

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  
Inbound Express Mail International (EMS)  
Originating from Foreign Posts

Docket No. MC2009-10

Docket No. CP2009-12

ORDER ADDING INBOUND INTERNATIONAL EXPEDITED SERVICES 2 TO  
COMPETITIVE PRODUCT LIST

(Issued December 31, 2008)

The Postal Service seeks to add a new product identified as Inbound International Expedited Services 2 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

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.<sup>1</sup> The Postal Service asserts that Inbound International

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<sup>1</sup> 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).

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 classifications not of general applicability for Inbound Express Mail International (EMS) originating from foreign posts.<sup>2</sup> The Governors' Decision establishes EMS prices pursuant to the Universal Postal Union's (UPU) EMS Cooperative procedures which permit each participating destination postal administration to change its charges effective January 1 of each year by notifying its partners directly or through the UPU's International Bureau by August 31 of the year prior to the effective date.<sup>3</sup> The Postal Service generally provides notice through the UPU International Bureau. Governors' Decision at 1, n.2.

Under the EMS Cooperative procedures, destination posts set prices for the following three pricing tiers:

1. Pay-For-Performance. Available EMS Cooperative members who elect to comply with pay-for-performance provisions. These rates also will apply to members of the Kahala Post Group;<sup>4</sup>
2. EMS Cooperative. EMS Cooperative members who elect not to comply with pay-for-performance provisions; and

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<sup>2</sup> 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. Request at 4, n.9.

<sup>3</sup> Request, Attachment 1, at 1, see *also* Request at 2.

<sup>4</sup> The Kahala Post Group is a group of postal administrations that in 2003 agreed to work together to improve international postal services, particularly for express and package services.

3. All Others. International posts who choose not to be members of the EMS Cooperative.

Request at 2.

With the exception of Inbound International Expedited Services 1 involving a bilateral agreement with the China Post Group, the Postal Service proposes that the three price tiers applicable to EMS for foreign posts whose prices are set pursuant to this process be classified as a single product, Inbound International Expedited Services 2.<sup>5</sup>

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.<sup>6</sup> The Postal Service also filed a Statement of Supporting Justification as required by 39 CFR 3020.32,<sup>7</sup> certification of the Governors' vote,<sup>8</sup> and certification of compliance with 39 U.S.C. 3633(a).<sup>9</sup> In addition, the Postal Service 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, discusses the possibility that the Postal Service could have requested that the new product be merged with Inbound International Expedited Services 1. He notes that the prices for inbound EMS are established through bilateral negotiation (*e.g.*, China Post Group) or unilaterally pursuant to the EMS Cooperative procedures.

He further states that the Request recognizes that the "price changes for EMS were locked down in August 2008 and this is the first experience putting prices set by

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<sup>5</sup> Request at 4. See PRC Order No. 84, Order Concerning the China Post Group Inbound EMS Agreement, Docket No. CP2008-7, June 27, 2008.

<sup>6</sup> See Attachment 1 to the Request.

<sup>7</sup> See Attachment 2 to the Request.

<sup>8</sup> See Attachment 3 to the Request.

<sup>9</sup> See Attachment 4 to the Request.

this method through Commission review under the [Postal Accountability and Enhancement Act (PAEA)].” Request, Attachment 2, at 2. The Postal Service views its Request as the simplest approach. *Id.* He observes, however, that the Commission could determine that inbound EMS from foreign posts be included with the existing inbound EMS product (Inbound International Expedited Services 1). Hutchins concludes that either approach “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 to coverage of institutional costs.” *Id.* at 2-3.

W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the Inbound EMS prices comply 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 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 classification changes established for existing EMS agreements (except for the China Post Group) in the Governors’ Decision are scheduled to take effect January 1, 2009 after review by the Commission. Governors’ Decision at 3.

In Order No. 141, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.<sup>10</sup> The

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<sup>10</sup> PRC Order No. 141, Notice and Order Concerning Adding Inbound International Expedited Services 2 to Competitive Product List, December 1, 2008 (Order No. 141).

Postal Service responded to the Chairman's Information Request No. 1 on December 12, 2008. It filed an errata on December 18, 2008.<sup>11</sup>

## II. COMMENTS

Comments were filed by the Public Representative and International Transport Solutions, Inc. (ITS). The Postal Service filed a reply to ITS' comments.<sup>12</sup>

The Public Representative focuses principally on confidentiality and the adequacy of cost coverage in the agreement.<sup>13</sup> Public Representative Comments 2-4. The Public Representative concludes that the Postal Service provides sufficient justification for the filing of materials under seal. He further notes that the cost coverage in the agreement should generate sufficient revenue so that there is no subsidization of international inbound EMS negotiated service agreements by market dominant products. Public Representative Comments at 4.

ITS is in the international mail consolidation industry.<sup>14</sup> Its market represents the import and export of bulk international mail generated from organizations. ITS Comments at 1. It focuses on section 407(e)(2) of title 39 regarding application of customs laws to shipments of competitive products by the Postal Service and similar shipments by private companies. It contends that the Postal Service enjoys special regulatory advantages not available to others which it states is in direct contradiction to the requirements of the PAEA. ITS asserts the Postal Service enjoys singular customs

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<sup>11</sup> Response of United States Postal Service to Chairman's Information Request No. 1 and Notice of Filing Responsive Materials (Under Seal), December 12, 2008; United States Postal Service Notice of Filing Errata to Response to Chairman's Information Request No. 1, and Notice of Filing Errata to Financial Materials (Under Seal), December 18, 2008.

<sup>12</sup> Reply to Comments of William Gensburg of International [Transport] Solutions, December 15, 2008 (Postal Service Reply).

<sup>13</sup> Public Representative Comments in Response to United States Postal Service Request to Add Inbound International Expedited Services 2 to the Competitive Product List, and Establishment of Rates and Classifications Not of General Applicability, December 5, 2008 (Public Representative Comments).

<sup>14</sup> Comments of William Gensburg of International Transport Solutions, Inc., December 9, 2008 (ITS Comments). This filing was accompanied by a Motion for Late Acceptance of Comments of William Gensburg of International Transport Solutions, Inc. pursuant to Order No. 141, December 9, 2008. The motion is granted.

advantages for all international mail. *Id.* ITS concludes that approval of the Inbound International Expedited Services 2 product will not comport with the PAEA's mandate until the customs laws of the United States change so that all shipments by international delivery companies, including the Postal Service, are treated equally. *Id.* at 1-2.

In its reply, the Postal Service contends that ITS has not shown that it is a "private company" within the context of 407(e)(1) or shown that it makes similar shipments to those imported or exported by the Postal Service. Postal Service Reply at 1. The Postal Service also argues that the organization does not present issues which are proper for consideration by the Commission or address whether the operational agreements or UPU-managed price setting procedures comply with 39 U.S.C. 3633. *Id.* at 2. It further contends that ITS does not provide information on consumer or small business concerns about the placement of the product on the Competitive Product List. The Postal Service argues that section 407(e)(2) of title 39 is not relevant to this proceeding. *Id.*

### III. COMMISSION ANALYSIS

The Commission has reviewed the contract, the financial analysis provided under seal that accompanies it, the supplemental information filed by the Postal Service in response to the Chairman's Information Request No. 1, and the parties' comments.

The Commission's statutory responsibilities in this instance entail assigning Inbound International Expedited Services 2 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the PAEA, including sections 3632, 3633, and 3642 of title 39.

*Product list assignment.* In determining whether to assign the Inbound International Expedited Services 2 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially

above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns.

39 U.S.C. 3642(b)(3).

The Postal Service describes the product as involving Inbound Express Mail International from foreign posts for delivery in the Postal Service's domestic service area. It proposes that it be added as a new competitive product called Inbound International Expedited Services 2. Request at 1, Attachment 2 at 1. The Postal Service asserts that it does not have the market power to set its prices substantially above costs, to raise prices significantly, or to decrease quality of output. Request, Attachment 2, at 3. It asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. *Id.*

The Postal Service argues inbound EMS falls outside the Private Express Statutes. It suggests that the relevant market can be served by "[p]rivate consolidators, freight forwarders, and integrators" who offer "quick end-to-end delivery of matter that could also be sent and delivered via EMS." *Id.* at 4.

Based on his review of the filing, the Public Representative concludes that the Postal Service's proposal complies with title 39, and that its Request fulfills all relevant requirements of the Commission Rules of Practice and Procedure. Public Representative Comments at 5.

ITS does not oppose the classification of Inbound International Expedited Services 2 as a competitive product. Rather, it argues that accepting the Postal

Service's request "cannot comport with the PAEA's mandate" until customs laws change so that shipments for the Postal Service and competing international delivery companies are treated equally. ITS Comments at 2. While the Commission appreciates ITS' concerns, the issues it raises are beyond the scope of this proceeding. The issues presented by the Postal Service's filing are whether the proposal is consistent with the policies of sections 3632, 3633, and 3642 of title 39. If ITS believes that the regulatory advantages it cites fall within the Commission's purview, it would need to develop its claim more fully.

Having considered the statutory requirements, comments filed by the parties and the support offered by the Postal Service, the Commission finds that Inbound International Expedited Services 2 is appropriately classified as a competitive product and should be added to the Competitive Product List.

*Cost considerations.* The Governor's Decision states that the price floor formula provides greater than 100 percent coverage of the costs attributable to each of the price tiers. *Id.* Attachment 1 at 2. The Postal Service provided data under seal which permitted analysis of the underlying agreements individually, by tier, and as a whole. The Postal Service's Representative, W. Ashley Lyons, certifies that the price formula is designed to ensure that each agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products.

Based on the data submitted and the comments received, the Commission finds that Inbound International Expedited Services 2 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of Inbound International Expedited Services 2 indicates that it comports with the provisions applicable to rates for competitive products.

*Procedural considerations.* The Postal Service indicates that the EMS prices established by the Governors are produced pursuant to EMS Cooperative procedures. Report, Attachment 1 at 1. The EMS Cooperative is a voluntary group established by

the UPU's Postal Operations Council. *Id.* at 1, n.1. Hutchins notes that the Request represents the "first experience putting prices set by this method through Commission review under the PAEA." *Id.*, Attachment 2 at 2. The Commission has concerns with the timing of the Request.

The EMS Cooperative requires that new rates to take effect January 1 of the coming year be communicated to the UPU and EMS partners by August 31. There is no opportunity for an EMS Cooperative member to change its rates for the coming year after August 31. The Postal Service notes that the EMS prices for 2009 "were locked down in August 2008." *Id.* at 4, n.9. The Commission's subsequent review of these rates after August 31 is therefore problematic. If a product is found to violate the PAEA, *e.g.*, does not satisfy section 3633(a)(2), the Postal Service may be without a suitable remedy until the next rate change is permitted for the following year, in this case 2010. However, no change of filed rates is required in this record.

In response to Order 84, the Postal Service filed a list of ongoing International Expedited Services Agreements.<sup>15</sup> The Postal Service is directed to file a similar public list organizing the instant agreements to be grouped under each of the three tiers of Inbound International Expedited Services 2. The Postal Service should also notify the Commission on a quarterly basis of additional participation by postal administrations in Pay-For-Performance and the effective date. The Postal Service shall also promptly notify the Commission if the prices terminate earlier than December 31, 2009, but no later than the actual termination date.

The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

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<sup>15</sup> See Docket No. 2008-7, United States Postal Service Response to Order No. 84 and Notice of Filing Ongoing Inbound International Expedited Services Agreements, July 23, 2008

*It is Ordered:*

1. Inbound International Expedited Services 2 (MC2009-10 and CP2009-12) is added to the Competitive Product List as a new product under Express Mail, Inbound International Expedited Services.
2. As discussed in the body of this Order, the Postal Service shall file a list of the instant agreements to be grouped under each of the three price tiers.
3. The Postal Service shall notify the Commission if any prices terminate earlier than December 31, 2009, and of changes to countries listed in each of the three price tiers on a quarterly basis.
4. The Secretary shall arrange for the publication of this Order in the *Federal Register*.

By the Commission.

Steven W. Williams  
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE  
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified at 39 CFR Appendix to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2009-10 and CP2009-12. The underlined text signifies that the text is new, and shall appear in addition to all other Mail Classification Schedule text.

PART B—Competitive Products

2000 Competitive Product List

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Express Mail

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Inbound International Expedited Services

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Inbound International Expedited Services 2 (MC2009-10 and CP2009-12)

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