

G. Regulatory Flexibility Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule does not have "tribal implications" because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Employment, Employment and training, Enforcement, Foreign workers, Forest and forest products, Fraud, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

For the reasons stated in the preamble, the Department of Labor proposes to amend 20 CFR part 655 as follows:

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), (p), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103-206, 107 Stat. 2428; sec. 412(e), Pub. L. 105-277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106-95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107-296, 116 Stat. 2135, as amended; Pub. L. 109-423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); and 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115-218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103-206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114-74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n), (p), and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105-277, 112 Stat. 2681; 8 CFR 214.2(h); and 28

U.S.C. 2461 note, Pub. L. 114-74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106-95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109-423, 120 Stat. 2900; and 8 CFR 214.2(h).

Subpart B—Labor Certification Process for Temporary Agricultural Employment in the United States (H-2A Workers)

■ 2. Amend § 655.103(b) by revising the definition of Adverse effect wage rate to read as follows:

§ 655.103 Overview of this subpart and definition of terms.

\* \* \* \* \*

(b) \* \* \*

Adverse effect wage rate (AEWR). The wage rate published by the OFLC Administrator in the Federal Register for non-range occupations as set forth in § 655.120(b) and range occupations as set forth in § 655.211(c).

\* \* \* \* \*

■ 3. Amend § 655.120 by revising paragraphs (b)(1)(i) through (iii) and (b)(5) to read as follows:

§ 655.120 Offered wage rate.

\* \* \* \* \*

(b)(1) \* \* \*

(i) For occupations included in the Department of Agriculture's (USDA) Farm Labor Survey (FLS) field and livestock workers (combined) category:

(A) If an annual average hourly gross wage in the State or region is reported by the FLS, that wage shall be the AEWR for the State; or

(B) If an annual average hourly gross wage in the State or region is not reported by the FLS, the AEWR for the occupations shall be the statewide annual average hourly gross wage in the State as reported by the Occupational Employment and Wage Statistics (OEWS) survey; or

(C) If a statewide annual average hourly gross wage in the State is not reported by the OEWS survey, the AEWR for the occupations shall be the national annual average hourly gross wage as reported by the OEWS survey.

(ii) For all other occupations:

(A) The AEWR for each occupation shall be the statewide annual average hourly gross wage for that occupation in the State as reported by the OEWS survey; or

(B) If a statewide annual average hourly gross wage in the State is not reported by the OEWS survey, the AEWR for each occupation shall be the national annual average hourly gross wage for that occupation as reported by the OEWS survey.

(iii) The AEWR methodologies described in paragraphs (b)(1)(i) and (ii) of this section shall apply to all job orders submitted, as set forth in § 655.121, on or after January 31, 2022, including job orders filed concurrently with an Application for Temporary Employment Certification to the NPC for emergency situations under § 655.134. For purposes of paragraphs (b)(1)(i) and (ii) of this section, the term State and statewide include the 50 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

\* \* \* \* \*

(5) If the job duties on the Application for Temporary Employment Certification do not fall within a single occupational classification, the applicable AEWR shall be the highest AEWR for all applicable occupations.

\* \* \* \* \*

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2021-25803 Filed 11-30-21; 8:45 am]

BILLING CODE 4510-FP-P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 559

RIN 3141-AA76

Facility License Notifications

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission proposes to amend our facility license notifications. The proposed rule would modify the requirement that facility license notice submissions include a name and address of the proposed gaming facility. Specifically, the National Indian Gaming Commission would require the submission of the name and address of the property only if known when the facility license notification is submitted to the NIGC Chair. The Commission proposes this action to assist tribal governments, and tribal gaming regulatory authorities that face challenges in meeting the regulatory requirement in instances where a facility has not been issued a name or address.

DATES: The agency must receive comments on or before January 3, 2022.

ADDRESSES: You may send comments by any of the following methods:

• *Federal eRulemaking Portal*: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Email*: [information@nigc.gov](mailto:information@nigc.gov).

• *Mail*: National Indian Gaming Commission, 1849 C Street NW, MS 1621, Washington, DC 20240.

• *Fax comments to*: National Indian Gaming Commission at 202-632-0045.

• *Hand Delivery*: National Indian Gaming Commission, 90 K Street NE, Suite 200, Washington, DC 20002, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT**: Rea Cisneros, National Indian Gaming Commission; Telephone: (202) 632-7003.

#### SUPPLEMENTARY INFORMATION:

##### I. Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

##### II. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100-497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC or Commission) and sets out a comprehensive framework for the regulation of gaming on Indian lands. On February 1, 2008, the NIGC published a final rule in the **Federal Register** called *Facility License Notifications and Submissions*, 73 FR 6019. The rule amended the then-current facility license regulations to provide for an expedited review to confirm a tribe's submittal of facility license information; to require notice to the NIGC when a tribe issues, renews, or terminates a facility license; to streamline the submittal of certain information relating to the construction, maintenance, and operation of a gaming facility; and to provide that a tribe need not submit a notification of seasonal or temporary closures of less than 180 days.

##### III. Development of the Proposed Rule

On, June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the Facility License notifications and submission requirements. Prior to consultation, the

Commission released proposed discussion drafts of the regulations for review. The proposed amendments to the regulations were intended to implement flexibilities for a tribe to submit the notification of a new facility if the facility does not have an existing physical address at the time of submission.

The Commission held two virtual consultation sessions in July 2021 to receive tribal input on the possible changes. The Commission reviewed all comments and now proposes these changes which it believes will allow Tribes greater flexibility in submitting facility license notifications and afford the Agency greater efficiency in processing the applications.

##### III. Regulatory Matters

###### *Regulatory Flexibility Act*

The proposed rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

###### *Small Business Regulatory Enforcement Fairness Act*

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rulemaking does not have an effect on the economy of \$100 million or more. The rulemaking will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

###### *Unfunded Mandate Reform Act*

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

###### *Takings*

In accordance with Executive Order 12630, the Commission has determined that the proposed rule does not have significant takings implications. A takings implication assessment is not required.

###### *Civil Justice Reform*

In accordance with Executive Order 12988, the Commission has determined that the proposed rule does not unduly

burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

###### *National Environmental Policy Act*

The Commission has determined that the proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

###### *Paperwork Reduction Act*

The information collection requirements contained in this proposed rule were previously approved by the Office of Management and Budget as required by 44 U.S.C. 3501, *et seq.*, and assigned OMB Control Number 3141-0012.

###### *Tribal Consultation*

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (E.O.) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC's consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes.

Pursuant to this policy, on June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the management contract process.

###### **List of Subjects in 25 CFR Part 559**

Gambling, Indian—lands, Indian—tribal government, Reporting and recordkeeping requirements.

Therefore, for reasons stated in the preamble, 25 CFR part 559 is amended as follows:

## PART 559—FACILITY LICENSE NOTIFICATIONS

■ 1. The authority citation for part 559 continues to read as follows:

**Authority:** 25 U.S.C. 2701, 2702(3), 2703(4), 2705, 2706(b)(10), 2710, 2719.

■ 2. Revise § 559.2(b) to read as follows:

### § 559.2 When must a tribe notify the Chair that it is considering issuing a new facility license?

\* \* \* \* \*

(b) The notice shall contain the following:

(1) A legal description of the property;  
(2) The tract number for the property as assigned by the Bureau of Indian Affairs, Land Title and Records Offices, if any;

(3) If not maintained by the Bureau of Indian Affairs, Department of the Interior, a copy of the trust or other deed(s) to the property or an explanation as to why such documentation does not exist; and

(4) If not maintained by the Bureau of Indian Affairs, Department of the Interior, documentation of property ownership.

\* \* \* \* \*

Dated: November 18, 2021, Washington, DC.

**E. Sequoyah Simermeyer,**  
*Chairman.*

[FR Doc. 2021-25845 Filed 11-30-21; 8:45 am]

BILLING CODE 7565-01-P

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3065

[Docket Nos. RM2020-4; Order No. 6047]

RIN 3211-AA26

### Market Dominant Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Commission is proposing to add rules which describe instances when letters may be carried out of the mail, or when the letter monopoly does not apply to a mailpiece. The Commission invites public comment on the proposed rule.

**DATES:** *Comments are due:* January 3, 2022.

**ADDRESSES:** For additional information, Order No. 6047 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:

#### Table of Contents

- I. Relevant Statutory Requirements
- II. Background
- III. Basis and Purpose of Proposed Rules
- IV. Proposed Rules

#### I. Relevant Statutory Requirements

Section 601 of title 39 describes instances when letters may be carried out of the mail, or when the letter monopoly does not apply to a mailpiece. 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. 39 U.S.C. 601(b)(1) and (2). 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 through 320.8. Section 601(c) directs the Commission to promulgate any regulations necessary to carry out this section. 39 U.S.C. 601(c).

#### II. Background

The Postal Service has exclusive rights in the carriage and delivery of letters under certain circumstances.<sup>1</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>2</sup>

<sup>1</sup> This exclusive right is known as the "letter monopoly." The Commission has previously discussed the background and history of the letter monopoly. *See* 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); 85 FR 8789 (Feb. 18, 2020).

<sup>2</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.

Under the Postal Accountability and Enhancement Act (PAEA) of 2006,<sup>3</sup> Congress added 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>4</sup> Congress gave the Commission the authority to promulgate any regulations necessary to carry out the section. 39 U.S.C. 601(c).

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.

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>5</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). 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.

<sup>3</sup> *See* Postal Accountability and Enhancement Act, Public Law 109-435, 120 Stat. 3198 (2006).

<sup>4</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, 109th Cong., 1st Sess., pt. 1, at 58 (2005) (H.R. Rep. No. 109-66), at 58.

<sup>5</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); 86 FR 36246 (Jul. 9, 2021).