

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Amendments to
Rules of Practice

Docket No. RM2020-4

PUBLIC REPRESENTATIVE MOTION
FOR ISSUANCE OF INFORMATION REQUEST

(March 3, 2020)

Pursuant to 39 CFR § 3001.21(a) and 39 CFR § 3001.100-101, the Public Representative requests that an Information Request be issued to obtain additional clarifying data and information from the Postal Service concerning regulations, advisory opinions or other administrative directives relating to Parts 310 and 320 of the Postal Service regulations that it may have issued since the effective date of 39 U.S.C. §601(b) and 601(c).

The Postal Accountability and Enhancement Act (PAEA), Pub.L.109-435, 120 Stat. 3198 (2006), § 503 provided that letters may be carried out of the mails that meet prescribed price and weight requirements and also codified certain Postal Service regulations effective as of certain dates that purport to permit private carriage of letters out of the mails by suspension of the operation of § 601 of title 39. The legislation also provides in 39 U.S.C. § 601(c) that, “any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.”

In this proceeding, the Commission has inquired whether additional regulations are necessary to carry out the intent of 39 U.S.C. § 601(b) and § 601(c), enacted over 13 years ago by the PAEA.¹ The Commission has posed several questions that require additional information from the Postal Service to assist the Commission in considering questions in Order No. 5422, particularly questions 2, 3 and 14. Order No. 5422 at 7-8.

¹ Advance Notice of Proposed Rulemaking to Consider Regulations to Carry Out the Statutory Requirements of 39 U.S.C. § 601, February 7, 2020 (Order No. 5422).

Questions 2 and 3 ask whether additional regulations are necessary to carry out the intent of 39 U.S.C. § 601(b) and § 601(b)(3). Question 14 asks whether the Commission should adopt regulations that replicate the Postal Service's regulations at 39 CFR 310.1 and 320.2 through 320.8.

The proposed questions seek information that will allow participants to provide comments that are more constructive and assist the Commission in evaluating the applicable legal and regulatory requirements. Obtaining this information will also contribute to a better understanding of how the Postal Service has interpreted the legislation that requires the Commission to promulgate any necessary regulations to carry out § 601.

1. Questions relating to 39 U.S.C. § 601(b)(1) and (b)(2).
 - a. Has the Postal Service issued regulations or other administrative directives incorporating the provisions of § 601(b)(1) and § 601(b)(2)?
 - b. If the answer to question 1(a) is yes, please identify those regulations, the date of issuance, and their location.
 - c. If the answer to question 1(a) is yes, did the Postal Service obtain approval, coordinate or otherwise communicate about those regulations with the Postal Regulatory Commission prior to issuing those regulations?
 - d. If the answer to question 1(c) is no, please explain why the Postal Service did not do so.
2. Section 310.6 of title 39 of the Postal Service's regulations provides that an advisory opinion on any question arising under Part 310 and Part 320 of the Postal Service's regulations may be obtained by writing to its General Counsel and that a numbered series of advisory opinions is available for public inspection in the Postal Service's library and copies are available for a duplication charge.
 - a. Are the advisory opinions available electronically on the Postal Service's website? If not, what plans are there to place those opinions on the website? If there are no plans, why not?

- b. Please describe the advisory opinions in terms of the number and size of opinions and types of questions answered in the advisory opinions, particularly whether they interpret the provisions of § 601 to permit letters to be carried out of the mails.
 - c. Have any advisory opinions been issued since the effective date of § 601(c) of title 39? If so, please provide copies of all advisory opinions issued since the effective date of § 601(c).
 - d. If any advisory opinions have been issued since the effective date of § 601(c) of title 39, did the Postal Service obtain approval, coordinate or otherwise communicate with the Postal Regulatory Commission regarding those opinions prior to issuing the advisory opinions? If not, please explain why not.
 - e. Have any advisory opinions been issued since July 1, 2005? If so, please provide copies of all advisory opinions that became effective since that date.
3. Section 310.2(c) of title 39 of the Postal Service's regulations provides that, "The Postal Service may suspend the operation of any part of paragraph (b) of this section where the public interest requires the suspension." Subsection (b) of section 310.2 provides the characteristics of when a letter may be carried out of the mails as well as permits written agreement between the shipper or carrier and the Postal Service for the carriage of letters out of the mails.
- a. Has the Postal Service suspended the operation of subsection (b) of Section 310.2 since the effective date of the Commission's regulations promulgated under 39 U.S.C. § 3633 (December 10, 2007)? If so, please provide a copy of any suspension orders.
 - b. Does the Postal Service believe that it may continue to suspend the operation of subsection (b) of section 310.6 without Commission authority pursuant to regulations promulgated under 39 U.S.C. § 601(c)? If so, please explain.

Respectfully submitted,

Kenneth E. Richardson
Public Representative

901 New York Avenue, N.W., Suite 200
Washington, DC 20268-0001
Phone (202) 789-6859
Email: richardsonke@prc.gov