Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule establishes a safety zone and therefore paragraph (34)(g) of figure 2–1 applies. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0579 to read as follows:

§ 165.T09–0579 Safety Zone; St. Ignace 4th of July Fireworks, East Moran Bay, Lake Huron, St. Ignace, MI.

(a) *Location.* The following area is a temporary safety zone: All waters of East Moran Bay within a 700-foot radius from the fireworks launch site at the end of the Arnold Transit Mill Slip, centered in position: 45°52′24.62″ N., 084°43′18.13″ W. [DATUM: NAD 83].

(b) *Effective period.* This regulation is effective from 9 p.m. on July 4, 2010 until 11:30 p.m. on July 5, 2010. This rule will be enforced from 9 p.m. to 11:30 p.m. on July 4, 2010. If the July 4th fireworks are cancelled for any reason, this regulation will be enforced from 9 p.m. to 11:30 p.m. on July 5, 2010.

(1) The Captain of the Port, Sector Sault Sainte Marie may suspend at any time the enforcement of the safety zone established under this section.

(2) The Captain of the Port, Sector Sault Sainte Marie, will notify the public of the enforcement and suspension of enforcement of a safety zone established by this section via any means that will provide as much notice as possible to the public. These means might include some or all of those listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and local Notice to Mariners.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within an enforced safety zone established by this section is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Sault Sainte Marie, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Sault Sainte Marie, to act on his behalf. The on-scene representative of the Captain of the Port, Sector Sault Sainte Marie, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within an enforced safety zone shall contact the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative may be contacted via VHF Channel 16.

Dated: June 23, 2010.

J.C. Mcguiness,

Captain, U.S. Coast Guard Captain of the Port, Sault Sainte Marie.

[FR Doc. 2010–16264 Filed 7–2–10; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Parts 3050 and 3055

[Docket No. RM2009–12; Order No. 465]

Service Performance Measurement

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a final rule on service perfomance measurement and customer satisfaction. The final rule reflects the Commission's consideration of comments on a proposed rule. Adoption of the final rule helps give effect to provisions in a 2006 federal law which, among other things, sought to increase Postal Service accountability. The Commission recognizes that exceptions from, and temporary waivers of, some reporting requirements may be appropriate. The discussion makes clear that these matters may be pursued in separate follow-up rulemakings initiated by the Postal Service.

DATES: This rule is effective on August 5, 2010.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at *stephen.sharfman@prc.gov* or 202-789-6820.

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 49190 (September 25, 2009).

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I. Introduction

The final rules described herein establish Postal Service reporting requirements for measuring the level of service and degree of customer satisfaction for each market dominant product. The reporting of level of service and customer satisfaction are required by 39 U.S.C. 3652(a)(2)(B) as part of the Postal Service's annual report to the Commission; are a necessary part of the modern system of rate regulation for market dominant products as required by 39 U.S.C. 3622; and support the Commission's responsibility to report on universal service as required by 39 U.S.C. 3651(b)(1)(A). The Commission's authority to promulgate the form and content of these reporting rules is 39 U.S.C. 503, 3622(a), 3652(d) and (e), and 3651(c).

Order No. 292, which provides notice of this rulemaking, describes each rule as proposed. The original descriptions have not been repeated in the final order except when necessary to add clarity to the discussion.[1] They may be relied upon, except where noted, and may be considered as incorporated by reference. The rules adopted by the final order are substantially the same as those originally proposed, with relatively few modifications. Specific discussions in this order are limited to rules that are the subject of actionable comments.

The order contains three substantive sections: (1) General issues applicable to both the reporting of service performance measurements and customer satisfaction (section IV); (2) rules applicable to service performance measurement reporting (section V); and (3) rules applicable to reporting of customer satisfaction (section VI).

Four issues of general applicability are addressed in section IV of this order.

1. The Commission, in the notice of rulemaking, invited the Postal Service to identify requirements that it might view as onerous or costly to implement, and to quantify the associated costs. The Postal Service did not reply to this invitation with the level of specificity necessary to consider changes to the proposed rules. The Commission and interested parties would have benefited from this information when evaluating each rule. Over 3 years have passed since the enactment of the Postal Accountability and Enhancement Act (PAEA) of 2006. The Commission finds that reporting of service performance measurements and customer satisfaction must begin without further delay.

2. The Commission adopted the Postal Service's general approach to providing both annual and quarterly reports in developing the proposed rules. However, the Postal Service, for the first time in its comments, offers a new legal argument that quarterly reporting is beyond what is required by the PAEA. After adopting the Postal Service's proposed approach, the Commission does not agree with the Postal Service's new argument that its approach is legally flawed. The final rule retains requirements for both annual and quarterly reporting.

3. The Postal Service outlines its capabilities to comply with the proposed rules. The indications are that the Postal Service still faces a major effort to be able to report service performance as contemplated by the PAEA. The Commission finds it necessary to prescribe a process for ensuring timely compliance with the rules given the current status of the Postal Service's reporting capability.

4. Finally, several commenters propose various approaches for continuing Commission oversight of service performance reporting. The Commission views service performance reporting predominately as part of the Annual Compliance Report/Annual Compliance Determination process, but may take other action as necessary.

Section V of this order discusses specific comments concerning the rules for service performance measurement reporting. Annual reporting requirements are addressed in section V.A, quarterly reporting requirements are addressed in section V.B, and proposals which potentially expand reporting requirements are addressed in section V.C.

For the most part, service performance reporting rules are adopted as proposed. Explanations are provided where comments indicate there could be possible confusion in the interpretation of the rules, and minor wording changes to add clarity to the rules have been incorporated. A proposal to require the Postal Service to provide explanations when requirements are not met is adopted in rule 3055.2(h). This is a task required of the Postal Service in any event. Also, a proposal which modifies the Standard Mail service day groupings for reporting purposes is adopted. *See* rule 3055.50(a). Proposals to modify the proposed rules that were not adopted include elimination of certain documentation requirements, an alternative documentation methodology, expanding the categories of exceptions, raising the standard of review consistent with the "analytical principles" methodology, and eliminating a special study of areas with a unique mailing characteristic.

Proposals also were presented which would expand the reporting requirements. These include proposals concerning forwarding and return of First–Class Mail, tail of the mail, remittance mail, critical entry times, and actionable raw data, among others. None of these proposals have been adopted at this time.

Section VI of this order discusses the reporting of customer satisfaction. The reporting of customer satisfaction is a new reporting requirement imposed for the first time by the PAEA. This requirement is not well defined, and will require development through the regulatory rulemaking process. This rulemaking is the first step in the process of developing satisfactory reporting requirements. Minor terminology changes to provide the most recent names of Postal Service programs are incorporated. A requirement to provide certain Mystery Shopper Program information proposed as rule 3055.93 has not been adopted.

To facilitate the interpretation of the final rules, the market dominant product list appears in the Appendix as Table 1–Market Dominant Product List as of August 10, 2009 to this rulemaking; illustrative examples of annual data reporting charts appear in

[1] Notice of Proposed Rulemaking on Periodic Reporting of Service Performance Measurements and Customer Satisfaction, September 2, 2009 (Order No. 292); *see also* 74 FR 49190 (September 25, 2009).

the Appendix as Table 2–Illustrative Annual Report Data Reporting Charts; illustrative examples of quarterly data reporting charts appear in the Appendix as Table 3–Illustrative Quarterly Report Data Reporting Charts; and illustrative examples of customer satisfaction data reporting charts appear in the Appendix as Table 4–Illustrative Customer Satisfaction Data Reporting Charts. Because these charts are merely illustrative, they will not be published in the **Federal Register.**

All final rules for adoption as new part 3055 of the Commission's rules of practice and procedure appear after the signature of this order. In general, reserved clauses that appeared in the proposed rules are eliminated in the final version.

II. Procedural History

On September 2, 2009, the Commission established Docket No. RM2009–11 to consider the addition of service performance and customer satisfaction reporting requirements to the Commission's rules of practice and procedure. The Commission issued Order No. 292 to establish this docket; propose amendments to its rules of practice and procedure; seek comments and reply comments from interested persons; and publish notice of this proceeding in the **Federal Register.** Order No. 292 also designated Emmett Rand Costich and James Callow to represent the interests of the general public pursuant to 39 U.S.C. 505.

The Commission proposed to amend its rules of practice and procedure by adding new part 3055—Service Performance and Customer Satisfaction Reporting. This part is further subdivided into Subpart A—Annual Reporting of Service Performance Achievements, Subpart B—Periodic Reporting of Service Performance Achievements, and Subpart C—Reporting of Customer Satisfaction.

Establishing rules to report service performance (subparts A and B) is the final step in a four–step process for incorporating measurements of level of service into the modern system of rate regulation for market dominant products. The previous steps established service standards, identified service performance measurement systems, and established performance goals.

The establishment of service standards is mandated by 39 U.S.C. 3691, which requires the Postal Service, in consultation with the Postal Regulatory Commission, to establish by regulation a set of modern service standards for market dominant products. Initial consultations between the Commission and the Postal Service concluded on November 19, 2007, with the Commission providing the Postal Service with comments addressing the Postal Service's service standards proposals.[2] The Postal Service completed this task by publishing as a final rule Modern Service Standards for Market Dominant Products, December 19, 2007 (Service Standards).[3]

In June 2008, the Postal Service identified service performance measurement systems by providing the Commission with a draft of its Service Performance Measurement plan (Plan).[4] The Plan presents the various systems the Postal Service proposes to use to measure the standards presented in the Service Standards document.[5] The Postal Service submitted the Plan for the Commission's "review, feedback, and concurrence."[6] In response, the Commission initiated Docket No. PI2008–1 to consider the Plan and to solicit public comment. This process culminated with the Commission issuing Order No. 140.[7] This order completed the second step in the process by approving the approaches that the Postal Service proposes to take in developing internal measurement systems for various classes of mail.[8]

The PAEA directed the Postal Service, in consultation with the Commission, to develop and submit to Congress a plan for meeting service standards. Congress directed, *inter alia,* that the plan establish performance goals. The Postal Service posted its FY 2009 targets on its Rapid Information Bulletin Board System (RIBBS) Web page at *http://www.ribbs.gov/targets/documents/tech__guides/Targets.pdf.*

The Postal Service's Plan included proposals for both annual and quarterly reporting of service performance measurements. The Commission solicited comments on service performance reporting when it considered the Postal Service's proposals for measurement systems. However, in Order No. 140, the Commission limits its considerations of those comments in anticipation of the instant rulemaking, which specifically addresses reporting requirements. The fourth and final step in the process, and the subject of this rulemaking, is for the Commission to issue rules specifying the reporting of service performance (subparts A and B).

Establishing rules to report customer satisfaction (subpart C) previously had not been addressed by the Postal Service or the Commission. Proposed rules appeared for the first time in the notice of proposed rulemaking establishing this docket.

In this docket, comments pertaining to all proposed rules (subparts A, B and C) were received from ACMA, PostCom/DMA, Bank of America, PSA, the Public Representative, the Postal Service, and Valpak.[9] Reply comments were received from PostCom/DMA, Bank of America, DMA, MOAA, PSA, the Public

[2] Comments of the Postal Regulatory Commission on Modern Service Standards for Market Dominant Products, November 19, 2007. The consultations are described as "initial" because of the ongoing nature of consultations that is necessary to transition from a set of standards to an operational measurement system encompassing performance goals (*see* uncodified section 302(b)(1) of the PAEA) and reporting mechanisms (*see* 39 U.S.C. 3652).

[3] 73 FR 72216 (December 19,2007) (to be codified at 39 CFR parts 121 and 122).

[4] The Commission published the Plan in Docket No. PI2008-1, Second Notice of Request for Comments on Service Performance Measurement Systems for Market Dominant Products, June 18, 2008 (Order No. 83). The draft published in Order No. 83 was the final draft in a series of drafts provided by the Postal Service to the Commission.

[5] An objective in designing service performance standards is for the Postal Service to provide a "system of objective external performance measurements for each market dominant product as a basis for measurement of Postal Service performance." 39 U.S.C. 3691(b)(1)(D). However, "with the approval of the Postal Regulatory Commission an internal measurement system may be implemented instead of an external measurement system" for individual products. 39 U.S.C. 3691(b)(2). In the Plan the Postal Service proposes various internal, external, and hybrid (containing both internal and external elements) measurment systems to measure the performance of its mail products.

[6] Letter from Thomas G. Day, Senior Vice President, United States Postal Service, to Dan G. Blair, Chairman, Postal Regulatory Commission, June 3, 2008.

[7] Docket No. PI2008–1, Order Concerning Proposals for Internal Service Standards measurement Systems, November 25, 2008 (Order No. 140.)

[8] Approval was provided with the exception of the measurement systems for several Special Services where the Commission directed the Postal Service to propose a remedial plan by June 1, 2009. The Postal Service submitted remedial proposals on May 15, 2009. *See* Letter from Thomas G. Day, Senior Vice President, Intelligent Mail and Address Quality, United States Postal Service, to Dan G. Blair, Chairman, Postal Regulatory Commission, May 15, 2009 (May 15, 2009 Letter from Thomas G. Day).

[9] Comments of the Association for Postal Commerce and the Direct Marketing Association in Response to Order No. 292 (PostCom/DMA Comments); Comments of Bank of America Corporation (Bank of America Comments); Comments of the Parcel Shippers Association on PRC Notice of Proposed Rulemaking (PSA Comments); Comments of the Public Representative in Response to Order No. 202 (Public Representative Comments); United States Postal Service Comments in Response to Order No. 292 (Postal Service Comments); Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Initial Comments on Proposed Rulemaking on Periodic Reporting (Valpak Comments), all filed November 2, 2009; and Comments of the American Catalog Mailers Association, November 3, 2009 (ACMA Comments).

Representative, the Postal Service, and Valpak.[10]

Late in this proceeding, the Postal Service informed the Commission that it would provide additional material concerning forwarded mail. Postal Service Reply Comments at 36. This material was provided in response to a Commission request in Docket No. PI2008–1 to "explore the cost of periodically conducting studies of service performance for forwarded and returned First–Class Mail and inform the Commission of their feasibility by the conclusion of fiscal year 2009." Order No. 140 at 24. This material is attached to a Postal Service motion requesting that it be considered in connection with the instant docket (Docket No. RM2009–11).[11] The Public Representative subsequently offers supplemental comments concerning this material.[12]

III. Statutory Provisions

Section 3652(a)(2) of title 39 requires that the Postal Service include in an annual report to the Commission an analysis of the quality of service "for each market–dominant product provided in such year" by providing "(B) measures of the quality of service afforded by the Postal Service in connection with such product, including—(i) the level of service (described in terms of speed of delivery and reliability) provided; and (ii) the degree of customer satisfaction with the service provided." In complying with this requirement, the Commission has authority to "by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating to the report) to be provided by the Postal Service * * * ." 39 U.S.C. 3652(e)(1).[13] The Commission also is to have access to "supporting matter" in connection with any information submitted under this section. 39 U.S.C. 3652(d).

Section 3622 of title 39 provides that the Commission by regulation establish "a modern system for regulating rates and classes for market–dominant products." The quality of service, and its reporting, forms an integral part of many of the objectives and factors set forth in this section. Reporting on quality of service allows assessment of whether the Postal Service is meeting the objective of maintaining the "high quality service standards established under section 3691." 39 U.S.C. 3622(b)(3). It furthers the objective of increasing "the transparency of the ratemaking process." 39 U.S.C. 3622(b)(6). It allows assessment of the factors addressing value of service, and by association with the proposed measurement systems, the value of intelligent mail. 39 U.S.C. 3622(c)(1), (8), and (13). Finally, it is important in relation to the rate cap requirements of 39 U.S.C. 3622(d)(1)(A) when analyzing whether quality of service is impacted in order to comply with rate cap requirements.

Section 3651(b)(1)(A) of title 39 requires that the Commission report to the President and Congress on an annual basis estimates of the costs incurred by the Postal Service in providing universal service. Describing the quality of service afforded a product, both anticipated and actual, is a necessary element in analyzing what service is being provided at a given cost. The Postal Service is to provide the Commission with such information that may, in the judgment of the Commission, be necessary in completing this report. 39 U.S.C. 3651(c).

IV. General Issues

The four issues addressed in this section are applicable to both the rules concerning service performance measurements and to the rules concerning reporting of customer satisfaction. They include quantifying costs and burdens, an objection to providing reports on a quarterly basis, an implementation procedure for ensuring future full compliance with the rules, and the continuing oversight role of the Commission.

A. Quantifying Costs and Burdens

The Commission invited the Postal Service to identify requirements imposed by the proposed rules that would be particularly onerous or costly to comply with.

> If a new requirement in these proposed rules is viewed by the Postal Service as particularly onerous, or involves costly new data collection that does not appear to add needed transparency, the Postal Service is requested to identify it and attempt to quantify its incremental cost.

Order No. 292 at 2.

Other than general comments addressing costs and burdens, the Postal Service did not reply with the specificity necessary to consider changes to the proposed rules.

Several parties commented on the Postal Service's limited response. Bank of America states that it shares the Postal Service's interest in minimizing implementation costs and administrative burdens. However, it notes that the Postal Service had not quantified the costs associated with complying with burdensome requirements, nor had it proposed rule modifications to mitigate perceived burdens. Bank of America Reply Comments at 1. PostCom/DMA comments that "in order to assess what is or is not reasonable, the Commission and affected mailers must be provided with some estimation—and not merely broad, unsupported and self contradictory statements—as to cost." PostCom/DMA Reply Comments at 2. PSA similarly notes that the Postal Service had not quantified costs or burdens. PSA Reply Comments at 1–2.

Noting that the Postal Service had not quantified onerous costs or burdens, PSA urges the Commission to not make significant changes to the proposed rules. *Id.* at 3. Bank of America suggests that the Postal Service be provided another opportunity to identify onerous costs or burdens. Bank of America Reply Comments at 2.

A more detailed response from the Postal Service would have benefited the Commission and other commenters in weighing the costs and burdens of complying with the proposed rules against the importance of the information that is being gathered. This would have provided an opportunity to consider specific alternatives at this time. As the Postal Service develops its plan to achieve compliance with these rules, it will have other opportunities to bring concerns that can be identified with specificity to the attention of the

[10] Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments on Proposed Rulemaking on Periodic Reporting, November 24, 2009 (Valpak Reply Comments); Reply Comments of the Association for Postal Commerce and the Direct Marketing Association in Response to Order No. 292 (PostCom/DMA Reply Comments); Reply Comments of Bank of America Corporation (Bank of America Reply Comments); Additonal Reply Comments of the Direct Marketing Association to Commission Order No. 292 (DMA Reply Comments); Reply Comments of the Mail Order Association of America on PRC Notice of Proposed Rulemaking (MOAA Reply Comments); Reply Comments of the Parcel Shippers Association of PRC Notice of Proposed Rulemaking (PSA Reply Comments); and United States Postal Service Reply Comments in Response to Order No. 292, December 2, 2009 (Public Representative Reply Comments).

[11] Motion of the United States Postal Service to File Report on Performance Measurement of Forwarded Mail, December 10, 2009 (Postal Service Supplemental Comments); *see also* Order No. 364, Order Granting Motions Concerning Postal Service Report on Performance Measurement of Forwarded Mail, December 17, 2009.

[12] Public Representative Comments in Response to Postal Service Report on Performance Measurement of Forwarded Mail, December 16, 2009 (Public Representative Supplemental Comments).

[13] The Commission's authority is continuing as it has further authority to initiate proceedings to improve the quality, accuracy and completeness of data whenever it shall appear that "the quality of service data has become significantly inaccurate or can be significantly improved." 39 U.S.C. 3652(e)(2(B).

Commission, and possibly to suggest less costly or burdensome alternatives.

B. Objection to Quarterly Reports

The service performance rules incorporate a two–level system for reporting service performance consisting of an Annual Report provided at a high level of aggregation and four Quarterly Reports which provide information at a more detailed level.

This two–tier approach was proposed by the Postal Service and adopted by the Commission. It was discussed at several Postal Service/Commission consultative meetings, where the statutory, 39 U.S.C. 3652(a)(2), product level reporting requirements also were reviewed with the Postal Service. Section 3652(a) provides that the Postal Service shall prepare and submit such reports as the Commission deems necessary to demonstrate (among other things) that the quality of service it provides complies with all applicable requirements of title 39. Section 3653(b) provides that the Commission shall make a determination on whether service standards in effect during a year have been met. The rules established by this order allow for both of these related, but different, provisions to be met through two–tier reporting.

The section 3653(b) requirement focuses on whether service standards are met over the course of a year. Annual reporting of service performance will enable the Commission to make these determinations. The section 3652(a) requirement is broader, focusing on such standards as the obligation to provide services to bind the nation together and to provide prompt and reliable service to all areas. *See* 39 U.S.C. 101. To evaluate these requirements, the Commission has determined that more detailed, quarterly information is necessary.

The Postal Service initially appeared to endorse this approach in its service performance Plan:

> In accordance with § 3652 of the Postal Accountability and Enhancement Act, the Postal Service is required to report measures of the quality of service on an annual basis. The Postal Service's proposal for service measurement goes far beyond annual reporting and will instead provide quarterly reporting for all market–dominant products, almost entirely at a district level.

Plan at 12.

The Postal Service now argues that the PAEA contemplates only annual reporting of service performance and customer satisfaction, and that the Commission is not authorized to require reports on a different timeframe. It states that there is no reason why the Commission needs quarterly service performance and customer satisfaction reports to effectuate its responsibilities under title 39. Furthermore, it contends that the Commission's authority is generally confined to determining the contents of the annual report, and not the timing of reports. The Postal Service acknowledges that the concept of quarterly reports arose out of Postal Service proposals, but that was when the Postal Service was proposing to report at the class, and not the product, level. Finally the Postal Service contends that the Commission's authority is significantly limited by 39 U.S.C. 3652(e)(1)(B) which requires the Commission to consider unnecessary or unwarranted administrative effort and expense on the part of the Postal Service. Postal Service Comments at 12–17; Postal Service Reply Comments at 3–8.

The Public Representative contends that the section 3652 statutory requirement to provide an annual report does not preclude the reporting of data on a more frequent basis. It argues that the Postal Service's objection to quarterly reporting of service measurements also is inconsistent with the Postal Service's position on the reporting of costs, revenues and rates under the existing periodic reporting rules. Public Representative Reply Comments at 4–5. In addition, the Public Representative argues that quarterly data are necessary for the Commission to carry out its regulatory functions. *Id.* at 5–10.

If the Commission finds the Postal Service's arguments persuasive, the Public Representative proposes two alternatives: (1) Either require the quarterly service performance data proposed by the rules to be provided as part of each annual report; or (2) require a report encompassing the previous four quarters (annual) to be provided 4 times a year (quarterly). *Id.* at 6. Valpak supports the Postal Service position that neither 39 U.S.C. 503 nor 39 U.S.C. 3651 authorizes the Commission to require quarterly reporting. It continues that although the Postal Service is not prohibited from filing quarterly reports, this also is not required by 39 U.S.C. 3652. Valpak argues that time is better spent on improving the quality of reports by product on an annual basis. Valpak Reply Comments at 1–2.

The Commission finds that prescribing the two–tier approach to reporting service performance measurements is within the Commission's statutory authority, provides information necessary to the Commission's regulatory responsibilities, and is based on sound logic and reasoning. The Commission has general authority to "promulgate rules and regulations and establish procedures, subject to chapters 5 and 7 of title 5, and take any other action they deem necessary and proper to carry out their functions and obligations" pursuant to 39 U.S.C. 503. Section III, Statutory Provisions, of this order thoroughly explains how the proffered rules relate to the Commission's regulatory responsibilities and need not be repeated at this point.

The two–tiered approach is intended to provide the appropriate level of detail necessary to evaluate a product's overall service performance for the purpose of an annual compliance determination. Too great a level of detail could distract from this analysis by requiring focus on potential anomalies in data that might not be relevant to a product's overall performance.

The more detailed information provided quarterly is intended to serve multiple purposes. Foremost, it will be used to verify the information provided in the Annual Report, and to ensure that a representative measurement system is in place which produces statistically reliable data. Additionally, it will provide the Commission with the level of detail necessary to carry out its other regulatory functions, such as examining the interaction of level of service with rate changes, which has rate cap implications, and in evaluating universal service.

Alternatively, as proposed by the Public Representative, all annual and quarterly data could be provided annually, *i.e.,* one comprehensive annual report providing information by quarter.[14] This alternate approach was not originally proposed, nor is it desirable. With a single data intensive report, focus could be lost in evaluating annual compliance. Compliance issues easily may arise concerning what amounts to supporting data, rather than a product's overall performance. Providing a separate Annual Report at the appropriate level of detail, as proposed, provides a first level filter, which focuses the analysis on more pertinent information to complete an annual determination of compliance.[15]

The once–a–year all–inclusive approach also creates timeliness of data

[14] This fact substantially weakens the end result of the Postal Service's new argument, as the rules could require the Postal Service to provide identical information, either on an annual, or on a quarterly basis.

[15] Although the Commission intends to focus on annual data for the Annual Compliance Determination, it finds no bar to using quarterly provided information when reviewing any compliance issue that may arise.

issues. Untimely service performance data quickly loses its relevance. Timely, reliable data facilitates the Commission's ability to effectively carry out its many regulatory functions, including review of periodic rate change proposals and universal service analysis. This information will facilitate the Commission's ability to make well–informed decisions.

The Postal Service also argues that the Commission's authority is limited, and must be balanced against the requirements discouraging unnecessary or unwarranted administrative effort and expense on the part of the Postal Service. As discussed previously, the Commission requested that the Postal Service quantify unreasonable costs or burdens when evaluating these rules. The Postal Service chose not to do so with any reasonable level of specificity. For this reason the Commission rejects this generalized and unsupported argument.

Finally, the Postal Service argues that because 39 U.S.C. 3652 only specifically identifies an annual report, the Commission is without authority to ask for more frequent reports. The Commission finds nothing in the statute that prohibits the Commission from seeking more frequent reports, if a regulatory need can be demonstrated. The Commission discusses the regulatory need for quarterly reports throughout this order. The Postal Service's narrow interpretation of the statute to conclude that the Commission may seek information only on an annual basis ignores the other functions this information plays in the Commission's regulatory responsibilities under the PAEA, and ignores the need to validate the data that are provided on an annual basis.

C. Implementation of Rules

The Postal Service's comments inform the Commission of its current ability to generate information as required by the rules. This includes both a product–by–product measurement and reporting capability status, and an estimate of what information may be provided in quarterly and annual reports in the near term. After review of these comments, it is evident that an implementation plan must be developed to ensure timely, full compliance with the service performance reporting rules.

The Postal Service offers that the first annual report should be provided with the FY 2010 Annual Compliance Report, with the anticipation that exceptions to reporting will be necessary. It asserts that it currently lacks the capacity to comply with certain parts of the rules without modifications to its measurement systems. Furthermore, the Postal Service states that the first quarterly report likely will not be capable of reporting on large parts of the information required by the rules. Postal Service Comments at 9–12; 29.

The Postal Service identifies its current abilities to comply with detailed service performance reporting requirements. The Postal Service asserts that it will be able to provide detailed annual and quarterly reports for all First–Class Mail products, except for Flats.[16] *Id.* at 29–30. The exception for the reporting of Flats data is due to limitations with the existing External First–Class (EXFC) system. The Postal Service asserts it will be able to report Flats at the national and area levels for overnight, 2–day and 3/4/5–day service standard groups, but it will not be able to report service performance down to the district level as required by the rules. *Id.* at 31–32.

The Postal Service asserts it will not be able to provide annual or quarterly reports for Standard Mail by product. *Id.* at 29–31. This is due to current electronic documentation requirements for full–service IMb, which in some instances do not require detailed mailpiece level data. *Id.* at 33. The Postal Service also asserts that currently there is insufficient data to provide overall results at the national, area, and district levels in the entry type and service standard groups specified by the rules. *Id.* at 34.

The Postal Service asserts it will not be able to provide annual or quarterly reports for Periodicals by product. *Id.* at 29–31. This is due to limitations with the Red Tag/Del-Trak measurement systems. *Id.* at 35–36. However, the Postal Service may be able to separately report on Destination Entry and End–to–End Periodicals at the class level. *Id.* at 36–37.

The Postal Service asserts it will be able to provide annual Package Services reports by product, except for Bound Printed Matter Flats and Media Mail/Library Mail (to the extent these products do not utilize Delivery Confirmation), and Inbound Surface Parcel Post (at UPU rates). *Id.* at 29. It also will be able to provide quarterly reports for Package Services statistics by product, except for Inbound Surface Parcel Post (at UPU rates). *Id.* at 31.

The Postal Service asserts it will be able to provide annual and quarterly reports for some, but not all, Special Service products. *Id.* at 30–31.

The Postal Service adds that full–service IMb has the capability to provide granular data below the class level, with the limiting factor being customer participation. However, rule changes to the measurement system generally will require a 2 fiscal year time lag before implementation, even assuming funding, availability of resources, and no other competing priorities. *Id.* at 37–40.

The Public Representative acknowledges the Postal Service's practical concerns as to the capabilities of the measurement systems to produce reliable and representative service performance measurement data in the short term. It suggests that this should be dealt with by granting temporary exemptions from specific reporting elements until such time as the measurement capabilities are more developed. Public Representative Reply Comments at 3.

Mailers express an interest in having the Postal Service begin providing service performance data in compliance with the rules as soon as practicable. Bank of America suggests that the final rule contain an effective date on which the Postal Service must comply with the rules. Bank of America Comments at 6. PostCom/DMA urges the Commission to require the Postal Service to develop and release interim and long–term implementation plans for service performance measurement and reporting systems. PostCom/DMA Comments at 6–8. PSA urges early implementation of the rules for product level reporting and suggests that reporting begin no later than Quarter 2, 2010 based upon existing systems. PSA Comments at 2–3. PSA notes that the proposed rules focus on how performance information is to be reported, and do not require significant changes to the Postal Service's performance measurement approach. *Id.*

PostCom/DMA and MOAA express concern with Postal Service comments that it may not be able to provide measurement statistics for Standard Mail by product at any level required by the proposed rules. PostCom/DMA Reply Comments at 2–4; MOAA Reply Comments at 1–2. PostCom/DMA urges

[16] One area of First–Class Mail where the Postal Service's capability to report service performance exceeds the reporting requirements of this rulemaking is in the area of Single–Piece First–Class Mail International. The Postal Service reported Inbound Single–Piece First–Class Mail International and Outbound Single–Piece First–Class Mail International disaggregated by overnight, 2–day, and 3/4/5–day groupings during the FY 2009 annual compliance review. This rulemaking currently requires reporting only a single aggregated number for Inbound Single–Piece First–Class Mail International and a single aggregate number for Outbound Single–Piece First–Class Mail International. A future rulemaking will bring the reporting requirements up to the level of actual reporting capability. Until that time, the Commission requests that the Postal Service continue reporting at the more disaggregate level on an annual basis.

the Postal Service to begin quarterly reporting at the product level to the extent any data is available, and include explanatory notes as the measurement systems continue to evolve. PostCom/DMA Reply Comments at 4. MOAA supports PostCom/DMA's suggestion to provide the maximum data possible under existing systems, and argues that the Postal Service should provide a schedule for full reporting under a reasonably rapid timetable. MOAA Reply Comments at 1–2. MOAA asks the Commission to be sensitive to the costs of providing this data. *Id.* at 2. Valpak also suggests requiring a firm schedule for compliance with service performance reporting by product for Standard Mail. Valpak Reply Comments at 3–5. Valpak argues that if the Postal Service cannot begin providing some data by product within the next 12 months, it would endorse the PostCom/DMA suggestion that data be obtained by other means, such as by using an alternative measurement system. *Id.* at 5.

The rules described in this rulemaking shall be effective 30 days after publication in the **Federal Register.** There is no expectation that the Postal Service will be able to provide service performance reporting in compliance with every aspect of the rules as of the effective date. In the case of customer satisfaction reporting, however, there is no apparent reason why the Postal Service cannot immediately comply with all customer satisfaction data reporting requirements. Most, if not all, customer satisfaction reporting requirements are based on information that the Postal Service currently has available.

Because of the limited initial expectations in the area of service performance reporting, the Commission shall require the Postal Service to follow a two–step process to achieve full compliance with all reporting requirements by the filing date of the FY 2011 Annual Compliance Report (2011 ACR). The first step requires the Postal Service to request semi–permanent exceptions from reporting as allowed by rule 3055.3. These exceptions are applicable only under limited, specific circumstances. The second step is to request temporary, short–term waivers from reporting in areas where measurement and reporting systems need additional time for development. This step further requires the presentation of implementation plans to achieve full compliance by the filing date of the 2011 ACR prior to the granting of a waiver.

In the interim, the Postal Service is directed to provide the Commission with all available required data as performance reports are due. When additional data becomes available in the future, this also shall be provided. Pending action on waivers or exceptions shall not act as a stay to providing available data.

Step 1: semi–permanent exceptions from reporting. Rule 3055.3 allows the Postal Service to petition the Commission to request that a product, or component of a product, be excluded from reporting. The rules establish strict limits on allowable exceptions. Because of these limitations, most instances that warrant an exception should be readily identifiable and justifiable. It is anticipated that any exception approved will be of a semi–permanent nature, as opposed to the temporary, transitional waivers discussed below. Any request for exception that is denied under rule 3055.3 may be further addressed by requesting a temporary waiver until reporting can be provided. The Postal Service shall file initial requests for exclusions from measurement with the Commission no later than June 25, 2010.[17]

Public comments on the first round of requests will be accepted until July 16, 2010. The Commission will issue a ruling shortly thereafter. The public always has an opportunity to comment on any exception, granted or not, during the Annual Compliance Report/Annual Compliance Determination process.

Step 2: temporary waivers from reporting. The Postal Service's recital of its immediate ability to comply with the service performance reporting requirements indicates that a transition period is necessary to allow further development of certain measurement and reporting systems. The Commission will provide an opportunity for the Postal Service to seek temporary waivers where it cannot immediately comply with specific reporting requirements. Waivers will be granted for a defined period of time, and will be applicable to any annual or quarterly report required to be filed in the interim. The FY 2010 annual report and interim quarterly reports will be viewed in light of these waivers.

As a condition of granting any waiver, the Commission shall require the Postal Service to develop and present implementation plans addressing each reporting requirement for which the Postal Service cannot provide the required information. The plans shall conform with a goal of achieving full compliance with all reporting requirements by the filing date of the 2011 ACR. The Postal Service has been working on its measurement systems since the passage of the PAEA in December 2006. Requiring full compliance by issuance of the 2011 ACR provides almost 2 additional years for the Postal Service to implement reporting systems to report service performance in full compliance with the rules.

Implementation plans at a minimum should provide an explanation of why a reporting requirement cannot be complied with, the steps necessary to come into compliance, and a timeline of events necessary to achieve compliance. Interim milestones shall be included in the plans where applicable such that both the Postal Service and the Commission can evaluate progress being made. The Commission needs to be informed of the Postal Service's plans and the progress being made, but intends to provide the Postal Service the flexibility to manage its plans without Commission interference.

The Postal Service's request for temporary waivers shall be filed with the Commission no later than September 10, 2010.[18] The Postal Service shall provide status reports on achieving the milestones of its implementation plans with the filing of quarterly performance reports.

The public has until October 1, 2010 to submit comments on requests for temporary waivers. Comments directed towards areas of the Postal Service's plans that are in jeopardy of not meeting the full compliance deadline will be most helpful.

The Commission will issue a ruling shortly thereafter. For any requests that may be unjustified or implementation plans that may appear unreasonable, the Commission intends to direct the Postal Service to make improvements to its plans or the request may be denied.

Interim reporting. This order provides illustrative examples of data reporting charts for annual and quarterly service performance and customer satisfaction reporting. The Postal Service may adopt these formats, or independently develop similar formats, for reporting data. All annual and quarterly reports shall be presented using complete data reporting tables. Where data are available, it shall be provided. Where data are not available, an appropriate notation shall be made where the data should have appeared indicating that the data are not

[17] The Commission requests that the Postal Service contact the Comnmission's Dockets supervisor at the time of filing to establish a new rulemaking "RM" docket for this filing.

[18] The Commission requests that the Postal Service contact the Comnmission's Dockets supervisor at the time of filing to establish a new rulemaking "RM" docket for this filing.

yet available. This will provide a clear indication of the progress being made towards full compliance with the reporting requirements.

D. Continuing Oversight

Many comments address the need for some form of continuing oversight of service performance measurements by the Commission. Bank of America encourages the Commission to provide "an ongoing and active role in ensuring timely, representative, and high quality reporting." Bank of America Comments at 6.

Valpak contends that implementing a service performance system is an ongoing process, and suggests that the Commission revisit the reporting rules after experience is gained, making adjustments as necessary. Valpak Comments at 7–8. It further suggests planning for subsequent discrete service performance measurement reporting dockets, apart from the annual compliance review process where service performance may take on a minor role. Valpak Reply Comments at 6–7.

Bank of America argues that mail prepared using full–service IMb may not be representative of the product as a whole. Thus, it urges the Commission to implement regular third–party auditing of service performance measurement systems using IMb to ensure accurate and representative measurements. Bank of America Comments at 7.

PostCom/DMA also expresses concern with the adequacy of full–service IMb adoption rates to provide geographically and statistically representative service performance measurements. They urge the Commission to monitor adoption rates, and evaluate the related rate incentive plans.[19] PostCom/DMA Comments at 4–6.

Bank of America urges the Commission to review appropriate quality control and data cleaning procedures, specifically in the area of Confirm service. Bank of America Comments at 7. PostCom/DMA expresses similar concerns. PostCom/DMA Comments at 14.

PostCom/DMA urges the Commission to establish a formal annual review of service performance standards and targets with an eye towards improving the standards and targets. *Id.* at 15–16.

Each of these arguments expresses concerns with the ability of the hybrid IMb–based measurement system approved by the Commission to provide reliable service performance measurements. The Commission has an ongoing role in monitoring customer satisfaction and service performance. Primary oversight will be through the Annual Compliance Report/Annual Compliance Determination process. This is the appropriate time to look at customer satisfaction and service performance, including but not limited to all aspects of data quality, potential auditing of systems, adequacy of the data being provided, sufficiency of the measurement systems, monitoring of adoption rates, and proposals for improvement.

Individual dockets may be initiated as required to consider improvements to the rules as implemented, or to consider innovative new approaches to evaluating both customer satisfaction and service performance. Additional, continuous visibility into the Postal Service's progress will be obtained through the quarterly reporting requirements.

The Postal Service has established baseline service performance standards and targets. The Commission has limited authority to establish service performance standards and targets on its own, which is implied by the PostCom/DMA suggestion to annually review the service performance standards and targets with a goal of improvement. However, the Commission will have an indirect role in reviewing Postal Service initiated performance standard and target changes to these baselines as this may affect the nature of the underlying service, or the rates associated with the service in regard to the price cap.

V. Service Performance Measurements Reporting

A. Annual Reporting

This rulemaking incorporates the rules for annual reporting of service performance measurements (or achievements) into new subpart A—Annual Reporting of Service Performance Achievements, of Part 3055—Service Performance and Customer Satisfaction Reporting. Table 2—Illustrative Annual Report Data Reporting Charts shown in the Appendix provides illustrative examples of data reporting charts.

Rules 3055.2, .3, .5 and .7 concerning the Contents of the Annual Report of Service Performance Achievements; Reporting Exceptions; Changes to Measurement Systems, Service Standards Service Goals or Reporting Methodologies; and Special Study are the subject of actionable comments, and are addressed below.[20]

1. Rule 3055.2—Contents of the Annual Report of Service Performance Achievements

Rule 3055.2 describes the contents of the annual report of service performance achievements. Subsection (b) directs the reader to specific reporting requirements applicable to each product within a specific class or group. Subsections (c) through (g) direct the Postal Service to describe the service standards, performance goals, measurement systems, and statistical methodologies for each product. Subsection (h) now requires an explanation where specific service standards are not met. Subsection (i) requires the identification of each product, or component of a product, granted an exception from reporting pursuant to rule 3055.3, along with a certification that the rationale for originally granting the exception remains valid. Subsections (j) and (k) (proposed subsections (i) and (j)) in effect require the Postal Service to demonstrate how it performs each aggregation/disaggregation of data, both between and among the various reports, and over the various timeframes. This would include providing volumes and other weighting factors as necessary to perform the required calculations.

Objections to documentation requirements. The Postal Service believes that the documentation requirements specified by rule 3055.2 (and similarly rules 3055.31 and 3055.32) are unnecessary, in major respects unworkable, and should be eliminated. Postal Service Comments at 22–28. The Postal Service's specific comments, however, only focus on the description of the aggregation methodologies within and between various reports as required by proposed rules 3055.2(i) and (j).[21]

The Postal Service contends that the requirements of proposed rules 3055.2(i) and (j) are akin to requirements seen under the previous ratemaking regime,

[19] DMA believes that full–service IMb provides a low cost solution for service performance measurement, but current incentives are not high enough to elicit large enough quantities of mail for the system to work. It argues for increasing the discounts to increase volume, as opposed to funding an external measurement system that does not rely on full–service IMb. DMA Reply Comments at 2. The Commission also is concerned with IMb adoption rates. However, potential incentive plans are beyond the scope of this order.

[20] Order No. 292 at 14–18 describes all rules appearing in subpart A. The descriptions have not been repeated in the final order unless pertinent to the discussion.

[21] Although the Postal Service only specifically mentions the aggregation methodologies within and between various reports as required by proposed rules 3055.2(i) and (j), the Postal Service's comments also could be interpreted to implicate the documentation requirements of rules 3055.2(c) through (g). The Commission's conclusions apply equally to proposed rules 3055.2(i) and (j), and to rules 3055.2(c) through (g).

and are "overkill" in the context of the PAEA where interested third parties do not have to be provided with previous levels of due process. *Id.* at 26. It argues that the requirements will create an unwarranted financial burden for the documentation of some products, and for certain other products, the Postal Service contends that the complexity of the systems prevent providing documentation in the formats anticipated by the rules. *Id.* at 26–27.

The Postal Service contends that some level of assurance should be provided in the analysis because many of the calculations are performed independent of the Postal Service by contractors. The Postal Service also notes that assurance should be provided because, pursuant to 39 U.S.C. 3652(a), the Inspector General of the Postal Service is required to conduct regular audits of the performance measurement systems.[22]

As an alternative, the Postal Service suggests that it is always available to the Commission to answer questions about the derivation of estimates. As a second alternative, the Postal Service proposes to submit a certification from a qualified auditor to attest to the accuracy of the estimates. *Id.* at 22–28.

Bank of America and PostCom/DMA support the rules which require the Postal Service to describe the measurement system for each product, including the process used to aggregate data. Bank of America Comments at 3; PostCom/DMA Comments at 13–14. However, PostCom/DMA also expresses concern with additional costs, and suggests clarification of what is to be provided, including addressing massive IMb data sets and consideration of potentially sensitive data. *Id.*

The Commission previously described the intent of proposed rules (i) and (j):

> Subsections (i) and (j) of this section in effect require the Postal Service to demonstrate how it performs each aggregation/disaggregation of data, both between and among the various reports, and over the various timeframes. The goal is to provide independent parties the information necessary to be able to replicate the aggregations/disaggregations made by the Postal Service between and among the various reports, and over the various timeframes. For example, this should include the ability to aggregate the data provided in the quarterly reports up to the level of data provided in the annual reports. It also should include the ability to aggregate data provided at the District level, to the Postal Administrative Area level, and to the National level. The Commission expects that data will be provided in electronic format (Excel files are anticipated at this time), with electronic links and formulas that can be followed in order to duplicate the Postal Service's aggregation methodologies. This would include providing volumes and other weighting factors as necessary to perform the required calculations.

Order No. 292 at 15 (footnote omitted).

The Commission finds that this requirement is a critical component in allowing third parties to understand the data being presented by the Postal Service. Without an understanding of this process, third parties cannot properly interpret the service performance data, which renders the data meaningless.[23]

The Commission assumes that the methodologies involved for service performance measurements, including aggregation methodologies, is information that the Postal Service or its subcontractors has available and which has been documented. Otherwise, it would be difficult to consistently apply these methodologies when analyzing and transforming raw data into presentable form. It also would not be possible for any third party (an independent auditor or the Inspector General of the Postal Service as suggested by the Postal Service) to audit and verify the Postal Service's systems without this documentation.

The Commission further assumes that the Postal Service did not allow its contractors unconstrained latitude in developing performance measurement systems. For the contractors to efficiently carry out their tasks, they should have been provided with the parameters of the systems that they were expected to deliver. In return, the contractors should have provided documentation to the Postal Service explaining what they had developed for the Postal Service. For these reasons, the Commission concludes that documentation can be provided in compliance with the documentation rule with little additional burden to the Postal Service.

There is no single answer as to what may be a sufficient level of documentation, or what level of underlying data must be presented in support of the data filings. The Postal Service seems to indicate that for certain products it is possible to provide complete documentation. For other products, the Postal Service indicates that it will be difficult, because of the complexities of the measurement systems, to provide complete documentation. The Commission finds that the level of documentation provided must be consistent with its previously stated goals, and to allow parties to reasonably understand and analyze the Postal Service performance measurement systems. The Commission only is interested in the Postal Service's underlying raw data sets to the extent necessary to understand how raw data is transformed into presentable form. It expects generally to examine data sets that are already in some aggregate form. The Commission is not asking that the Postal Service's raw databases be made publicly available.

Assuming that the Postal Service is able to substantially comply with documentation requirements, it still may be necessary to consult informally with the Postal Service to understand more fully how its systems operate. This potentially could include a series of technical conferences to explain to all parties the performance measurement systems. The Commission will make its staff available as necessary to assist the Postal Service to determine how it can best comply with the documentation requirements.

Alternative documentation proposal. The Public Representative proposes that the Postal Service only fully document its service performance measurement system in the first annual report after these rules go into effect, instead of having to fully document its service performance measurement system each year. He proposes that the Postal Service then be required to document only changes to these systems in future reports. He asserts this change mimics the reporting requirements established under the existing periodic reporting rules using the analytical principles concept. Public Representative Comments at 7–9, and Attachment A, rules 3055.1(c) and 3055.2(e).

The Commission does not adopt the Public Representative's proposal. The measurement and data reporting systems are in a nascent phase and are currently under development. The Commission anticipates many potentially significant changes over the next few years. It may become extremely cumbersome to track these changes without establishing a new baseline on an annual basis. The only additional burden placed upon the Postal Service by this rule is the requirement to re–file, verbatim, previously filed material where no changes have occurred. Once the measurement and data reporting systems stabilize, this proposal may be reconsidered.

Proposal to require explanations. Bank of America requests an addition to

[22] The Postal Service also expresses concern with public disclosure of certain data that otherwise potentially could have been packaged and sold to interested mailers, thereby depriving the Postal Service of an additional revenue source. *Id.* at 28, n.16.

[23] Bank of America provides an excellent example of the effects of weighting on the presentation of data and a third–party's ability to interpret the data. *See* Bank of America Comments at 3–4.

rule 3055.2 which requires the Postal Service to explain, in instances where specific service standards are not met, why they are not met, and to require the Postal Service to provide a plan for meeting service standards in the future. Bank of America Comments at 3, n.7.

The Postal Service opposes this suggestion arguing that this is a purpose of the Annual Compliance Report/ Annual Compliance Determination process. Postal Service Reply Comments at 34. It contends that the Commission is authorized to seek additional information as might be necessary at that time.

The Commission agrees with the Postal Service that the Annual Compliance Report/Annual Compliance Determination process is the most appropriate time for reviewing postal services that do not meet their service standards or goals. The Postal Service also is correct in recognizing that the Commission may seek this information if it is not provided. However, this process will be facilitated by the Postal Service providing explanations at the time it files its Annual Compliance Report, and not waiting for a Commission request. Clarifying rule 3055.2 to specify that providing explanations is required will serve as a reminder to the Postal Service to provide this information at the time of filing, and may eliminate the delay involved with issuing information requests. Because this information should be provided anyway, and if not it would be requested, the Commission does not find this to be a material change to the proposed rule.

The following requirement will be added to rule 3055.2:

(h) For each product that does not meet a service standard, an explanation of why the service standard is not met, and a plan describing the steps that have or will be taken to ensure that the product meets or exceeds the service standard in the future.

Minor wording change. The Public Representative proposes a minor language change to clarify proposed rule 3055.2(i). He proposes to change the word "next" to "preceding" when describing related levels of aggregation/ disaggregation. Public Representative Comments at 11–12, and Attachment A, rule 3055.2(i).

Although the Commission believes the intent of the rules is clear, it finds that the language can be improved. The wording in rules 3055.2(j) and 3055.31(d) will be modified to read: "Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggrgation."

2. Rule 3055.3—Reporting Exceptions

Rule 3055.3 provides an avenue for the Postal Service to seek exceptions from the general requirement to report on service performance in instances where reports would be cost prohibitive in relation to the revenue generated from the service, it defies meaningful measurement, or in the case of certain negotiated service agreements.

Clarification of "component" of a product terminology. The Postal Service expresses several concerns with rule 3055.3 Reporting exceptions. It asks clarification of the terminology "component" of a product. It opines that this terminology could apply to the various levels of aggregation required by the rules, or to the absence of certain elements of required information for an entire product. Postal Service Comments at 19.

Rule 3055.3 provides that "[t]he Postal Service may petition the Commission to request that a product, or component of a product, be excluded from reporting * * *. The Commission had two applications in mind for the terminology "component of a product." The first applies where "component" refers to a standalone service provided by the Postal Service that is grouped under an umbrella product for administrative purposes only. For example, Ancillary Services is a product within Special Services. Stamped Cards would be a component of the Ancillary Services product. The Postal Service may wish to seek an exception from reporting on the Stamped Cards component of Ancillary Services if it believes one or more of the exceptions are applicable.

The second is where "component" refers to a feature or service provided as part of a recognized product. For example, the Single–Piece Letters/ Postcards product within First–Class Mail includes forwarding and return service. Some have argued that forwarding and return service should be independently measured. The Commission could consider forwarding and return service a component of the Single–Piece Letters/Postcards product susceptible to a request for exception from reporting.[24]

Proposal to expand allowable exceptions. The Postal Service also argues that the exceptions should be expanded in three ways: (1) To apply to failure to meet the documentation requirements of rules 3055.2 and 3055.31; (2) to apply to reports on customer satisfaction; and (3) to encompass the transition period when the Postal Service fails to provide specific reports while the measurement systems are brought up to speed. A further suggestion is to provide an "other reasons" catchall category of exceptions for items not specifically addressed. *Id.* at 21.

The Commission intended only limited exceptions, and has not been persuaded that additional exceptions should be provided. Temporary waivers for near term failure to meet the documentation requirements or events encountered during the transition period are addressed in the discussion of an implementation plan in section IV.C. This speaks to the Postal Service's immediate concern. The Commission is not aware of any specific reason to extend reporting exception rules to the customer satisfaction requirements. Most, if not all, customer satisfaction reporting requirements are based on Postal Service systems already in place, or from data that it routinely collects. The Postal Service has, as it has frequently done in the past, the ability to formulate requests for waivers in the form of a motion to address future issues that may not be apparent at this time. The Commission does not find a need to expand the exceptions rule at this time.

Exceptions procedures. Finally, the Postal Service comments that the rules are silent on specific procedures for executing the exception mechanism. The Postal Service's view is that the exceptions procedures need not become a forum for any other purpose than permitting the Postal Service to explain why reporting requirements are not being met. *Id.* at 21–22. PSA contends that rule 3055.3 should include a provision allowing interested parties to comment on proposed exceptions. PSA Reply Comments at 3.

The Commission has concluded that it will seek comments and issue an appropriate ruling on the initial round of exception requests. *See* section IV.C. The Commission will reconsider if a more formal process is warranted at a later date. Interested persons always have an opportunity to comment on exceptions during the Annual Compliance Report/Annual Compliance Determination process. Further opportunity for interested persons to seek reconsideration of exceptions is provided pursuant to 39 U.S.C. 3652(e)(2)(B).

3. Rule 3055.5–Changes to Measurement Systems, Service Standards, Service Goals or Reporting Methodologies

Rule 3055.5 requires the Postal Service to apprise the Commission of all

[24] The Commission is not prejudging the success or failure of making any of these arguments in obtaining an exception.

changes to measurement systems, service standards, service goals, and reporting methodologies. The Commission may institute a proceeding to consider change proposals if it appears that the changes might have a material impact on the accuracy, reliability, or utility of the reported measurement, or if the changes might have a material impact on the characteristics of the underlying product.

Bank of America and PostCom/DMA voice general support for these rules. Bank of America Comments at 3; PostCom/DMA Comments at 15.

Standard of review. The Public Representative contends that 39 U.S.C. 3652 requires the same standard of review for service performance as it does for costs, revenues and rates. He equates internal (including hybrid) service performance measurement systems and methodologies for data reporting (including the use of proxies) with analytical principles as defined in rule 3050.1 of the periodic reporting rules. As such, the Public Representative proposes to incorporate the more restrictive rules for changes in accepted analytical principles into the rules for service performance. *See* 39 CFR 3050 *et seq.* The Public Representative also would extend the Postal Service's advance notification requirement from 30 to 60 days, and differentiate between internal and external measurement systems. Public Representative Comments at 3–6, 9–11, and Attachment A, rules 3055.1(b) and 3055.5.

The Postal Service opposes the Public Representative's proposal arguing that the Commission's approach is both adequate and appropriate. Postal Service Reply Comments at 15–18.

The periodic reporting rules, along with the concept of "analytical principles," are intended for reporting on technical areas of rate analysis which have evolved over 30 years. Over this time the associated data measurement systems, analytical methodologies, and forms of data presentation have matured and become fairly stable. Recent changes to analytical principles typically account for recent changes in the data reporting systems, or are meant to incorporate new ways of looking at information generated through these systems.

By contrast, the periodic reporting of service performance is a new requirement of the PAEA. The data measurement systems, analytical methodologies, and forms of data presentation are currently under development and are, for practical purposes, untested. Many adjustments are anticipated before these systems become mature. At this early stage, the Postal Service must have the flexibility to take the lead in developing these systems. While the Commission does not intend to insert itself into the day–to–day development decisions, it still must be kept apprised of changes to proposed systems to ensure that they produce and report reliable, useful information. 39 U.S.C. 3652(a)(1). The Commission finds that the rules as proposed serve this function. Thus, the Commission does not adopt the proposal to impose the more restrictive periodic cost reporting procedures in the case of service performance measurements at this time.

Commission oversight of service standards and service goals. The Postal Service opposes the portions of rule 3055.5 which imply that the Commission has limited oversight over service standards and service goals. By statute, it argues that 39 U.S.C. 3691 reserves to postal management all authority over the establishment or revision of service standards, and uncodified section 302 provides postal management authority to establish service goals. It asserts that these areas are core management functions. *Id.* at 18–22.

The Commission does not intend to specify service standards or service goals for new products, or, on its own, to initiate review of existing products with the purpose of requiring changes to established service standards or service goals. However, the Postal Service's authority in this area is not without limit. Accurate, up–to–date information is necessary for the Commission to carry out its responsibilities to monitor and report on quality of service under the PAEA. This only can be accomplished if the Postal Service provides notice and continuously keeps the Commission apprised of all changes.

The Commission also finds that service performance standard or goal changes that might have a material impact on the characteristics of an underlying product must be reviewed for possible product classification change issues. They also must be reviewed for rate and rate cap implications. For example, a reduction in service without a reduction in price may imply that customers are getting less for their money, *i.e.,* experiencing a *de facto* rate increase. The review of rate changes and establishing rules that delineate how such cases are to be considered by the Commission are well within the purview of the Commission. *See* 39 U.S.C. 3622. The Commission's rules of practice are clear when the Postal Service directly proposes rate changes, but may be less clear when rates that are in effect are changed indirectly. Providing (1) a notice requirement, and (2) establishing the possibility of a proceeding in rule 3055.5 to remove any ambiguity that the Postal Service must officially notify the Commission of Postal Service actions that may indirectly affect rates.[25]

Minor wording change. Upon review of the wording of rule 3055.5, the Commission determined that it may be unclear as to when the Commission may initiate a proceeding. For clarity, the Commission will add the words "at any time" to the rule. This is consistent with Commission authority to initiate proceedings at any time pursuant to 39 U.S.C. 3652(e)(2), and authority to establish modern rate regulation pursuant to 39 U.S.C. 3622.[26] In some instances, it parallels a customer's ability to file a complaint pursuant to 39 U.S.C. 3662, request a proceeding pursuant to 39 U.S.C. 3652(e)(2), or provide comment pursuant to 39 U.S.C. 3653(a). In some instances, it parallels the Postal Service's obligation to file a nature of service case pursuant to 39 U.S.C. 3661. However, the Commission's intent is to make a preliminary determination of whether or not a proceeding is warranted within the 30–day notification period, and notify the Postal Service immediately of any determinations to initiate a proceeding.

4. Rule 3055.7–Special Study

The measurement systems that the Postal Service propose do not appear to capture certain information on delivery performance; for example, from the processing facility in Anchorage, Alaska to the outer reaches of Alaska; from Honolulu to the neighbor islands of Hawaii; or from San Juan to more distant locations in the Caribbean district.

Proposed rule 3055.7 contemplates the Postal Service conducting a special study, every 2 years, to evaluate final delivery service performance in these remote locations.

The Postal Service contends that a special study is not necessary because transit time measurements already include single–piece, bulk, and international First–Class Mail, Standard Mail, and Package Services to and from

[25] A parallel argument can be made for when a service goal or service standard changes the nature of a product, that effectively amounts to a classification change.

[26] The Commission views service standard and service goal changes as potentially affecting the value of a service to the customer. Thus, service standard or service goal changes may be equated wtih rate changes.

all ZIP Codes in these areas. Parcels having Delivery Confirmation are currently measured from start–the–clock through delivery to final destination. Finally, Periodicals measurements will be extended to these areas when the hybrid measurement approach replaces the Red Tag/Del–Trak measurement system. Postal Service Comments at 44-45.

The intent of obtaining special studies is to allow evaluation of the unique aspects of providing service to the less populous/more remote areas of these districts, and compare how this service differs from the districts as a whole. Beyond the service performance implications, this will add to the understanding of universal service in these areas. The Postal Service states it now is able to measure all ZIP Codes in these areas. This may provide the necessary information for the special study. However, if the intent of the Postal Service was only to aggregate information obtained from these ZIP Codes to obtain a district level result, this would not provide the insight as required into the unique aspects of service to the less populous/more remote areas.

The special study shall remain in the final rule. If the result of the special study indicates that the more remote/less populous areas of these districts receive essentially the same service as the less remote/more populous areas of these districts, the Postal Service may, in the future, petition the Commission to eliminate this requirement from future reports.

B. Quarterly Reports

This rulemaking incorporates the rules for quarterly reporting of service performance measurements into a new Subpart B—Periodic Reporting of Service Performance Achievements, of Part 3055—Service Performance and Customer Satisfaction Reporting. Table 3—Illustrative Quarterly Report Data Reporting Charts shown in the Appendix provides a visualization of the quarterly data reporting elements specified by the rules through illustrative examples of data reporting charts.

Rules 3055.31, .32 and .50 concerning the Contents of the Quarterly Report of Service Performance Achievements; Measurement Systems Using a Delivery Factor; and Standard Mail are the subject of actionable comments, and are addressed below.[27]

1. Rule 3055.31—Contents of the Quarterly Report of Service Performance Achievements

Rule 3055.31 specifies the contents of each quarterly report. Subsection (b) directs the reader to specific reporting requirements applicable to each product within a specific class or group. Subsection (c) requires identification of each product, or component of a product, granted an exception from reporting pursuant to rule 3055.3, along with a certification that the rationale for originally granting the exception remains valid. Finally, subsections (d) and (e) direct the Postal Service to demonstrate how it aggregates/disaggregates data to different reporting levels.

Aggregation of data. Bank of America supports the demonstration of the aggregation of data, rule 3055.31(d)–(e). Specifically, Bank of America stresses the importance of weighting to allow meaningful analysis of data, and the impact that weighting has on reported performance. Bank of America Comments at 3–4.

The Postal Service contends that the documentation requirements specified by rule 3055.31 should be eliminated, arguing that it is unnecessary and in major respects unworkable.[28] *See* Postal Service Comments at 22–28.

The Commission previously addressed this issue when discussing rule 3055.2 and did not find the Postal Service's arguments persuasive. The rule shall not be modified based on the Postal Service's arguments.

Minor wording change. The Public Representative proposes the same minor language change to add clarity to rule 3055.31(d), as he proposed for rule 3055.2(j). In both places, he proposes to change the word "next" to "preceding" when describing related levels of aggregation/disaggregation. Public Representative Comments at 11–13, and Attachment A, rules 3055.2(j) and 3055.31(d).

The Commission previously found that the clarity of these rules can be improved. Consistent with the wording modifications to rule 3055.2(j), the Commission also modifies rule 3055.31(d) to read:

> Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors.

2. Rule 3055.32—Measurement Systems Using a Delivery Factor

Rule 3055.32 requires the Postal Service to independently report delivery factors when used in computing End–to–End service performance.

The Postal Service contends that the documentation requirements specified by rule 3055.32 should be eliminated arguing that it is unnecessary and in major respects unworkable.[29] *See* Postal Service Comments at 22–28.

The Commission previously addressed this issue when discussing rule 3055.2 and did not find the Postal Service's arguments persuasive. The rule shall not be modified based upon the Postal Service's arguments.

3. Rule 3055.50—Standard Mail

Rule 3055.50 specifies the quarterly reporting requirements for all products within the Standard Mail class.

Destination Entry service standard day groupings. The Postal Service established 2–day through 10–day service standards for Destination Entry Standard Mail. The proposed rule separates Destination Entry mail into two groups for reporting purposes. It proposes reporting an aggregation of mail subject to the 2–day through 4–day service standards and an aggregation of mail subject to the 5-–day through 10–day service standards. Destination Entry 2–day through 4–day service standard mail roughly coincides with destination delivery units (DDU) and destination sectional center facility (DSCF) entered mail. Destination Entry 5–day through 10–day service standard mail roughly coincides with destination bulk mail center (DBMC) and bulk mail center (BMC) entered mail.

Valpak proposes slightly different Standard Mail day aggregations for Destination Entry mail. It contends that its proposal makes the reporting of Destination Entry mail more meaningful. It proposes separate reporting of 2–day mail which roughly reflects DDU–entered mail, aggregating 3– to 4–day mail which roughly reflects DSCF–entered mail, and aggregating 5– to 10–day mail which roughly reflects DBMC– and BMC–entered mail.

Valpak also proposes an alternative in case its preferred aggregations prove impossible or too costly to implement. It proposes aggregating 2– to 3–day mail which reflects all DDU–entered mail and over 99 percent of all DSCF–entered mail, and aggregating 4– to 10–day mail which reflects DBMC and remote

[27] Order No. 292 at 19–23 describes all rules appearing in subpart B. The descriptions have not been repeated in the final order unless pertinent to the discussion.

[28] The Postal Service's specific arguments objecting to rule 3055.31 are incorporated into its arguments objecting to rule 3055.2 and are addressed in the discussion of rule 3055.2.

[29] The Postal Service's specific arguments objecting to rule 3055.32 are incorporated into is arguments objecting to rule 3055.2 and are addressed in the discussion of rule 3055.2.

destinating mail entered at the appropriate BMC, plus any DSCF Virgin Islands mail. Valpak Comments at 6–7.

PostCom/DMA also proposes different Standard Mail day aggregations for Destination Entry mail. It proposes aggregating the 2– to 5–day mail and aggregating the 6– to 10–day mail. PostCom/DMA Comments at 12.

The Postal Service appears to support the rule as proposed. It contends that increasing the number of reporting groups could have a negative effect on the representativeness of the underlying data, and the statistical validity of the reported result. Postal Service Reply Comments at 27–29.

The Commission adopts Valpak's proposal which separates reporting of 2–day mail, 3– to 4–day mail, and 5– to 10–day mail. Valpak's proposal improves upon the Commission's proposal in the notice of rulemaking by effectively providing separate reporting for BMC (now network distribution center (NDC))– and DSFC–entered mail. The Commission acknowledges the Postal Service's concerns about the representativeness of data and statistical validity. However, this is a concern regardless of which proposal is adopted, and a final resolution of appropriate aggregations will not be possible until measurement and reporting systems are further developed, and actual mail volumes are considered.

End–to–End service standard day groupings. The Postal Service established 3–day through 22–day service standards for End–to–End Standard Mail. The proposed rule separates End–to–End mail into two groups for reporting purposes. It proposes reporting an aggregation of mail subject to the 3–day through 5–day service standards and an aggregation of mail subject to the 6–day through 22–day service standards. End–to–End 3–day through 5–day service standard mail roughly coincides with sectional center facility turnaround, area distribution center turnaround, and intra–BMC area mail. End–to–End 6–day through 22–day service standard mail roughly coincides with all other End–to–End mail subject to greater transportation needs.

PostCom/DMA proposes slightly different End–to–End Standard Mail day aggregations. It proposes aggregating 3– to 5–day mail, aggregating 6– to 10–day mail, and aggregating 11– to 22–day mail. This is designed to improve the visibility of non–contiguous United States mail, monitor performance due to NDC changes, and monitor the broader Postal Service network through the four Tier 3 NDCs. PostCom/DMA Comments at 12.

The Postal Service's comments presented above for Destination Entry mail apply equally to End–to–End mail. Postal Service Reply Comments at 27–29.

The Commission adopts the PostCom/DMA proposal which separates reporting of 3– to 5–day mail, 6– to 10–day mail, and 10– to 22–day mail. This proposal effectively provides increased visibility for mail coming to and going from the contiguous United States, and is an improvement over the aggregations proposed in the notice of rulemaking. The same caveats apply concerning the representativeness of data, and statistical validity of the service performance measurement process.

Aggregating service standard days. PostCom/DMA and Valpak ask the Commission to clarify which service standards are applicable to the data that is being aggregated. PostCom/DMA Comments at 12; Valpak Comments at 4–5.

PostCom/DMA correctly assumes that when aggregating a range of days for reporting purposes, mail for each individual day will be measured against that day's standard, and not against the maximum standard of the group. *See* PostCom/DMA Comments at 12. For example, a single number will be reported for 3– to 4–day service standard Destination Entry mail. All 3–day service standard mail will be measured individually and compared with respect to the 3–day service standard. All 4–day service standard mail will be measured individually and compared with respect to the 4–day service standard. The 3–day result then will be combined with the 4–day result, weighted by an appropriate factor, and reported as the result for 3– to 4–day service standard Destination Entry mail. Three–day service standard mail will not be measured with respect to a 4–day service standard.

A similar process will be used for reporting on all products that have multiple service standard days. The process is applicable to both on–time service performance measurements and mail service variance reports. If reported using the illustrative data tables appearing in the Appendix, this single number would be reported in the "% On–Time" column. For annual reports, this number will be compared against the "Target," which is the service goal, not the service standard. *See* Valpak Comments at 9.

4. Rule 3055.65—Special Services

In Order No. 292, the Commission proposed an approach to measuring the service performance of green card Return Receipt service within the Special Services, Ancillary Services product. Order No. 292 at 26–28. Requirements specifying the form for reporting these measurements were incorporated into proposed rule 3055.65(b). The Postal Service was directed to respond to these proposals.

The Postal Service's response informs the Commission that it will incorporate the requirements proposed by the Commission into a special study concerning green card Return Receipt service that it intends to undertake in FY 2010. Postal Service Comments at 43–44.

The Commission will review the Postal Service's special study methodology and initial results during the FY 2010 Annual Compliance Report/Annual Compliance Determination process.

C. Proposals to Expand the Scope of the Service Performance Rules

Forwarding and return of First–Class Mail. In Order No. 140, the Commission asks the Postal Service to explore the cost of periodically conducting studies of service performance for forwarded and returned First–Class Mail, and to consider whether it is possible to incorporate pieces delivered to post office boxes and pieces requiring forwarding and return into its current EXFC measurement system design. Order No. 140 at 21, 24.

In response, the Postal Service concludes that it is not feasible to use EXFC, and that estimated costs and challenges stand as compelling barriers to the development of special studies to measure forwarding and return performance.[30] *See* Postal Service Supplemental Comments.

In the instant docket, the Public Representative again suggests including service performance reporting of forwarded First–Class Mail. Public

[30] Additionally, the Postal Service contends it "does not consider that section 3691 can fairly be read to impose any obligation to establish service standards of measurement reporting for mail within a product on the basis of it being subject to one or a variety of applicable mail flows or processing technologies, or whether such mail is forwarded, returned to sender or subject to different modes address correction." Postal Service Supplemental Comments, Attachment at 1, n.1. The Commission respectfully disagrees with the Postal Service's interpretation. It might lead to the conclusion that only one performance characteristic could be measured for each product. The Postal Service itself recognized that this is not the case. It proposes separate reporting within Standard Mail for destination entry and End–to–End mail due to differences in mail flows. Within First–Class Mail, rational arguments can be made for measuring forwarded and returned mail separately from properly addressed mail, as opposed to the Postal Service's approach of excluding this segment of First-Class Mail from measurement or alternatively to include this mail in overall First–Class Mail product reporting.

Representative Comments at 15–17. He submits that the Postal Service has a statutory obligation to measure the service performance of this mail. He further requests that the Postal Service be directed to measure service performance using EXFC, special studies, or a combination of the two. Alternatively, the Public Representative asks that the Postal Service provide partial measurements by capturing existing operational data. Public Representative Supplemental Comments at 2.

At this time, the Commission will not require reporting on forwarded or returned mail. The Commission likely will revisit this in the future because forwarding and return is an important characteristic of First–Class Mail which affects the service performance of each product within that class. At that time, the Commission will find it helpful for the Postal Service to attempt to develop ideas for attaining meaningful measurements instead of focusing on potential impediments to doing so.

Tail of the Mail. Bank of America and PostCom/DMA suggest reporting mail service variances as a cumulative percentage of mail delivered each day for mail exceeding their respective service standards until 99 percent of the mail entering the system is accounted for. Bank of America Comments at 3, n.5; PostCom/DMA Comments at 9–10. The variance reports as proposed generally only provide data on the percentages of mail delivered within 1 day, 2 days or 3 days of the applicable service performance standard.

The Commission addressed this issue in Order No. 140 at 43–44, where it did not recommend expanding variance reporting beyond the 1–day, 2–day, and 3–day reporting as proposed by the Postal Service. Although the Commission recognizes potential benefits to mailers of more detailed reporting, the Commission remains unconvinced of a need to provide variance reporting beyond the proposed 3 days to fulfill its regulatory functions. Reporting at the 1–day, 2–day, and 3–day level should provide an indication of the Postal Service's consistency in meeting its service performance requirements, and provide an indication of potential tail of the mail problems. However, this issue is subject to re–evaluation once measurement systems begin generating actual data and specific problems are identified.

Remittance mail. Bank of America argues that the Postal Service should measure and report service performance for remittance mail containing payments separately from other First–Class Mail. Bank of America Comments at 4–5.

The Postal Service opposes this suggestion arguing that neither the statute nor the proposed rules require reporting of service performance at a subproduct level. The Postal Service also agrees with the Commission's position expressed in Order No. 140 which does not require the separate reporting of remittance mail. Postal Service Reply Comments at 34–35.

The Commission expressed its position in Order No. 140.

> The Commission distinguishes separate reporting of remittance mail from treating remittance mail as a distinct category of First–Class Mail. The Postal Service has indicated to the Commission in consultations that it is considering ways to separately measure the performance of remittance mail, which indicates a future potential for separate reporting of remittance mail. However, treating remittance mail as a distinct category of First–Class Mail raises classification issues that are beyond the scope of this discussion.

Order No. 140 at 146.

The rules will not be modified at this time to require the separate reporting of remittance mail from other First–Class Mail.

Critical Entry Times (CETs). Bank of America suggests expanding rule 3055.2 to report on CETs, and to subject CETs to the change notice provisions of rule 3055.5. Bank of America Comments at 3, n.7.

The Postal Service approves of the Commission's conclusions reached in Order No. 140 at 17. It believes that requiring reporting of CETs would amount to an inappropriate and unauthorized intrusion on the management function. Postal Service Reply Comments at 33.

The Commission expressed its position in Order No. 140.

> The Commission perceives start–the–clock as a detailed and difficult issue, and urges the Postal Service to continue working with the mailing community in developing a working, user friendly, information system. The Commission supports the Postal Service's proposal to document CETs and encourages it to develop systems to make this information publicly available in the very near future.

Order No. 140 at 17.

The Commission accepts the Postal Service's representation that it will document CETs on a facility–by–facility basis in a central location. Unless it is shown that CETs are being unreasonably manipulated to influence the performance measurement system, the Postal Service needs the flexibility to establish CETs based on its business requirements. Subjecting CETs to the notice provisions of rule 3055.5 now would needlessly restrict this flexibility. Individual CETs do not have to be reported to the Commission.

Actionable, raw data. Bank of America and PostCom/DMA argue that they have business needs for service performance reporting beyond what the Commission requires to perform its regulatory function. Bank of America suggests that the Commission encourage the Postal Service to provide mailers access to aggregate raw data. Bank of America Comments at 2. PostCom/DMA also contends that customers have a need for access to actionable service performance data. PostCom/DMA Comments at 8–9.

The Commission is not persuaded to modify its previous position on this topic.

> The Commission observes that business needs of some mailers may vastly exceed the needs of the regulator to perform its functions. Although the Commission may well specify reporting in a greater level of detail over time, it is not anticipated that the level of reporting will reach the provision of near real time data envisioned by some mailers. The Postal Service should be allowed time to explore the business needs of its customers and propose information products to meet those needs outside the context of the regulatory requirements.

Order No. 140 at 42.

Year–to–year comparisons. Valpak suggests a requirement for the Postal Service to provide year–to–year comparisons of data. For example, percentage on–time (last year) data could be compared with percentage on–time (current year) and a percentage on–time change could be calculated. Valpak Comments at 10.

All data will be available for interested persons to make comparisons of their own choosing. The Postal Service may choose to make comparisons in its reports to the Commission if it finds a comparison style format helpful. However, until experience is gained with the reporting of service measurement data, the Commission will not require the Postal Service to provide year–to–year comparisons.

Improving the transparency of service performance information. PostCom/DMA express frustration with the form and content of service performance information the Postal Service posts on its Web site. They ask the Commission to work with the Postal Service to improve the transparency and accessibility of service standards, service performance targets, and service performance reports. PostCom/DMA Comments at 16–17.

The Postal Service controls what it posts to its Web site. The Commission can only suggest that the Postal Service

work with its customers in improving the quality and usefulness of the information it posts. The Commission, however, will post all public sections of both annual and quarterly service performance and customer satisfaction reports to its Web site as they are filed by the Postal Service. This will improve the transparency of the reporting systems and will provide more detailed information than what currently is posted on the Postal Service's Web site.

Including variance reports in the Annual Report. Valpak contends that 39 U.S.C. 3652(a)(2)(B)(i) requires annual variance reports as a measure of a product's reliability. It asserts that providing this information is a Postal Service statutory requirement that the Commission cannot waive even though the Commission is capable of compiling this report using information obtained through quarterly reports. Valpak Comments at 14–17.

The Postal Service suggests that this information potentially could be provided as part of the annual report. Postal Service Reply Comments at 27.

The rules as adopted require the provision of variance reports as part of each quarterly report, but not as part of the annual report. The proposed quarterly reporting rules also require the Postal Service to aggregate quarterly reports up to an annual level. Thus, Valpak will have access to the information it seeks under the rules as proposed. Both quarterly reports and the annual report will be available for analysis under the Annual Compliance Determination process. Under these circumstances there is no reason to require the separate entry Valpak seeks.

VI. Reporting of Customer Satisfaction

A. General Considerations

This rulemaking incorporates the rules for reporting customer satisfaction into new Subpart C—Annual Reporting of Customer Satisfaction, of Part 3055—Service Performance and Customer Satisfaction Reporting. Table 4—Illustrative Customer Satisfaction Data Reporting Charts shown in the Appendix provides a visualization of the annual data reporting elements specified by the rules through illustrative examples of data reporting charts.[31]

Rule 3055.90 specifies the general requirement for the Postal Service to file a report on customer satisfaction as part of its Annual Compliance Report unless more frequent reporting is specifically requested. *See* 39 U.S.C. 3652(a)(2)(B)(ii).

The Postal Service comments generally that 39 U.S.C. 3652(a)(2)(B)(ii) provides little guidance on Congressional intent regarding what would constitute appropriate reports on customer satisfaction. Nevertheless, the Postal Service contends that the rules as proposed go further than necessary, intrude upon matters more appropriately left to postal management, and may exceed the intended statutory authority for the Commission to specify such reporting. Postal Service Comments at 45–47.

The Commission also recognizes that little guidance is provided by statute concerning the measurement of customer satisfaction and the relationship of customer satisfaction to other aspects of the statute. However, the Commission disagrees that the rules go further than necessary or intrude upon postal management. Congress clearly intended the Commission to have a role in both considering and improving visibility into customer satisfaction, as evidenced by Congress including the statutory provisions concerning customer satisfaction in the PAEA. This includes the development of reporting requirements concerning this new and relatively unexplored area through the current rulemaking process.

B. Rule 3055.91—Consumer Access to Postal Services

Rule 3055.91 requires the Postal Service to provide information encompassing four areas of customer access. First, it requests information on the number, type, and status of post offices servicing the public. Second, it seeks information pertaining to the number and type of delivery points accessed by the Postal Service. Third, it requests information pertaining to the number of collection boxes accessed by the Postal Service. Finally, it seeks information on customer wait time in line for retail services.

The Postal Service contends that reporting of consumer access as required by rule 3055.91 does not provide direct evidence of customer satisfaction, falls outside the scope of information Congress intended the Postal Service to report, and is outside the scope of information the Commission is authorized to require in reports on quality of service. Thus, it contends that the provisions specified in rule 3055.91 should be eliminated. *Id.* at 50–51.

Valpak contends that requiring the Postal Service to report on consumer access to postal services as part of measuring the degree of customer satisfaction lacks statutory basis and should be withdrawn.[32] It argues that the information sought does not relate to how customers feel about postal services and can only be used by the Commission to "attempt to determine how the Commission feels that consumers might feel." Valpak Comments at 17–18.

The Public Representative contends that data on customer access and Mystery Shopper Program information are important measures of customer satisfaction and service quality, even if they are indirect measures. He argues that the requirement to report on consumer access to postal services is directly responsive to Congressional intent in establishing modern service standards to "preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self–sustaining." *See* 39 U.S.C. 3691(b)(1)(B). Public Representative Reply Comments at 10–12.

The Commission agrees with the Postal Service that the data required by the customer access rule does not provide a direct indication of customer satisfaction. However, it finds that several of these reporting requirements are relevant to an analysis of customer satisfaction. For example, if a customer cannot access a needed postal service, that customer cannot be satisfied with that service. At some point, access may become so limited that service is effectively unavailable. Quantifying specific modes of customer access is a first step in the analysis, which asks what level of access is available. Information quantifying post offices, delivery points, and collection boxes should be readily available to management and can be provided with little burden. Changes in the levels of access over time then can be correlated with customer satisfaction. The Commission finds that measuring customer access to postal services is likely to be an important aspect of customer satisfaction, as well as a critical aspect of evaluating universal service. Thus, the Commission shall retain the customer access provisions in the final rule.

In Docket No. N2009–1, the Postal Service provided information on alternative access channels for obtaining postage and certain postal services. The Postal Service provided percentages of revenues obtained through various "brick and mortar" and alternative

[31] Order No. 292 at 29–34 describes all rules appearing in subpart C. The descriptions have not been repeated in this order unless pertinent to the discussion.

[32] Its argument is directed at the requirements to report on post offices, delivery points, and collection boxes, but not towards the requirement to report wait time in line.

access channels,[33] and a comparison of products that can be purchased in brick and mortar facilities and products that can be purchased online.[34]

In Order No. 292, the Commission concluded that the Postal Service may find that reporting of information on alternative access channels will provide a more balanced view of the current status of customer access to postal services, and that such reports also may provide another avenue to promote the use of alternative access channels. The Commission sought comments on the benefits of reporting this aspect of customer access and any proposal that the Postal Service may have on what and how any related data items can be reported.

The Commission did not receive responsive comments addressing this subject. The Commission eventually may want to expand evaluation of different types of access to postal services, but it shall not establish reporting requirements on alternative access channels in this rulemaking.

The Postal Service specifically asks the Commission to delete the requirement to report wait time in line as required by rule 3055.91(d). It contends that this measurement would not necessarily allow one to draw particular conclusions about customer satisfaction. Furthermore, wait time in line (as a component of the Mystery Shopper Program) should remain within the purview of the Postal Service as an internal management diagnostic tool. Postal Service Comments at 56–57.

If the Postal Service's concern is with the confidentiality of the Mystery Shopper Program data, the Commission is not requiring the Postal Service to use data from this program to develop wait time in line statistics. The Postal Service may develop an independent system for generating data. However, the Commission is of the opinion that using Mystery Shopper Program data as the basis for reporting wait time in line would be the most economical for the Postal Service.

The Commission infers from previous Postal Service presentations that the Postal Service has determined an acceptable wait time in line is less than 5 minutes. If the Postal Service has any studies that it could share with the Commission which sheds light on a customer's perception of wait time in line, the Commission would find those studies most helpful. This will help the qualitative aspect of analyzing wait time in line as it relates to customer satisfaction.

The Postal Service asks for clarification of rule 3055.91(a) pertaining to reporting the number of post offices. The explanatory note contained in Order No. 292 specifies that the responsive information must be "disaggregated by the types of post offices as appearing in the Postal Service's Annual Report." Order No. 292 at 30. The Postal Service explains that the disaggregation in the annual report is by facility type, not by types of post offices. These are Post Offices, Classified Stations, Branches and Carrier Annexes; Contract Postal Units; and Community Post Offices. The Postal Service argues that if the intent is to reflect the locations at which customers may access retail services, it would seem unnecessary to include Carrier Annexes. Postal Service Comments at 47–48.

The Commission's intent is to encompass both retail and commercial customer access points. The Commission's understanding is that some Carrier Annex locations accept mail from commercial customers. The term "post office" is used in the generic sense in the rule to indicate customer access points. In this instance, it is consistent with the Postal Service characterization of reporting on facility types. Thus, Carrier Annexes are to be included in reporting.

Customer access is to be reported annually. In Order No. 292, the Commission asked that for the immediate future the Postal Service voluntarily provide these reports on a quarterly basis. Order No. 292 at 30–31. The Commission again requests that this information be provided voluntarily.

C. Rule 3055.92—Customer Experience Measurement Surveys

Rule 3055.92 requires the Postal Service to file with the Commission a copy of each type of Customer Experience Measurement Survey instrument used in the preceding fiscal year, and to report a summary of the information obtained on an annual basis. Where the Postal Service solicits information through multiple choice questions, it is required to provide additional detail by providing the number of responses obtained for each possible response. The summary of information obtained also must include a description of the customer type targeted by each distinct type of survey instrument, statistics on the number of surveys initiated, and the number of surveys returned to the Postal Service.

The Postal Service previously informed the Commission that it intends to redesign its Customer Satisfaction Measurement Survey to meet the requirements of the PAEA and to generate customer satisfaction data on a product–by–product basis.[35] The Postal Service anticipated that it will be transitioning from the former Customer Satisfaction Measurement system to a newly named Customer Experience Measurement system during FY 2010. The Postal Service recently informed the Commission that the transition to the new Customer Experience Measurement system is complete. The final rule has been updated to reflect this name change, and to account for potential future name changes.

The Public Representative states that the Customer Experience Measurement program was developed without Commission consultation. Thus, it argues that the Commission is currently unable to determine whether the Customer Experience Measurement program will satisfy the statutory requirements. The Public Representative asks the Commission to conclude that the Customer Experience Measurement program is an internal measurement system that has not been approved by the Commission pursuant to 39 U.S.C. 3691(B)(2). He then asks that the Commission request public comment on the information that should be included in this program for measuring customer satisfaction. Public Representative Reply Comments at 12–15.

The Customer Experience Measurement survey is an internal Postal Service management tool, which also may be of use for reporting customer satisfaction. The Postal Service may develop internal management tools with or without Commission approval. The Commission provided guidance during the consultation process to increase the likelihood that future consumer surveys, including the Customer Experience Measurement survey, would produce reliable and meaningful information. Order No. 292 at 32. The Postal Service did not believe that the Commission should be involved in the actual survey process. Postal Service Comments at 51–53.

As a starting point in developing a customer satisfaction measurement system, the Commission defers to the Postal Service's expertise in developing this form of survey. After experience is

[33] Docket No. N2009–1, Responses of United States Postal Service Witness VanGorder to Public Representative Interrogatories PR/USPS–T1–1–5, and 7(c–d), 8, July 27, 2009.

[34] Docket No. N2009–1, United States Postal Servce Notice of Errata in Filing of Response of Witness VanGorder to Public Representative Interrogatory PR/USPS–T1–1(a) [Errata], July 28, 2009.

[35] Docket No. PI2008–1, Reply Comments of the United States Postal Service, February 1, 2008, at 11.

gained, the Commission may identify topics on which additional information is needed. The Postal Service will be responsible for developing appropriate means for producing this information. The Commission does not adopt the Public Representative's proposal.

D. Rule 3055.93—Mystery Shopper Program

Proposed rule 3055.93 seeks information obtained from the Mystery Shopper Program. It requires the Postal Service to file a copy of the National Executive Summary Report (which summarizes data from the Mystery Shopper Program) on a quarterly basis, along with each type of survey instrument used in preparing each report. The Commission understands that the Mystery Shopper Program is a management tool for developing proprietary information and is aware of the necessity that the "mystery" of the program be maintained.

The Postal Service argues that the requirement to file copies of the National Executive Summary Report generated by the Mystery Shopper Program is unwarranted and should be eliminated. The Postal Service explains that the program is primarily designed to help local retail managers retain business in a competitive marketplace. The Postal Service contends that the information generated by this program is commercially sensitive and proprietary in nature. Furthermore, the program consists of objective observations about the conditions in postal facilities and operational practices, and does not provide direct evidence of customer satisfaction within the meaning of the statute. *Id.* at 53–56.

The usefulness of using Mystery Shopper Program data in the evaluation of customer satisfaction is best explained by example. The Commission finds the effect of wait time in line to mail a parcel requiring counter service relevant to customer satisfaction with the overall product. If mailers have to wait an excessively long time to enter parcels into the system, they will become dissatisfied and place less value on using the product.

Nonetheless, the Commission agrees that the detailed operational information gathered by the Mystery Shopper Program is designed to assist local managers to identify and correct problems rather than to capture the attitudes of customers. Therefore, the Commission will eliminate proposed rule 3055.93 from the final rules on service performance measurement.

E. Suggested Data Reporting Item

The Public Representative proposes that customer satisfaction reporting can be improved by requiring the reporting of Call Center and other customer inquiry data. Public Representative Comments at 17–20. The Postal Service opposes incorporating requirements to include Call Center and other customer inquiry data. It argues that this data is compiled for management and diagnostic purposes and should not be reported. Postal Service Reply Comments at 36–37.

The Commission will not accept the Public Representative's proposal. The potential benefits and limitations of this type of information have not been sufficiently explored in this docket for an informed decision to be made.

Concurring Opinion of Commissioner Dan G. Blair and Vice Chairman Tony L. Hammond

We concur with the regulations establishing reporting requirements for measuring the level of service performance for market dominant products as required by 39 U.S.C. 3652. We do not, however, agree that section VI of this order meets the intent and spirit of the Postal Accountability and Enhancement Act (PAEA), Pub. L. 109–143, 120 Stat. 3218 (2006).

Section 3652 requires that the Postal Service include in an annual report to the Commission an analysis of the quality of service "for each market–dominant product provided in such year" by providing "(B) measures of the quality of service afforded by the Postal Service in connection with such product, including—(i) the level of service (described in terms of speed of delivery and reliability) provided; and (ii) the degree of customer satisfaction with the service provided."

Section VI of this order includes reporting rules on customer satisfaction. However, this reporting is not tied to any specific market dominant product. Rather, these reporting requirements focus on the number, type, and status of post offices serving the public; the number and type of delivery points accessed by the Postal Service; and the number of collection boxes provided by the Postal Service. Access to postal services are provided through means beyond brick and mortar facilities such as those on the internet, at retail stores, or at kiosks, just to name a few. While this information has relevance in a broader context of postal operations, *see* 39 U.S.C. 3651, the reporting requirements are not related to specific market dominant products.

In addition, the rules require the submission of data compiled from Customer Experience Measurement surveys. We recognize such surveys are a useful management tool. However, the information sought is not directly tied to market dominant service level performance. We find it significant that while 39 U.S.C. 3652 requires that the Annual Compliance Report include information on the degree of customer satisfaction, 39 U.S.C. 3653 does not specify customer satisfaction as a topic on which a finding of compliance or noncompliance must be made. These reporting requirements may place an unnecessary burden on the Postal Service at a time when it has limited resources.

VII. Ordering Paragraphs

It is ordered:

1. The Commission amends its rules of practice and procedure by adding new part 3055—Service Performance Measurement and Customer Satisfaction Reporting. This part is subdivided into Subpart A—Annual Reporting of Service Performance Achievements, Subpart B—Periodic Reporting of Service Performance Achievements, and Subpart C—Reporting of Customer Satisfaction.

2. The Postal Service's initial request for semi–permanent exceptions from reporting shall be filed with the Commission no later than June 25, 2010. Interested persons may file comments concerning this request until July 16, 2010.

3. The Postal Service's request for temporary waivers from reporting, including its implementation plans, shall be filed with the Commission no later than September 10, 2010. Interested persons may file comments concerning this request until October 1, 2010.

4. The Secretary shall arrange for publication of this notice in the **Federal Register.**

List of Subjects

39 CFR Part 3050

Administrative practice and procedure, Postal Service, Reporting and recordkeeping requirements.

39 CFR Part 3055

Administrative practice and procedure, Postal Service, Reporting and recordkeeping requirements.

By the Commission.

Shoshana M. Grove,

Secretary.

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3050—PERIODIC REPORTING

■ 1. The authority citation for part 3050 continues to read as follows:

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

§§ 3050.50 through 3050.53 [Removed]

■ 2. Remove reserved §§ 3050.50 through 3050.53.

■ 3. Add part 3055 to read as follows:

PART 3055—SERVICE PERFORMANCE AND CUSTOMER SATISFACTION REPORTING

Subpart A—Annual Reporting of Service Performance Achievements

Sec.
3055.1 Annual reporting of service performance achievements.
3055.2 Contents of the annual report of service performance achievements.
3055.3 Reporting exceptions.
3055.4 Internal measurement systems.
3055.5 Changes to measurement systems, service standards, service goals or reporting methodologies.
3055.6 Addition of new market dominant products or changes to existing market dominant products.
3055.7 Special study.
3055.20 First–Class Mail.
3055.21 Standard Mail.
3055.22 Periodicals.
3055.23 Package Services.
3055.24 Special Services.
3055.25 [Reserved]

Subpart B—Periodic Reporting of Service Performance Achievements

Sec.
3055.30 Periodic reporting of service performance achievements.
3055.31 Contents of the Quarterly Report of service performance achievements.
3055.32 Measurement systems using a delivery factor.
3055.45 First–Class Mail.
3055.50 Standard Mail.
3055.55 Periodicals.
3055.60 Package Services.
3055.65 Special Services.
3055.70 [Reserved]

Subpart C–Reporting of Customer Satisfaction

Sec.
3055.90 Reporting of customer satisfaction.
3055.91 Consumer access to postal services.
3055.92 Customer Experience Measurement Surveys.

Authority: 39 U.S.C. 503, 3622(a), 3652(d) and (e); 3657(c).

Subpart A— Annual Reporting of Service Performance Achievements

§ 3055.1 Annual reporting of service performance achievements.

For each market dominant product specified in the Mail Classification Schedule in part 3020, appendix A to subpart A of part 3020 of this chapter, the Postal Service shall file a report as part of the section 3652 report addressing service performance achievements for the preceding fiscal year.

§ 3055.2 Contents of the annual report of service performance achievements.

(a) The items in paragraphs (b) through (k) of this section shall be included in the annual report of service performance achievements.

(b) The class or group–specific reporting requirements specified in §§ 3055.20 through 3055.25.

(c) The applicable service standard(s) for each product.

(d) The applicable service goal(s) for each product.

(e) A description of the measurement system for each product, including:

(1) A description of what is being measured;

(2) A description of the system used to obtain each measurement;

(3) A description of the methodology used to develop reported data from measured data;

(4) A description of any changes to the measurement system or data reporting methodology implemented within the reported fiscal year; and

(5) Where proxies are used, a description of and justification for the use of each proxy.

(f) A description of the statistical validity and reliability of the results for each measured product.

(g) A description of how the sampled data represents the national geographic mail characteristics or behavior of the product.

(h) For each product that does not meet a service standard, an explanation of why the service standard is not met, and a plan describing the steps that have or will be taken to ensure that the product meets or exceeds the service standard in the future.

(i) The identification of each product, or component of a product, granted an exception from reporting pursuant to § 3055.3, and a certification that the rationale for originally granting the exception remains valid.

(j) Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors.

(k) For each product, documentation showing how the reports required by subpart A of this part were derived from the reports required by subpart B of this part. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors.

§ 3055.3 Reporting exceptions.

(a) The Postal Service may petition the Commission to request that a product, or component of a product, be excluded from reporting, provided the Postal Service demonstrates that:

(1) The cost of implementing a measurement system would be prohibitive in relation to the revenue generated by the product, or component of a product;

(2) The product, or component of a product, defies meaningful measurement; or

(3) The product, or component of a product, is in the form of a negotiated service agreement with substantially all components of the agreement included in the measurement of other products.

(b) The Postal Service shall identify each product or component of a product granted an exception in each report required under subparts A or B of this part, and certify that the rationale for originally granting the exception remains valid.

§ 3055.4 Internal measurement systems.

Service performance measurements obtained from internal measurement systems or hybrid measurement systems (which are defined as systems that rely on both an internal and an external measurement component) shall not be used to comply with any reporting requirement under subparts A or B of this part without prior Commission approval.

§ 3055.5 Changes to measurement systems, service standards, service goals, or reporting methodologies.

The Postal Service shall file notice with the Commission describing all changes to measurement systems, service standards, service goals or reporting methodologies, including the use of proxies for reporting service performance, 30 days prior to planned implementation. The Commission may initiate a proceeding at any time to consider such changes if it appears that the changes might have a material impact on the accuracy, reliability, or utility of the reported measurement, or if the changes might have a material impact on the characteristics of the underlying product.

§ 3055.6 Addition of new market dominant products or changes to existing market dominant products.

Whenever the Postal Service proposes the addition of a new market dominant product or a change to an existing

market dominant product, it also shall propose new or revised (as necessary) service performance measurement systems, service standards, service goals, data reporting elements, and data reporting methodologies.

§ 3055.7 Special study.

Included in the second section 3652 report due after this rule becomes final, and every 2 years thereafter, the Postal Service shall provide a report, by class of mail, on delivery performance to remote areas of the Alaska, Caribbean, and Honolulu districts.

§ 3055.20 First–Class Mail.

(a) *Single–Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels.* For each of the Single–Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels products within the First–Class Mail class, report the on–time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the overnight, 2–day, and 3/4/5–day service standards.

(b) *Outbound Single–Piece First–Class Mail International and Inbound Single–Piece First–Class Mail International.* For each of the Outbound Single–Piece First–Class Mail International and Inbound Single–Piece First–Class Mail International products within the First–Class Mail class, report the on–time service performance (as a percentage rounded to one decimal place).

§ 3055.21 Standard Mail.

For each product within the Standard Mail class, report the on–time service performance (as a percentage rounded to one decimal place).

§ 3055.22 Periodicals.

For each product within the Periodicals class, report the on–time service performance (as a percentage rounded to one decimal place).

§ 3055.23 Package Services.

For each product within the Package Services class, report the on–time service performance (as a percentage rounded to one decimal place).

§ 3055.24 Special Services.

For each product within the Special Services group, report the percentage of time (rounded to one decimal place) that each product meets or exceeds its service standard.

§ 3055.25 Nonpostal products [Reserved]

Subpart B—Periodic Reporting of Service Performance Achievements

§ 3055.30 Periodic reporting of service performance achievements.

For each market dominant product specified in the Mail Classification Schedule in part 3020, appendix A to subpart A of part 3020 of this chapter, the Postal Service shall file a Quarterly Report with the Commission addressing service performance achievements for the preceding fiscal quarter (within 40 days of the close of each fiscal quarter).

§ 3055.31 Contents of the Quarterly Report of service performance achievements.

(a) The items in paragraphs (b) through (e) of this section shall be included in the quarterly report of service performance achievements.

(b) The class or group–specific reporting items specified in §§ 3055.45 through 3055.70.

(c) The identification of each product, or component of a product, granted an exception from reporting pursuant to § 3055.3, and a certification that the rationale for originally granting the exception remains valid.

(d) Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors.

(e) A year–to–date aggregation of each data item provided in each Quarterly Report due for the reported fiscal year, where applicable, including volumes and other weighting factors provided in electronic format, with formulas shown and data links preserved to allow traceability to individual Quarterly Reports.

§ 3055.32 Measurement systems using a delivery factor.

For measurements that include a delivery factor, the duration of the delivery factor also shall be presented independent of the total measurement.

§ 3055.45 First–Class Mail.

(a) *Single–Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels.* For each of the Single–Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels products within the First–Class Mail class, report the:

(1) On–time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the overnight, 2–day, and 3/4/5–day service standards, provided at the District, Postal Administrative Area, and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by mail subject to the overnight, 2–day, and 3/4/5–day service standards, provided at the District, Postal Administrative Area, and National levels.

(b) *Outbound Single–Piece First–Class Mail International and Inbound Single–Piece First–Class Mail International.* For each of the Outbound Single–Piece First–Class Mail International and Inbound Single–Piece First–Class Mail International products within the First–Class Mail class, report the:

(1) On–time service performance (as a percentage rounded to one decimal place), provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, provided at the Postal Administrative Area and National levels.

§ 3055.50 Standard Mail.

(a) For each product within the Standard Mail class, report the on–time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry (2–day), Destination Entry (3–day through 4–day), Destination Entry (5–day through 10–day), End–to–End (3–day through 5–day), End–to–End (6–day through 10–day), and End–to–End (11–day through 22–day) entry mail/service standards, provided at the District, Postal Administrative Area, and National levels.

(b) For each product within the Standard Mail class, report the service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry (2–day), Destination Entry (3–day through 4–day), Destination Entry (5–day through 10–day), End–to–End (3–day through 5–day), End–to–End (6–day through 10–day), and End–to–End (11–day through 22–day) entry mail/service standards, provided at the District, Postal Administrative Area, and National levels.

§ 3055.55 Periodicals.

(a) *Within County Periodicals.* For the Within County Periodicals product within the Periodicals class, report the:

(1) On–time service performance (as a percentage rounded to one decimal place), provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, provided at the Postal Administrative Area and National levels.

(b) *Outside County Periodicals.* For the Outside County Periodicals product within the Periodicals class, report the:

(1) On–time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry and End–to–End entry mail, provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry and End–to–End entry mail, provided at the Postal Administrative Area and National levels.

§ 3055.60 Package Services.

(a) *Single–Piece Parcel Post.* For the Single–Piece Parcel Post product within the Package Services class, report the:

(1) On–time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the 2–day through 4–day and 5–day through 20–day service standards, provided at the District, Postal Administrative Area, and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by mail subject to the 2–day through 4–day and 5–day through 20–day service standards, provided at the District, Postal Administrative Area, and National levels.

(b) *Bound Printed Matter Flats, Bound Printed Matter Parcels, and Media Mail/Library Mail.* For each of the Bound Printed Matter Flats, Bound Printed Matter Parcels, and Media Mail/Library Mail products within the Package Services class, report the:

(1) On–time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry and End–to–End entry mail, provided at the District, Postal Administrative Area, and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry and End–to–End entry mail, provided at the District, Postal Administrative Area, and National levels.

(c) *Inbound Surface Parcel Post (at UPU rates).* For the Inbound Surface Parcel Post (at UPU rates) product within the Package Services class, report the:

(1) On–time service performance (as a percentage rounded to one decimal place), provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, provided at the Postal Administrative Area and National levels.

§ 3055.65 Special Services.

(a) For each product within the Special Services group, report the percentage of time (rounded to one decimal place) that each product meets or exceeds its service standard, provided at the National level.

(b) *Additional reporting for Ancillary Services.* For the Certified Mail, electronic Return Receipt, Delivery Confirmation, Insurance, and an aggregation of all other services within the Ancillary Services product, individually report the percentage of time (rounded to one decimal place) that each service meets or exceeds its service standard. For green card Return Receipt report:

(1) The number of EXFC seed mailpieces sent;

(2) The percentage of green cards properly completed and returned;

(3) The percentage of green cards not properly completed, but returned;

(4) The percentage of mailpieces returned without a green card signature; and

(5) The percentage of the time the service meets or exceeds its overall service standard.

(c) *Additional reporting for Post Office Box Service.* For Post Office Box Service, report the percentage of time (rounded to one decimal place) that the product meets or exceeds its service standard, provided at the District and Postal Administrative Area levels.

§ 3055.70 NONPOSTAL PRODUCTS [RESERVED]

Subpart C—Reporting of Customer Satisfaction

§ 3055.90 Reporting of customer satisfaction.

For each market dominant product specified in the Mail Classification Schedule in part 3020, appendix A to subpart A of part 3020 of this chapter, the Postal Service shall file a report as part of the section 3652 report, unless a more frequent filing is specifically indicated, addressing customer satisfaction achievements for the preceding fiscal year. The report shall include, at a minimum, the specific reporting requirements presented in §§ 3055.91 through 3055.92.

§ 3055.91 Consumer access to postal services.

(a) The following information pertaining to post offices shall be reported, disaggregated by type of post office facility, and provided at the Postal Administrative Area and National levels:

(1) The number of post offices at the beginning of the reported fiscal year;

(2) The number of post offices at the end of the reported fiscal year;

(3) The number of post office closings in the reported fiscal year;

(4) The number of post office emergency suspensions in effect at the beginning of the reported fiscal year;

(5) The number of post office emergency suspensions in the reported fiscal year; and

(6) The number of post office emergency suspensions in effect at the end of the reported fiscal year.

(b) The following information pertaining to delivery points shall be reported, disaggregated by delivery point type, provided at the Postal Administrative Area and National levels:

(1) The number of residential delivery points at the beginning of the reported fiscal year;

(2) The number of residential delivery points at the end of the reported fiscal year;

(3) The number of business delivery points at the beginning of the reported fiscal year; and

(4) The number of business delivery points at the end of the reported fiscal year.

(c) The following information pertaining to collection boxes shall be reported, provided at the Postal Administrative Area and National levels:

(1) The number of collection boxes at the beginning of the reported fiscal year;

(2) The number of collection boxes at the end of the reported fiscal year;

(3) The number of collection boxes removed during the reported fiscal year; and

(4) The number of collection boxes added to new locations during the reported fiscal year.

(d) The average customer wait time in line for retail service shall be reported. Data shall be provided for the beginning of the reported fiscal year and for the close of each successive fiscal quarter at the Postal Administrative Area and National levels.

§ 3055.92 Customer Experience Measurement Surveys.

(a) The report shall include a copy of each type of Customer Experience Measurement instrument, or any similar instrument that may supersede the Customer Experience Measurement instrument used in the preceding fiscal year.

(b) The report shall include information obtained from each type of Customer Experience Measurement instrument, or any similar instrument that may supersede the Customer Experience Measurement instrument including:

(1) A description of the customer type targeted by the survey;

(2) The number of surveys initiated and the number of surveys received; and

(3) Where the question asked is subject to a multiple choice response, the number of responses received for each question, disaggregated by each of the possible responses.

[FR Doc. 2010–16178 Filed 7–2–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2010–0156; FRL–9170–6]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the Iowa State Implementation Plan (SIP). The purpose of this revision is to update the Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution. These revisions reflect updates to the Iowa statewide rules previously approved by EPA and will ensure consistency between the applicable local agency rules and Federally-approved rules. This rulemaking also ensures Federal enforceability of the applicable parts of the local agency's "Air Pollution" rules.

DATES: This direct final rule will be effective September 7, 2010, without further notice, unless EPA receives adverse comment by August 5, 2010. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2010–0156, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *E-mail: casburn.tracey@epa.gov.*

3. *Mail or Hand Delivery:* Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2010–0156. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Tracey Casburn at (913) 551–7016, or by e-mail at *casburn.tracey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following questions:

I. What is being addressed in this document?
II. What revisions is EPA approving?
III. What action is EPA taking?
IV. What action is EPA not taking?
V. Statutory and Executive Order Reviews

I. What is being addressed in this document?

The State requested EPA approval of the 2009 revisions to the local agency's Rules and Regulations, Chapter V, "Air Pollution," as a revision to the SIP. In order for the local program's "Air Pollution" rules to be incorporated into the Federally-enforceable SIP, on behalf of the local agency, the State must submit the formally adopted regulations and control strategies, which are consistent with State and Federal requirements, to EPA for inclusion in the SIP. The regulation adoption process generally includes public notice of a public comment period and a public hearing, and formal adoption of the rule by the State authorized rulemaking body. In this case that rulemaking body is the local agency. After the local agency formally adopts the rule, the local agency submits the rulemaking to the State, and then the State submits the rulemaking to EPA for consideration for formal action (inclusion of the rulemaking into the SIP). EPA must provide public notice and seek additional public comment regarding