

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

Before Commissioners:

Robert G. Taub, Chairman;  
Michael Kubayanda, Vice Chairman;  
Mark Acton;  
Ann C. Fisher; and  
Ashley E. Poling

Transfer of Inbound Letter Post Small  
Packets to the Competitive Product List

Docket No. MC2019-17

Competitive Product Prices  
Inbound E-Format Letter Post

Docket No. CP2019-155

NOTICE OF A PRELIMINARY DETERMINATION TO UNSEAL SELF-DECLARED  
RATES FOR INBOUND LETTER POST SMALL PACKETS AND BULKY LETTERS

(Issued January 23, 2020)

I. INTRODUCTION

On October 29, 2019, the Postal Service provided notice of specific per-item and per-kilogram self-declared prices that it intends to implement for Inbound Letter Post Small Packets and Bulky Letters on July 1, 2020.<sup>1</sup> The Postal Service filed these rates under seal and requested that the Commission accord these rates non-public treatment. October Notice at 2; *id.* Attachment 1 (October Application). In accordance with

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<sup>1</sup> Docket No. CP2019-155, Notice of the United States Postal Service of Effective Date and Specific Rates Not of General Applicability for Inbound E-Format Letter Post, and Application for Non-Public Treatment, October 29, 2019, at 1 (October Notice).

39 U.S.C. § 504(g)(3) and 39 C.F.R. § 3007.103(c), the Commission provides notice of its preliminary determination that it is not appropriate to accord non-public treatment to the self-declared rates for Inbound Letter Post Small Packets and Bulky Letters and that these rates should be unsealed.

## II. BACKGROUND

On November 16, 2018, the Postal Service filed a request seeking modification of the Market Dominant and Competitive product lists pursuant to 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*<sup>2</sup> In the Request, the Postal Service proposed to: (1) remove Inbound Letter Post small packets and bulky letters from the Market Dominant Inbound Letter Post product on the Market Dominant product list; and (2) add identical services to the Competitive product list. *Id.* The Postal Service did not propose prices for the affected mailpieces when it filed its Request. *See id.* at 9. In Order No. 4980, the Commission conditionally approved the transfer of Inbound Letter Post Small Packets and Bulky Letters items from the Market Dominant to the Competitive product list.<sup>3</sup> The Commission held that before Inbound Letter Post Small Packets and Bulky Letters may be added to the Competitive product list, the Postal Service must propose and the Commission must approve prices that satisfy 39 U.S.C. 3633(a) and 39 C.F.R. part 3015. Order No. 4980 at 19.

In May 20, 2019, the Postal Service filed notice of a proposed range of prices for the Inbound Letter Post Small Packets and Bulky Letters product.<sup>4</sup> In Order No. 5152, the Commission approved a range of self-declared prices for Inbound Letter Post Small

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<sup>2</sup> Docket No. MC2019-17, United States Postal Service Request to Transfer Inbound Letter Post Small Packets and Bulky Letters, and Inbound Registered Service Associated with Such Items, to the Competitive Product List, November 16, 2018, at 1 (Request).

<sup>3</sup> Docket No. MC2019-17, Order Conditionally Approving Transfer, January 9, 2019, at 18 (Order No. 4980).

<sup>4</sup> Docket No. CP2019-155, Notice of the United States Postal Service of Rates Not of General Applicability for Inbound E-Format Letter Post, and Application for Non-Public Treatment, May 20, 2019 (May Notice).

Packets and Bulky Letters from Universal Postal Union (UPU) group I, II, and III countries and from group IV<sup>5</sup> countries with mail flows that exceed a certain annual tonnage threshold.<sup>6</sup> The Commission also approved the application of default terminal dues established in the Universal Postal Convention to mail flows from group IV countries that do not exceed the annual tonnage threshold. Order No. 5152 at 5. When approving the range of self-declared prices, the Commission directed the Postal Service to provide notice of specific per-item and per-kilogram prices at least 15 days before the effective date of those prices. *Id.* at 19.

In response, on October 29, 2019, the Postal Service provided notice of specific per-item and per-kilogram self-declared prices for Inbound Letter Post Small Packets and Bulky Letters to be effective on July 1, 2020, and filed these self-declared rates under seal. October Notice, Attachment 2. The Postal Service stated that the proposed specific per-item and per-kilogram prices for Inbound Letter Post Small Packets and Bulky Letters fall within the range approved by the Commission in Order No. 5152. October Notice at 3.

On November 20, 2019, the Postal Service filed a motion in Docket No. MC2019-17 to request that the Commission approve the addition of Inbound Letter Post Small Packets and Bulky Letters to the Competitive product list, effective January 1, 2020.<sup>7</sup> The Motion identified two sets of prices that would be in effect in Calendar

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<sup>5</sup> For purposes of UPU letter post remuneration, the UPU classifies its members into four country groups, which are based on a postal development indicator developed by the UPU. See Decisions of the UPU Istanbul Congress, Resolution C 7/2016, Classification of countries and territories for terminal dues and Quality of Service Fund (QSF) purposes for the 2018-2021 period, 2017, available at: [http://www.upu.int/uploads/tx\\_sdownload/actsActsOfThe26ThCongressIstanbul2016En.pdf](http://www.upu.int/uploads/tx_sdownload/actsActsOfThe26ThCongressIstanbul2016En.pdf).

<sup>6</sup> Docket No. CP2019-155, Order Approving Range of Rates for Inbound Letter Post Small Packets and Bulky Letters and Associated International Registered Mail Service, July 12, 2019, at 5 (Order No. 5152). The Postal Service applied an annual tonnage threshold of 100 tonnes. See Docket No. CP2019-155, Responses of the United States Postal Service to Questions 1-10 of Chairman's Information Request No. 1, June 7, 2019, question 3.a.

<sup>7</sup> Docket No. MC2019-17, Motion of the United States Postal Service to Effectuate Transfer on January 1, 2020, and Application for Non-Public Treatment, November 20, 2019, at 1 (Motion).

Year 2020. First, terminal dues established by the Universal Postal Convention and its Regulations would apply from January 1, 2020, to June 30, 2020. See Motion at 4. Second, for countries with mail flows that exceed applicable annual tonnage thresholds, the Postal Service proposed self-declared prices, which it intends to implement on July 1, 2020. *Id.* For countries with mail flows that do not exceed applicable annual tonnage thresholds, terminal dues established by the Universal Postal Convention and its Regulations would continue to apply after June 30, 2020. *Id.* at 3.

In Order No. 5372, the Commission approved both sets of proposed prices for Inbound Letter Post Small Packets and Bulky Letters and granted the Postal Service's Motion.<sup>8</sup> The Commission noted the concerns raised by commenters regarding the Postal Service's request that the Commission afford non-public treatment to the specific per-item and per-kilogram self-declared rates for Inbound Letter Post Small Packets and Bulky Letters. Order No. 5372 at 16-17. The Commission stated that it would consider the appropriate degree of non-public protection, if any, to be accorded to the specific per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product in a future order. *Id.* at 17.

### III. DATA AT ISSUE

In the instant order, the Commission considers the appropriate degree of non-public protection, if any, to be accorded to the specific per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product. Specifically, the Commission considers whether it is appropriate to unseal the rate chart the Postal Service provided with its October Notice. See October Notice, Attachment 2.

In Attachment 2 of its October Notice, the Postal Service provides the following rate chart for the Inbound Letter Post Small Packets and Bulky Letters product:

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<sup>8</sup> Order Granting Postal Service's Motion and Approving Prices for Inbound Letter Post Small Packets and Bulky Letters, December 19, 2019, at 2 (Order No. 5372).

**Inbound Letter Post Small Packets and Bulky Letters Effective July 1, 2020  
Rates Not of General Applicability for Mail Classification Schedule § 2340.6**

	<b>Per Piece in USD</b>	<b>Per Kilogram in USD</b>
<b>Inbound Letter Post Small Packets and Bulky Letters, unless exception applies</b>	\$X.XX	\$X.XX

The instant order is limited to the self-declared rates provided in the rate chart referenced above. The Commission is not considering whether to unseal any of supporting financial workpapers the Postal Service filed with its October Notice or its Motion at this time.

IV. THE POSTAL SERVICE'S APPLICATION FOR NON-PUBLIC TREATMENT

When it filed its October Notice, the Postal Service filed the specific per-item and per-kilogram self-declared rates for Inbound Letter Post Small Packets and Bulky Letters and supporting workpapers under seal and requested non-public treatment for these materials. October Notice at 2. The financial workpapers established cost coverage for Inbound Letter Post Small Packets and Bulky Letters at the proposed July 1, 2020 prices. *Id.* at 3. These workpapers include country-specific rates, volume, revenue, weight, cost, and cost coverage. October Application at 4.

When it filed its Motion, the Postal Service also filed the specific per-item and per-kilogram self-declared rates for Inbound Letter Post Small Packets and Bulky Letters and supporting workpapers under seal and requested non-public treatment for these materials.<sup>9</sup> The financial workpapers established cost coverage for Inbound Letter Post Small Packets and Bulky Letters at the proposed January 1, 2020 and July 1, 2020 prices. Motion at 6. These workpapers include country-specific rates (including

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<sup>9</sup> Motion at 2; *id.* Attachment 1 (November Application).

country-specific terminal dues that went into effect on January 1, 2020), volume, revenue, weight, cost, and cost coverage. November Application at 4.

The Postal Service asserts that the materials filed under seal with its October Notice and Motion contain commercial information “that, under good business practice, would not be disclosed to the public.” October Application at 1; November Application at 1. Furthermore, the Postal Service maintains that it “does not believe that any commercial enterprise would voluntarily publish . . . non-public settlement rates or information pertaining to country-specific volumes, costs, and revenues.” October Application at 1-2; November Application at 1-2. The Postal Service argues that, pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4), the materials it filed under seal with its October Notice and Motion are exempt from mandatory disclosure. October Application at 2; November Application at 2.

The Postal Service claims that if the materials filed with the October Notice and the Motion are disclosed publicly, it is likely that it will suffer commercial harm. October Application at 4; November Application at 4. Specifically, the Postal Service identifies six potential commercial harms and provides one hypothetical illustrative example for each alleged commercial harm. October Application at 7-10; November Application at 7-10. The Postal Service claims that three of these six alleged commercial harms will result only if the financial workpapers are disclosed. First, the Postal Service alleges that designated operators could use information in the workpapers to gain an advantage when negotiating service agreements. October Application at 8; November Application at 8. Second, the Postal Service asserts that competitors could analyze the workpapers to gain a market advantage. October Application at 9; November Application at 9. Third, the Postal Service claims that disclosing the workpapers would expose other designated operators to similar commercial harms. October Application at 10; November Application at 10. Accordingly, unsealing the self-declared rates alone does not implicate these three alleged commercial harms.

The remaining three alleged commercial harms discuss potential commercial injury to the Postal Service if the self-declared rates are publicly disclosed. See

October Application at 7-9; November Application at 7-9. First, the Postal Service alleges that foreign postal operators would use public disclosure of the self-declared rates to their advantage and to the detriment of the Postal Service. October Application at 7; November Application at 7. For example, the Postal Service claims that if the self-declared rates are disclosed then other designated operators could adjust their reciprocal self-declared rates. *Id.* Additionally, the Postal Service asserts that public disclosure of self-declared rates could harm the negotiating position of the Postal Service when it attempts to negotiate alternative rates for Inbound Letter Post Small Packets and Bulky Letters with these designated operators. October Application at 7-8; November Application at 7-8. Relatedly, the Postal Service claims that if designated operators know the self-declared rates, then they could determine if remail opportunities exist in particular markets,<sup>10</sup> which could result in revenue loss for the Postal Service. October Application at 8; November Application at 8.

Second, the Postal Service alleges that competitors could analyze the self-declared rates and the supporting financial workpapers to determine what the Postal Service must charge its customers to comply with the requirements applicable to competitive products. October Application at 8; November Application at 8. The Postal Service posits that competitors could then set their own rates for similar products under that threshold to freeze the Postal Service out of the market. *Id.*

Third, the Postal Service asserts that competitors could analyze the “rates, revenues, volumes, and weights,” provided under seal to determine what products and rates to offer in the competitive domestic and international markets. October Application at 9; November Application at 9. Furthermore, the Postal Service claims that customers could use the same information to negotiate better terms in contracts with the Postal Service or its competitors. *Id.*

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<sup>10</sup> For example, an opportunity for remail exists when two designated operators are charged different rates for the delivery of mail by a third designated operator in its country. The first designated operator could send its UPU letter post small packets and bulky letters through the second designated operator that is charged a lower rate for delivery in the third country.

## V. COMMENTS

The U.S. Chamber of Commerce (the Chamber), the International Mailers Advisory Group (IMAG), the Association for Postal Commerce (PostCom), and the National Association of Manufacturers (NAM) oppose the Postal Service's application for non-public treatment for the specific per-item and per-kilogram self-declared rates for Inbound Letter Post Small Packets and Bulky Letters.<sup>11</sup> No other commenters addressed the Postal Service's application for non-public treatment in their comments.

The Chamber, PostCom, and NAM state that there is a public interest in unsealing these self-declared rates. For example, PostCom asserts there is a public interest in unsealing the self-declared rates because market dominant products have been subsidizing Inbound Letter Post for years. PostCom Comments at 3. In addition, NAM states that unsealing these self-declared rates is in the public interest because there are "important considerations of fairness to American businesses who are paying for comparable service within the United States," and if these prices are set improperly, they could distort the market. NAM Comments at 1. Furthermore, the Chamber claims there is potential for price discrimination because these rates are only accessible by designated operators. Chamber Comments at 2. Accordingly, the Chamber states that according non-public protection to these rates would prevent any interested persons from lodging a complaint about price discrimination because they would not know the prices from which they are excluded. *Id.*

The Chamber, IMAG, and PostCom also argue that unsealing the self-declared rates will not result in commercial harm.<sup>12</sup> For example, because the UPU International Bureau (IB) will publish the self-declared rates, PostCom asserts that "there is no

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<sup>11</sup> Docket No. CP2019-155, Comments of the U.S. Chamber of Commerce, November 6, 2019 (Chamber Comments); Docket No. CP2019-155, Comments of the International Mailers Advisory Group, November 6, 2019 (IMAG Comments); Docket No. CP2019-155, Comments of the Association for Postal Commerce, November 6, 2019 (PostCom Comments); Docket No. CP2019-155, Comments of National Association of Manufacturers, November 7, 2019 (NAM Comments).

<sup>12</sup> Chamber Comments at 2-3; IMAG Comments at 2-3; PostCom Comments at 2-3.

justification for keeping these rates non-public after March 1, 2020,” when designated operators provide their self-declared rates to the UPU. PostCom Comments at 2. In addition, IMAG asserts that disclosing the self-declared rates would not result in designated operators having an advantage over the Postal Service when negotiating alternative rates for Inbound Letter Post Small Packets and Bulky Letters because designated operators would not negotiate such alternative rates without knowing the other operator’s self-declared rates. IMAG Comments at 2-3. Similarly, the Chamber, IMAG, PostCom, and NAM observe that the Postal Service publicly publishes rates for domestic competitive products and services for which it negotiates service agreements with customers.<sup>13</sup>

#### VI. COMMISSION INFORMATION REQUEST NO. 1

On December 3, 2019, the Commission issued Commission Information Request No. 1.<sup>14</sup> The Commission asked whether the Postal Service would consent to unsealing the self-declared rates after all designated operators filed their respective self-declared rates with the UPU IB. CIR No. 1, question 1. The Postal Service indicates that it does not consent.<sup>15</sup> The Postal Service states that its concerns with disclosing self-declared rates are not limited to designated operators adjusting their reciprocal self-declared rates after learning the Postal Service’s self-declared rates. Response to CIR No. 1, question 1. Specifically, it cites the possibility that designated operators could gain an unfair advantage in negotiating alternative rates through bilateral commercial contracts. *Id.*

In addition, the Postal Service notes that although designated operators are required to provide any self-declared rates to the UPU IB by March 1, 2020, the UPU IB

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<sup>13</sup> Chamber Comments at 3; IMAG Comments at 3; PostCom Comments at 3; NAM Comments at 1.

<sup>14</sup> Commission Information Request No. 1, December 3, 2019 (CIR No. 1).

<sup>15</sup> Responses of the United States Postal Service to Questions 1-2 of Commission Information Request No. 1, December 6, 2019, question 1 (Response to CIR No. 1).

is not required to publish those rates until April 1, 2020. *Id.*, citing Convention Regulation Article 30-108.9. Furthermore, the Postal Service asserts that because the regulations relating to publishing these self-declared rates are new, details regarding its implementation are unknown, including when and how the UPU IB will publish these rates, and who will have access to this information. *Id.*

## VII. PRELIMINARY DETERMINATION TO UNSEAL SELF-DECLARED RATES FOR INBOUND LETTER POST SMALL PACKETS AND BULKY LETTERS

### A. Legal Standard

The Postal Accountability and Enhancement Act of 2006 (PAEA)<sup>16</sup> sets forth both a mechanism for the Postal Service to seek non-public treatment of information that it provides to the Commission and the legal standard for the Commission to evaluate the degree of appropriate confidentiality to be accorded to such information. As a threshold matter, for the Postal Service to seek non-public treatment, the information must be of the type and nature eligible for non-public treatment.

The Postal Service has asserted two statutory provisions for withholding the self-declared rates for Inbound Letter Post Small Packets and Bulky Letters and the supporting workpapers it filed with its October Notice and its Motion. October Application at 2; November Application at 2. First, 39 U.S.C. § 410(c)(2) provides that the Postal Service shall not be required to disclose “information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed.”<sup>17</sup> Second, the FOIA exempts from public disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4).

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<sup>16</sup> Pub. L. 109-435, 120 Stat. 3198 (2006).

<sup>17</sup> 39 U.S.C. § 410(c)(2). The Postal Service also cites 5 U.S.C. § 552(b)(3), which exempts from public disclosure information that is specifically exempted by another statutory provision, such as 39 U.S.C. § 410(c)(2). October Application at 2; November Application at 2.

After the Postal Service has identified its basis for seeking non-public treatment of the materials that it provides to the Commission, the PAEA also establishes the Commission's specific authority as it relates to the information that the Postal Service claims to be non-public. Information filed in this proceeding and claimed by the Postal Service to be non-public shall be treated subject to the procedures of 39 U.S.C. § 504(g)(2) and (3). The Commission is not prohibited from publicly disclosing such information as long as two conditions are met. *Id.* § 504(g)(3)(A). First, the Commission must have engaged in a rulemaking to "establish a procedure for according appropriate confidentiality to information identified by the Postal Service [as non-public]."<sup>18</sup> Second, in determining the appropriate degree of confidentiality to be given to information alleged by the Postal Service to be non-public, the Commission must "balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets." 39 U.S.C. § 504(g)(3)(A).

Whenever non-public materials are provided to the Commission, an application for non-public treatment must also be provided. 39 C.F.R. § 3007.200(a). In addition to demonstrating that the materials designated as non-public contain information of a type and nature eligible for non-public treatment, the application must contain all of the information and arguments to fulfill the burden of persuasion that the materials should be withheld from the public. *Id.* § 3007.201(a). That application must include a "specific and detailed statement" containing, among other things, "[p]articular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure." *Id.* § 3007.201(b)(4). The Commission preliminarily treats those

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<sup>18</sup> *Id.* In 2009, the Commission satisfied this condition when it established procedures for treatment of materials filed by the Postal Service and claimed to be non-public. Docket No. RM2008-1, Final Rule Establishing Appropriate Confidentiality Procedures, June 19, 2009 (Order No. 225) (codified at 39 C.F.R. pt. 3007). In 2018, these procedures underwent revision through notice-and-comment rulemaking. See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018 (Order No. 4679); Non-Public Information, 83 Fed. Reg. 31,258, 31,258-94 (July 3, 2018) (codified at 39 C.F.R. pt. 3007).

designated materials, and the information contained therein, as non-public.<sup>19</sup> The Commission's long-standing practice is that it does not *accept* any rationale for non-public treatment given in the application for non-public treatment unless the Commission makes a determination of non-public status, which may occur in response to a motion by an interested person or *sua sponte*. See Order No. 4679 at 11.

In this notice, the Commission undertakes a preliminary procedural step—issuance of a “notice of its preliminary determination concerning the appropriate degree of protection, if any, to be accorded to materials claimed by any person to be non-public.” 39 C.F.R. § 3007.103(c). After allowing seven days for interested persons to respond to this preliminary determination, the Commission will issue an order containing its final determination of what non-public treatment, if any, will be accorded to the per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product. This decision will apply the standard appearing in 39 C.F.R. § 3007.104. Section 3007.104(a) incorporates the standard for issuing a determination to publicly disclose materials claimed by the Postal Service to contain non-public information from 39 U.S.C. § 504(g)(3)(A): “the Commission shall balance the nature and extent of the likely commercial injury identified by the Postal Service against the public interest in maintaining the financial transparency of a government entity competing in commercial markets.” 39 C.F.R. § 3007.104(a). In the sections that follow, the Commission first discusses its preliminary determination concerning the nature and extent of any likely commercial harm, followed by a discussion of the public interest in maintaining financial transparency.

## B. Alleged Commercial Harms

The Postal Service alleges three commercial harms will arise if the per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky

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<sup>19</sup> *Id.* § 3007.102(a). This is consistent with the Commission's long-standing practice under former § 3007.23. See Order No. 4679 at 11.

Letters product are disclosed. First, it asserts that disclosure of the self-declared rates would be used by foreign postal operators to the detriment of the Postal Service. October Application at 7; November Application at 7. For example, the Postal Service states that if the self-declared rates are disclosed before designated operators are required to provide their reciprocal self-declared rates to the UPU, then designated operators could adjust their reciprocal self-declared rates to the detriment of the Postal Service. *Id.* Additionally, the Postal Service claims that if self-declared rates are disclosed before the UPU IB publishes these rates, then the Postal Service would be disadvantaged when negotiating alternative rates with designated operators as the Postal Service does not expect to know the reciprocal self-declared rates. October Application at 7-8; November Application at 7-8; Response to CIR No. 1, question 1. Relatedly, the Postal Service claims that if designated operators know the self-declared rates, then they could determine if remail opportunities exist in particular markets, which could result in revenue loss for the Postal Service. October Application at 8; November Application at 8.

It appears from the Postal Service's filings that the potential for this commercial harm concludes when the UPU IB publishes these rates to other designated operators. As mentioned by the Postal Service, designated operators electing to charge the Postal Service reciprocal self-declared rates must provide their self-declared rates to the UPU IB by March 1, 2020. October Application at 5-6; November Application at 5-6. Thus, if the Postal Service's self-declared rates are not disclosed before March 1, 2020, then designated operators could not adjust their reciprocal self-declared rates in response to discovering the rates charged by the Postal Service.<sup>20</sup> Additionally, the potential for designated operators to gain an unfair advantage in negotiating alternative rates in bilateral service agreements also terminates when the UPU IB publishes the

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<sup>20</sup> The Chamber, IMAG, and PostCom also question whether disclosing the self-declared rates before the deadline for designated operators to notify the UPU of its self-declared rates would be harmful given self-declared rates are established according to a UPU formula. Chamber Comments at 3; IMAG Comments at 2; PostCom Comments at 2.

self-declared rates that will go into effect on July 1, 2020, because designated operators would know other designated operators' self-declared rates. Thus, once the UPU IB publishes the self-declared rates, unsealing these rates would not result in the commercial harm identified by the Postal Service.

In addition, disclosing the specific per-item and per-kilogram self-declared rates will not help designated operators to determine if remail opportunities exist in particular markets. Due to the nature of self-declared rates, designated operators already know that self-declared rates would be greater than default UPU terminal dues. Thus, designated operators know that opportunities for remail exist in markets where operators pay default UPU terminal dues rather than self-declared rates no matter what the specific self-declared rates are.<sup>21</sup> However, because disclosing the self-declared rates alone would not help designated operators to identify which markets will pay self-declared rates versus those that pay default terminal dues, it is unlikely that unsealing the specific per-item and per-kilogram self-declared rates would result in the identification of any particular remail opportunities.

Second, the Postal Service alleges that competitors could analyze the self-declared rates and the supporting financial workpapers to determine what the Postal Service must charge its customers to comply with the requirements applicable to competitive products. October Application at 8; November Application at 8. For example, the Postal Service posits that competitors could then set their own rates for similar products under that threshold to freeze the Postal Service out of the market. *Id.*

Third, the Postal Service asserts that competitors could analyze the "rates, revenues, volumes, and weights," provided under seal to determine what products and rates to offer in the competitive domestic and international markets. October Application at 9; November Application at 9. Furthermore, the Postal Service claims

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<sup>21</sup> The Postal Service notes that consistent with the Universal Postal Convention and the Convention Regulations, the Postal Service will charge UPU terminal dues for Inbound Letter Post Small Packets and Bulky Letters items entering from certain low flow countries. October Notice at 5.

that customers could use the same information to negotiate better terms in contracts with the Postal Service or its competitors. *Id.*

The Commission preliminarily determines that disclosing the specific per-item and per-kilogram self-declared rates is unlikely to result in the second and third alleged commercial harms. It appears that these alleged commercial harms would only result if financial workpapers are disclosed in addition to the self-declared rates.<sup>22</sup> For example, competitors would not be able to analyze the unsealed data to determine the minimum per-item and per-kilogram rates required for the Inbound Letter Post Small Packets and Bulky Letters product to cover costs based upon the self-declared rates alone. Additionally, customers would not be able to determine “whether additional margin for net profit exists[.]” October Application at 6; November Application at 6. Moreover, unsealing the self-declared rates alone would not disclose any data related to domestic commercial products that is not already public. Because the Commission is not proposing to unseal the financial workpapers at this time, these alleged commercial harms are not likely to result from disclosure of the specific per-item and per-kilogram self-declared rates only.

Furthermore, it is difficult to distinguish the alleged commercial injury posed by competitors and by customers by unsealing the self-declared rates and the commercial injury posed by competitors and by customers by publishing rates for competitive

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<sup>22</sup> See October Application at 8 (“[a] competing package delivery service obtains a copy of the unredacted version of the rate chart *and* financial workpapers . . .”) (emphasis added); *id.* at 9 (“[a] competing package delivery service obtains a copy of the unredacted version of the non-public materials exposing rates, revenues, volumes, *and* weights . . .”) (emphasis added); November Application at 8 (“[a] competing package delivery service obtains a copy of the unredacted version of the rates *and* financial workpapers . . .”) (emphasis added); *id.* at 9 (“[a] competing package delivery service obtains a copy of the unredacted version of the non-public materials exposing rates, revenues, volumes, *and* weights . . .”) (emphasis added). If the Postal Service believes that these specific commercial harms are likely to occur if just the per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product are unsealed, then the Postal Service must provide an illustrative example of how the harm would occur if just the self-declared rates are unsealed.

products such as Priority Mail, Priority Mail Express, and First-Class Package Service.<sup>23</sup> The Postal Service does not explain why the Commission should extend exceptional non-public protection to the self-declared rates when prices for other competitive products are publicly available.

### C. Public Interest

Since Fiscal Year 1998, the Postal Rate Commission (the predecessor agency to the Commission) and the Commission have continuously expressed concerns regarding the financial performance of the Inbound Letter Post product.<sup>24</sup> The Postal Service frequently referenced the UPU terminal dues system as the driver of the product's poor financial performance.<sup>25</sup>

In recent years, participants have expressed similar concerns related to the financial performance of the Inbound Letter Post product and its unique pricing regime. For example, several U.S. Representatives and a U.S. Senator filed comments in Docket No. IM2018-1 that stated because terminal dues are less than domestic rates, U.S. mailers pay more to mail items within the U.S. and U.S. companies are on an uneven playing field when competing with foreign companies.<sup>26</sup> Numerous U.S. businesses echoed concerns that terminal dues harm U.S. companies that compete

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<sup>23</sup> See Chamber Comments at 3; IMAG Comments at 3; PostCom Comments at 3; NAM Comments at 1.

<sup>24</sup> Docket No. RM2018-2, Notice of Proposed Rulemaking to Revise the Periodic Reporting Requirements, July 12, 2018, at 16 (Order No. 4706).

<sup>25</sup> See Docket No. ACR2019, United States Postal Service FY 2019 Annual Compliance Report, December 27, 2019, at 7-8 (FY 2019 ACR).

<sup>26</sup> Docket No. IM2018-1, Comment Received from U.S. Representative Daniel W. Lipiniski, July 5, 2018, at 1; Docket No. IM2018-1, Comments Received from U.S. Representatives Kenny Marchant and Ralph Abraham, July 3, 2018, at 2-3; Docket No. IM2018-1, Comment Received from U.S. Senator Bill Cassidy, M.D., July 3, 2018, at 1.

against foreign businesses.<sup>27</sup>

On August 23, 2018, President Donald J. Trump issued a presidential memorandum in which he expressed similar concerns related to the terminal dues system.<sup>28</sup> Specifically, the Presidential Memorandum notes that the United States is not fully reimbursed by foreign operators for the cost of delivering inbound mail and that the current system distorts the international flow of small packets by incentivizing the shipping of goods from countries that pay lower terminal dues. Presidential Memorandum, section 2(c)(i).

In September 2019, UPU members met in Geneva, Switzerland and negotiated reforms to the UPU terminal dues system as it applies to UPU letter post small packets and bulky letters. See October Notice at 4. Pursuant to these reforms, the Postal Service will apply self-declared rates to some Inbound Letter Post Small Packets and Bulky Letters items as of July 1, 2020. *Id.* Given the long history of concern discussed above, the public has an interest in the self-declared rates being transparent to ensure that the recent reform efforts address the weaknesses of the terminal dues system that has resulted in large negative contribution, which has caused market dominant mailers to subsidize these mailpieces.<sup>29</sup> Furthermore, there is public interest in maintaining financial transparency into a government establishment competing in commercial

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<sup>27</sup> Docket No. IM2018-1, Comments of Small Business & Entrepreneurship Council, July 2, 2018, at 1; Docket No. IM2018-1, Public Comment from Honey-Can-Do International, LLC, June 21, 2018, at 2; Docket No. IM2018-1, Comment Received from Range Kleen, June 19, 2018, at 2; Docket No. IM2018-1, Comment Received from Pretika Corporation, June 15, 2018, at 2; Docket No. IM2018-1, Comment Received from Dexas International Ltd., June 12, 2018, at 2.

<sup>28</sup> Presidential Memorandum for the Secretary of State, Secretary of the Treasury, Secretary of Homeland Security, Postmaster General, and Chairman of the Postal Regulatory Commission, August 23, 2018 (Presidential Memorandum), available at: <http://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-state-secretary-treasury-secretary-homeland-security-postmaster-general-chairman-postal-regulatory-commission/>.

<sup>29</sup> See Chamber Comments at 3-6; NAM Comments at 1; PostCom Comments at 3. In FY 2019 ACR, the Postal Service reported that Inbound Letter Post, which includes mailpieces that were transferred to Inbound Letter Post Small Packets and Bulky Letters, contributed negative \$164 million. FY 2019 ACR at 7.

markets because these rates are only accessible to designated operators and there is potential for price discrimination. See Chamber Comments at 2.

The Commission preliminarily determines that unsealing the self-declared rates would promote the financial transparency of the Postal Service, a government establishment competing in commercial markets. As discussed above, there are longstanding and often-repeated concerns expressed about the UPU terminal dues system that have resulted in domestic mailers subsidizing the acceptance, processing, and delivery of UPU letter post small packets and bulky letters for over 20 years. Unsealing the self-declared rates would provide greater transparency as to whether the recent changes to the UPU terminal dues system address these concerns. The Commission preliminarily determines that this interest and the interest in preventing price discrimination outweighs the nature and extent of likely commercial harm to the Postal Service if the self-declared rates are unsealed.

#### VIII. INITIAL ADMINISTRATIVE ACTIONS

Pursuant to 39 C.F.R. § 3007.103(c), the Commission preliminarily determines that the specific per-item and per-kilogram self-declared rates for Inbound Letter Post Small Packets and Bulky Letters should be unsealed shortly after the UPU IB publishes these rates.<sup>30</sup> Any interested person, including the Postal Service, may file a response to this Notice by January 30, 2020.

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<sup>30</sup> The UPU IB will publish the self-declared rates by April 1, 2020. Response to CIR No. 1, question 1; see Convention Regulation Article 30-108.9.

IX. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission preliminarily determines that the specific per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product should be unsealed shortly after the Universal Postal Union publishes these rates.
2. Responses to this Notice are due by January 30, 2020.

By the Commission.

Ruth Ann Abrams  
Acting Secretary