

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

Before Commissioners: Dan G. Blair, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Tony L. Hammond

Competitive Product Prices	Docket No. MC2009-10
Inbound Express Mail International (EMS)	
Originating from Foreign Posts	Docket No. CP2009-12

NOTICE AND ORDER CONCERNING ADDING INBOUND INTERNATIONAL
EXPEDITED SERVICES 2 TO COMPETITIVE PRODUCT LIST

(Issued December 1, 2008)

I. BACKGROUND

On November 19, 2008, the Postal Service filed a request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Inbound International Expedited Services 2 to the Competitive Product List.¹ The Postal Service asserts that Inbound International Expedited Services 2 is a competitive product within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009-10.

The Postal Service contemporaneously filed notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, that the Governors have established prices and

¹ Request of the United States Postal Service Regarding Inbound Express Mail International (EMS) from Foreign Posts to Add *Inbound International Expedited Services 2* to Competitive Product List; and Notice of Establishment of Rates and Classifications Not of General Applicability, November 19, 2008 (Request).

classifications not of general applicability for inbound Express Mail International (EMS) originating from foreign posts. More specifically, the Governors' Decision defines three price tiers for Inbound Express Mail originating from foreign posts and proposes that the Commission permit the three price tiers applicable to EMS from foreign posts that have prices set using the Universal Postal Union (UPU) process to be classified as a single product, Inbound International Expedited Services 2. Request at 4.²

EMS prices have been established for these agreements by the Postal Service in accordance with the UPU,³ which authorizes each participating destination postal administration to set its prices for inbound Express Mail with notification to partners directly or through the UPU's International Bureau by August 31 of the year prior to the effective date. Request at 2. The Postal Service generally makes notification of prices established through the UPU International Bureau, but also sends letters directly to foreign postal administrations. Governors' Decision at 1, n.2. The Postal Service asserts that the EMS Cooperative process allows the destination administration to set pieces and weight prices according to a three-tier system.⁴ The tiers consist of:

² The Governors' Decision states that the Mail Classification Schedule (MCS) language which sets forth three EMS price tiers addresses the Commission recommendation that a consistent approach be used for "organizing competitive product negotiated agreements within the Mail Classification Schedule." PRC Order No. 84, Order Concerning the China Post Group Inbound EMS Agreement, Docket No. CP2008-7, June 27, 2008, at 6.

³ See Attachment 4 to the Request, Certification of Prices for Inbound Express Mail International (EMS), which states prices were established by letter dated August 28, 2008, to the International Bureau of the UPU.

⁴ The Postal Service states that at the time of Governors' Decision No. 08-20 in this proceeding, EMS prices met all requirements of the financial model which is reflected in the decision. The financial model filed under seal in the instant case provides inputs that became available subsequent to the Governors' vote. This model as filed has an anomaly because the margin is slightly below the threshold set by the Governors. However, the Postal Service contends that this difference should not impact the Commission's approval of the prices that were established in August 2008 and that the cost coverage presented in the model as filed is above 100 percent and satisfies the statutory pricing criteria for competitive products.

1. Pay-for-performance. Available to members of the Kahala Post Group and EMS Cooperative members who elect to comply with pay-for-performance provisions;
2. EMS Cooperative. EMS Cooperative members who elect not to comply with pay-for-performance provisions; and
3. All Others. International posts who choose not to be members of the EMS Cooperative.

Request at 2.

In support of its Request, the Postal Service filed a redacted version of the Governors' Decision establishing prices and classifications for Inbound Express Mail International.⁵ The Postal Service also filed a Statement of Supporting Justification as required by 39 CFR 3020.32,⁶ certification of the Governors' vote,⁷ and certification of compliance with 39 U.S.C. 3633(a).⁸ In addition, the Postal Service indicates that it filed an unredacted copy of the Governors' Decision, the agreements with foreign posts and other supporting documents designed to establish compliance with 39 CFR 3015.5 under seal. Request at 1, n.2.

In the Statement of Supporting Justification, Brian T. Hutchins, Manager, International Postal Relations, explains that in the instant case, the Postal Service has considered that the new product could have been requested to be merged with the existing product Inbound International Expedited Services 1. He observes, however, the Postal Service only deals with inbound EMS from foreign posts which have one set of demand and market characteristics and a single set of pricing formulas approved by

⁵ See Attachment 1 to the Request.

⁶ See Attachment 2 to the Request.

⁷ See Attachment 3 to the Request.

⁸ See Attachment 4 to the Request.

the Governors. He also states that the prices are established through negotiation as with the China Post Group⁹ or unilaterally pursuant to the UPU EMS Cooperative.

He notes the rationale for the Postal Service's submission of a separate request is because the pricing formula for EMS was finalized through the UPU in August 2008 with the knowledge that the pricing would be established before the Commission had an opportunity to review the pricing formula for the first time under the Postal Accountability and Enhancement Act (PAEA). The decision was made to submit this Request as a second product for inbound EMS rather than as an addition to the existing product (Inbound International Expedited Services 1). The Postal Service views this as a method to simplify the process of adding the product. Request, Attachment 2, at 2. He observes that the Commission could determine that inbound EMS from foreign posts with the established UPU prices should be included with the existing inbound EMS product (Inbound International Expedited Services 1). However, he states that with either approach, approval of the product will "improve the Postal Service's competitive posture, while enabling the Commission to verify that prices set according to EMS Cooperative procedures cover their attributable costs and make a positive contribution ...toward the requisite 5.5 percent of the Postal Service's total institutional costs paid for by competitive products." *Id.* at 2-3.

W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). Request, Attachment 4. He asserts that the EMS agreement "prices demonstrate that EMS should cover its attributable costs and preclude the subsidization of competitive products by market dominant products." *Id.*

The Postal Service filed much of the supporting materials, including the Governors' Decision and the EMS agreements with foreign posts, under seal. It maintains that the EMS agreements with foreign posts, related financial information, and

⁹ See Docket No. CP2008-7, PRC Order No. 84, Order Concerning the China Post Group Inbound EMS Agreement, June 27, 2008.

the Governors' Decision should remain under seal as they contain pricing, cost, and other information that are highly confidential. Request at 5.

The Postal Service's existing EMS agreements with the proposed pricing and classification changes established in the Governors' Decision are scheduled to take effect January 1, 2009 after review by the Commission. Governors' Decision at 3.

II. NOTICE OF FILINGS

The Commission establishes Docket Nos. MC2009-10 and CP2009-12 for consideration of the Request pertaining to the proposed Inbound International Expedited Services 2 product and the related agreements, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this Order; however, future filings should be made in the specific docket in which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR 3020 subpart B. Comments are due no later than December 5, 2008. The public portions of these filings can be accessed via the Commission's website (www.prc.gov).

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

It is Ordered:

1. The Commission establishes Docket Nos. MC2009-10 and CP2009-12 for consideration of the matters raised in each docket.
2. 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.
3. Comments by interested persons in these proceedings are due no later than December 5, 2008.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Steven W. Williams
Secretary