

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

Before Commissioners:

Ashley E. Poling, Vice Chairwoman;
Mark Acton;
Ann C. Fisher; and
Robert G. Taub

Regulations Pertaining to 39 U.S.C. § 601

Docket No. RM2020-4

NOTICE OF PROPOSED RULEMAKING FOR REGULATIONS
PERTAINING TO SECTION 601

(Issued November 24, 2021)

I. INTRODUCTION

The Commission initiated this proceeding to determine whether regulations promulgated by the Commission may be necessary to carry out the requirements of 39 U.S.C. 601.¹ Section 601 describes instances when letters may be carried out of the mail, or when the letter monopoly does not apply to a mailpiece. For the reasons set forth below, the Commission proposes new rules, which appear after the signature of this Order.

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).

II. BACKGROUND

The Postal Service has exclusive rights in the carriage and delivery of letters under certain circumstances.² This letter monopoly is codified in the Private Express Statutes (PES), a group of civil and criminal statutes that make it unlawful for any entity other than the Postal Service to send or carry letters. See 18 U.S.C. 1693-1699; 39 U.S.C. 601-606.³

Prior to the Postal Accountability and Enhancement Act (PAEA) of 2006, the Postal Service issued regulations that purported to suspend the PES.⁴ These regulations provided definitions of important terms, including the definition of the term “letter.” 39 CFR 310.1(a) (2005). The regulations also described several statutory exceptions to the letter monopoly, such as when the letter accompanies and relates to cargo or when a special messenger is used. See 39 CFR 310.3 (2005). In addition, the regulations purported to establish administrative suspensions of the PES (39 CFR 310.1(a)(7) n.1, 320 (2005)), including suspensions for certain data processing materials or for extremely urgent letters. See 39 CFR 320.2, 320.6 (2005). These regulations were originally promulgated by the Postal Service in 1974 and were amended several times prior to enactment of the PAEA.⁵

In 2006, Congress passed the PAEA, which *inter alia*, added new price and weight limits to the monopoly, repealed the Postal Service’s purported authority to adopt

² This exclusive right is known as the “letter monopoly.” The Commission has previously discussed the background and history of the letter monopoly. See Order No. 5422 at 2-4.

³ Although these provisions of the U.S. Code are customarily referred to collectively as the “PES,” they do not all relate to private expresses or prohibit carriage of letters out of the mails.

⁴ See Postal Accountability and Enhancement Act, Pub. L. 109-435, 120 Stat. 3198 (2006); see also 39 CFR 310, 320 (2005). The PAEA included the term “purport” to describe the Postal Service’s efforts to suspend the PES, reflecting some disagreement between the Postal Service and policymakers about the Postal Service’s authority to promulgate such regulations prior to the PAEA. See H.R. Rep. No. 109-66, 109th Cong., 1st Sess., pt. 1, at 58 (2005) (H.R. Rep. No. 109-66).

⁵ See Comprehensive Standards for Permissible Private Carriage, 39 Fed. Reg. 33211 (Sept. 16, 1974).

administrative suspension of the monopoly, and repealed the Postal Service's authority to implement provisions of the criminal code defining the scope of the monopoly.⁶

In addition to adding price and weight limits as exceptions, Congress added a "grandfather clause" in Section 601(b)(3) to authorize the continuation of private activities that the Postal Service had purportedly permitted by regulations to be carried out of the mail.⁷ Congress also eliminated the Postal Service's authority to adopt any regulations creating exceptions or defining the scope of the monopoly. See 39 U.S.C. 401(2), 404(a)(1), 601. Instead, Congress gave the Commission the authority to promulgate any regulations necessary to carry out the section.⁸

Accordingly, Section 601(a) sets forth the conditions under which a letter may be carried out of the mail, which include requiring that the letter be enclosed in an envelope, that the proper amount of postage is affixed to the envelope, and that the postage is canceled. 39 U.S.C. 601(a).

Section 601(b) provides the price and weight limitations such that the letter monopoly does not apply to letters charged more than six times the current rate for the first ounce of a Single-Piece First-Class Letter or to letters weighing more than 12.5 ounces. See 39 U.S.C. 601(b)(1), (b)(2). As discussed above, the "grandfather clause" in Section 601(b)(3) references exceptions from the Postal Service regulations that purported to permit private carriage as in effect on July 1, 2005. 39 U.S.C. 601(b)(3); see also 39 CFR 310.1; 39 CFR 320.2-320.8 (2005).

⁶ See H.R. Rep. No. 109-66 at 57. Congress stated that "the bill clarifies the scope of the statutory monopoly that historically has been defined solely by the [Postal Service]." *Id.* at 58.

⁷ The House Report on the PAEA explains that the clause protects mailers and private carriers who had relied upon the regulations adopted as of the date of the bill. See H.R. Rep. No. 109-66 at 58.

⁸ 39 U.S.C. 601(c). See Docket Nos. MC2012-14 and R2012-8, Order Approving Addition of Valassis Direct Mail, Inc. Negotiated Service Agreement to the Market Dominant Product List, August 23, 2012, at 6-7 (Order No. 1448) (citing Section 601(c) and stating that the Postal Service no longer has authority to issue regulations interpreting or defining the postal monopoly); see also Docket No. MC2012-13, Order Conditionally Granting Request to Transfer Parcel Post to the Competitive Product List, July 20, 2012, at 6-7 (Order No. 1411) ("As a result of the PAEA, the Postal Service no longer has authority to issue regulations interpreting or defining the postal monopoly. The Commission now has the authority to promulgate such regulations."). Order No. 1411 at 7 n.13.

Section 601(c) directs the Commission to promulgate any regulations necessary to carry out this section. 39 U.S.C. 601(c). This rulemaking and the public inquiry in Docket No. PI2021-2 sought to answer how the Commission shall meet this statutory requirement.

III. PROCEDURAL HISTORY

On February 7, 2020, the Commission issued Order No. 5422, seeking input from the public about what regulations promulgated by the Commission may be necessary to carry out the requirements of 39 U.S.C. 601. In particular, the Commission sought comments on 14 issues, such as whether the statutory requirements of Section 601 are clear and concise, whether any terms in the statute required further definition, and whether consumers and competitors can easily determine when a mailpiece is subject to monopoly protections. Order No. 5422 at 7-8.

Prior to the comment deadline, the Commission issued two Chairman's Information Requests, regarding certain Postal Service regulations.⁹ In its response, the Postal Service explained that it had not issued regulations or other administrative directives in connection with Sections 601(b)(1) and (2) since the effective date of amended Section 601(b).¹⁰ The Postal Service also provided information regarding alternative payment agreements pursuant to 39 CFR 310.2(b).¹¹ In addition, the Postal Service provided information regarding advisory opinions pursuant to 39 CFR 310.6. Response to CHIR No. 1, question 2.

The Commission received a wide range of comments in response to Order No. 5422, but found it necessary to gather more information before promulgating regulations

⁹ Chairman's Information Request No. 1, March 4, 2020 (CHIR No. 1); Chairman's Information Request No. 2, April 1, 2020 (CHIR No. 2).

¹⁰ Responses of the United States Postal Service to Questions 1-3 of Chairman's Information Request No. 1, March 11, 2020, question 1 (Response to CHIR No. 1).

¹¹ Response to CHIR No. 1, question 3; see *also* Response of the United States Postal Service to Chairman's Information Request No. 2, April 3, 2020, question 1 (Response to CHIR No. 2).

under Section 601. Thus, the Commission held this docket in abeyance and initiated a public inquiry seeking further input from the public.¹² In particular, the Commission sought comments on two issues: (1) whether Postal Service regulations administering current Sections 601(a), 601(b)(1), and 601(b)(2) should be adopted by the Commission; and (2) what private carrier services are within the scope of Section 601(b)(3). For both issues, the goal of the Commission was to determine whether it is necessary to clarify the statutory exemptions regarding the letter monopoly. The Commission sought information as to how best to resolve any ambiguities in the application of the exceptions. The Commission also inquired whether consolidating regulations and definitions under one section, rescinding redundant and/or conflicting sections, or standardizing the terminology used in the regulations would be helpful. The comment period in the public inquiry closed on August 26, 2021.

Having received adequate input from the public in order to propose regulations in this docket, the Commission issued an order, filed concurrently with this order, closing the public inquiry docket.¹³

IV. SUMMARY OF COMMENTS

The Commission appreciates the thoughtful and detailed responses from commenters regarding this important topic. Brief summaries of the comments received in both proceedings are below.

¹² See Order Holding Rulemaking in Abeyance, July 2, 2021 (Order No. 5929); Docket No. PI2021-2, Notice and Order Providing an Opportunity to Comment on Regulations Pertaining to 39 U.S.C. § 601, July 2, 2021 (Order No. 5930).

¹³ See Docket No. PI2021-2, Order Closing Docket, November 24, 2021 (Order No. 6046[^]).

A. Comments Received in this Proceeding

In this docket, 11 parties provided comments in response to Order No. 5422.¹⁴

The Berkshire Company. The Berkshire Company (TBC) states that it is not easy to determine when a mailpiece is subject to monopoly protections. TBC Comments at 2. It explains that the interrelationships between different regulations add to confusion and lack of clarity. *Id.* at 5. It notes that the current effect of the letter monopoly on consumers and small businesses is limited, but competitors have greater challenges. *Id.* at 2. It suggests that regulations and definitions be consolidated under one section, and redundant and/or conflicting sections be rescinded. *Id.* It further states that the definition of “letter” is not clear and should be further defined. *Id.* at 2, 3. TBC recommends that the Commission and Postal Service Board of Governors appoint a joint panel of postal executives, commissioners, and postal industry leaders to draft the definition of the term “letter,” update regulations that do not require changes to the law, and present those recommendations for updates to the two congressional oversight committees. *Id.* at 4. It further states that, with the consistent decline of letters, any changes to the protections provided by the regulations will only worsen the financial condition of the Postal Service. *Id.*

Taxpayers Protection Alliance. The Taxpayers Protection Alliance (TPA) states that there is no current, pressing issue with the definition of mail subject to the monopoly. TPA Comments at 1. It asserts that the Postal Service’s issues are not the

¹⁴ See Comments of the Berkshire Company in Response to Order No. 5442, April 6, 2020 (TBC Comments); Comments of Taxpayers Protection Alliance, April 6, 2020 (TPA Comments); Comments of American Consumer Institute Center for Citizen Research Regarding Docket No. RM2020-4 Submitted to the United States Postal Regulatory Commission, April 6, 2020 (ACI Comments); Comments of United Parcel Service, Inc. on Advance Notice of Proposed Rulemaking to Consider Regulations to Carry Out the Statutory Requirements of 39 U.S.C. § 601, April 7, 2020 (UPS Comments); Comments of FedEx Corporation, April 7, 2020 (FedEx Comments); Comments of Netflix, Inc., April 7, 2020 (Netflix Comments); Comments of Small Business & Entrepreneurship Council, April 7, 2020 (SBE Comments); Comments of the National Postal Policy Council and the National Association of Presort Mailers, April 7, 2020 (NPPC *et al.* Comments); Comments of the Association for Postal Commerce, April 7, 2020 (PostCom Comments); Comments of the United States Postal Service in Response to Order No. 5422, April 7, 2020 (Postal Service Comments); Public Representative Comments, April 7, 2020 (PR Comments).

result of unclear or excessively narrow monopoly guidelines, but rather due to a combination of poor management and ill-advised pricing policies. *Id.* It explains that consumers seem to have a clear understanding about which pieces of mail fall under the purview of the Postal Service. *Id.* TPA states that attempting to alter the monopoly regulations during this time would detract from pandemic response efforts and lead to unnecessary uncertainties. *Id.* at 2. TPA recommends that the Postal Service and the Commission work together to address these issues instead of deliberating over monopoly definitions that have served consumers well for generations. *Id.*

American Consumer Institute Center. American Consumer Institute Center (ACI) comments that the current mail system has been successful. ACI Comments at 1. It states that affirming the current statutes without any modifications or expansions to the current regulations would present further benefits to users through ensuring continued predictability and transparency in the mail system. *Id.* ACI further states that there is no immediate, nor prospective need to advance new rules with regard to letters carried out of the mail. *Id.* at 2.

United Parcel Service, Inc. United Parcel Service, Inc. (UPS) states that the Commission has statutory authority to issue regulations under Sections 503 and 601(c) to define terms such as “letter” more clearly and narrowly in a manner that would aid consumers, competitors, and the Postal Service. UPS Comments at 1. For example, it asserts that “letters” should be defined to cover only traditional paper objects like sheets and cards. *Id.* at 5. UPS also suggests that the Commission could use this docket to clarify the scope of the Postal Service’s rulemaking authority. *Id.* at 1-2. It asserts that consumers and competitors cannot easily determine when a mailpiece is subject to monopoly protections. *Id.* at 5. UPS explains that it is a burden on competitors and small businesses to assess and comply with complicated rules. *Id.* at 5-6.

FedEx Corporation. FedEx Corporation (FedEx) asserts that the Commission should not replicate the Postal Service’s regulations that purport to define the terms “letter” and “packet.” FedEx Comments at 1. Instead, it states that the Commission should issue new regulations under its own authority. *Id.* FedEx explains that these

regulations should enumerate in clear terms all instances where the private carriage of letters is permitted under Section 601. *Id.*

FedEx first provided a historical summary of the monopoly dating from its roots in pre-constitutional English common law to the PAEA provision on which this proceeding is based. *Id.* at 2-12. As to specific issues raised by the Commission, FedEx states that the Commission should consider regulations to clarify that the exemptions from the monopoly apply, such as when several letters are sent in a single package to a specific address, or when charges for private carriage are not assessed per letter. *Id.* at 13. FedEx further states that the Commission should also declare the Postal Service regulations in this area void. *Id.* at 14, 17. It also declares that the net effect of the monopoly is most likely to harm users of the mail by decreasing the incentives for efficiency and innovation. *Id.* at 14. Additionally, FedEx recommends that the Commission take into account the issue of the universal service obligation (USO) of the Postal Service. *Id.* at 15.

Netflix, Inc. Netflix, Inc. (Netflix) urges the Commission to retain for now the current definition of “letters” as articulated in Publication 542. Netflix Comments at 4. It states that, for mailers, this definition is understandable, clear, and easy to apply. *Id.* at 5. It further states that retaining the current definition would not foreclose carriers or the Postal Service from seeking clarifications of Section 601 suspensions from the Commission. *Id.* Netflix asserts that Section 601(c) authorizes the Commission to establish a process for carriers to seek interpretations of current suspensions from the Commission. *Id.* In addition, it further states that it is concerned with granting precedential effect to the Postal Service’s advisory opinions as these opinions are not accessible online and special arrangements must be made to view them. *Id.* Netflix also asks the Commission to refrain from adopting new, sweeping changes to the monopoly based on broad claims of competition from digital communications. *Id.* at 6.

Small Business & Entrepreneurship Council. Small Business & Entrepreneurship Council (SBE) comments that current guidelines have not precipitated undue stress, challenges, or concerns. SBC Comments at 1. It states that the established

frameworks for letter mail delivery are already clear, concise, and consistent with respect to the long-held collective understanding of small business communities. *Id.* It advises that further definition of letters carried out of the mail and changes to the scope of the monopoly would present only limited marginal benefits, while also introducing substantial unknown consequences in maintaining systems through which small businesses interact with their customers and partners, identify new clients, and complete deliveries. *Id.* at 1-2.

National Postal Policy Council and National Association of Presort Mailers. National Postal Policy Council and National Association of Presort Mailers (NPPC *et al.*) caution the Commission against using its regulatory authority to propose substantive changes at this time. NPPC *et al.* Comments at 1. They recommend that the Commission consider adopting regulations to simplify and clarify the existing regulatory scheme relating to Section 601. *Id.* They urge the Commission to not consider the PES regulations separately from other important national postal policies, such as the USO and the mailbox rule. *Id.* at 4.

In addition, NPPC *et al.* make specific recommendations. They suggest that the Commission issue regulations essentially identical to the Postal Service regulations with a notation that this is how those regulations appeared as of July 1, 2005, or, as an alternative, adopt a clarified and simplified version of those regulations with the July 1, 2005 version in a footnote. *Id.* at 10. They also suggest that the Commission consider adopting, essentially unchanged, the definition of “letter” as defined in 39 CFR 310.1. *Id.* at 10-11. They recommend that the Commission consider whether to adopt the current exclusions, exceptions, and suspensions of the statutes, or whether to standardize the terminology used while retaining the substance. *Id.* at 11. They further recommend that the Commission should address the status of PES advisory rulings issued in the past by the Postal Service. *Id.* They also ask that the Commission discuss whether the Commission believes it has the authority to modify the scope of permissible private carriage. *Id.* NPPC *et al.* conclude that to the extent the

Commission believes it has authority to make substantive “modernization” of the PES regulations, it should refrain from doing so at this time. *Id.* at 12.

Association for Postal Commerce. Association for Postal Commerce (PostCom) submits that there is no need to implement any regulations at this time. PostCom Comments at 1. It states that no rules implement Section 601 and no party has raised any issues regarding lack of clarity around the letter monopoly. *Id.* In addition, it states that the lack of Commission rules implementing Section 601 has not caused significant confusion in the marketplace. *Id.* It asserts that promulgating regulations to implement this section may create, rather than dispel, confusion. *Id.* at 2.

Postal Service. The Postal Service states that there is no need to issue regulations and most of the questions raised address issues that go well beyond the scope of the Commission’s authority under Section 601(c). Postal Service Comments at 1. The Postal Service states that, since the PAEA’s enactment, no party has petitioned the Commission to issue rules clarifying any aspect of Section 601, nor has any party filed a complaint alleging that the Postal Service has misapplied Section 601. *Id.* at 10. It explains that the substantial slowdown in requests for advisory opinions before and since the PAEA suggests that the public understanding of these statutory and regulatory provisions is fairly settled. *Id.* at 11. It avers that it is unclear why transfer of the letter monopoly regulations to a different part of title 39 of the Code of Federal Regulations (CFR) would be necessary or helpful. *Id.* The Postal Service submits that, given there is no clear need for regulatory change at this time, the best solution is simply to let the regulations remain as they are. *Id.* at 12. The Postal Service notes that it is well aware that Congress divested the Postal Service of regulatory authority over Section 601. *Id.*

Public Representative. The Public Representative provides an extensive background on the statutes, regulations, directives, and advisory opinions related to the letter monopoly. PR Comments at 3-9. However, he states that the Commission’s authority to promulgate regulations under Section 601(c) is neither clear nor unambiguous. *Id.* at 9.

He proffers several recommendations where the Commission might clarify regulations, propose new regulations, or undertake additional analysis. *Id.* at 61-62. For example, he suggests that a new regulation should be issued by either the Commission or the Postal Service to make clear that the Postal Service may approve only practices which are within the confines of interpreting existing regulations. *Id.* at 19, 60. He also states that additional regulations are needed to clarify that the Postal Service does not have authority under certain regulations, to modify regulations, or to suspend operation of the letter monopoly. *Id.* at 61. He comments that the Commission should add an affirmative statement within the regulations identifying the regulations effective as of the appropriate dates. *Id.* at 23, 61. He suggests that the Commission clarify the scope of Section 601(b)(3) such that it covers only those specific regulations that purport to permit private carriage of letters by suspension under 39 CFR 310.1, 39 CFR 320.2-.8, and any other regulations shown to have been based on the suspension authority. *Id.* at 26, 61. Further, he states that Commission regulations should seek to ensure there is a single source of authoritative regulations easily accessible by interested persons and that this source is transparent. *Id.* at 60, 62.

B. Comments Received in Docket No. PI2021-2

In the public inquiry, comments were received from five parties: James I. Campbell Jr., PostCom, the Lexington Institute, the Postal Service, and the Public Representative.¹⁵ Campbell and the Lexington Institute were the only parties that did not previously provide comments in this docket.

Campbell. Campbell submits that the PAEA repealed the Postal Service's rulemaking authority over both criminal statutes establishing the monopoly and

¹⁵ Docket No. PI2021-2, Comments of James I. Campbell Jr., August 26, 2021 (Campbell Comments); Docket No. PI2021-2, Comments of the Association for Postal Commerce, August 26, 2021 (Docket No. PI2021-2 PostCom Comment); Docket No. PI2021-2, Comments of the Lexington Institute, August 26, 2021 (LI Comments); Docket No. PI2021-2, Comments of the United States Postal Service in Response to Order No. 5930, August 26, 2021 (Docket No. PI2021-2 Postal Service Comments); Docket No. PI2021-2, Public Representative Comments, August 26, 2021 (Docket No. PI2021-2 PR Comments).

exceptions to the monopoly set out in 39 U.S.C. 601; therefore, Postal Service regulations administering the monopoly laws prior to enactment of the PAEA are no longer in force. Campbell Comments at 2. Campbell offers detailed suggestions on how the Commission may adopt and/or revise the Postal Service regulations for clarification. For example, he recommends that the Commission clarify the application of Section 601(a) by declaring void continued publication of 2005 monopoly regulations which purport to reword and expand Section 601(a). *Id.* at 4. He also recommends that the Commission adopt a regulation that incorporates the text from 39 CFR 320.6(c) (2005) to clarify application of the price test of Section 601(b)(1) to shipments with multiple letters and shipments of letters not priced on a letter-by-letter basis. *Id.* at 6. Campbell further provides instances where the Commission could clarify, for certain regulations, where items may be carried out of the mail whether or not they can be considered “letters” or “packets” within the meaning of 18 U.S.C. 1693-99. *Id.* at 8-14.

PostCom. PostCom states that it reaffirms its position that there is no need to examine such regulations pertaining to Section 601 at this time. Docket No. PI2021-2 PostCom Comments at 1. It also states that many of the topics identified for exploration relate to potential Congressional actions that are outside of the Commission’s authority. *Id.* PostCom explains that no rules implement Section 601, no party (to its knowledge) has raised any issues regarding lack of clarity regarding the letter monopoly, and no PostCom members have indicated that the lack of Commission rules implementing Section 601 has caused significant confusion in the marketplace. *Id.*

PostCom avers that these reactions likely stem from the straightforward language of Section 601. *Id.* It contends that the statute sets forth three easily understandable exceptions to the prohibition on carriage of letters out of the mail. *Id.* PostCom states that it is difficult to see how Commission regulations interpreting these standards would increase their clarity; instead, promulgating regulations to implement this section may create, rather than dispel, confusion. *Id.* at 1-2. It further states that it is not aware of any serious problems or issues raised by the implementation of Section

601(b)(3). *Id.* at 2. Thus, PostCom states there is no need for the Commission to address Section 601(b)(3). *Id.*

Lexington Institute. Lexington Institute contends that the statutory language in Section 601 is straight-forward. LI Comments at 1. It explains that, unlike many Postal Service regulations and other correspondence, Section 601 is written in plain English and its provisions are clear and understandable. *Id.* Thus, the Lexington Institute recommends that the Postal Service regulations administering current Sections 601(a), 601(b)(1) and 601(b)(2) should not be adopted by the Commission. *Id.* at 2.

In addition, it states that it is not necessary for the Commission to clarify the statutory exemptions regarding the letter monopoly. *Id.* Rather, it recommends that the Commission continue to emphasize the need for the Postal Service's USO to be defined, and the annual costs determined. *Id.* The Lexington Institute notes that it is important to view this discussion in the broader context of recent trends in mail delivery, *i.e.*, slowing service, and the Postal Service's increased emphasis on package delivery. *Id.* at 1. It further states that it is especially important that any new regulations pertaining to Section 601 not impede ways in which mail can be delivered quicker, and through alternate means. *Id.* The Lexington Institute concludes there is no clear and compelling need, for either the Postal Service or its customers, for additional regulations pertaining to this docket. *Id.* at 2.

Postal Service. The Postal Service comments that all of Section 601, except paragraphs (b)(1)-(2), are found in existing regulations, which the statute essentially codified and which the Commission is not at liberty to change. Docket No. PI2021-2 Postal Service Comments at 1. It states that the history of administration of the regulations before and after the advent of Section 601, including the comments filed in Docket No. RM2020-4, reveals no reason why the regulations under Section 601(c) are necessary at this time, including lack of confusion over nonstandard terminology or supposedly redundant or conflicting provisions. *Id.* at 1-2. The Postal Service also states that the Commission lacks the power to revise regulations that Congress has codified (or to otherwise narrow or alter the substantive scope of the monopoly), given

the lack of any delegation of authority to the Commission to do so. *Id.* In addition, it states that there is no basis to reformulate the existing regulations subject to 601 and that recodification could only confuse matters, given Section 601(b)(3)'s explicit reference to existing citations. *Id.* at 3. The Postal Service contends that any rulemaking authority conferred upon the Commission by Section 601(c) extends only to 39 CFR 310.1(a)(7), 310.2(b)(1)-(2), and 320.2-8, and not to any other provisions of 39 CFR parts 310-320. *Id.* at 6.

The Postal Service states that although no changes are necessary, if the Commission decides to make clarifying changes, a simpler solution would be to leave the regulations in their traditional location in the CFR with certain clarifications and updates. *Id.* at 7. The Postal Service proffered two examples: (1) one or more interpretative notes could be added to signal which provisions are subject to the Commission's rulemaking authority; or (2) a new provision could explicitly clarify that notwithstanding the placement of 39 CFR parts 310-320 in the Postal Service chapter, certain specified provisions are now codified by Section 601 and the authority to clarify those provisions now lies with the Commission. *Id.* The Postal Service acknowledges that various provisions of parts 310-320 beyond the Commission's Section 601 authority warrant updating and it will consult with Commission on the draft rulemaking materials prior to issuance of any revisions. *Id.*

The Postal Service also contends that the Commission's rulemaking authority does not extend to revising the regulations subject to Section 601. *Id.* at 8. The Postal Service states that Congress's intent in the PAEA is clear: it wanted to clarify the application of the monopoly through its amendments to Section 601, while reserving to itself the question as to whether to further redefine the scope of the monopoly in the future. *Id.* at 10. The Postal Service reasons that this approach makes sense because redefining the scope of the monopoly should occur only as part of a comprehensive reexamination of the Postal Service's legal obligations and funding mechanisms: a task that only Congress can perform. *Id.*

Finally, the Postal Service states that it cannot be said that the advent of Section 601(b)(1) absolutely superseded 39 CFR 320.6(c), let alone impliedly repealed it. *Id.* at 13. Rather, the Postal Service avers that Congress expressly codified the entirety of 39 CFR 320.6 and there is no basis for the Commission to order it modified or deleted. *Id.*

Public Representative. The Public Representative states that the Commission should adopt appropriate parts of the Postal Service's regulations administering sections 601(a), 601(b)(1), and 601(b)(2) currently set forth in 39 CFR 310.1-310.7 and 320.1-320.9 for the convenience of the interested public and to clarify outdated, relevant Postal Service regulations. Docket No. PI2021-2 PR Comments at 4. He explains that, given the several exceptions to, and suspensions of, the monopoly permitted by statute and the presently published Postal Service regulations, consolidation of those, where feasible, is most desirable for the convenience of practitioners and the public generally. *Id.*

He provides several principles that should be applied in determining which Postal Service regulations should be adopted: (1) any Commission rules for Section 601 should be comprehensive and located in one location within the Commission's rules; (2) the rules should be clear; (3) those parts of the current Postal Service rules, sections 310.1 and 320.2- 320.9 of title 39 and any other pertinent rules, that are no longer supported by statutory authority should be omitted from the Commission's rules and to the extent the Postal Service rules conflict with the Commission's authority, the Commission may direct the Postal Service to modify its regulations; and (4) the procedure for obtaining advisory opinions or other relief from the substance of the rules within the Commission's authority should be included within the Commission's Section 601 rules. *Id.* at 4-5.

In addition, the Public Representative states that the Commission should adopt the Postal Service regulations that reflect the statutory exemptions in section 601 and provides specific and detailed suggestions for each Postal Service regulation. *Id.* at 4-10. He concludes that the Commission does not have authority to substantively modify

the suspensions authorized by the Postal Service regulations, and that the PAEA does not expressly prohibit the extension of the suspensions to additional new carriers not already undertaking these activities. *Id.* at 10-12.

V. SUMMARY OF PROPOSED RULES

Based on the comments received in response to Order No. 5422 and the comments received in Docket No. PI2021-2 in response to Order No. 5930, the Commission proposes new regulations necessary to carry out Section 601.

The Commission notes that a majority of commenters across both dockets cautioned against substantive changes. These commenters generally cited the clarity of the current guidelines and other pressing issues related to the Postal Service and in the mailing industry. To maintain stability, the Commission finds that no substantive regulations are necessary at this time.

In addition, the Commission declines to adopt the Postal Service regulations or move those regulations to a new location. The Commission finds that adopting them would be redundant. In addition, moving the Postal Service's regulations could potentially lead to cross-referencing issues and create confusion for the public where there is none. Further, some Postal Service regulations may be outdated or no longer be supported by statutory authority. The Commission also finds it unnecessary to clarify the Postal Service regulations as, per many commenters, the regulations appear to be well understood. The Commission will work with the Postal Service to revise certain regulations to better align with statutory language and current practices, particularly those regulations which are no longer operative. See Docket No. PI2021-2 Postal Service Comments at 7.

Nonetheless, the Commission finds it necessary to provide some clarity on the statute, and its relationship with the Postal Service's regulations. The Commission also finds it necessary to provide the public a process to seek clarification of the statute or the letter monopoly should the need arise in the future. Thus, the Commission proposes the following rules.

First, the Commission proposes a provision stating that certain Postal Service regulations in parts 310 and 320 are within the scope of these new rules and subject to Commission interpretation. The Postal Service asserts that only certain provisions in parts 310 and 320 are subject to Commission authority, namely 39 CFR 310.1(a)(7), 310.2(b)(1)–(2), and 320.2–320.8. *See id.* at 6. However, the Commission notes that Section 601(b)(3) specifically references 39 CFR 310.1 in its entirety and thus, the entirety of that provision is under Commission authority. Additionally, the definitions referenced in part 310.1 are referenced in part 320.1 and therefore, the Commission also includes part 320.1. The Commission also proposes a provision that if there is a conflict between the Postal Service regulations and Section 601, Section 601 takes precedence.

Next, the Commission proposes a provision explicitly stating that the Postal Service no longer has authority to issue regulations interpreting, suspending or otherwise defining the scope of the letter monopoly. These provisions also include a prohibition on issuing guidance or entering into agreements purporting to do the same. The Commission also proposes a provision stating that it has the sole authority to promulgate regulations necessary to carry out Section 601, as the Commission has consistently explained in other proceedings.¹⁶

Finally, the Commission proposes a provision allowing interested parties to seek interpretation of Postal Service regulations or statutory language by filing a rulemaking petition with the Commission, or requesting an advisory opinion from the Commission's General Counsel. The Commission may also initiate its own proceeding. These procedures allow for interpretation of statutory and regulatory requirements that is accessible and transparent to the public.

¹⁶ *See, e.g.*, Order No. 1448 at 6-7; Order No. 1411 at 7 n.13.

VI. PROPOSED SECTION 39 CFR 3065

The Commission proposes to place the new regulations clarifying Section 601 in new part 39 CFR 3065.

Proposed § 3065.1. Proposed rule 3065.1 states that the rules in this part implement 39 U.S.C. 601. It lists the Postal Service regulations that are subject to the proposed rules and clarifies that the Commission has authority to interpret them. It also provides that in the event of a conflict between Section 601 and the Postal Service regulations, Section 601 would supersede any applicable requirements.

Proposed § 3065.2. Proposed rule 3065.2 provides that the Commission has the sole authority to promulgate new regulations necessary to carry out Section 601. It also prohibits the Postal Service from promulgating any new regulations, issuing any guidance, or entering into agreements purporting to suspend or otherwise define the letter monopoly. It further states that the Postal Service may not promulgate new regulations or issue any guidance purporting to interpret Section 601.

Proposed § 3065.3. Proposed rule 3065.3 provides two procedures for parties seeking clarification or interpretation of the statute or regulations concerning Section 601. It also states that the Commission may initiate its own proceeding for clarification or interpretation.

VII. ADMINISTRATIVE ACTIONS

The Regulatory Flexibility Act requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. See 5 U.S.C. 601 *et seq.* (1980). If the proposed or final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities, the head of the agency may certify that the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply. See 5 U.S.C. 605(b).

In the context of this rulemaking, the Commission's primary responsibility is regulatory oversight of the United States Postal Service. The rules that are the subject of this rulemaking have a regulatory impact on the Postal Service, but do not impose

any regulatory obligation upon any other entity. Based on these findings, the Chairman of the Commission certifies that the rules that are the subject of this rulemaking will not have a significant economic impact on a substantial number of small entities.

Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

The Commission invites interested persons to provide comments regarding the proposed rules to carry out Section 601. Comments are due no later than 30 days after publication of this notice in the *Federal Register*.

Pursuant to 39 U.S.C. 505, Kenneth E. Richardson will continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

Additional information concerning this rulemaking may be assessed via the Commission's website at <http://www.prc.gov>.

VIII. ORDERING PARAGRAPHS

It is ordered:

1. Interested persons may submit comments on the proposed rules no later than 30 days from the date of the publication of this notice in the *Federal Register*.
2. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson will continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. The Secretary shall arrange for publication of the proposed rules and general statement as to the basis and purpose of the proposed rules in the *Federal Register*.

By the Commission.

Erica A. Barker
Secretary

List of Subjects in 39 CFR Part 3065

Administrative practice and procedure, Postal Service.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3065—RULES FOR LETTERS CARRIED OUT OF THE MAIL

1. Add part 3065 to read as follows:

PART 3065—RULES FOR LETTERS CARRIED OUT OF THE MAIL

Sec.

3065.1 Applicability and scope.

3065.2 Prohibition on new regulations.

3065.3 Procedure for seeking clarification or interpretation.

Authority: 39 U.S.C. 503, 601.

§ 3065.1 Applicability and scope.

(a) The rules in this part implement 39 U.S.C. 601, which generally describes when letters may be carried out of the mail.

(b) Notwithstanding placement in Postal Service chapter I, the following provisions in parts 310 and 320 of this title are within the scope of this part and the Commission has the authority to interpret them:

- (1) 39 C.F.R. 310.1;
- (2) 39 C.F.R. 310.2(b)(1) - (2); and
- (3) 39 C.F.R. 320.1 – 320.8.

(c) In the event of a conflict between 39 U.S.C. 601 and applicable regulations under parts 310 and 320 of this title, 39 U.S.C. 601 shall supersede any other generally applicable requirements.

§ 3065.2 Prohibition on new regulations.

(a) The Postal Service may not promulgate any new regulations, issue guidance, or enter into agreements purporting to suspend or otherwise define the scope of the letter monopoly.

(b) The Postal Service may not promulgate any new regulations or issue guidance purporting to interpret 39 U.S.C. 601.

(c) The Commission has the sole authority to promulgate new regulations necessary to carry out 39 U.S.C. 601.

§ 3065.3 Procedure for seeking clarification or interpretation.

(a) The Commission may, on its own motion, initiate a proceeding under this subpart pursuant to § 3010.201(a) of this chapter.

(b) The Commission may provide interpretation of these regulations or 39 U.S.C. 601 upon:

(1) a party's request to initiate a rulemaking proceeding with the Commission pursuant to the requirements of § 3010.201(b) of this chapter; or

(2) a party's request for an advisory opinion from the General Counsel.