

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

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman; and  
Robert G. Taub

Competitive Product Prices  
Inbound EMS 2  
(MC2009-10)

Docket No. CP2014-58

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

(Issued August 1, 2014)

I. INTRODUCTION

The Postal Service proposes a change in rates not of general applicability for Inbound EMS 2, effective January 1, 2015.<sup>1</sup> For the reasons discussed below, the Commission approves the Postal Service's proposal.

II. BACKGROUND

Inbound EMS 2 covers EMS documents and merchandise received from foreign posts for delivery in the Postal Service's domestic delivery area. It was added to the

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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, July 11, 2014 (Notice).

competitive product list in 2008.<sup>2</sup> Prices reflect a formula set by Governors' Decision Nos. 08-20 and 11-6 pursuant to EMS Cooperative procedures under the Universal Postal Union (UPU).<sup>3</sup> Notice at 1.

Prices are applied pursuant to a tier structure. Tier 1a prices are available to EMS Cooperative members that participate in a Pay-for-Performance (PFP) Plan. Notice at 3. Tier 1b prices, which consist of discounted Tier 1a prices, are available to EMS Cooperative members that participate in a PFP Plan and agree to grant reciprocal discounts. *Id.* Tier 2 rates are available to posts not eligible for Tier 1a or 1b pricing. *Id.* Attachment 3 at 1. Participation in the PFP Plan may result in penalties if certain criteria are not met.

The instant Notice, which concerns price changes effective January 1, 2015, is the latest in an annual series the Postal Service has filed since the product's introduction. The timing of the Notice reflects an EMS Cooperative requirement that members provide advance notice of price changes and the Postal Service's recognition of the Commission's interest in adequate time for review.<sup>4</sup>

*Related Commission action.* In Order No. 2120, the Commission provided notice of the Postal Service's filing, appointed a Public Representative, and provided an opportunity for public comment.<sup>5</sup> In Chairman's Information Request No. 1, the Commission asked whether the Postal Service had incurred any financial penalties for Inbound EMS 2 in CY 2013, and whether the supporting financial workpapers filed in

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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). The product name was later changed to Inbound EMS 2 at the request of the Postal Service. See Docket No. CP2013-77, Order No. 1822, Order Approving Rate and Classification Changes for Inbound International Expedited Services 2, August 30, 2013.

<sup>3</sup> The EMS Cooperative is a voluntary group established in 1998 by the UPU's Postal Operations Council. The Postal Service is a member of this group.

<sup>4</sup> Prices are to be communicated to the UPU by August 31 of the calendar year before they take effect. See Notice at 2 n.6.

<sup>5</sup> Notice and Order on Changes in Rates Not of General Applicability, July 14, 2014 (Order No. 2120).

this case included potential penalties.<sup>6</sup> The Commission also asked the Postal Service to provide the following documents: the CY 2015 PFP Plan (or latest available Plan); the Postal Service's annual EMS Cooperative Report Card (Report Card) for CY 2013; and any available CY 2014 quarterly Report Cards.<sup>7</sup>

In response to CHIR No. 1, the Postal Service acknowledged that it incurred PFP financial penalties in CY 2013.<sup>8</sup> Responses to CHIR No. 1 at 2. It stated that the financial workpapers accompanying its Notice do not model potential PFP financial penalties in CY 2015. *Id.* The Postal Service also provided the requested documents.

### III. COMMENTS

The Public Representative filed comments on July 21, 2014.<sup>9</sup> No other comments were received. The Public Representative concludes, based on her review of the filing, that the Notice demonstrates the proposed prices are: (1) not cross-subsidized by market dominant products; (2) expected to cover costs; and (3) expected to provide the required contribution to institutional costs. PR Comments at 2. She, therefore, concludes that the Postal Service's proposal appears to meet the requirements of 39 U.S.C. § 3633. *Id.*

### IV. COMMISSION ANALYSIS

The Commission has reviewed the Notice; the accompanying financial analysis provided under seal; the Public Representative's comments; and the Postal Service's response to CHIR No. 1.

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<sup>6</sup> See Chairman's Information Request No. 1, July 22, 2014 (CHIR No. 1).

<sup>7</sup> The annual Report Card demonstrates the extent to which the Postal Service met specified criteria under the PFP Plan and any consequent financial penalties applied during the respective calendar year. The criteria include delivery performance, tracking, Call Center; EMS customs information; and EMS service performance.

<sup>8</sup> Responses of the United States Postal Service to Chairman's Information Request No. 1, July 25, 2014 (Responses to CHIR No. 1).

<sup>9</sup> Public Representative Comments on Postal Service Notice of Filing Changes in Rates Not of General Applicability for Inbound EMS 2, July 21, 2014 (PR Comments).

*Statutory and regulatory requirements.* Planned price changes for competitive products are reviewed pursuant to 39 U.S.C. § 3633(a)(1)—(3) and the Commission's implementing regulations at 39 C.F.R. § 3015.

The Commission has reviewed the financial model, and finds that the financial results demonstrate consistency with the applicable statutory criteria under the assumption that the Postal Service will not incur any PFP financial penalties in CY 2015.

Under this assumption, the Commission finds that the proposed prices are expected to comply with statutory criteria requiring that competitive products are not cross-subsidized by market dominant products; cover costs; and make a contribution to overhead.<sup>10</sup> See 39 U.S.C. § 3633(a)(1) through (a)(3). However, if financial penalties are incurred, the financial results would change to some degree, and could affect conclusions about consistency with the statutory criteria.<sup>11</sup>

The Commission observes that the financial model projecting CY 2015 financial results does not appear to include an adjustment for any PFP penalties, and therefore expected revenues could be overstated. In this regard, the Commission recognizes that the extent of penalties — if incurred during CY 2015 — cannot be known with precision and, based on recent performance history, are likely to be small. For example, the Commission notes that a review of the FY 2013 financial results for the Inbound EMS 2 product, which included penalties actually incurred by the Postal Service, show that the product covered costs. FY 2013 Annual Compliance Determination at 89. In addition, a preliminary Commission analysis (using a single factor as a final adjustment to revenues) also suggests that incorporating penalties into the financial workpapers in the instant docket should not cause projected CY 2015 cost coverage to fall below 100 percent. Thus, assuming that PFP penalties incurred in CY 2015 will not be significantly

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<sup>10</sup> The Postal Service's cost coverage scenario also assumes the greatest possible discount to all current PFP agreement holders. Notice at 3.

<sup>11</sup> The Postal Service incurred such penalties in CY 2013 (the most recent calendar year for which data is available).

different than the penalties incurred in CY 2013, the new Inbound EMS 2 rates should cover costs.

For these reasons, the Commission concludes that the new Inbound EMS 2 rates comply with the requirements of 39 U.S.C. § 3633(a).

*Future filings.* The Commission's review of the financial models filed in similar cases indicates that in the first four filings (for rates effective in CY 2009 through CY2012), the Postal Service included a PFP penalty factor projecting remuneration to the Postal Service. The impact of these factors was quite small.<sup>12</sup> In its filings for Inbound EMS 2 rates effective CY 2013 through CY 2015, the Postal Service did not include a PFP factor in its financial models.<sup>13</sup> For CY 2013 and CY 2014, the absence of a penalty factor may reflect the absence of penalties, but the Postal Service's filings for the referenced years do not appear to explicitly address this point. However, for CY 2015 rates, the Postal Service acknowledges incurring PFP penalties for CY 2013—the most recent year for which performance results are available—but those penalties are not reflected in the model or otherwise explained.

To promote clarity and facilitate prompt review, the Postal Service must provide additional supporting explanation and revise its financial workpapers in future filings concerning rate changes not of general applicability for this product. Specifically, the Postal Service is to provide an affirmative statement addressing whether PFP penalties were incurred in the most recent calendar year for which annual performance results are available. In addition, the Commission directs the Postal Service to revise its financial model to capture, to the extent feasible, the potential for PFP penalties based upon performance results from the most recent annual Report Card. The approach

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<sup>12</sup> See Docket Nos. MC2009-10 and CP2009-12, CP2009-57, CP2010-90, and CP2011-66. In CY 2009 and CY 2010, Postal Service applied the same PFP factor. In CY 2011 and CY 2012, the Postal Service applied a slightly different factor to both models.

<sup>13</sup> See Docket Nos. CP2012-52, CP2013-77, and CP2014-58.

used in the early models for this product would appear to suffice, as long as an explanation of what the factor reflects is provided.<sup>14</sup>

The Postal Service shall also provide the most recent annual EMS PFP Plan available, along with the most recent annual Report Card and all available quarterly Report Cards for the calendar year preceding the effective date of the Inbound EMS 2 rates that are the subject of the filing.

## V. ORDERING PARAGRAPHS

*It is ordered:*

1. The proposed rates for Inbound EMS 2 scheduled to take effect January 1, 2015 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. In future filings concerning changes in rates not of general applicability for the Inbound EMS 2 product, the Postal Service is to provide the additional information and supporting documentation described in the body of this Order.

By the Commission.

Ruth Ann Abrams  
Acting Secretary

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<sup>14</sup> For example, to the extent any PFP penalties are modeled as a single factor, the Postal Service should explain the development of such factor.