fee. The core of the service is the sack handling and entry as domestic mail and it is not dependent on the underlying domestic mail services. The Postal Service states that the instant contract is functionally equivalent to the IDE contracts previously submitted, fits within the Mail Classification Schedule (MCS) language included as Attachment A to Governors' Decision No. 08–6 and should be included within the IDE Contracts product. Notice at 2.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. The contract is with P&T Express Mail Service Joint Stock Company (VNPE). VNPE is established under the auspices of the Vietnam Post and Telecommunications Group, the public postal administration for Vietnam, responsible for Vietnam's compliance with international obligations relative to Express Mail Service. The Postal Service submitted the contract and supporting material under seal and attached a redacted copy of the contract and certified statement required by 39 CFR 3015.5(c)(2) to the Notice. *Id.,* Attachments 1 and 2 respectively.[4]

The Postal Service will notify the customer of the effective date of the contract within 30 days after receiving all regulatory approvals. The contract term is 1 year from the effective date. The contract is subject to automatic renewal after the 1 year term unless the parties determine otherwise. *Id.,* Attachment 1.

The Notice advances reasons why the instant IDE contract fits within the Mail Classification Schedule language for IDE contracts. The Postal Service states that the instant contract is functionally equivalent to the IDE contracts filed previously because it shares similar cost and market characteristics and therefore, the contracts should be classified as a single product. *Id.* at 3–4. It states that in Governors' Decision No. 08–6, a pricing formula and classification system were established to ensure that each contract meets the statutory and regulatory requirements of 39 U.S.C. 3633. The Postal Service states that the costs of each contract must conform to a common description and the contract language of the MCS prescribes that each IDE contract must cover its attributable costs. *Id.*

The Postal Service reports that the instant contract covers the same domestic services as those in Docket Nos. CP2008–14 and CP2008–15 except for the addition of the Priority Mail small flat rate box. It asserts that in ''almost all substantive respects,'' the instant IDE contract resembles the contracts in CP2008–14 and CP2008–15. *Id.* at 4. The Postal Service contends that even though fees or the underlying domestic services offered may be different, these distinctions do not affect the contracts' functional equivalence because the total costs associated with IDE Contracts are volume variable and the basic service offered of handling inbound sacks in the domestic mail stream is the same. *Id.* Other changes include language to update changes in policies and product structures and terms to clarify the applicability of Postal Service export requirements. *Id.*

The Postal Service also affirms the instant contract has material differences reflected in the language of this agreement compared to other IDE contracts. *Id.* These differences include: (1) The 1 year term of the instant contract is subject to automatic renewal which differs from the contracts in CP2008–14 and CP2008–15 which are automatically renewed unless terminated; (2) Priority Mail small flat rate box has been added as a domestic mail type which Vietnam Post can access via IDE service while other included domestic mail services included are the same as in previous contracts but have updated rate structures;[5] (3) terms are included which express the parties' wish to explore future opportunities for volume based discounts which the Postal Service states does not represent a new commitment; (4) terms that clarify charges for non-conforming size or weight items, and Delivery Confirmation charges for First-Class Mail parcel items; (5) language which explains the need for a permit application fee; (6) terms which address changes to IDE customer payment requirements upon detention or seizure of mail by Customs and Border Protection; and (7) terms to explain the use of the Centralized Trust Account payment method as applicable to Vietnam's financial regulatory requirements which were not offered in the contract for CP2008–14. *Id.* at 5–6.

The Postal Service maintains that these differences only add detail or amplify processes included in previous IDE contracts and do not affect the fundamental service being offered or the essential structure of the contracts. *Id.* at 7. It asserts that the contracts are substantially equivalent in all pertinent respects. *Id.*

The Postal Service maintains that certain portions of the contract and certified statement required by 39 CFR 3015.5(c)(2), related financial information, portions of the certified statement which contain costs and pricing as well as the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2–3.

II. Notice of Filing

The Commission establishes Docket No. CP2009–41 for consideration of the matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the instant contract is consistent with the policies of 39 U.S.C. 3632, 3622, or 3642. Comments are due no later than July 10, 2009.

The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket No. CP2009–41 for consideration of the issues raised in this docket.

2. Comments by interested persons in these proceedings are due no later than July 10, 2009.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

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

Dated: July 1, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–16584 Filed 7–14–09; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. R2009–4; Order No. 236]

Postal Service Price Changes

AGENCY: Postal Regulatory Commission.

ACTION: Approval of price changes.

DATES: Implementation is scheduled for July 19, 2009.

[4] Attachment 1 was revised by Notice of United States Postal Service of Filing Erratum to Attachment 1 to Notice of United States Postal Service of Filing Functionally Equivalent Inbound Direct Entry Contracts Negotiated Service Agreement, June 30, 2009.

[5] The Postal Service states that the other domestic mail services are the same as in Docket Nos. CP2008–14 and CP2008–15, but the instant contract reflects the updated Priority Mail rate structure based on the price adjustments for competitive products in Docket CP2009–8.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6924 or *stephen.sharfman@prc.gov*.

SUMMARY: This document discusses the Commission's consideration and approval of a Postal Service request to reduce prices for a component of the mail stream referred to as Standard Mail high density flats. The approval means that the Postal Service may implement the planned price reductions.

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 27843 (June 11, 2009).

I. Introduction

On June 1, 2009, the Postal Service filed a notice with the Commission announcing its intention to adjust prices for Standard Mail High Density flat pieces pursuant to 39 U.S.C. 3622 and 39 CFR Part 3010.[1] The proposed adjustment (decrease) has a planned implementation date of July 19, 2009. The Postal Service submits that this proposal represents a way that it can take advantage of its greater pricing flexibility for market dominant products under the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3218 (2006), to ''respond quickly and flexibly to perceived needs in the mailing community.'' *Id.* at 3.

In Order No. 220, the Commission established Docket No. R2009–4 to consider matters raised by the Postal Service's filing, appointed a public representative, and afforded interested persons an opportunity to comment on specific issues as well as any other matters related to the Postal Service's filing.[2] In particular, the Commission sought comment on whether the price cap and unused rate adjustment authority were applicable to this overall price decrease.

On June 5, 2009, Chairman's Information Request No. 1 was issued.[3] CHIR No. 1 sought information from the Postal Service with respect to price adjustment authority and annual limitation calculations. The Postal Service filed its response to the Chairman's Information Request on June 12, 2009.[4]

This case raises the issue of how the Commission should address a rate decrease in a period of deflation. The Postal Service's proposal was not opposed by any commenter. The Commission finds the Postal Service's proposal to be appropriate given the unique factual circumstances of this case. The Commission will initiate one or more rulemakings to consider revising its rules to address issues concerning application of the price cap and calculation of rate adjustment authority.

II. Postal Service Request

The Postal Service explains that it has heard the concerns expressed by High Density flats mailers on the detrimental impact that the above-average price increases implemented on May 11, 2009, will have on their businesses. Request at 2. After taking these concerns into consideration, the Postal Service determined that High Density flat prices that reflect an increase from the previous year similar to the average Standard Mail increase are more appropriate at this time. *Id.* As a result, the Postal Service seeks to change the current rates for Standard Mail High Density flats. It asserts that the proposed reduced rates could potentially avoid diversion of large mail volumes from the postal system. *Id.* at 5.

The Postal Service's proposal reduces prices for the Standard Mail High Density flats price categories for both commercial and nonprofit mailpieces. *Id.* at 2. The adjustment decreases the minimum per-piece prices for commercial and nonprofit High Density flats by 0.1 cent, and decreases the pound price element for commercial and nonprofit High Density flats to match the Standard Mail Saturation flats pound price element. The per-piece price element for pound-rated pieces increases by 0.7 cents per piece to ''ensure a smooth transition at the breakpoint,'' according to the Postal Service. *Id.* at 3. Dropship discounts for High Density flats do not change under this proposal.

III. Comments

Several parties filed comments in this case: Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc., the Public Representative, and Newspaper Association of America.[5] In addition, the Postal Service responded to questions posed in Order No. 220 concerning the Request.[6] The parties' comments are summarized below.

Valpak comments. Valpak argues that the Commission's rules should apply to price decreases, and that the Commission did not intend to permit all types of rate decreases without any Commission review. In support, it cites to the Commission's rules which, for the most part, discuss the price cap in terms of ''adjustments'' rather than increases or decreases. Valpak Comments at 2. Valpak submits that in the current ''abnormal economic circumstances'' application of the Commission's rules can create ''strange results.'' *Id.* It believes that the proper response may be to modify the Commission's rules on this subject. The better approach here, according to Valpak, would have been for the Postal Service to file a motion to waive the filing requirements or request another type of one-time relief. *Id.* at 4.

Public Representative comments. First, the Public Representative points out that the Postal Service does not provide any support or estimate for its claim that the request ''could potentially avoid diversion of large volumes'' of High Density flat mail. Public Representative Comments at 1–2. Second, the Public Representative contends, based on the text of 39 U.S.C. 3622(d)(1), that the price cap does not apply to price decreases. Such an application would be ''illogical,'' according to the Public Representative. He notes that the PAEA does not include any provision suggesting that a rate decrease must be at least as great as the drop in consumer price index. He also discusses Congress' purpose in creating the price cap limitation—to create a ceiling to ensure against unreasonable price increases—a concern that is not present when rates are decreasing. *Id.* at 3–8.

Third, the Public Representative contends that in the absence of a price increase calculation, the Postal Service's unused rate adjustment authority is not required or needed. In support of this conclusion, he cites certain Commission rules which he believes demonstrate that the annual limitation and unused rate adjustment authority only apply to rate increases. With respect to whether the Postal Service can waive unused rate adjustment authority, he believes this issue is ''moot'' because this rate decrease does not generate any unused rate adjustment authority since consumer prices have decreased. *Id.* at 8–9.

[1] United States Postal Service Notice of Market-Dominant Price Adjustment, June 1, 2009 (Request).

[2] PRC Order No. 220, Notice and Order Concerning Price Adjustment for Standard Mail High Density Flats, June 4, 2009 (Order No. 220).

[3] Chairman's Information Request No. 1, June 5, 2009 (CHIR No. 1).

[4] Response of the United States Postal Service to Chairman's Information Request No. 1, June 12, 2009.

[5] Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments Regarding Price Adjustment for Standard Mail High Density Flats (Valpak Comments), Public Representative Comments in Response to Notice of Price Adjustment for Standard Mail High Density Flats (Public Representative Comments), Comments of the Newspaper Association of America on Notice of Market-Dominant Price Adjustment (NAA Comments), all filed June 22, 2009.

[6] Response of the United States Postal Service to Order No. 220 (Postal Service Comments), June 22, 2009.

NAA comments. NAA supports the Postal Service's proposed adjustment to Standard Mail High Density Flats rates because it will encourage retained mail volume and discourage a migration of customers out of the mailstream. NAA Comments at 1.

Postal Service comments. The Postal Service believes that applying the price cap to a price decrease is not required under the language or purpose of section 3622. Postal Service Comments at 2–3. First, it argues that section 3622(d)(1)(A) uses the word ''increase,'' and that the section is supposed to apply only to limit the Postal Service's flexibility with respect to increases. *Id.* at 3. Second, it believes that the legislative history of the PAEA indicates that Congress was concerned about capping the extent to which the Postal Service could increase prices, not decrease prices. *Id.* at 4. Third, it cites to Commission rule 3010.22(a) which generally discusses price adjustments in terms of ''increases.''[7]

The Postal Service notes that section 3622(d)(1)(A) does not foreclose the Commission from adjusting the Postal Service's authority due to mid-cycle price decreases. *Id.*[8] However, it submits that the Commission should not adjust the Postal Service's pricing authority due to the unique factual circumstances present in this case, where the partial-year annual limitation applicable to the proposed adjustment is negative. *Id.* at 2, 5. Applying the price cap would require the Postal Service to utilize a large portion of its unused price adjustment authority for Standard Mail to effectuate the decrease. This would, according to the Postal Service ''create a perverse incentive for the Postal Service not to implement mid-year price decreases in order to respond to market conditions, during an environment of declining CPI–U'' by, in effect, ''penaliz[ing] the Postal Service for making a mid-cycle price decrease in order to respond to market conditions, by requiring that the Postal Service give up a large portion of its unused price adjustment authority.'' *Id.* at 2–3, *see also Id.* at 5.

The Postal Service also suggests that even if a mid-year decrease during a period of declining CPI–U does not implicate the Postal Service's price adjustment authority, the other provisions of section 3622 (such as sections 3622(b), (c), and (e)), still apply, and the Commission can make a determination on such issues under rule 3010.13(j).

With respect to the issue of waiver, the Postal Service states that it does not view a price adjustment that is outside the price cap structure as presenting a question as to whether it can ''waive'' price adjustment authority because, in such circumstances, there no authority is being generated that would be eligible to be waived.

IV. Commission Analysis

Impact on the price cap. The Postal Service considers this price adjustment to be outside the Commission's current rules because the proposed High Density flat price adjustments are decreases and were not part of the regular annual price adjustment. Request at 3. The Postal Service states that it ''is not claiming any new unused rate adjustment authority as a result of this price decrease.'' *Id.*[9] In its comments, the Postal Service elaborates on its position. It believes that application of the price cap to this situation would ''requir[e] the Postal Service [to] give up a large portion of its unused price adjustment authority.'' Postal Service Comments at 5. In support of this statement, the Postal Service points to its calculation in response to CHIR No. 1 which shows a reduction to the Postal Service's unused rate adjustment authority as a result of this case.[10]

However, this position does not take into consideration the fact that any adjustment to the Postal Service's unused rate adjustment authority as a result of this case would also ''reset'' the cap calculation. In other words, if the unused rate adjustment authority is changed as a result of this case, the cap calculation going forward would also be ''reset.'' The negative change in CPI–U for the last five months of last year would have already been taken into account by the resetting of the cap calculation. Therefore, a future rate increase could be larger than it otherwise could have been if the cap calculation and unused rate adjustment authority were not reset as a result of this proceeding. Indeed, the change in unused rate adjustment authority as a result of this proceeding would be offset by the negative change in CPI-U that would have to be taken into account as a result of this proceeding. *See* Library Reference PRC–R2009–4–LR–1 for an example of this mathematical phenomenon. This balancing occurs whether or not the change in CPI-U is positive or negative.

The Commission believes that the larger issue with respect to this proposed rate change is the impact that the one decimal place rounding constraint found in 39 CFR 3010.21 and 3010.22 potentially could have on the rate adjustment authority altered as a result of this proceeding. If the Commission alters the Postal Service's unused rate adjustment authority as a result of this proceeding, depending on how CPI-U changes in the upcoming months, proper application of 39 CFR 3010.22 could result in a lower amount of Postal Service's rate adjustment authority for the next regular annual price adjustment due to rounding. *See* Library Reference PRC-R2009–4–LR–1 for an example of this calculation. This potential problem would not occur if the unused rate adjustment authority and annual limitation calculation were rounded to the same number of digits. If the Postal Service continues to exercise its pricing flexibility in a similar manner in the future (small increases or decreases in rates), this rounding problem could become more pernicious.

In addition to these problems, an issue is whether the procedures of 39 CFR part 3010 used for calculating rate adjustment authority are applicable to rate decreases. The Commission's rules do not directly address such a situation. The Commission's rules are designed for price adjustment proposals during periods of inflation. However, as noted above, this case has highlighted some problems with the application of the Commission's current rules in unforeseen factual circumstances. Accordingly, the Commission will accept the Postal Service's approach here based on the unique facts of this

[7] The Postal Service notes that the Commission may wish to consider the need for additional rules concerning the effect of mid-year price adjustments that consist entirely of a decrease on the Postal Service's price adjustment authority. *Id.* at 7.

[8] *See also* Postal Service Comments at 3, 4–5 (''Thus, while the Commission must apply the price cap structure of section 3622(d) to price adjustments that include increases to prices (*i.e.*, either a price adjustment that consists solely of price increases, or a price adjustment that includes increases to some prices and decreases to others), it is not required to do so with respect to price adjustments consisting solely of a decrease in prices.''); (''While the statute clearly does not require that the price cap structure established by section 3622(d) apply to a mid-year decrease, this does not mean that the statute affirmatively forecloses the Commission from decided that the Postal Service's price adjustment authority may in certain circumstances be altered as a result of such a decrease.'').

[9] The Postal Service submits that the unused price adjustment authority for Standard Mail should remain at 0.081 percent. *Id.* at 3 (*citing* PRC Order No. 191, Order Reviewing Postal Service Market Dominant Price Adjustment, May 16, 2009).

[10] The Postal Service's Notice and Response of the United States Postal Service to Chairman's Information Request No. 1 use a ''before rates'' unused price adjustment authority for Standard Mail of 0.081 percent. *See, e.g.*, Notice at 3. This before rates unused price adjustment authority is incorrect. The proper before rates unused price adjustment authority is 0.103 percent which is found in Order No. 201, Order Approving Revisions in Amended Notice of Market Dominant Price Adjustment at 4, April 9, 2009.

particular situation. Moreover, no commenters voiced opposition to the Postal Service's suggested approach.

Nonetheless, the issues raised by the Postal Service's filing need to be addressed on a holistic basis. Therefore, the Commission will be initiating a rulemaking to solicit public comment on how a rate decrease should affect the cap calculation and unused rate adjustment authority in the future, as well as how to deal with the rounding issue discussed above.

The Commission's action in this case should not be construed as a finding that the Commission does not have authority under either the PAEA or its rules to apply the compliance cap calculation or adjust the Postal Service's unused rate adjustment authority in cases where there is a rate decrease. As the Postal Service correctly notes, ''[w]hile the statute clearly does not *require* that the price cap structure established by section 3622(d) apply to a mid-year decrease, this does not mean that the statute affirmatively forecloses the Commission from deciding that the Postal Service's price adjustment authority may in certain circumstances be altered as a result of such a decrease.'' The Commission's determination that the price cap should not apply in this case is limited to the narrow, unique factual situation at issue here.

The rates resulting from this proceeding will be used as the base rates for the next cap calculation for the Standard Mail class. The unused rate adjustment authority for the Standard Mail class remains at 0.103.

Objectives and factors. Pursuant to the Commission's rules, 39 CFR 3010.14(b)(7), the Postal Service addresses how this proposed rate adjustment helps achieve the objectives of 39 U.S.C. 3622(b) and takes into account the factors of 39 U.S.C. 3622(c). The Postal Service lists and discusses what it considers the relevant objectives and factors of 39 U.S.C. 3622 to the proposed price adjustment. *Id.* at 4–8. It believes that, at most, the price reductions will cause only a modest decrease in Postal Service revenues, and could potentially avoid diversion to non-postal delivery of large volumes of mail currently paying High Density flats prices.

The Commission finds that, under the circumstances of this case, the objectives and factors in 39 U.S.C. 3622(b) and (c) appear to be satisfied by explanations and data in the Request.

Workshare discounts. 39 U.S.C. 3622(e) requires that workshare discounts given by the Postal Service do not exceed their avoided costs unless certain criteria are fulfilled. The Postal Service maintains its view that the price differences between the High Density categories and the Saturation and Carrier Route categories are not workshare discounts. It recognizes that the Commission has instituted Docket No. RM2009–3 to consider that issue. In this case, the Postal Service provided in Appendix B (and an associated Excel file) a table showing the cost and price differences, as well as passthroughs for Carrier Route, High Density, and Saturation flats (both commercial and nonprofit) following the proposed adjustments to the prices of High Density flats. The Postal Service notes that none of the passthroughs exceeds 100 percent, so the limitations of section 3622(e) do not apply. It explains that all of the passthroughs for the High Density/Carrier Route relationship are slightly higher and the passthroughs for the High Density/Saturation relationship are slightly lower than those reported in Docket No. R2009–2 due to the instant proposed High Density flats price reduction.

The Commission finds that the rate changes have only a minor effect on the passthroughs approved just a few months ago and they do not cause any of the affected ''passthroughs'' to exceed 100 percent, Thus, the requirements of section 3622(e) are satisfied here.[11]

Preferred rates. 39 U.S.C. 3626 requires that nonprofit categories of products shall be set to yield 60 percent of the per-piece revenue of their commercial counterparts. The Postal Service explains that nonprofit High Density flats receive the same price reductions as commercial flats. Due to the fact that the proposed price changes apply to both commercial and nonprofit flats and due to the small volumes of High Density nonprofit flats, the Postal Service submits that the required 60 percent ratio, required under 39 U.S.C. 3626, between commercial and nonprofit prices is not altered as a result of the proposed price adjustment.

As the current commercial/nonprofit price ratio is not altered as a result of the proposed price adjustment, the Commission finds that the required 60 percent differential will be maintained.

V. Ordering Paragraphs

A full review of the United States Postal Service Notice of Market-Dominant Price Adjustment with respect to Standard Mail High Density flats, filed June 1, 2009, has been completed. With regard to the price adjustments contained therein, for the reasons set forth above

It is ordered:

1. The Commission approves the Standard Mail High Density flats rate adjustment.
2. The rates resulting from this proceeding will be used as the base rates for the next cap calculation for the Standard Mail class.
3. The unused rate adjustment authority for the Standard Mail class remains at 0.103.
4. The Secretary of the Commission will arrange for publication of this Order in the **Federal Register**.

Issued: July 1, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–16783 Filed 7–14–09; 8:45 am]

BILLING CODE 7710–FW–P

[11] As the Postal Service notes, the Commission is currently considering whether the relationship between High Density and Saturation mailpieces is to be considered ''worksharing'' for purposes of 39 U.S.C. 3622(e) in Docket No. RM2009–3.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 206(3)–2; SEC File No. 270–216; OMB Control No. 3235–0243.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 206(3)–2, (17 CFR 275.206(3)–2) which is entitled ''Agency Cross Transactions for Advisory Clients,'' permits investment advisers to comply with section 206(3) of the Investment Advisers Act of 1940 (the ''Act'') (15 U.S.C. 80b–6(3)) by obtaining a client's blanket consent to enter into agency cross transactions (*i.e.*, a transaction in which an adviser acts as a broker to both the advisory client and the opposite party to the transaction), provided that certain disclosures are made to the client. Rule 206(3)–2 applies to all registered investment advisers. In relying on the rule, investment advisers must provide certain disclosures to their clients. Advisory clients can use the