

ORDER NO. 5212

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

Competitive Product Prices  
Inbound EMS 2 (MC2009-10)

Docket No. CP2019-209

ORDER APPROVING CHANGES IN PRICES  
NOT OF GENERAL APPLICABILITY FOR INBOUND EMS 2

(Issued August 28, 2019)

I. INTRODUCTION

The Postal Service requests a change in prices not of general applicability for Inbound EMS 2 effective January 1, 2020.<sup>1</sup> The Commission analyzes the proposed prices pursuant to 39 U.S.C. § 3633. For the reasons discussed below, the Commission approves the Postal Service's request.

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<sup>1</sup> Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound EMS 2, and Application for Non-Public Treatment, August 14, 2019 (Notice).

## II. BACKGROUND

Inbound EMS 2 covers Express Mail International (EMS) documents and merchandise received from foreign posts for delivery in the Postal Service's domestic delivery area. The Commission approved its addition to the competitive product list in 2008.<sup>2</sup>

The Postal Service's Notice proposes to revise the Inbound EMS 2 prices, effective January 1, 2020. The Postal Service maintains that the proposed prices are in accordance with the terms of Governors' Decision No. 19-1 and comply with the requirements of 39 U.S.C. § 3633(a)(2). Notice at 1-2.

In Order No. 5201, the Commission provided notice of the Postal Service's filing, appointed a Public Representative, and provided the public with an opportunity to comment.<sup>3</sup>

## III. COMMENTS

The Public Representative filed comments on August 22, 2019.<sup>4</sup> The Public Representative notes that the Postal Service provides the minimum and maximum cost coverage for the Inbound EMS 2 product. *Id.* at 2. She concludes that the proposed rates for Inbound EMS 2 should generate sufficient revenues to cover cost. *Id.*

The Public Representative comments, however, that the minimum cost coverage calculation assumes that the Postal Service will maintain its current level of service performance and not accrue additional penalties for missing pay-for-performance (PfP)

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<sup>2</sup> See Docket Nos. MC2009-10 and CP2009-12, Order Adding Inbound International Expedited Services 2 to Competitive Product List, December 31, 2008 (Order No. 162). Subsequently, the Commission approved the Postal Service's request to change the product name to Inbound EMS 2. See Docket No. CP2013-77, Order Approving Rate and Classification Changes for Inbound International Expedited Services 2, August 30, 2013 (Order No. 1822).

<sup>3</sup> Notice and Order Concerning Changes in Rates for Inbound EMS 2, August 15, 2019 (Order No. 5201).

<sup>4</sup> Public Representative Comments on Postal Service Notice of Filing Changes in Rates Not of General Applicability for Inbound EMS 2, August 22, 2019 (PR Comments).

targets. *Id.* Because these penalties may further reduce revenue, the Public Representative states that the minimum cost coverage estimate may not represent the lowest possible cost coverage. *Id.* Nevertheless, she notes that “it is unlikely that more severe penalties would reduce the cost coverage below what is permissible under 39 U.S.C. § 3633(a).” *Id.* at 2-3. Based upon her review of all the materials the Postal Service submitted under seal, she recommends that the Commission approve the proposed Inbound EMS 2 prices. *Id.* at 3.

#### IV. COMMISSION ANALYSIS

*Proposed Inbound EMS 2 prices.* The Commission reviews price changes for competitive products in accordance with the requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7. These requirements prohibit the subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)), require each competitive product to cover its attributable costs (39 U.S.C. § 3633(a)(2)), and require competitive products as a whole to cover an appropriate share of institutional costs (39 U.S.C. § 3633(a)(3)).

The Commission has reviewed the Notice, supporting documentation, and the Public Representative’s comments in light of the requirements in 39 U.S.C. § 3633(a)(1)-(3). As a result of this review, the Commission finds that the prices presented in the Notice should not lead to the subsidization of competitive products by market dominant products, should cover attributable costs, and should have a positive effect on the contribution that competitive products make to institutional costs. Thus, the Commission finds that the planned prices for Inbound EMS 2 satisfy the applicable statutory criteria and regulatory requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

*Pay-for-Performance penalties.* Under the EMS Cooperative's annual PfP plan,<sup>5</sup> the prices that foreign postal operators pay the Postal Service for the delivery of Inbound EMS 2 are subject to potential penalties based on the Postal Service's service performance. The EMS Cooperative grades the Postal Service's service performance on an annual basis and issues a PfP report card reflecting that evaluation. In Order No. 4799, the Commission directed the Postal Service to continue accounting for year-to-year changes in these penalties in its supporting financial models using the PfP report card, to continue providing detailed explanations of the penalty calculation in future financial workpapers, and to provide the workpapers used to calculate the PfP penalty in the Annual Compliance Reports and price change requests.<sup>6</sup>

In the instant docket, the Postal Service filed copies of the 2019 PfP plan and the Postal Service's most recent annual PfP report card. Notice, Attachment 5, 6. The Postal Service also provided an Excel spreadsheet explaining how it accounted for some penalty calculations in its financial workpapers. The Postal Service did not include other PfP penalties in its supporting financial workpapers, instead addressing those penalties in a narrative, under seal.<sup>7</sup>

The Commission has acknowledged that, based on recent service performance history, PfP penalties for Inbound EMS 2 are likely to be small and should not cause cost coverage to fall below 100 percent.<sup>8</sup> For that reason, the Postal Service's omission of some of these penalties in its calculations is very unlikely to affect compliance with the requirements of 39 U.S.C. § 3633(a)(1)-(3) and does not prevent approval of the

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<sup>5</sup> The EMS Cooperative is a voluntary body of the Universal Postal Union (UPU), comprised of designated postal operators of UPU member countries that aims to promote cooperation between members to allow them to provide their customers with a high-quality EMS service on a global basis. The EMS Cooperative administers an annual PfP plan that links payment for EMS delivery to service performance. The Calendar Year 2019 PfP plan is the latest available.

<sup>6</sup> Docket No. CP2018-287, Order Approving Changes in Prices Not of General Applicability for Inbound EMS 2, August 28, 2018 (Order No. 4799).

<sup>7</sup> Excel file "NONPUBLIC USPS EMS Fins CP2019-209.xlsx," spreadsheet "01\_Narrative."

<sup>8</sup> Order No. 4799 at 5; see also Docket No. CP2015-177, Order Approving Changes in Rates Not of General Applicability for Inbound EMS 2, August 12, 2015 (Order No. 2656).

Postal Service's price change request, in this case. In future filings, however, the Postal Service should apply all PfP penalties in its financial workpapers in order to ensure transparency of the Inbound EMS 2 product and to provide the most accurate data possible for the Commission's review.

## V. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission finds that the proposed Inbound EMS 2 prices, scheduled to take effect January 1, 2020, are in accordance with the relevant statutory and regulatory requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.
2. The Postal Service shall continue to include in its supporting financial models for all future filings for changes in Inbound EMS 2 prices all Pay-for-Performance penalties incurred in the last calendar year for which Pay-for-Performance report cards are available, even if the effect on cost coverage is small.
3. The Postal Service shall continue to provide a detailed explanation of the penalty calculation in future financial workpapers for changes in prices for Inbound EMS 2. The explanation shall explicitly link the penalty calculation to the most recent annual report card and the most recent Pay-for-Performance plan.
4. The Postal Service must provide the workpapers used to calculate the Pay-for-Performance penalty with its Annual Compliance Reports and in future requests to change Inbound EMS 2 prices.

By the Commission.

Darcie S. Tokioka  
Acting Secretary