

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

AMENDMENTS TO RULES OF PRACTICE

Docket No. RM2020-4

**RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO MOTION OF THE ASSOCIATION FOR POSTAL COMMERCE**

(March 30, 2020)

On March 23, 2020, the Association for Postal Commerce (PostCom) moved to hold this proceeding in abeyance, with the pending deadline for comments extended indefinitely. PostCom pointed to the ongoing COVID-19 outbreak, which is both constraining resources for and imposing increased demands upon the Commission and all stakeholders, as a reason to defer all non-essential matters. PostCom characterizes this proceeding as just such a non-essential matter, given that the lack of regulations on 39 U.S.C. § 601 has bred no apparent confusion or other issues in the fourteen years since that statute's revision.

PostCom is absolutely correct on these counts. The Commission initiated this proceeding on its own discretion, and it was not prompted by a dispute or inquiry from any stakeholder. Indeed, judging from publicly noticed proceedings and communications, it does not appear that the Commission has received any stakeholder query or complaint about Section 601 since its revision in 2006, and as the Postal Service's response to Chairman's Information Request No. 1 demonstrates, even informal inquiries to the Postal Service have been sparse (and apparently have not led stakeholders to seek authoritative resolution from the Commission). As a predicate for this proceeding, the Commission invokes a pair of generic observations in reports by

other governmental bodies,¹ coupled with interpretive questions that arose in proceedings concerning the use of Section 601 standards in postal product classification, rather than in administration of Section 601 itself. See Order No. 5422 at 5-6 (discussing relevant cases). There is nothing to suggest that “[a]ny regulations [are] necessary to carry out” Section 601 at this time. See 39 U.S.C. § 601(c).

Moreover, the Commission’s advance notice of proposed rulemaking proposes inquiry on potential areas for statutory revision.² Those are not proper subjects for a rulemaking; if anything, they could be explored in a public inquiry docket, such as the one that will be conducted next year in advance of the Commission’s Section 701 report to Congress, which will focus expressly on legislative recommendations. See Pub. L. No. 109-435, § 701(a), 120 Stat. 3198, 3242.

For all of these reasons, the Postal Service supports PostCom’s motion.³

¹ Order No. 5422, Advance Notice of Proposed Rulemaking to Consider Regulations to Carry Out the Statutory Requirements of 39 U.S.C. 601, PRC Docket No. RM2020-4 (Feb. 7, 2020), at 5 (citing Task Force on the U.S. Postal Serv., United States Postal Service: A Sustainable Path Forward 33 (2018), and Gov’t Accountability Off., GAO-17-543, U.S. Postal Service, Key Considerations for Potential Changes to USPS’s Monopolies 8 (2017)).

² In particular, questions 3, 4, and 10 could be construed to inquire into potential changes to the regulations codified by 39 U.S.C. § 601(b)(3), or otherwise to alter the legislative scope of the letter monopoly; questions 5-7 and 12-13 ask policy questions about the public impact and relevance of the monopoly; and questions 11 and 12 expressly ask about whether statutory requirements should be changed. See Order No. 5422 at 7-8. The relevant text and legislative history are clear that Congress reserved to itself, rather than delegating to the Commission, the power to revise the substantive scope of the monopoly. 39 U.S.C. § 601(b)(3) (codifying regulatory exceptions and the definition of “letter”); H.R. REP. NO. 109-66, pt. 1, at 57-58 (2005); S. REP. NO. 108-318, at 32, 39 (2004).

³ It should go without saying that the reasons to dismiss or defer this proceeding do not apply to Docket No. RM2017-3, which PostCom also joined a motion to hold in abeyance. See Joint Motion to Hold Proceeding in Abeyance, PRC Docket No. RM2017-3 (Mar. 23, 2020). This rulemaking is discretionary and concerns a matter on which no party has sought a rulemaking; moreover, it is at an early stage, when pending and future comment deadlines would consume stakeholders’ resources. By contrast, Docket No. RM2017-3 concerns a matter of vital importance to the financial stability of the Postal Service and to the achievement of important statutory objectives: a deficiency that has persisted for three and a half years since the Commission determined its existence. Moreover, Docket No. RM2017-3 is now in the Commission’s hands; no stakeholder need devote any resources to it now or, in all likelihood, for some time after issuance of a final rule. Thus, dismissal of this docket has no bearing on maintenance of Docket No. RM2017-3.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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