

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

Before Commissioners:

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

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

Docket No. RM2020-4

ORDER ADOPTING FINAL RULES REGARDING SECTION 601

(Issued July 8, 2022)

I. INTRODUCTION

On February 7, 2020, 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.<sup>1</sup> Section 601 describes instances when letters may be carried out of the mail, or when the letter monopoly does not apply to a mailpiece, and directs the Commission to promulgate any regulations necessary to carry out this section. In this Order, the Commission adopts new rules carrying out the requirements of Section 601.

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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> Section 601, the subject of this proceeding, provides specific instances where letters may be carried out of the mail (*i.e.*, not subject to the letter monopoly) and directs the Commission to promulgate any regulations necessary to carry out this section. See 39 U.S.C. § 601.

Prior to the Postal Accountability and Enhancement Act (PAEA) of 2006, the Postal Service issued regulations that purported to suspend the PES.<sup>4</sup> These regulations provided definitions of important terms, including the definition of the term “letter.” 39 C.F.R. § 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 C.F.R. § 310.3 (2005). In addition, the regulations purported to establish administrative suspensions of the PES (39 C.F.R. §§ 310.1(a)(7) n.1, 320 (2005)), including suspensions for certain data processing materials or for extremely urgent letters. See 39 C.F.R. §§ 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.<sup>5</sup>

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<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> See Postal Accountability and Enhancement Act, Pub. L. 109-435, 120 Stat. 3198 (2006); see also 39 C.F.R. §§ 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, 109<sup>th</sup> Cong., 1<sup>st</sup> Sess., pt. 1, at 58 (2005) (H.R. Rep. No. 109-66).

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

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 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.<sup>6</sup>

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.<sup>7</sup> 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), 404a(a)(1), 601. Instead, Congress gave the Commission the authority to promulgate any regulations necessary to carry out the section.<sup>8</sup>

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

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

that purported to permit private carriage as in effect on July 1, 2005. 39 U.S.C. § 601(b)(3); *see also* 39 C.F.R. § 310.1; 39 C.F.R. § 320.2-320.8 (2005).

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 regarding 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 fourteen 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.<sup>9</sup> 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).<sup>10</sup> The Postal Service also provided information regarding alternative payment agreements pursuant to 39 C.F.R. § 310.2(b).<sup>11</sup> In addition, the Postal Service provided information regarding advisory opinions pursuant to 39 C.F.R. § 310.6. Response to CHIR No. 1, question 2.

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

<sup>10</sup> 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).

<sup>11</sup> 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).

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 under Section 601. Thus, the Commission held this docket in abeyance and initiated a public inquiry seeking further input from the public.<sup>12</sup> 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). Order No. 5930 at 6-7. For both issues, the Commission wanted to determine whether it was necessary to clarify the statutory exemptions regarding the letter monopoly. *Id.* at 7. The Commission sought information as to how best to resolve any ambiguities in the application of the exceptions. *Id.* 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. *Id.* The comment period in the public inquiry closed on August 26, 2021.

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 filed a notice of proposed rulemaking proposing new regulations necessary to carry out Section 601.<sup>13</sup> Having received adequate input from the public in order to propose regulations in this docket, the Commission issued an order closing the public inquiry docket.<sup>14</sup>

In Order No. 6047, the Commission explained that most commenters across both dockets cautioned against substantive changes, noting the clarity of the current

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<sup>12</sup> 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).

<sup>13</sup> Notice of Proposed Rulemaking for Regulations Pertaining to Section 601, November 24, 2021 (Order No. 6047).

<sup>14</sup> See Docket No. PI2021-2, Order Closing Docket, November 24, 2021 (Order No. 6046).

guidelines and other pressing issues related to the Postal Service and in the mailing industry. Order No. 6047 at 16. Based on those comments and to maintain stability, the Commission found that no substantive regulations were necessary at that time. *Id.*

In addition, the Commission declined to adopt the Postal Service regulations or move those regulations to a new location, finding that adopting them would be redundant and could lead to cross-referencing issues. *Id.* However, the Commission found that some Postal Service regulations may be outdated or no longer be supported by statutory authority. *Id.* The Commission stated that it 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. *Id.*

Nonetheless, the Commission found it necessary to issue regulations that provide some clarity on the Section 601, and its relationship with the Postal Service's regulations. *Id.* The Commission also found it necessary to provide a process for the public to seek clarification of the statute or the letter monopoly should the need arise in the future. *Id.*

#### IV. SUMMARY OF PROPOSED RULES

First, the Commission proposed 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. *Id.* at 17. The Commission also proposed a provision that if there is a conflict between the Postal Service regulations and Section 601, Section 601 takes precedence. *Id.*

Second, the Commission proposed 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. *Id.* These provisions also included a prohibition on issuing guidance or entering into agreements purporting to do the same. *Id.* In addition, the Commission proposed a provision stating that it has the sole authority to promulgate regulations necessary to carry out Section 601.

Third, the Commission proposed 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. *Id.* The Commission may also initiate its own proceeding. *Id.* These procedures allow for interpretation of statutory and regulatory requirements that would be accessible and transparent to the public. *Id.*

The Commission proposed to place the new regulations clarifying Section 601 in new part 39 C.F.R. § 3065. *Id.* at 18. Interested parties were invited to submit comments on the proposed rules no later than 30 days after publication of the notice in the *Federal Register*. *Id.* at 19.

## V. SUMMARY OF COMMENTS

In response to Order No. 6047, the Commission received comments from The Berkshire Company, the Postal Service, and the Public Representative.<sup>15</sup>

### A. The Berkshire Company

The Berkshire Company (TBC) comments that the rules assert the role of the Commission as the arbiter of interpretation of Section 601. TBC Comments at 1. It notes that this is appropriate because of the long-term view of the role of the Commission and because of certain service standard changes implemented by the Postal Service. *Id.*

However, TBC suggests that the Commission clarify the appeals process for USPS Marketing Mail eligibility. *Id.* at 2. It states that the Postal Service relies on the

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<sup>15</sup> Comments of the Berkshire Company in Response to Proposed Rulemaking for Regulations Pertaining to Section 601, December 14, 2021 (TBC Comments); Comments of the United States Postal Service in Response to Order No. 6047, January 3, 2022 (Postal Service Comments); Public Representative Comments, January 4, 2022 (PR Comments). The Public Representative also filed a motion for late acceptance of his comments, explaining that the filing was not completed and accepted on January 3, 2022 due to an inadvertent error. See Motion of the Public Representative to File Late Comments, January 4, 2022. The motion is granted.

requirements of Section 601 and the definition of the term “letter” when determining USPS Marketing Mail eligibility. *Id.* at 1. TBC explains that the Postal Service issues guidance in the form of customer support rulings on these issues and proposed rule 3065.2’s prohibition on new regulations may be interpreted such that the Postal Service would be prohibited from issuing these rulings. *Id.* at 1-2. It also asserts that a reasonable reading of the rule allows a mailer to appeal to the Commission when the Postal Service rejects a mailing based on the interpretation of the words “personal information” as the mailer may claim it is not a “letter” as defined by 39 U.S.C. § 310.1. *Id.* at 2. In addition, TBC resubmits its opinion that the term “letter” is defined by exceptions and should be better defined. *Id.*

#### B. The Postal Service

The Postal Service states that it is in full agreement with the Commission’s measured approach to the proposed rules as informed by the comments in this proceeding and in Docket No. PI2021-2, as well as the Commission’s interpretation of the scope of its authority as reflected in the proposed rules. Postal Service Comments at 1. However, the Postal Service provides several recommendations aimed at “dispelling potential confusion about the scope of the Commission’s authority, which extends only to Section 601 and not to other aspects of the Private Express Statutes or 39 C.F.R. Part 310.” *Id.*

First, the Postal Service states that the language in proposed rule 3065.1(a) suggests that Section 601 is the sole authority that describes when letters may be carried out of the mail. *Id.* at 2. It recommends that the rule be changed to “The rules in this part implement 39 U.S.C. 601, which ~~generally~~ describes certain circumstances in which ~~when~~ letters may be carried out of the mail.” *Id.*

Next, the Postal Service asserts that proposed rule 3065.1(b) as drafted suggests that the entirety of the definitional rules in 39 C.F.R. § 310.1 is within the Commission’s authority under Section 601(c). *Id.* However, it states that in order to fall within the scope of Section 601(b)(3) and the Commission’s authority, the relevant

regulations must “purport to permit private carriage by suspension of the operation of this section (as [in effect on July 1, 2005])” and as of July 1, 2005, the claim of purported suspension was expressly limited to paragraph (a)(7) and did not extend to any other aspect of the section. *Id.* at 2-3. In addition, the Postal Service contends that Section 601(b)(3) provides that a covered rule must “purport to permit private carriage by suspension of the operation of this section” and paragraph (a)(7) is the only portion of 39 C.F.R. § 310.1 that meets this standard. *Id.* at 3. It states that in most other regards, 39 C.F.R. § 310.1 purports not to permit private carriage, but to define the terms on which private carriage is prohibited. *Id.* at 4.

The Postal Service also states that only two provisions outside of paragraph (a)(7) exclude certain objects from the definition of “letter” and could be said to permit private carriage. *Id.* at 4. However, the Postal Service states that these provisions list items that are clearly not letters in contrast to the items listed in paragraph (a)(7), which do meet the primary definition of “letter” but were excepted for policy reasons. *Id.* In addition, the Postal Service argues that Commission risks an overreach of its authority if it justifies including the definitions found in 39 C.F.R. § 310.1 in its rules because those same definitions are implicated in other statutes where Congress did not confer rulemaking authority to the Commission, such as the remainder of 39 U.S.C. Chapter 6 and the title 18 PES. *Id.* at 4-5. Thus, the Postal Service recommends amending proposed rule 3065.1(b)(1) to “39 C.F.R. 310.1(a)(7)[.]” *Id.* at 5.

Finally, the Postal Service raises two issues with proposed rule 3065.2, stating that the proposed rule could “usurp the Postal Service’s delegated authority to enter into contracts and to settle claims, including, potentially, claims for unpaid postage or damages resulting from violations of the Private Express Statutes” and the rule could be in tension with 39 C.F.R. § 310.2(b)(2), which permits certain agreements. *Id.* at 5-6.

It also states that the proposed rule would bar the Postal Service from issuing guidance on the letter monopoly or Section 601, which it asserts goes beyond the scope of the Commission’s authority. *Id.* at 6. It proffers that the statute does not preempt the Postal Service’s ability to offers its views on any aspect of postal laws, for example, in

Commission proceedings, in informal correspondence and discussions, during litigation or other activities in the ordinary course of business. *Id.*

The Postal Service explains that these issues could be remedied by deleting proposed rule 3065.2(a) and (b) and retitling proposed rule 3065.2 accordingly. It states that subsections (a) and (b) are unnecessary considering subsection (c), which it believes more succinctly and accurately conveys the scope of the Commission's rulemaking authority by characterizing it as "sole." *Id.* at 6-7. The Postal Service suggests that proposed rule 3065.2 be amended to the following:

§ 3065.2 ~~Prohibition on new regulations.~~ Rulemaking authority.

~~(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.

*Id.* at 7.

### C. The Public Representative

The Public Representative states that he does not have any objections or suggestions regarding the proposed rules. PR Comments at 4. He comments that the rules should function as intended if the Postal Service cooperates with the Commission. *Id.* He explains that in his earlier comments, he discussed his concerns that there might be inadvertent omissions or technical errors involving cross references within the Postal Service's rules or unnecessary conflicts between the agencies' rules. *Id.* He states that these concerns have been ameliorated because of the Postal Service's assurances that it will work with the Commission to modify its rules as necessary to recognize the Commission's authority in Section 601. *Id.* at 4-5. He also states that potential conflicts may be avoided because of proposed rule 3065.2, which prohibits the Postal Service from promulgating new regulations, guidance, or agreements purporting to suspend or to otherwise define the scope of the monopoly. *Id.* at 5.

Regarding proposed rule 3065.3, the Public Representative notes that procedures for the internal handling of interpretive requests directed to the Commission's general counsel in paragraph (b)(2) are not considered in Order No. 6047. *Id.* Because the Postal Service has stated that no party has requested new rules to clarify any aspect of Section 601 and there has been a substantial slowdown in requests for advisory opinions since the PAEA's enactment, the Public Representative asserts that it appears unnecessary to consider or establish internal procedures for such inquiries directed to the Commission's General Counsel at this time. *Id.* He explains that if and when such inquiries materialize, the internal administrative process can be determined based on the circumstances and requirements for review of the inquiry at that time. *Id.*

For these reasons, the Public Representative states that he supports the issuance of the proposed rules. *Id.*

## VI. COMMISSION ANALYSIS

After consideration of the comments submitted, the Commission again finds that no substantive regulations are necessary at this time and declines TBC's suggestion to propose rules defining the term "letter." See Order No. 6047 at 16. However, to better clarify the interplay between the Commission's regulations and the Postal Service's regulations, the Commission adopts the proposed rules with several modifications as described in the following discussion.

The Postal Service comments that the text in proposed rule 3065.1(a) suggests that Section 601 is the sole authority that describes when letters may be carried out of the mail, notwithstanding other aspects of the PES. To clarify the rule, the Commission accepts the Postal Service's suggested modifications and amends rule 3065.1(a) to: "The rules in this part implement 39 U.S.C. 601, ~~generally~~ describes certain circumstances in which ~~when~~ letters may be carried out of the mail."

However, the Commission adopts proposed rule 3065.1(b) without any modification, even though the Postal Service asserts that only 39 C.F.R. § 310.1(a)(7) is

under Commission authority. The Postal Service maintains that Congress intended only for the expressly purported suspensions in paragraph 310.1(a)(7) to enter the Commission's regulatory purview under Section 601 and suggests that the rule be amended to limit its authority to 39 C.F.R. § 310.1(a)(7) instead of the entirety of 39 C.F.R. § 310.1.

The Commission disagrees. The Postal Service's interpretation conflicts with the legislative history and legislative intent to eliminate the Postal Service's authority to adopt any regulations creating exceptions or otherwise defining the scope of the postal monopoly.<sup>16</sup> Moreover, the Postal Service's interpretation appears to find limitations in the text where there is none.<sup>17</sup> Simply put, if Congress wanted to limit the exceptions to services based on paragraph (a)(7), Congress could have expressly written 310.1(a)(7) in the statute instead of 310.1. Because Section 601(b)(3) references 39 C.F.R. § 310.1 in its entirety, the entirety of that provision is under Commission authority and the Commission will track the language of the statute in its rule.<sup>18</sup>

Next, both TBC and the Postal Service identify potential issues with proposed rule 3065.2. They assert that the prohibition on issuing guidance or entering into agreements may affect Marketing Mail eligibility and other activities in the ordinary course of postal operations. As stated in Order No. 6047, proposed rule 3065.2 provides that the Commission has the sole authority to promulgate new regulations necessary to carry out Section 601. The Commission maintains that, as a result of the

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<sup>16</sup> H.R. Rep. No. 109-66, at 57; *see also* 39 U.S.C. 401(2), 404a(a)(1), 601.

<sup>17</sup> The statute allows for carriage that is within the scope of certain Postal Service regulations and expressly lists those regulations ("including, in particular, sections 310.1 and 320.2-320.8"). The statement that follows - "that purport to permit private carriage by suspension of the operation of this section" - does not qualify or further limit the scope of the Commission's authority. Rather, the statement clarifies that the services provided by the Postal Service, based on the listed regulations, purport to permit private carriage by suspension of the operation of this section.

<sup>18</sup> The Commission notes that the Postal Service did not argue that the 39 C.F.R. § 320.1 definitions should not be included in the rules, even though the statute does not include 39 C.F.R. § 320.1 in the list of regulations in the grandfather clause. As discussed in Order No. 6047, the Commission includes 39 C.F.R. § 320.1 because it references the definitions in 39 C.F.R. § 310.1. *See* Order No. 6047 at 17.

PAEA, the Postal Service may not promulgate any regulations creating exceptions or otherwise defining the scope of the monopoly.<sup>19</sup> Moreover, the Postal Service has stated that it has not issued any new regulations or advisory opinions since the enactment of the PAEA and any post-PAEA informal correspondence from members of the public to the Postal Service about the letter monopoly has been infrequent.<sup>20</sup>

However, the Commission finds that a portion of the text of the proposed rule may unintentionally limit the Postal Service's ability to perform its ordinary operations and introduce confusion where the Commission wishes to maintain stability.<sup>21</sup> Based on concerns from TBC and the Postal Service, the Commission removes the words "issue guidance" from the text of the rules. With this change, the Commission does not find it necessary to modify or clarify the appeals process for USPS Marketing Mail eligibility under these rules. Nor does the Commission find it necessary to remove the reference to agreements purporting to suspend or otherwise define the scope of the monopoly. The Commission acknowledges that certain written agreements under 39 C.F.R. § 310.2(b)(2) and other private activities are permitted by Section 601(b)(3). The prohibition on the Postal Service's entering into any other agreements that purport to suspend or otherwise define the scope of the letter monopoly would not usurp the Postal Service's more general authority to enter into contracts or settle claims. The Postal Service's authority to enter into contracts or settle claims does not encompass changes to the letter monopoly. If the Postal Service were able to suspend or otherwise define the scope of the letter monopoly by agreement, the prohibition on new

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<sup>19</sup> See Order Nos. 5422, 6047 (citing 39 U.S.C. §§ 401(2), 404a(a)(1), 601); see *also* Order No. 1448 at 6-7 (citing Section 601(c) and stating that the Postal Service no longer has authority to issue regulations interpreting or defining the postal monopoly); Order No. 1411 at 7 n.13.

<sup>20</sup> See Response to CHIR No. 1; see *also* Comments of the United States Postal Service in Response to Order No. 5422, April 7, 2020, at 11.

<sup>21</sup> See Order No. 6047 at 16 (describing commenter concern about substantive changes and expressing an intention to maintain stability).

regulations would be rendered meaningless.<sup>22</sup> Accordingly, the Commission adopts proposed rule 3065.2 with the following modifications:

**§ 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.

The Commission envisions that the Postal Service will consult with the Commission prior to issuance of any revisions to its rules and as necessary to ensure that its rules, guidance, and agreements do not conflict with the Commission's rules regarding Section 601.<sup>23</sup>

Finally, no commenter proposed changes to proposed rule 3065.3, which provides procedures for parties seeking clarification or interpretation of the statute or regulations concerning Section 601, and thus, the Commission adopts the proposed rule without modification. The Commission agrees with the Public Representative that the internal administrative process for inquiries directed at the General Counsel can be determined based on the circumstances at the time of any such inquiry.

## VII. REGULATORY FLEXIBILITY ACT ANALYSIS

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

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<sup>22</sup> See Order No. 6047 at 2-3 (describing that Congress repealed the Postal Service's purported authority to adopt administrative suspension of the monopoly, repealed the Postal Service's authority to implement provisions of the criminal code defining the scope of the monopoly, and eliminated the Postal Service's authority to adopt any regulations creating exceptions or otherwise defining the scope of the monopoly).

<sup>23</sup> See Docket No. PI2021-2, Comments of the United States Postal Service in Response to Order No. 5930, August 26, 2021, at 7.

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.

#### VIII. ORDERING PARAGRAPHS

*It is ordered:*

1. Part 3065 of title 39, Code of Federal Regulations, is amended as set forth below the signature of this Order, effective 30 days after publication in the *Federal Register*.
2. The Secretary shall arrange for publication of the final rules and general statement as to the basis and purpose of the final 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 amends 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 describes certain circumstances in which letters may be carried out of the mail.

(b) Notwithstanding placement in Postal Service chapter I of this title, 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) § 310.1 of this title;
- (2) § 310.2(b)(1) and (2) of this title; and
- (3) §§ 320.1 through 320.8 of this title.

(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 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 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.