

processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The agency will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(f) *Reducing costs.* At any time a request may contact the ABMC FOIA Public Liaison or other FOIA professional to assist in reformulating a request to meet the requester's needs at a lower cost.

§ 404.10 Waiver or reduction of charges.

Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(a) ABMC will waive its fees in whole or in part when it determines, based on all available information, that the following factors are satisfied:

(1) Disclosure of the requested information will shed light on identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(2) The disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. ABMC will consider the requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public. ABMC will presume that a representative of the news media satisfies this consideration.

(3) The disclosure is not primarily in the commercial interest of the requester. Requesters will be given an opportunity to provide explanatory information regarding this consideration. ABMC ordinarily will presume that when a news media requester has satisfied factors in paragraphs (a)(1) and (a)(2) of this section, the request is not primarily in the commercial interest of the requester.

(b) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver must be granted for those records.

(c) Requests for a waiver or reduction of fees should be made when the request is first submitted to the agency and should address the criteria referenced

above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester must pay any costs incurred up to the date the fee waiver request was received.

[FR Doc. 2020-03016 Filed 2-14-20; 8:45 am]

BILLING CODE 6120-01-P

POSTAL REGULATORY COMMISSION

39 CFR Chapter III

[Docket No. RM2020-4; Order No. 5422]

Amendments to Rules of Practice

AGENCY: Postal Regulatory Commission.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Commission seeks input from the public about what regulations promulgated by the Commission may be necessary to carry out certain statutory responsibilities related to the letter monopoly, specifically those instances where the letter monopoly does not apply to a mailpiece.

DATES: *Comments are due:* April 7, 2020.

ADDRESSES: For additional information, Order No. 5422 can be accessed electronically through the Commission's website at <https://www.prc.gov>. Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Background
- III. Issues for Consideration
- IV. Ordering Paragraphs

I. Introduction

The Commission issues this advance notice of proposed rulemaking to seek 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, "Letters carried out of the mail," which, as explained in greater detail below,

describes when the letter monopoly does not apply to a mailpiece.¹

II. Background

The Postal Service has exclusive rights in the carriage and delivery of letters under certain circumstances. This letter monopoly is codified in the Private Express Statutes (PES), which are 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. 601-606.²

Section 601 provides specific instances (exceptions) where letters may be carried out of the mail (*i.e.*, not subject to the letter monopoly). These statutory exceptions include letters charged more than six times the current rate for the first ounce of a single-piece first class letter and letters weighing more than 12.5 ounces. *See* 39 U.S.C. 601(b)(1), (b)(2). A "grandfather clause" in Section 601(b)(3) also references exceptions from prior Postal Service policies and regulations. The statute also directs the Commission to promulgate any regulations necessary to carry out this section. *See* 39 U.S.C. 601(c).

Prior to the Postal Accountability and Enhancement Act (PAEA) of 2006, the Postal Service issued regulations to define and suspend the PES.³ These regulations defined the crucial term "letter" as "a message directed to a specific person or address and recorded in or on a tangible object," subject to several provisions. 39 CFR 310.1(a). 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. In addition, the regulations describe administrative suspensions of the PES (39 CFR 310.1(a)(7) n.1, 320), including suspensions for certain data processing materials or for extremely urgent letters. *See* 39 CFR 320.2, 320.6. These regulations were originally promulgated by the Postal Service in 1974 and have been amended several times.⁴ In 2003,

¹ The scope of this proceeding and inquiry does not extend to the mailbox monopoly (or mailbox rule), which grants the Postal Service the exclusive ability to deposit mailable matter in a letter box. *See* 18 U.S.C. 1725.

² Although these provisions of the U.S. Code are customarily referred to collectively as the "Private Express Statutes," they do not all relate to private expresses or prohibit carriage of letters out of the mails.

³ *See* Postal Accountability and Enhancement Act, Public Law 109-435, 120 Stat. 3198 (2006); *see also* 39 CFR 310, 320.

⁴ *See* Comprehensive Standards for Permissible Private Carriage, 39 FR 33211 (Sept. 16, 1974).

the President's Commission on the United States Postal Service recommended that the scope of the letter monopoly should be clarified and periodically reviewed by a Postal Regulatory Board.⁵

In 2006, Congress passed PAEA to clarify the limited statutory exemptions to the monopoly.⁶ In addition to adding price and weight limits as exceptions (601(b)(1), (b)(2)), Congress also added a "grandfather clause" in Section 601(b)(3) to authorize the continuation of private activities that the Postal Service had permitted by regulations to be carried out of the mail. 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 id.* at 58. Congress also eliminated the Postal Service's authority to adopt any future regulations creating additional exceptions or defining the scope of the postal monopoly. *See* 39 U.S.C. 401(2), 404a(a)(1), 601. Congress instead gave the Commission the authority to promulgate "any regulations necessary to carry out this section [601]." ⁷ To date, the Commission has not promulgated any regulations pursuant to Section 601(c), and issues this advance notice of proposed rulemaking to explore potential options for doing so now.

III. Issues for Consideration

In the more than 45 years since the Postal Service initially promulgated its regulations, the postal industry has fundamentally changed. The Postal Service recently stated that the "most significant competitor for First-Class Mail is digital communication, including electronic mail, and other digital technologies such as online bill

⁵ Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service, July 31, 2003, at 71. The President's Commission recommended "transforming the narrowly focused Postal Rate Commission [] into an independent Postal Regulatory Board." *Id.* at XIII.

⁶ *See* H.R. Rep. No. 109-66 (2005) part 1, 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 39 U.S.C. 601(c). 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.

payment and presentment."⁸ The USPS Office of Inspector General also released a report citing electronic diversion as a key factor that has affected the First-Class Mail correspondence segment.⁹

Over time there have been several published reports discussing or evaluating the letter monopoly. In a 2007 report, the Federal Trade Commission stated that the monopoly should only be as broad as needed to satisfy the statutory requirement of universal service.¹⁰ The Commission, in response to Section 702 of the PAEA, issued a report on Universal Postal Service and the Postal Monopoly, which traced the history of the monopoly to its current status.¹¹ The Government Accountability Office reported that narrowing the monopoly could decrease revenues and threaten the universal service obligation, but may also lead to greater efficiencies and innovation.¹² In 2018, the Task Force on the United States Postal System stated that the statutory monopoly business model is increasingly ineffective.¹³ In particular, it explained that "technological changes have significantly reduced the effectiveness of the statutory monopoly business model by undermining the historical barriers to market competition and product substitution." *Id.*

The Commission has generally discussed or acknowledged the letter monopoly when reviewing requests to modify the product lists. In such cases, the Commission must consider whether a product is covered by the monopoly. *See* 39 U.S.C. 3642(b)(2). For example, in Docket Nos. MC2012-14 and R2012-8, where the Commission approved a new product as a Market Dominant Negotiated Service Agreement, the

⁸ The U.S. Postal Service Five-Year Strategic Plan FY2020-FY2024, January 7, 2020, at 14.

⁹ *See* USPS Office of Inspector General, A New Reality: Correspondence Mail in the Digital Age, March 5, 2018, at 9.

¹⁰ Accounting for Laws that Apply Differently to the United States Postal Service and its Private Competitors: A Report by the Federal Trade Commission, January 16, 2008, at 93.

¹¹ Report on Universal Service and the Postal Monopoly, December 19, 2008, at 15-84 (USO Report). The USO Report includes, as an appendix, George Mason University's presentation and analysis of the history of the postal monopoly. *See* George Mason University, School of Public Policy, Postal Monopoly Laws: History and Development of the Monopoly on the Carriage of Mail and the Monopoly on Access to Mailboxes, November 2008, at 250 ("[A]ny decision by the Commission interpreting the term letter in section 601 would be considered tantamount to defining the scope of the monopoly."). *Id.*

¹² U.S. Governmental Accountability Office, U.S. Postal Service, Key Considerations for Potential Changes to USPS's Monopolies, GAO-17-543, June 22, 2017, at 8.

¹³ Task Force on the United States Postal Service, United States Postal Service: A Sustainable Path Forward, December 2018, at 33.

Commission acknowledged, without considering the merits of, assertions by the Postal Service that a specific product is subject to the postal monopoly. Order No. 1448 at 6-7.

Specifically in dockets where the Postal Service seeks to classify a product as competitive, it often cites various statutory and regulatory exceptions to the monopoly. For example, in Docket No. MC2012-13, the Postal Service asserted that the contents of Parcel Post are outside the scope of the letter monopoly because: (1) Invoices or receipts accompanying merchandise mailed as Parcel Post are subject to the cargo exception in 39 CFR 310.3(a), (2) incidental, non-addressed, non-personalized advertising may be enclosed pursuant to 39 CFR 320.7, and (3) any letters enclosed would be permitted due to the price exception pursuant to 39 U.S.C. 601(b)(1). Order No. 1411 at 6-7. In another case, the Postal Service acknowledged that a sealed parcel could contain letter material and, therefore, stated it intended to raise prices consistent with 39 U.S.C. 601(b)(1) to avoid the application of the PES.¹⁴ The Commission has acknowledged these past assertions.¹⁵

In Docket No. MC2013-57, several parties addressed whether the Round-Trip Mailer product, which consists of a round-trip mailing of a disc, was covered by the postal monopoly.¹⁶ In particular, the parties disputed whether the content of the Round-Trip Mailer constitutes a "letter" that is subject to the Private Express Statutes. *Id.* Because of a finding on market power, the Commission did not rule on the merits of the monopoly issue. *Id.* at 56.

However, the Commission noted that "[t]he legal and policy issues surrounding the postal monopoly have far-reaching and important implications that go beyond the boundaries of this proceeding." *Id.* The Commission further stated that the "issue may be appropriate for review in a separate proceeding." *Id.* The Commission believes it is now time for that separate proceeding.

With this background, the Commission issues this advance notice of proposed rulemaking to consider approaches to fulfilling its statutory

¹⁴ *See* Docket No. MC2015-7, Request of the United States Postal Service to Transfer First-Class Mail Parcels to the Competitive Product List, November 14, 2014, Attachment B at 2.

¹⁵ *See* Docket No. MC2015-7, Order Conditionally Approving Transfer, July 20, 2017, at 35 (Order No. 4009); Order No. 1411 at 7.

¹⁶ Docket No. MC2013-57, Order Denying Request, December 23, 2014, at 54-56 (Order No. 2306).

responsibilities under 39 U.S.C. 601(c), including considering whether changes are needed to the regulations concerning the letter monopoly or necessary to carry out Section 601.

The Commission is soliciting comments to identify issues that may be considered when developing regulations to implement 39 U.S.C. 601. See 39 U.S.C. 601(c). All relevant comments will be considered. However, the Commission is interested in comments on the following specific issues:

1. Are the statutory requirements of 39 U.S.C. 601(a) clear and concise, or are additional regulations necessary to carry out the intent of the statute?

2. Are the statutory requirements of 39 U.S.C. 601(b) clear and concise, or are additional regulations necessary to carry out the intent of the statute?

3. Is the scope of 39 U.S.C. 601(b)(3)—permitting that the carriage of letters out of the mail provided “such carriage is within the scope of services described by regulations of the United States Postal Service (including, in particular, sections 310.1 and 320.2–320.8 of title 39 of the Code of Federal Regulations, as in effect on July 1, 2005) that purport to permit private carriage by suspension of the operation of this section (as then in effect)” —sufficiently clear and concise, or are additional regulations necessary to carry out the intent of the statute?

4. Do any terms that currently appear in 39 U.S.C. 601 require further definition?

5. Can consumers and competitors easily determine when a mailpiece is subject to monopoly protections?

6. What is the current effect of the letter monopoly on consumers, small businesses, and competitors?

7. Are the weight and/or price requirements found in 39 U.S.C. 601(b) still relevant?

8. Are the weight and/or price requirements found in 39 U.S.C. 601(b) applied uniformly?

9. Have there been any post-PAEA Postal Service regulations that appear to limit, expand, or otherwise affect the scope of the letter monopoly contrary to law?

10. Is the term “letter” clear and concise, or can any improvements be made to the definition? If so, please provide any proposed definitions and explain how the proposed definition may better implement the intent of Congress and affect the scope of the letter monopoly.

11. Do the current statutory and regulatory requirements correctly implement the intent of Congress and advance the public interest, or should

consideration be given to any changes that may be implemented by regulation?

12. How might changes to the statutory and regulatory requirements regarding the scope of the letter monopoly affect the financial condition of the Postal Service, competitors of the Postal Service, users of the Postal Service, and/or the general public interest?

13. Are there any social, economic, technological, or other trends that should be taken into account by Congress in considering the scope of the monopoly?

14. Because the Commission is tasked with developing regulations to carry out 39 U.S.C. 601, to what extent should the Commission adopt regulations that replicate, in whole or in part, the Postal Service’s regulations that appear at 39 CFR 310.1 and 320.2 through 320.8?

IV. Ordering Paragraphs

It is ordered:

1. Docket No. RM2020–4 is established for the purpose of considering amendments to the Code of Federal Regulations, title 39, chapter III, as discussed in this advance notice of proposed rulemaking.

2. Interested persons may submit comments no later than April 7, 2020.

3. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as Public Representative in this proceeding.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Eric A. Barker,

Secretary.

[FR Doc. 2020–03156 Filed 2–14–20; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2020–0011; FRL–10005–43–Region 7]

Air Plan Approval; Missouri; Control of Nitrogen Oxide Emissions From Portland Cement Kilns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Missouri State Implementation Plan (SIP) received on February 15, 2019. The submission revises a Missouri regulation that

establishes nitrogen oxide (NO_x) control equipment and NO_x emission levels for Portland cement kilns. Specifically, the revisions add a definition, remove obsolete dates, update references to test methods, clarify rule language, remove unnecessary words, and make other minor edits. These revisions do not impact the stringency of the SIP and do not impact air quality. Approval of these revisions will ensure consistency between State and federally-approved rules.

DATES: Comments must be received on or before March 19, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2020–0011 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Written Comments” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tracey Casburn, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7016; email address casburn.tracey@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” refer to the EPA.

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2020–0011, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the