

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

PERFORMANCE INCENTIVE MECHANISM

Docket No. RM2021-2

**NOTICE OF FILING NON-PUBLIC USPS-RM2021-2-NP1 AND APPLICATION FOR
NON-PUBLIC TREATMENT**
(February 18, 2021)

Pursuant to Order No. 5816, Advance Notice of Proposed Rulemaking Regarding Performance Incentive Mechanism, PRC Docket No. RM2021-2 (Jan. 15, 2021), the United States Postal Service hereby gives notice that it is filing the following folder under seal in this proceeding:

USPS-RM2021-2-NP1

Nonpublic FY2020 TFP Documentation

This folder contains (1) a Microsoft Excel spreadsheet known as the TFP Summary Table, and (2) 137 program files used to derive the Postal Service's reports of total factor productivity (TFP). As described below, the TFP Summary Table is the subject of the attached application for non-public treatment, whereas the Postal Service is seeking provisional non-public treatment of the program files, pending further evaluation of their eligibility for non-public treatment under the Commission's rules.

I. TFP Summary Table

By way of context, the spreadsheet of annual TFP tables that the Postal Service has historically filed with the Commission¹ represents the output of a number of complex computer operations performed on data from myriad Postal Service sources.

¹ E.g., USPS Annual Tables, FY 2019 TFP (Total Factor Productivity) (Feb. 27, 2020).

See *generally* USPS-RM2021-2-1, Total Factor Productivity Documentation (Feb. 16, 2021). As should be evident from the documentation filed on February 16 and from the program files in this filing, the work of compiling and processing data is done entirely outside of Microsoft Excel, and the annual TFP tables spreadsheet is merely the final report of the resulting numbers. There does not exist some other version of the annual TFP tables spreadsheet that “display[s] the formulae used and links to related spreadsheets.” Order No. 5816, Advance Notice of Proposed Rulemaking Regarding Performance Incentive Mechanism, PRC Docket No. RM2021-2 (Jan. 15, 2021), at 8 n.16.

In an effort to honor the apparent intent of the Commission’s order, however, the Postal Service is providing an alternative Excel spreadsheet (the TFP Summary Table). Unlike the annual TFP tables, the TFP Summary Table does contain internal formulas to show relationships between certain TFP components. The TFP Summary Table is identical to one that Christensen Associates prepares for Postal Service management using an established production process. Because certain competitive-product volume, revenue, and cost data in this spreadsheet has not been filed publicly and would cause commercial injury if disclosed, the Postal Service is filing the spreadsheet non-publicly with the attached application for non-public treatment.

Unfortunately, it is not possible at this time to prepare a functional public version of the TFP Summary Table. To produce a public version that (1) has sensitive data aggregated at a higher level, (2) shows the same results as the non-public version, and (3) reveals internal links and formulas would require the creation of a new production process with different code. The Postal Service has been informed that, due to the

annual planning cycle and the time-intensive nature of such a bespoke task, the necessary Christensen Associates resources are unlikely to be available to perform the work for at least several months – independent of the exigency discussed in the next section.

Of course, commenters who are sufficiently interested to apply and who are able to comply with the protective conditions set forth in Part 3011, Subpart C, of the Commission's rules will be eligible to gain access and review the TFP Summary Table by those means. Moreover, given the substantial body of material already made available via the Postal Service's public filing in this docket on February 16, 2021, insight into the structure of TFP measurement sufficient to meet the needs of most commenters can hopefully be attained even without resort to those access procedures.

II. Program Files

The program files are numerous and complex, and they are mostly written in TSP and FORTRAN. The Postal Service's timely submission of these files has been hampered by the short interval between their production and the Commission's filing deadline, combined with the untimely and ongoing absence of a critical Christensen Associates subject-matter expert due to a family emergency. As a result, the Postal Service has been unable to adequately evaluate the potential presence of sensitive information within the program files, in order to determine which files are and are not eligible for non-public treatment. It is difficult to determine at this time when that evaluation will be complete, as it depends on either the return of the aforementioned expert from leave of currently undetermined duration or the investment of substantial

time and effort by non-expert personnel to retrace the derivation and import of data used in the program files.

The Postal Service is mindful of the Commission's deadline for production of these materials, which has already passed. In the interest of facilitating Commission review without inadvertently risking undue commercial harm to the Postal Service or any third party, the Postal Service is submitting the program files non-publicly on a provisional basis. When the Postal Service, Christensen Associates, and any other relevant parties are able to have adequately evaluated the files' eligibility for non-public treatment, the Postal Service expects to follow up with a supplemental re-submission of the program files, either publicly or with a suitable application for non-public treatment, as appropriate. Because that evaluation has not yet been completed, the Postal Service is not in a position to submit an application for non-public treatment regarding any or all of the program files at this time, and so it respectfully requests the Commission nonetheless to confer non-public treatment on a provisional basis under these extraordinary circumstances.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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ATTACHMENT

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. Part 3011, Subpart B, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the TFP Summary Table filed under seal in USPS-RM2021-2-NP1. The TFP Summary Table contains commercially sensitive information: namely, volume and cost information regarding competitive products that is disaggregated to the product level. As described below, public disclosure of this information would cause significant harm to the Postal Service. The Postal Service hereby furnishes below the justification for this application as required by 39 C.F.R. § 3011.201(b).

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials;

The materials designated as non-public consist of information of a commercial nature as well as third-party business information that, under good business practice, would not be disclosed publicly. Based on its longstanding and deep familiarity with the postal and communications businesses and markets generally, and its knowledge of many firms, including competitors, mailers, and suppliers, the Postal Service does not believe that any commercial enterprise would voluntarily publish information pertaining to supplier pricing or to the costs and volumes of specific competitive products, out of a concern that doing so would be used by suppliers, customers, and competitors to its and its partners' commercial detriment. As such, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3).

(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual;

With respect to cost and volume information for competitive products, the Postal Service does not believe that any third party has a proprietary interest in the information.

(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public;

USPS-RM2021-2-NP1 includes a Microsoft Excel file known as the Total Factor Productivity (TFP) Summary Table for FY2020. Building up from various source data incorporated into the spreadsheet, the TFP Summary Table shows the development of various components of TFP, as well as the ways in which each component contributed to change in TFP over the prior year. Cost-weighted mail volume comprises part of the workload measure used in TFP, and the TFP Summary Table shows the derivation of weighted mail volume (i.e., volumes and unit attributable costs) at the product level, including individual domestic and international competitive products. (Data for inbound and outbound international negotiated service agreements (NSAs) are aggregated above the product level, but remain distinct from their host products.) This data is derived from the non-public versions of the Cost and Revenue Analysis and International Cost and Revenue Analysis reports filed with the Postal Service's Annual Compliance Reports (as of the time of this filing), and for certain competitive products, the data is not included in the public versions of those reports. The same rationale for

non-disclosure of this data applies in the context of the TFP Summary Table as in the context of those non-public reports.

(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure;

If the information the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers it quite likely that it would suffer commercial harm. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practice. In this regard, the Postal Service is not aware of any business with which it competes (or any other commercial enterprise), in either industries engaged in the carriage and delivery of physical items or those engaged in communications generally, that would publicly disclose information of comparable nature and detail. This indicates that such information is typically regarded as posing a substantial risk of commercial harm.

Information relating to the costs of producing products is generally considered to be among the most sensitive commercial information. The product-level cost data would provide competitors with valuable information, enabling them to better understand the Postal Service's cost structures, operational capabilities, and pricing and marketing strategies. Such information would be extremely valuable to competitors in assessing the strengths and weaknesses of various postal products. Armed with detailed product cost information, competitors would be able to better identify and understand areas where they could adapt their own operations to be more competitive with postal products and better assess how to price and market their own products in such a way

as to target the Postal Service's weaknesses and compensate for its strengths in producing and marketing various products.

Competitors could also use the product-specific volume information to analyze the Postal Service's possible market strengths and weaknesses and to focus sales and marketing efforts on those areas, to the detriment of the Postal Service. Disclosure of this information would also undermine the Postal Service's position in negotiating favorable terms with potential customers, who would be able to ascertain critical information about relevant product trends. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the competitive-product-specific volume and cost data in the TFP Summary Table (to the extent not otherwise disclosed in public Postal Service reports).

(5) At least one specific hypothetical, illustrative example of each alleged harm;

The following restates the harms discussed above and presents at least one hypothetical situation illustrating the consequences of disclosure.

Harm: Competitors, mailers, and suppliers could use cost and volume data, disaggregated by individual competitive product, to gain knowledge and insights about the relative strengths and weaknesses of the Postal Service's competitive product lines. That refined understanding would, in turn, give competitors advantages in seeking to divert business from the Postal Service and to gain new business for which the Postal Service might compete. Mailers and suppliers would be able to negotiate favorable deals with the Postal Service more effectively. As a result, the Postal Service would experience losses of existing and new business, or erosion of contributions and margins.

Hypothetical: The TFP Summary Table provides volume and unit-cost data for domestic and international competitive products. These data are generally broken out by individual product (international NSA data is aggregated, yet still distinct).

Hypothetically, this information is made public. Competitors use it – alone or in

combination with other available data – to gain a refined understanding of the relative strengths and weaknesses of the Postal Service’s product lines (domestic and international), the individual strengths and weaknesses of particular products, and the degree to which products are sold through public schedules, compared to contract pricing arrangements. Financial analysts for the competitors relay their assessments to colleagues in the competitors’ marketing and investment divisions. This information provides a better foundation to enable competing firms to make decisions regarding investments and product design in their own product lines.

Based on such assessments, for example, firms that have individual products for domestic express service (overnight), international express service, or package service comparable to Priority Mail determine that they have potential for competitive gain against the Postal Service in these areas and, accordingly, decide to allocate investments in improved operations, supplier arrangements, and technologies to improve their competitive positions. To the extent that these decisions actually make the firms more competitive, the Postal Service loses existing or new business.

Hypothetical: Cost information is disclosed to the public. Mailers or foreign postal operators (FPOs) who seek to negotiate individual contract rates with the Postal Service gain a better understanding of the average or unit costs of particular products, as well as the relative and absolute strengths and weaknesses of particular product lines. This information enables the mailers or FPOs to negotiate contract rates with the Postal Service more effectively than in the absence of such information.

Harm: Competitors could use disaggregated product volume distribution information to assess vulnerabilities and focus sales and marketing efforts to the detriment of the Postal Service.

Hypothetical: Disaggregated volumes contained in the TFP Summary Table are disclosed to the public. Another delivery service's employee monitors the filing of this information and passes it along to the firm's sales and marketing functions. The competitor assesses the profitability of certain services on a per-piece basis or the Postal Service's relative concentration in certain service offerings. The competitor then targets its advertising and sales efforts at actual or potential customers in market segments where the Postal Service appears to have made headway, hindering the Postal Service's ability to reach out effectively to these customers.

Harm: Customers, including FPOs, and suppliers could use disaggregated product volume and cost distribution information to undermine the Postal Service's leverage in negotiations.

Hypothetical: Disaggregated volume and cost information in the TFP Summary Table is released to the public. A FPO's employee monitors the filing of this information and passes the information along to its international postal relations functions. The FPO assesses the Postal Service's average per-item cost for categories about which it is negotiating with the Postal Service, with particular focus on categories known to be included in bilaterals with other FPOs. The FPO uses the average cost information as a justification for pricing demands in negotiations, refusing to accept a higher price without steeper concessions than the Postal Service might otherwise have been able to foreclose. The Postal Service's ability to negotiate the best value from the bargain suffers as a result. This hypothetical applies with equal force to customers other than

FPOs, for NSA mail and non-NSA mail that can be made subject to an NSA (e.g., International Priority Airmail, which can be included in Global Plus 1 NSAs).

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the portions of the materials filed non-publicly and relating to competitive products should be withheld from persons involved in competitive decision-making in the relevant markets for competitive delivery products (including private-sector integrators, FPOs, and current or potential NSA customers), as well as their consultants and attorneys.

(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. 39 C.F.R. § 3011.401(a). However, because the non-public materials are related to relationships with customers that often continue for decades, or at least beyond ten years, and include information that is relevant to Postal Service decisions that will be made more than ten years after the date of filing, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3011.401(b)-(c).

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the relevant materials.