- Delivery Confirmation
- Insurance
- Merchandise Return Service:
- Per-Piece Fee
- Account Maintenance Fee
- Permit Fee
- Total Merchandise Return Service
- Parcel Airlift
- Registered Mail
- Return Receipt
- Return Receipt for Merchandise
- Restricted Delivery
- Shipper Paid Forwarding
- Signature Confirmation
- Special Handling
- Stamped Envelopes
- Stamped Cards
- Premium Stamped Envelopes
- Premium Stamped Cards
- Total Ancillary Services
- International Ancillary Services:

International Certificate of Mailing
International Registered Mail:
Outbound International Registered Mail
Inbound International Registered Mail
Total International Registered Mail
International Return Receipt:
Outbound International Return Receipt
Inbound International Return Receipt
Total International Return Receipt
International Restricted Delivery:
Outbound International Restricted Delivery
Inbound International Restricted Delivery
Total International Restricted Delivery
Inbound International Insurance
Inbound International Delivery Confirmation
Customs Clearance and Delivery Fee
Total International Ancillary Services
Address List Services:
ZIP Coding of Mailing Lists
Correction of Mailing Lists
Address Changes for Election Boards
Carrier Sequencing of Address Cards
Total Address List Services
Caller Service/Reserve Numbers
Change-of-Address Credit Card Authentication
Confirm
International Reply Coupon Services:
Outbound International Reply Coupon Service
Inbound International Reply Coupon Service
Total International Reply Services
International Business Reply Mail Services:
Outbound Business Reply Mail Service
Inbound International Business Reply Mail Service
Total International Business Reply Service
Money Orders
Post Office Boxes
Other Special Services:
Standard Mail Forwarding/Return:
Forwarding/Return Fee
Weighted Factor Forwarding/Return Fee
Total Standard Mail Forwarding/Return
Total Market Dominant Special Services
Total Market Dominant Mail and Services
Competitive Products
Priority Mail:
Domestic Priority Mail
Priority Mail International:
Outbound Priority Mail International:
Subject to UPU Inward Land Rates
Subject to Terminal Dues
Target System Countries at UPU Rates
Transition System Countries at UPU Rates
Subject to Agreement
Canada
Other
Total Outbound Priority Mail International
Inbound Air Parcel Post:
Subject to UPU Inward Land Rates
Subject to Agreement
Canada
Other
Total Inbound Air Parcel Post
Total Priority Mail International
Total Priority Mail
Express Mail:
Domestic Express Mail:
Custom Designed
Next Day and Second Day Post Office-to-Post Office
Next Day and Second Day Post Office-to-Addressee
Total Domestic Express Mail
Outbound International Expedited Services
Global Express Guaranteed
Express Mail International
Inbound International Expedited Services:
Subject to UPU Rates
Subject to Agreement
Canada
Other
Total Inbound International Expedited Services
Total International Express Mail:
Total Express Mail
Package Services:
Bulk Parcel Post:
Inter-Bulk Mail Center:
Barcoded
Origin Bulk Mail Center Presort
Bulk Mail Center Presort
Total Inter-Bulk Mail Center
Intra-Bulk Mail Center Barcoded
Parcel Select:
Destination Bulk Mail Center
Destination Sectional Center Facility
Destination Delivery Unit
Total Parcel Select
Parcel Return Service:
Return Bulk Mail Center
Return Destination Units
Total Parcel Return Service
Total Bulk Parcel Post
International Mail:
International Priority Airmail
International Surface Airlift
International Direct Sacks—M–Bags
Outbound International Direct Sacks—M–Bags
Inbound International Direct Sacks—M–Bags
Total International Direct Sacks—M–Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at Non-UPU Rates):
Canada
Other
Total Inbound Surface Parcel Post (at Non-UPU Rates)
Total International Mail
International Special Services:
International Money Transfer Service:
Outbound International Money Transfer Service
Inbound International Money Transfer Service
Total International Money Transfer Service
International Ancillary Services:
International Certificate of Mailing
International Registered Mail
International Return Receipt:
Outbound International Return Receipt
Inbound International Return Receipt
Total International Return Receipt
International Restricted Delivery
International Insurance:
Outbound International Insurance
Inbound International Insurance
Total International Insurance
Custom Clearance and Delivery Fee
Total International Ancillary Services
Total International Special Services

IV. Ordering Paragraphs

It is Ordered:

1. The Commission hereby amends its rules of practice and procedure by deleting rules 3001.102 and 103, and adding new part 3050—Periodic Reporting as set forth below.

2. These actions will take effect 30 days after publication in the **Federal Register**.

3. The Secretary shall arrange for publication of this order in the **Federal Register**.

List of Subjects

39 CFR Part 3001

Administrative practice and procedure; Confidential business information, Freedom of information, Sunshine Act.

39 CFR Part 3050

Administrative practice and procedure, Postal Service, Recordkeeping and reporting requirements.

Issued: April 16, 2009.

By the Commission.

Steven W. Williams,

Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR chapter III as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 3622; 3633; 3652; 3661.

§ 3001.102 [Removed]

■ 2. Remove and reserve § 3001.102 in subpart G.

§ 3001.103 [Removed]

■ 3. Remove and reserve § 3001.103 in subpart G.

■ 4. Add Part 3050—Periodic Reporting, to read as follows:

PART 3050—PERIODIC REPORTING

Sec.

3050.1 Definitions applicable to this part.
3050.2 Documentation of periodic reports.
3050.3 Access to information supporting Commission reports or evaluations.
3050.10 Analytical principles to be applied in the Postal Service's annual periodic reports to the Commission.
3050.11 Proposals to change an accepted analytical principle applied in the Postal Service's annual periodic reports to the Commission.
3050.12 Obsolescence of special studies relied on to produce the Postal Service's annual periodic reports to the Commission.
3050.13 Additional documentation required in the Postal Service's section 3652 report.
3050.14 Format of the Postal Service's section 3652 report.

3050.20 Compliance and other analyses in the Postal Service's section 3652 report.
3050.21 Content of the Postal Service's section 3652 report.
3050.22 Documentation supporting attributable cost estimates in the Postal Service's section 3652 report.
3050.23 Documentation supporting incremental cost estimates in the Postal Service's section 3652 report.
3050.24 Documentation supporting estimates of costs avoided by worksharing and other mail characteristics in the Postal Service's section 3652 report.
3050.25 Volume and revenue data.
3050.26 Documentation of demand elasticities and volume forecasts.
3050.27 Workers' Compensation Report.
3050.28 Monthly and pay period reports.
3050.30 Information needed to estimate the cost of the universal service obligation. [Reserved]
3050.35 Financial reports.
3050.40 Additional financial reporting.
3050.41 Treatment of additional financial reports.
3050.42 Proceedings to improve the quality of financial data.
3050.43 Information on program performance.
3050.50 Information on service performance for domestic products. [Reserved]
3050.51 Information on service performance for Special Services. [Reserved]
3050.52 Information on service performance for international products. [*Reserved*]
3050.53 Information on customer satisfaction and retail access. [Reserved]
3050.60 Miscellaneous reports and documents.

Authority: 39 U.S.C. 503, 3651, 3652, 3653.

§ 3050.1 Definitions applicable to this part.

(a) *Accepted analytical principle* refers to an analytical principle that was applied by the Commission in its most recent Annual Compliance Determination unless a different analytical principle subsequently was accepted by the Commission in a final rule.

(b) *Accepted quantification technique* refers to a quantification technique that was applied in the most recent iteration of the periodic report applying that quantification technique or was used to support a new analytical principle adopted in a subsequent rule 3050.11 proceeding.

(c) *Analytical principle* refers to a particular economic, mathematical, or statistical theory, precept, or assumption applied by the Postal Service in producing a periodic report to the Commission.

(d) *Annual Compliance Determination* refers to the report that 39 U.S.C. 3653 requires the Commission to issue each year evaluating the compliance of the Postal Service.

(e) *Annual periodic reports to the Commission* refers to all of the reports that the Postal Service is required to provide to the Commission each year.

(f) *Quantification technique* refers to any data entry or manipulation technique whose validity does not require the acceptance of a particular economic, mathematical, or statistical theory, precept, or assumption. A change in quantification technique should not change the output of the analysis in which it is employed.

(g) *Section 3652 report* refers to the annual compliance report provided by the Postal Service to the Commission pursuant to 39 U.S.C. 3652, but does not include the reports required by 39 U.S.C. 2803 and 2804.

§ 3050.2 Documentation of periodic reports.

(a) At the time that it submits any periodic report to the Commission, the Postal Service shall identify any input data that have changed, list any quantification techniques that it has changed, and list any corrections that it has made since that report was last submitted to and accepted by the Commission. It shall provide a brief narrative explanation of each listed change.

(b) If workpapers are required to support a periodic report, they shall:

(1) Show all calculations employed in producing each estimate;

(2) Be sufficiently detailed to allow all numbers used in such calculations to be traced back to public documents or to primary data sources; and

(3) Be submitted in a form, and be accompanied by sufficient explanation and documentation, to allow them to be replicated using a publicly available PC application.

(c) Spreadsheets used in preparing periodic reports shall be submitted in electronic form. They shall display the formulas used, their links to related spreadsheets, and shall not be password protected.

(d) Filing of portions of the documentation required by paragraphs (b) and (c) of this section that are not time critical may be delayed up to 2 weeks if the Postal Service obtains permission from the Commission to defer filing of such portions at least 30 days prior to the date on which the periodic report is due.

§ 3050.3 Access to information supporting Commission reports or evaluations.

(a) The Commission shall have access to material if, in its judgment, the information supports any report, assessment, or evaluation required by title 39 of the United States Code, including:

(1) The working papers and supporting matter of the Postal Service or the Postal Service Inspector General in connection with any information submitted under 39 U.S.C. 3652; and

(2) Information that supports the Commission's annual assessment under 39 U.S.C. 3651.

(b) [Reserved]

§ 3050.10 Analytical principles to be applied in the Postal Service's annual periodic reports to the Commission.

In its annual periodic reports to the Commission, the Postal Service shall use only accepted analytical principles. With respect to its submissions under § 3050.26, however, the Postal Service may elect to use an analytical principle prior to its acceptance by the Commission.

§ 3050.11 Proposals to change an accepted analytical principle applied in the Postal Service's annual periodic reports to the Commission.

(a) To improve the quality, accuracy, or completeness of the data or analysis of data contained in the Postal Service's annual periodic reports to the Commission, the Commission, acting on its own behalf, may issue a notice of proceeding to change an accepted analytical principle. In addition, any interested person, including the Postal Service or a public representative, may submit a petition to the Commission to initiate such a proceeding.

(b) *Form and content of notice or petition.* The notice of proceeding or petition shall identify the accepted analytical principle proposed for review, explain its perceived deficiencies, and suggest how those deficiencies should be remedied.

(1) If the notice of proceeding or petition proposes that a specific alternative analytical principle be followed, it should include the data, analysis, and documentation on which the proposal is based, and, where feasible, include an estimate of the impact of the proposed change on the relevant characteristics of affected postal products, including their attributable cost, avoided cost, average revenue, or service attainment.

(2) If the petitioner requests access to data from the Postal Service to support the assertions or conclusions in its petition, and such data are not otherwise available, it shall accompany the petition with a request to gain access to such data. The petitioner's request should identify the data sought, and include the reasons for believing that the data will support its petition. To

expedite its evaluation of the data request, the Commission may, after reasonable public notice, order that answers or objections be presented orally or in writing.

(c) *Procedures for processing a notice or petition.* To better evaluate a notice or petition to change an accepted analytical principle, the Commission may order that it be made the subject of discovery. By request of any interested person, or on its own behalf, the Commission may order that the petitioner and/or the Postal Service provide experts on the subject matter of the proposal to participate in technical conferences, prepare statements clarifying or supplementing their views, or answer questions posed by the Commission or its representatives.

(d) *Action on the notice or petition.* (1) After the conclusion of discovery procedures, if any, the Commission shall determine whether to issue a notice of proposed rulemaking based on the petition and the supporting material received. Such notice shall be evaluated by procedures that are consistent with 5 U.S.C. 553. Interested parties will be afforded an opportunity to present written comments and reply comments, and, if the Commission so orders, to present oral comments as well.

(2) If accepted by the Commission, the change proposed in the notice of proposed rulemaking shall be published in a final rule in the **Federal Register** and on the Commission's Web site.

§ 3050.12 Obsolescence of special studies relied on to produce the Postal Service's annual periodic reports to the Commission.

The Postal Service shall provide a list of special studies whose results are used to produce the estimates in its annual periodic reports to the Commission. It shall indicate the date the study was completed and whether the study reflects current operating conditions and procedures. The Postal Service shall update the list annually.

§ 3050.13 Additional documentation required in the Postal Service's section 3652 report.

At the time the Postal Service files its section 3652 report, it shall include a brief narrative explanation of any changes to accepted analytical principles that have been made since the most recent Annual Compliance Determination was issued and the reasons that those changes were accepted.

§ 3050.14 Format of the Postal Service's section 3652 report.

The Postal Service's Cost and Revenue Analysis (CRA) report shall be presented in a format reflecting the classification structure in the Mail Classification Schedule. It shall also be presented in an alternative, more disaggregated format capable of reflecting the classification structure in effect prior to the adoption of the Postal Accountability and Enhancement Act.

§ 3050.20 Compliance and other analyses in the Postal Service's section 3652 report.

(a) The Postal Service's section 3652 report shall include an analysis of the information that it contains in sufficient detail to demonstrate the degree to which, in the fiscal year covered by its report, each of its products (market dominant and competitive) comply with all of the applicable provisions of title 39 of the United States Code and the regulations promulgated thereunder, and promote the public policy objectives set out in title 39 of the United States Code.

(b) Its analysis shall be applied to products individually, and, where appropriate, to products collectively.

(c) It shall address such matters as non-compensatory rates, discounts greater than avoided costs, and failures to achieve stated goals for on-time delivery standards. A more detailed analysis is required when the Commission observed and commented upon the same matter in its Annual Compliance Determination for the previous fiscal year.

§ 3050.21 Content of the Postal Service's section 3652 report.

(a) No later than 90 days after the close of each fiscal year, the Postal Service shall submit a report to the Commission analyzing its cost, volume, revenue, rate, and service information in sufficient detail to demonstrate that all products during such year comply with all applicable provisions of title 39 of the United States Code. The report shall provide the items in paragraphs (b) through (j) of this section.

(b) The volume and revenue generated by each product;

(c) The attributable costs of, and the contribution to institutional costs made by, each product;

(d) The quality of service received by each market dominant product, including the speed of delivery and the reliability of delivery;

(e) For each market dominant workshare discount offered during the reporting year:

(1) The per-item cost avoided by the Postal Service by virtue of such discount;

(2) The percentage of such per-item cost avoided that the per-item workshare discount represents;

(3) The per-item contribution made to institutional costs; and

(4) The factual and analytical bases for its conclusion that one or more of the exception provisions of 39 U.S.C. 3622(e)(2)(A) through (D) apply.

(f) For each market dominant negotiated service agreement:

(1) Identify its rates and service features;

(2) Estimate its costs, volumes, and revenues;

(3) Analyze its effect on the operational performance of the Postal Service, specifying the affected operations and, to the extent possible, quantifying the effect;

(4) Analyze the contribution of the agreement to institutional costs for its most recent year of operation. The year analyzed shall end on the anniversary of the negotiated service agreement that falls within the fiscal year covered by the Postal Service's annual periodic reports to the Commission and include the 12 preceding months. The analysis shall show all calculations and fully identify all inputs. Inputs used to estimate the effect on total contribution to the Postal Service, such as unit costs and price elasticities, shall be updated using fiscal year values; and

(5) Analyze the effect of the negotiated service agreement (and other functionally equivalent negotiated service agreements) on the marketplace. If there were harmful effects, explain why those effects were not unreasonable.

(g) For each competitive negotiated service agreement:

(1) Identify its rates and service features; and

(2) Estimate its costs, volumes, and revenues.

(h) For market tests of experimental products:

(1) Estimate their costs, volumes, and revenues individually, and in aggregate, by market dominant and by competitive product group;

(2) Estimate the quality of service of each individual experimental product; and

(3) Indicate whether offering the experimental product has created an inappropriate competitive advantage for the Postal Service or any mailer.

(i) For each nonpostal service, estimate its costs, volumes, and revenues; and

(j) Provide any other information that the Postal Service believes will help the Commission evaluate the Postal Service's compliance with the applicable provisions of title 39 of the United States Code.

§ 3050.22 Documentation supporting attributable cost estimates in the Postal Service's section 3652 report.

(a) The items in paragraphs (b) through (p) of this section shall be reported when they have changed from those used in the most recent Annual Compliance Determination.

(b) The CRA report, including relevant data on international mail services;

(c) The Cost Segments and Components (CSC) report;

(d) All input data and processing programs used to produce the CRA report, to include:

(1) CSC Reconciliation to Financial Statement and Account Reallocations;

(2) Manual Input Requirement (reflecting direct accounting or modeled costs);

(3) The CSC ''A'' report (showing how indirect costs are distributed to products based on the distribution of direct costs);

(4) The CSC ''B'' report (showing how indirect Property Equipment Supplies Services and Administrative (PESSA) costs are distributed to products;

(5) The CSC ''D'' report (showing final adjustments to total attributable and product-specific costs);

(6) The CSC ''F'' report (containing distribution keys for indirect labor components);

(7) The control file that includes the CRA program control string commands used to produce the CRA and the above-described CSC reports; and

(8) The master list of cost segment components, including all of the components used as distribution keys in the development of the CSC report and its accompanying reports.

(e) Spreadsheet workpapers underlying development of the CSC report by component. These workpapers shall include the updated factors and input data sets from the supporting data systems used, including:

(1) The In-Office Cost System (IOCS);

(2) The Management Operating Data System (MODS);

(3) The City Carrier Cost System (CCCS);

(4) The City Carrier Street Time Sampling System (CCSTS);

(5) The Rural Carrier Cost System (RCCS);

(6) The National Mail Count;

(7) The Transportation Cost System (TRACS);

(8) System for International Revenues and Volumes/Outbound (SIRV/O);

(9) System for International Revenues and Volumes/Inbound (SIRV/I);

(10) Military and International Dispatch and Accountability System; and

(11) Inbound International Revenue Accounting Systems (IAB data).

(f) The econometric analysis of carrier street time, including input data, processing programs, and output;

(g) The Window Service Supply Side Variability, Demand Side Variability, and Network Variability studies, including input data, processing programs, and output;

(h) The econometric analysis of purchased highway transportation cost variability, including input data, processing programs, and output;

(i) The econometric analysis of freight rail cost variability, including input data, processing programs, and output;

(j) A list and summary description of any transportation contracts whose unit rates vary according to the level of postal volume carried. The description should include the product or product groups carried under each listed contract;

(k) Spreadsheets and processing programs distributing attributable mail processing costs;

(l) The Vehicle Service Driver Data Collection System;

(m) Input data, processing programs, and output of the Vehicle Service Driver Cost Variability Study;

(n) Econometric analysis of postmaster cost variability;

(o) Floor Space Survey; and

(p) Density studies used to convert weight to cubic feet of mail.

§ 3050.23 Documentation supporting incremental cost estimates in the Postal Service's section 3652 report.

Input data, processing programs, and output of an incremental cost model shall be reported.

§ 3050.24 Documentation supporting estimates of costs avoided by worksharing and other mail characteristics in the Postal Service's section 3652 report.

(a) The items in paragraphs (b) through (l) of this section shall be reported, including supporting calculations and derivations.

(b) Letter, card, flat, parcel and non-flat machinable mail processing cost models with Delivery Point Sequence percentages calculated, which shall include:

(1) Coverage factors for any equipment where coverage is less than 100 percent;

(2) MODS productivities;

(3) Piggyback factors and supporting data;

(4) Entry profiles, bundle sorts, and pieces per bundle;

(5) Bundle breakage, handlings, and density;

(6) Mail flow density and accept rates;

(7) Remote Computer Reader finalization costs, cost per image, and Remote Bar Code Sorter leakage;

(8) Percentage of mail finalized to carrier route;

(9) Percentage of mail destinating at post office boxes; and

(10) Wage rates and premium pay factors.

(c) Pallet cost models for Periodicals;

(d) Sack cost models for Periodicals;

(e) Bundle cost models for Periodicals;

(f) Other container cost models for Periodicals;

(g) Analysis of Periodicals container costs;

(h) Business Reply Mail cost supporting material;

(i) Mail processing units costs for Carrier Route, High Density, and Saturation mail;

(j) Mail processing unit costs by shape and cost pool for each product and benchmark category;

(k) Delivery costs by product, shape, presort level, automation compatibility, and machinability, including Detached Address Label cost calculations; and

(l) Dropship cost avoidance models.

§ 3050.25 Volume and revenue data.

(a) The items in paragraphs (b) through (e) of this section shall be provided.

(b) The Revenue, Pieces, and Weight (RPW) report, including estimates by shape, weight, and indicia, and the underlying billing determinants, broken out by quarter, within 90 days of the close of each fiscal year;

(c) Revenue, pieces, and weight by rate category and special service by quarter, within 30 days of the close of the quarter;

(d) Quarterly Statistics Report, including estimates by shape, weight, and indicia, within 30 days of the close of the quarter; and

(e) Billing determinants within 40 days of the close of the quarter.

§ 3050.26 Documentation of demand elasticities and volume forecasts.

By January 20 of each year, the Postal Service shall provide econometric estimates of demand elasticity for all postal products accompanied by the underlying econometric models and the input data sets used; and a volume forecast for the current fiscal year, and the underlying volume forecasting model.

§ 3050.27 Workers' Compensation Report.

The Workers' Compensation Report, including summary workpapers, shall be provided by March 1 of each year.

§ 3050.28 Monthly and pay period reports.

(a) The reports in paragraphs (b) through (f) of this section shall be provided within 15 days of the close of the relevant period or as otherwise stated.

(b) Monthly Summary Financial Report on the 24th day of the following month, except that the report for the last month of each quarter shall be provided at the time that the Form 10–Q report is provided.

(1) The report shall follow the formats as shown below.

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Table 1—USPS Monthly Financial Statement

Month, Fiscal Year

[$ millions]

	Current Period					Year-to-Date				
	Actual	Plan	SPLY	% Plan Var	% SPLY Var	Actual	Plan	SPLY	% Plan Var	% SPLY Var
Operating Revenue:										
Mail and Services Revenue										
Government Appropriations										
Total Operating Revenue										
Operating Expenses:										
Personnel Compensation and Benefits										
Transportation										
Supplies and Services										
Other Expenses										
Total Operating Expenses										
Net Operating Income										
Interest Income										
Interest Expense										
Total Net Income										
Other Operating Statistics:										
Mail Volume (Millions):										
Total Market Dominant Volumes										
Total Competitive Product Volumes										
Total Mail Volume										
Total Workhours (Millions)										
Total Career Employees										
Total Non-Career Employees										

Table 2—Mail Volume and Mail Revenue

Month, Fiscal Year

[Thousands]

	Current Period			Year-to-Date		
	Actual	SPLY	% SPLY Var	Actual	SPLY	% SPLY Var
Market Dominant Products:						
First Class:						
Volume						
Revenue						
Periodicals:						
Volume						
Revenue						
Standard Mail:						
Volume						
Revenue						
Package Services:						
Volume						
Revenue						
All Other Market Dominant Mail:						
Volume						
Revenue						
Total Market Dominant Products:						
Volume						
Revenue						
Total Competitive Products:						
Volume						
Revenue						
Total All Mail:						
Volume						
Revenue						

Table 3—USPS Expenses

Month, Fiscal Year

[$ millions]

	Current Period					Year-to-Date				
	Actual	Plan	SPLY	% Plan Var	% SPLY Var	Actual	Plan	SPLY	% Plan Var	% SPLY Var
Personnel Expenses:										
Salaries and Benefits										
City Delivery										
Mail Processing										
Customer Services and Retail										
Rural Delivery										
Other, including Plant and Vehicle Maintenance										
Operational Support, Postmasters, and Administration										
Total Salaries and Benefits										
Other Personnel Related Expenses:										
Retiree Health Benefits										
Workers' Compensation										
All Other Personnel Related Expenses										
Total Other Personnel Related Expenses										
Total Personnel Compensation and Benefits										
Non-Personnel Expenses:										
Transportation										
Supplies and Services										
Depreciation and Amortization										
Rent and Utilities										
Vehicle Maintenance Service										
Information Technology										
Rural Carrier Equipment Maintenance										
Other Non-Personnel Expenses										
Total Non-Personnel Expenses										
Total Operating Expenses										
Interest Expense										
Total Expenses										

Table 4—USPS Workhours

Month, Fiscal Year

[data in thousands]

	Current Period					Year-to-Date				
	Actual	Plan	SPLY	% Plan Var	% SPLY Var	Actual	Plan	SPLY	% Plan Var	% SPLY Var
Workhours:										
City Delivery										
Mail Processing										
Mail Processing										
Customer Services and Retail										
Rural Delivery										
Other, including Plant and Vehicle Maintenance, Operational Support, Postmasters, and Administration										
Total Workhours										
Overtime Ratio per 100 Workhours										

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(2) [Reserved]

(c) National Consolidated Trial Balances and the Revenue and Expense Summary (monthly);

(d) National Payroll Hours Summary in electronic form (pay period);

(e) On-roll and Paid Employee Statistics (ORPES) (pay period); and

(f) Postal Service Active Employee Statistical Summary (HAT report) (pay period).

§ 3050.30 Information needed to estimate the cost of the universal service obligation. [Reserved]

§ 3050.35 Financial reports.

(a) The reports in paragraphs (b) through (d) of this section shall be provided annually at the time indicated.

(b) Annual Report of the Postmaster General (when released to the public);

(c) Congressional Budget Submission and supporting workpapers, including Summary Tables SE 1, 2, and 6 (within 7 days of the submission of the Federal Budget by the President to the Congress); and

(d) Integrated Financial Plan (within 7 days of approval by the Board of Governors).

§ 3050.40 Additional financial reporting.

(a) *In general.* The Postal Service shall file with the Commission:

(1) Within 40 days after the end of each fiscal quarter, a quarterly report containing the information required by the Securities and Exchange Commission to be included in quarterly reports under sections 13 and 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)) on Form 10–Q, as such form (or any successor form) may be revised from time to time;

(2) Within 60 days after the end of each fiscal year, an annual report containing the information required by the Securities and Exchange Commission to be included in annual reports under such sections on Form 10–K, as such form (or any successor form) may be revised from time to time; and

(3) Periodic reports within the time frame and containing the information prescribed in Form 8–K of the Securities and Exchange Commission, as such form (or any successor form) may be revised from time to time.

(b) *Internal control report.* For purposes of defining the reports required by paragraph (a)(2) of this section, the Postal Service shall comply with the rules prescribed by the Securities and Exchange Commission implementing section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262), beginning with the annual report for fiscal year 2010.

(c) *Financial reporting.* The reports required by paragraph (a)(2) of this section shall include, with respect to the Postal Service's pension and post-retirement health obligations:

(1) The funded status of the Postal Service's pension and post-retirement health obligations;

(2) Components of the net change in the fund balances and obligations and the nature and cause of any significant changes;

(3) Components of net periodic costs;

(4) Cost methods and assumptions underlying the relevant actuarial valuations;

(5) The effect of a 1 percentage point increase in the assumed health care cost trend rate for each future year on the service and interest costs components of net periodic post-retirement health cost and the accumulated obligation;

(6) Actual contributions to and payments from the funds for the years presented and the estimated future contributions and payments for each of the following 5 years;

(7) The composition of plan assets reflected in the fund balances; and

(8) The assumed rate of return on fund balances and the actual rates of return for the years presented.

(d) *Time of filing.* Within 5 business days of receiving the data listed under paragraph (c) of this section from the Office of Personnel Management, the Postal Service shall provide two copies of that data to the Commission.

(e) *Segment reporting.*

(1) Beginning with reports for fiscal year 2010, for purposes of the reports required under paragraphs (a)(1) and (2) of this section, the Postal Service shall include segment reporting.

(2) The Postal Service shall determine the appropriate segment reporting under paragraph (e)(1) of this section after consultation with the Commission.

§ 3050.41 Treatment of additional financial reports.

(a) For purposes of the reports required by § 3050.40(a)(2), the Postal Service shall obtain an opinion from an independent auditor on whether the information listed in § 3050.40(c) is fairly stated in all material respects, either in relation to the basic financial statements as a whole or on a stand-alone basis.

(b) *Supporting matter.* The Commission shall have access to the audit documentation and any other supporting matter of the Postal Service and its independent auditor in connection with any information submitted under § 3050.40.

§ 3050.42 Proceedings to improve the quality of financial data.

The Commission may, on its own motion or on request of an interested party, initiate proceedings to improve the quality, accuracy, or completeness of Postal Service data required under § 3050.40 whenever it shall appear that the data have become significantly inaccurate or can be significantly improved; or those revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

§ 3050.43 Information on program performance.

(a) The Postal Service shall provide the items in paragraphs (b)(1) through (3) of this section at the same time that the President submits an annual budget to Congress:

(b)(1) The comprehensive statement required by 39 U.S.C. 2401(e);

(2) The performance plan required by 39 U.S.C. 2803; and

(3) The program performance reports required by 39 U.S.C. 2804.

(c) Section 3050.10 does not apply to the reports referenced in this section.

§ 3050.50 Information on service performance for domestic products. [Reserved]

§ 3050.51 Information on service performance for Special Services. [Reserved]

§ 3050.52 Information on service performance for international products. [Reserved]

§ 3050.53 Information on customer satisfaction and retail access. [Reserved]

§ 3050.60 Miscellaneous reports and documents.

(a) The reports in paragraphs (b) through (g) of this section shall be provided at the times indicated.

(b) A master list of publications and handbooks, including those related to internal information procedures, data collection forms, and corresponding training handbooks by July 1, 2009, and again when changed;

(c) The items listed in paragraph (b) of this section in hard copy form, and in electronic form, if available;

(d) Household Diary Study (when completed);

(e) Input data and calculations used to produce the annual Total Factor Productivity estimates (by March 1 of each year);

(f) Succinct narrative explanations of how the estimates in the most recent Annual Compliance Determination were calculated and the reasons that particular analytical principles were followed. The narrative explanations shall be comparable in detail to that which had been provided in Library Reference 1 in omnibus rate cases processed under the Postal Reorganization Act (by July 1 of each year); and

(g) An update of the history of changes in postal volumes, revenues, rates, and fees that appears in library references USPS–LR–L–73 through 76 in Docket No. R2006–1 (by July 1 of each year).

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