BAC 7710-FW-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3017

[Docket No. RM2015-14; Order No. 2960]

Procedures Related to Commission Views

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a set of final rules establishing the Commission's process for developing views to the Secretary of State on certain international mail matters pursuant to 39 U.S.C. 407(c)(1). Relative to the proposed rules, the changes are minor in nature.

DATES: *Effective:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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I. Introduction

On July 21, 2015, the Commission issued proposed rules describing general procedures related to the development of the Commission's views on certain international mail matters pursuant to 39 U.S.C. 407(c)(1).[1] For the reasons discussed below, the Commission adopts final rules on this topic. The final rules reflect several minor revisions to the proposed rules.

II. Rulemaking Context

In addition to revising the longstanding approach to establishing domestic mail rates and classifications, the Postal Accountability and Enhancement Act (PAEA) of 2006 amended several statutory provisions concerning international mail matters.[2] One of these amendments directs the Secretary of State, prior to concluding a treaty, convention, or amendment establishing a market dominant rate or classification, to request the Commission's views on the consistency of such rate or classification with the standards and criteria established by the Commission under 39 U.S.C. 3622. 39 U.S.C. 407(c)(1). Section 3622 concerns the establishment of a modern system for regulating rates and classes for market dominant products.

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[1] Notice of Proposed Rulemaking, July 21, 2015 (Order No. 2602).

[2] *See* Postal Accountability and Enhancement Act, Pub. L. 109-435, 120 Stat. 3198 (2006), section 405(a) (PAEA).

A companion provision requires the Secretary of State to ensure that each treaty, convention, or amendment concluded under section 407(b) is consistent with the Commission's views unless the Secretary makes a written determination that ensuring such consistency is not in the Nation's foreign policy or national security interest. 39 U.S.C. 407(c)(2). Such a written determination must be provided to the Commission, along with a full explanation of the reasons, but portions of the determination may be designated confidential for reasons of foreign policy or national security. *Id*.

The introduction of a formal advisory role for the Commission in this area was a significant change from previous law, as previous law did not require the Secretary of State to request the Commission's views in carrying out the Secretary's responsibilities.[3] Notwithstanding a degree of shared responsibility, the PAEA makes clear that the Secretary of State exercises primary authority for the conduct of foreign policy with respect to international postal services and other international delivery services, including the determination of U.S. positions and the conduct of U.S. participation in negotiations with foreign governments and international bodies. *See* 39 U.S.C. 407(b)(2).

Pursuant to the directive in section 407(c)(1), the Secretary of State requested—and the Commission provided—views on certain proposals submitted for consideration at the quadrennial Universal Postal Union (UPU)

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[3] *See* 39 U.S.C. 407(d) (1998), *amended by the PAEA*.

Congresses[4] held in 2008 and 2012, which occurred after enactment of the PAEA. In anticipation of preparing views in connection with the 2012 Congress, the Commission established Docket No. PI2012-1 to receive written comments from the public on the principles that should guide the development of its views.[5] The Commission closed Docket No. PI2012-1 on January 29, 2015.[6]

III. Summary of Proposed Rules

The proposed rules describe general procedures associated with the development of the Commission's views on certain proposals submitted for consideration at UPU Congresses and related meetings. They are patterned on the approach followed in Docket No. PI2012-1 with several adjustments to reflect the Commission's experience in that docket.

The proposed rules establish a docket for each UPU Congress and related meetings to serve as an administrative mechanism for soliciting and receiving public comments and posting related notices and documents. Each docket will be established on or about 150 days before the date a UPU Congress is scheduled to convene. As in Docket No. PI2012-1, the Commission will seek comments on the general principles that should guide the Commission in the

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[4] The UPU Congress is the plenipotentiary body of this international organization that has the authority to amend the UPU Acts. These Acts include the UPU Constitution, General Regulations, Rules of Procedure, and Postal Payment Services Agreement.

[5] Docket No. PI2012-1, Order No. 1420, Notice Providing Opportunity to Comment on Development of Commission Views pursuant to 39 U.S.C. 407(c)(1), July 31, 2012. The next UPU Congress is tentatively scheduled to convene in mid-September 2016 in Istanbul, Turkey.

[6] Docket No. PI2012-1, Order No. 2335, Order Closing Docket, January 29, 2015, at 1.

formation of its views. The proposed rules also allow comments on specific proposals to the extent such proposals are publicly available. Comment deadlines will be established on a case-by-case basis and based on the Commission's assessment of how much time can be allowed, consistent with timely submission of its views to the Secretary of State.

IV. Review and Analysis of Comments

A. Overview

The Commission received initial comments from Joyce Dillard, Federal Express Corporation (FedEx), the Public Representative, and the Postal Service.[7] The Commission received reply comments from FedEx, United Parcel Service (UPS), the Public Representative, and the Postal Service.[8] Commenters generally support issuance of rules on procedures for administering certain view-related matters, but seek clarification of, and revisions relating to:

- the applicability of Administrative Procedure Act (APA) procedural requirements to views;

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[7] Comments Received from Joyce Dillard, August 28, 2015 (Dillard Comments); Comments of Federal Express Corporation, August 27, 2015 (FedEx Comments); Comments of the Public Representative, August 27, 2015 (PR Comments); and United States Postal Service Comments on Procedures Related to Commission Views, August 27, 2015 (Postal Service Comments).

[8] Reply Comments of Federal Express Corporation, September 11, 2015 (FedEx Reply Comments); Reply Comments of United Parcel Service on the Proposed Rule to Adopt Procedures Related to the Commission's Views on International Postal Agreements, September 11, 2015 (UPS Reply Comments); Errata Notice of United Parcel Service, September 14, 2015; and Reply Comments of United Parcel Service on the Proposed Rule to Adopt Procedures Related to the Commission's Views on International Postal Agreements (Corrected and Refiled), September 14, 2015 (Corrected UPS Reply Comments); Reply Comments of the Public Representative, September 11, 2015 (PR Reply Comments); and United States Postal Service Reply Comments on Procedures Related to Commission Views, September 11, 2015 (Postal Service Reply Comments).

- the scope of comments and scope of Commission views, particularly with regard to the proposed definition of modern market regulation;

- several other matters related to the comment procedure, including the absence of an affirmative right to file reply comments;

- the definition of views;

- the Commission's option to suspend or forego solicitation of comments, including the proposed standard for exercising this option; and

- the availability of proposals and the Commission's views.

Having considered the comments received, the Commission adopts final rules that reflect several revisions to the proposed rules in response to comments as well as several other minor changes. The latter include revisions to reflect the Commission's intention to designate future dockets established pursuant to 39 CFR part 3017 as "International Mail" (IM) dockets, instead of "Public Inquiry" (PI) dockets, and to refer to "comments" instead of "public comments." The Commission used the IM docket designation prior to the enactment of the PAEA for agency action related to preparation of a series of annual reports to Congress on international mail financial results. This change, which makes it easier for interested persons to locate international documents on the Commission's website, requires minor conforming changes to several of the proposed sections of part 3017.

B. Applicability of APA Procedural Requirements to Commission Views

Proposed rules. The Commission proposed adding rules in a new part 3017 to provide the public with a description of the general procedures it plans to use in connection with the development of views pursuant to 39 U.S.C. 407(c)(1), primarily with regard to obtaining public input. The proposed rules incorporate procedures consistent with the Commission's core responsibility to provide its views to the Secretary of State in a timely manner. The proposed rules also reflect the Commission's commitment to having the docket serve as a mechanism for handling related matters, such as informing the public about the availability of relevant proposals, the Commission's views, or other documents.

Commenters' positions. FedEx asserts that the proposed docket must comply with the notice and comment requirements of the APA, located in 5 U.S.C. 553.[9] FedEx states that the Commission must employ APA procedures whenever it adopts a rule, and asserts there is "no reasonable doubt that the [v]iews are a 'rule' as defined by the APA." FedEx Comments at 8. FedEx acknowledges that there are several exceptions to the APA notice and comment requirements, and comments that the foreign affairs exception is the only one that "could plausibly be deemed applicable." *Id*. at 8-9.

FedEx asserts that Congress has carefully avoided the procedural dilemma that combining regulatory and executive functions poses by deliberately creating a bifurcated decision-making process in 39 U.S.C. 407(c)(1) and (c)(2).

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[9] FedEx Comments at 8-12; FedEx Reply Comments at 4.

Id. at 9. According to FedEx, under this process the Commission's responsibility is to apply title 39 of the U.S. Code to the rates and classifications under consideration, while the responsibility of the Secretary of State is to protect the foreign policy and national security interests of the United States by limiting, if necessary, application of the Commission's views. *Id*. FedEx acknowledges that the courts have never addressed this bifurcation in the context of the approval of intergovernmental postal agreements, but cites two cases it alleges concern similar bifurcations of regulatory and foreign policy functions in support of its position.[10]

FedEx contends that *South African Airways* concerned a bifurcation of functions very similar to those in section 407. FedEx Comments at 9-10. As explained by FedEx, in *South African Airways*, the Court of Appeals for the District of Columbia Circuit found it appropriate for a court to review an order of the Secretary of Transportation revoking a permit of a foreign air carrier. *Id*. at 10. While such orders were subject to disapproval for foreign policy or national defense considerations by the President, the court found that judicial review was appropriate because the Secretary of Transportation's order was based on economic considerations and thus did not encroach on the President's foreign policy powers. *Id*.

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[10] *Id.* at 9-10. *See South African Airways v. Dole*, 817 F.2d 119 (D.C. Cir. 1987); and *Aerolineas Argentinas S.A. v. U.S. Department of Transportation*, 415 F.3d 1 (D.C. Cir. 2005) (hereafter, *South African Airways* and *Aerolineas Argentinas,* respectively).

FedEx contends that the *South African Airways* holding was confirmed and extended in *Aerolineas Argentinas*. *Id*. at 11. In support of this contention, FedEx asserts that the Court of Appeals for the District of Columbia Circuit held that a determination by the Secretary of Transportation that Argentina had unjustly discriminated against U.S. carriers was subject to judicial review after expiration of the period in which the President could have, but did not, disapprove of the determination. *Id*. FedEx asserts that the court "pointedly noted" that it should not lightly presume that Congress intended to grant the Department of Transportation "an unreviewable discretion to engage in otherwise noxious decisionmaking." *Id*. FedEx concludes that the two cases demonstrate that the Commission must comply with the requirements of 5 U.S.C. 553 because the Commission's views do not involve a foreign affairs function of the United States. *Id*. at 11-12.

UPS supports FedEx's proposal to amend the proposed rules and incorporate APA notice and comment procedures on grounds that the Commission's views meet the definition of a rule under the APA because they are agency statements interpreting or prescribing law or policy. Corrected UPS Reply Comments at 8 n.6. UPS also asserts that the Commission has an important role under section 407(c)(1), noting that the Commission's views should be crucial in determining the Secretary of State's posture in international postal negotiations. *Id*. at 2. It nevertheless concludes that the foreign affairs exception is inapplicable on grounds that it is a particularly narrow exception to

APA notice and comment requirements. *Id*. at 8-9. UPS asserts that for the exception to apply, the rulemaking should provoke undesirable international consequences, and concludes that complying with APA notice and comment procedures "could hardly be said" to produce this result. *Id*. at 9. UPS also contends that the scope of comments and the Commission's views are limited to compliance with the standards and criteria established by the Commission under 39 U.S.C. 3622 and concludes the foreign affairs exception is inapplicable because 39 U.S.C. 3622 does not directly concern foreign affairs. *Id*.

The Public Representative and the Postal Service assert that characterization of the Commission's views as a rule under the APA is incorrect.[11] The Public Representative states that while the APA broadly defines a rule, the definition does not include a statement from an expert agency intended to inform the Secretary of State on the consistency of a potential international agreement with U.S. regulations. PR Reply Comments at 2. Moreover, she contends that a significant characteristic of a rule to which APA notice and comment procedures apply is that the rule must have the force and effect of law. *Id*. She reasons that a view does not fall under the APA's broad definition of a rule because absent action by the Secretary of State, it lacks any future legal effect. *Id*. The Public Representative also notes that a UPU body must approve the relevant proposals before they can take effect. *Id*. at 3.

[11] PR Reply Comments at 2; Postal Service Reply Comments at 4.

The Public Representative also considers FedEx's reliance on *South African Airways* misplaced because the order at issue in that case is distinguishable from the Commission's views. *Id*. First, she asserts that the order from the Secretary of Transportation revoking foreign air carrier permits is distinguishable because the order was presented for presidential review while views are subject to the approval of the Secretary of State. *Id*. at 3-4. Second, the order at issue in *South African Airways* revoked a permit, while views provide the Secretary of State with the expert opinion of the agency in the best position to determine the consistency of such rates and classifications with domestic postal law before the Secretary supports or opposes a proposal. *Id*. at 4. She asserts that Congress intended for views to contribute to the development of the United States' position on a specific foreign relations matter, while the Secretary of Transportation revoked South African Airways' permit pursuant to a foreign policy determination expressed by Congress, by statute, and the President, by executive order. *Id*. at 4-5.

The Postal Service asserts that FedEx's assertion that the Commission providing its views to the Secretary of State constitutes issuance of an agency rule pursuant to the APA is simply wrong. Postal Service Reply Comments at 4. It contends that FedEx's discussion of the definition of rule relies on only part of the definition, and that a complete understanding of the APA definition of rule clearly establishes that the views of the Commission are not a rule subject to the APA rulemaking requirements. *Id*.

The Postal Service states that a rule as defined by the APA implements, interprets, or prescribes law or policy. *Id.* at 5. The Postal Service examines each of these characteristics separately as they relate to the role of the Commission in 39 U.S.C. 407(c)(1) and contends that the views do not constitute rules under the APA. *Id*. It states that implementation of a law or policy requires an action that results in an impact on a specific party, and contends that views are merely the position of the Commission on the consistency of UPU proposals with U.S. postal laws that assist the Secretary of State in making foreign policy decisions. *Id*. at 5. The Postal Service asserts that interpretation relates to an agency action to review and provide a true meaning or understanding as to language. *Id*. It concludes that 39 U.S.C. 407(c)(1) does not involve any interpretation by the Commission. *Id*. Finally, the Postal Service states the Commission's views do not prescribe law or policy within the purview of the Commission; instead, it asserts the views have no legal or policy ramifications, but instead provide interagency guidance. *Id*. As such, the Postal Service contends these views are not a rule under the APA and the Commission need not comply with the formal rulemaking requirements of title 5 of the United States Code. *Id*.

Commission analysis. Under the APA, a rule is defined broadly and includes any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy, including the approval or prescription for the future of rates. 5 U.S.C. 551(4). Rulemaking is

the agency process for formulating, amending, or repealing a rule.[12] 5 U.S.C. 551(5). Significantly, 5 U.S.C. 553, which addresses rulemakings, provides an exception to the requirements of that provision to the extent a military or foreign affairs function of the United States is implicated by the rulemaking or the rulemaking relates to agency management or personnel or to public property, loans, grants, benefits, or contracts. 5 U.S.C. 553(a)(1) and (2).

Under 5 U.S.C. 553, rulemakings generally require that an agency publish a notice concerning the intended rulemaking in the **Federal Register** and provide an opportunity for commenters to submit written comments. 5 U.S.C. 553(b)(1)—(3); 5 U.S.C. 553(c). Publication of a substantive rule is to occur not less than 30 days before the effective date, except in certain specified circumstances. 5 U.S.C. 553(d)(1)—(3).

FedEx and UPS contend that views are rules as defined by the APA, and as a result, FedEx and UPS assert that the Commission should amend the proposed rules to ensure that the APA's notice and comment requirements are incorporated into the final rules. FedEx Comments at 8-12; Corrected UPS Reply Comments at 8-9. The Postal Service and the Public Representative disagree and provide support for their assertion that the APA's notice and comment requirements do not apply to views. Postal Service Reply Comments

[12] Rulemaking is one of two categories of agency actions defined in the APA; adjudication is the other. *See* 5 U.S.C. 551(7). Adjudication involves matters such as the issuance of permits or certificates. 5 U.S.C. 551(8). No commenter addressing APA procedural requirements asserts that development of views involves adjudication.

at 4-6; PR Reply Comments at 2-5. As a whole, the comments raise two distinct questions concerning the applicability of the APA to views: whether views constitute rules under 5 U.S.C. 551(4); and whether views must comply with the notice and comment requirements of 5 U.S.C. 553 if views are in fact rules under the APA. The Commission concludes that views are not rules as defined by the APA, and that even if views were considered to be rules, they are exempt from the notice and comment requirements of 5 U.S.C. 553.

Determining whether views are rules under the APA begins with examination of the function the Commission performs in developing views and the statutory authority for the exercise of that function. With respect to function, the plain language of 39 U.S.C. 407 makes clear that Commission views are an interagency advisory communication prepared at the request, and for the sole consideration of, the Secretary of State prior to his/her conclusion of treaties, conventions, or amendments addressing certain international postal rates and classifications. *See* 39 U.S.C. 407(c)(1) and (2). This interagency communication advises the Secretary of State on the consistency of those rate and classification proposals with title 39 policies. The advisory nature of views is demonstrated by how many steps the views are removed from final international postal rates and classifications. After the Commission transmits its views to the Secretary of State, the Secretary of State then finalizes U.S. positions on UPU proposals consistent with the Commission's views unless the Secretary of State determines foreign policy or national security reasons dictate otherwise. 39

U.S.C. 407(c)(2). The Secretary of State then uses the various U.S. positions to negotiate and act on UPU proposals. The UPU Acts are then amended to incorporate adopted proposals and generally must be signed by the President or his/her delegate for U.S. ratification or accession. The Commission's views are simply too many steps removed from the final rates and classifications adopted by the UPU and signed by the President to be classified as rules. The number of steps between the view and a final binding decision also distinguishes views from the types of orders at issue in *South African Airways* and *Aerolineas Argentinas*.[13]

The advisory, interagency nature of the communication and the subject matter—international rates and classifications—also materially distinguish the Commission's views from the conventional rulemaking activity of ratemaking. The Commission's domestic rate and classification rulemakings typically are not purely advisory in nature, nor are they designed for the sole consideration of the Secretary of State. Instead, these rulemakings are intended to have binding effect on those who are regulated (or engage in activities regulated) by the agency conducting the rulemaking. However, the Secretary of State pursuant to title 39 exercises the primary authority for the conduct of foreign policy with

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[13] The two cases are also distinguishable from views on several other grounds, including that the orders in these cases involved action on permits, not rates and classifications. Agency action on permits falls within the APA definition of a license, which is associated with adjudication (and related orders), rather than rulemaking. *See* 5 U.S.C. 551(8); *see also* 5 U.S.C. 551(6) and (7). In addition, the facts involved statutory provisions that mandated issuance of an order and directly addressed the terms for judicial review of permit actions, in contrast to section 407's silence on issuance of an order and judicial review.

respect to international postal and delivery services, including the determination of U.S. positions in negotiations with foreign governments and international bodies. *See* 39 U.S.C. 407(b)(2).

The Commission provides advisory views to the Secretary of State, which are distinct from rules under the APA that directly implement, interpret, or prescribe law or policy with respect to the application of future rates, wages, or prices. Commission views do not prescribe, establish, or enforce international rates or classifications. These considerations all support the conclusion that views sent to the Secretary of State are a statutory responsibility that falls outside the APA's definition of a rule.

Even if views were considered rules under the APA, the notice and comment requirements of 5 U.S.C. 553 do not apply. First, under the APA, substantive legislative rules are the only rules subject to the notice and comment requirements of 5 U.S.C. 553.[14] Legislative rules are defined as "those that grant rights, impose obligations, or produce other significant effects on private interests." *Id.* (citing *Batterton v. Marshall,* 648 F.2d 694, 701-02 (D.C. Cir. 1980)). Legislative rules also must have legal effect. *Id.* The test for determining whether a rule has legal effect involves consideration of the following factors: "(1) whether in the absence of the rule there would not be an adequate legislative basis for enforcement action or other agency action to confer benefits

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[14] *Perez v. Mortgage Bankers Assn*, 135 S.Ct. 1199, 1203-04 (2015); *Mountain States Health Alliance v. Burwell*, No. 13-641, 2015 WL 5297498, at *7 (D.D.C. Sep. 10, 2015).

or ensure the performance of duties, (2) whether the agency has published the rule in the Code of Federal Regulations, (3) whether the agency has explicitly invoked its general legislative authority, [and] (4) whether the rule effectively amends a prior legislative rule." *Id.* (citing *Am. Mining Cong. v. Mine Safety & Health Admin.,* 995 F.2d 1106, 1112 (D.C. Cir. 1993)). Courts also consider the agency's characterization of its rule and whether the rule has been applied consistently in the past. *Id.*

The Commission's views are not substantive legislative rules. They do not grant rights or impose obligations, nor do they produce other significant effects on private interests; instead, they simply advise the Secretary of State. They have not been and will not be published in the **Federal Register**. The Commission provides its advisory views in accordance with 39 U.S.C. 407(c)(1), which does not grant the Commission general legislative authority. Views, unlike regulations, do not amend past views but instead address current UPU proposals. Therefore, even if views were considered to be rules, the notice and comment requirements of 5 U.S.C. 553 do not apply.

Second, views are also exempt from APA notice and comment requirements pursuant to 5 U.S.C. 553(a)(1) as an agency action involving a foreign affairs function. In considering the applicability of the foreign affairs exception, the initial question is whether a view involves a foreign affairs function. Several factors support the conclusion that this is the case with Commission views. For example, the Commission's responsibility for developing a view is

lodged in 39 U.S.C. 407(c)(1). The parent provision, 39 U.S.C. 407, is captioned "International postal arrangements." Also, contextually, the plain language of 39 U.S.C. 407(c)(1) establishes the requisite nexus to a foreign affairs function by providing that “before concluding any treaty, convention, or amendment" that establishes a rate for a market dominant product, the Secretary of State shall request the Commission’s views. By definition, the Commission is advising the Secretary of State on matters directly related to foreign affairs—the terms of international postal treaties, conventions, and amendments.

As exemptions to the APA's procedural requirements are to be narrowly construed, the second question is whether a rulemaking would unduly interfere with the asserted foreign affairs function. If not, the exemption generally does not apply.[15] The critical considerations associated with 39 U.S.C. 407(c), in terms of the Commission's role, are the soundness and timeliness of the views, as the Secretary of State must have an opportunity to review and assess them prior to concluding his/her responsibilities under 39 U.S.C. 407(c), which includes development of U.S. positions on UPU proposals.

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[15] *See* United States Department of Justice, *Attorney General's Manual on the Administrative Procedure Act* 26 (1947), noting that the Senate and House reports stated that the phrase "foreign affairs function" is not to be loosely interpreted to mean any function extending beyond the borders of the United States, but only to those "affairs" which so affect relations with other governments that, for example, the public rulemaking provisions would clearly provoke definitely undesirable international consequences. In addition, it has been held that modification, interpretation, or violation of an international agreement's terms are clearly and directly matters of foreign affairs. *Mast Industries, Inc. v. Regan*, 596 F. Supp. 1567, 1579 (1984).

In practice, the development of the Commission's view occurs within an extremely compressed timetable. Given this practical reality, compliance with all APA procedural requirements would hamstring the Commission's ability to provide the Secretary of State with sound, timely views. A brief review of the process illustrates the difficulties.

First, development of a Commission view typically occurs in the context of a UPU Congress. The UPU is solely responsible for determining the distribution schedule for the proposals the Commission reviews. In light of different submission deadlines and the need for translation, typically the UPU does not make all proposals available at once, and often makes many proposals available only very near the start of a UPU Congress. In some cases, amendments to proposals are only made available immediately before the meeting at which the proposals are to be considered. In addition, verbal amendments may be proposed during deliberations.

Second, the Commission is unable to ensure the availability of the proposals to interested parties because the UPU does not make them publicly available.

Third, upon receipt of the proposals, development of views entails deliberations by the Commission and coordination of a view in time for the Secretary of State to have a meaningful opportunity to consider the Commission's advice. In cases when proposals are made available by the UPU with very little time for evaluation, the Commission will frequently provide its

preliminary assessment verbally, following up later with a written view. Ensuring that interested persons have an opportunity to review all proposals—and responding to each concern as occurs in most rulemakings—would preclude timely preparation and submission of views to the Secretary of State.

Fourth, given the compressed timetable under which 39 U.S.C. 407(c) functions occur, waiting until 30 days after publication in the **Federal Register** would in many cases mean that the Secretary of State could not rely on the Commission's views until well after a U.S. position had been developed and the proposals are deliberated at the UPU. *See* 5 U.S.C. 553(d)(3). For these reasons, the foreign affairs exemption would apply if views were found to be rules within the meaning of the APA.

C. Section 3017.1(a)—Definition of Modern Rate Regulation

Proposed rule. Proposed § 3017.1(a) defines modern rate regulation as the standards and criteria the Commission has established pursuant to 39 U.S.C. 3622.

Commenters' positions. The Postal Service proposes that the definition of modern rate regulation be amended to "the standards and criteria that the Commission has established in [39 CFR part 3010] with respect to rates and part 3020 with respect to classification pursuant to its authority in [39 U.S.C. 3622]." Postal Service Comments at 9. The Postal Service observes that the definition in the proposed rules is identical to the statutory language of 39 U.S.C. 407(c)(1). *Id.* However, it contends that this definition, if interpreted as it has been in the

past, not only deviates from the Commission's statutory authority, but may result in confusion for members of the public and unnecessary work for those submitting comments. *Id*. at 2. It urges the Commission to clarify the definition to ensure comments do not exceed the scope of the Commission's views as delineated by 39 U.S.C. 407(c)(1). *Id*.

The Postal Service notes that in Docket No. PI2012-1, the Commission solicited comments on the principles that should guide development of its views on the consistency of proposals with the standards and criteria of 39 U.S.C. 3622. *Id.* at 6. It asserts that this solicitation, while closely related to the statute, exceeded the scope of 39 U.S.C. 407(c)(1) and resulted in comments focused on the objectives and factors of 39 U.S.C. 3622 rather than the standards and criteria established by the Commission. *Id*. at 7. The Postal Service contends that its proposed definition of modern rate regulation unambiguously identifies the standards and criteria established by the Commission as being found in part 3010 for UPU proposals related to rates and in part 3020 for UPU proposals related to classifications, and points commenters to the relevant regulations on which the Commission will base its view to the Secretary of State. *Id*. at 9-10.

The Postal Service suggests that changes in these rates might be analogized to a Type 1 rate adjustment and proposes that the standards for Type 1 rate adjustments in 39 CFR 3010.11(d) be applied to UPU proposals. *Id*. at 5. The Postal Service also notes that part 3020 establishes the rules for Postal Service products and the classification of those products. *Id*. With respect to the

Commission review process of UPU proposals, however, it states that part 3020 is rarely applicable because UPU proposals reviewed by the Commission rarely relate to classification changes for market dominant products. *Id*. Thus, the Postal Service asserts that the Commission usually does not need to consider the standards and criteria in part 3020 when issuing its views to the Secretary of State. *Id*.

UPS asserts that the Postal Service's proposed definition of modern rate regulation is inconsistent with 39 U.S.C. 407(c) and urges the Commission to reject it. Corrected UPS Reply Comments at 1. UPS observes that the issues raised by UPU proposals extend beyond the legality of terminal dues rates. *Id*. at 4. It asserts that the Commission must also consider other UPU proposals in light of, for example, the objective of 39 U.S.C. 3622(b)(7) to enhance mail security and deter terrorism. *Id*.

UPS also contends the Postal Service's proposal is at odds with how the Postal Service interpreted the Commission's authority in 2012, when the Postal Service stated that under section 407(c), the Commission is tasked with providing its view on whether proposals are consistent with the 39 U.S.C. 3622 objectives and factors. *Id*. at 10 n.7.

UPS asserts that when the Commission considers the objectives and factors of 39 U.S.C. 3622 in evaluating UPU proposals, it is giving heed to the statutory language of 39 U.S.C. 407(c)(1). *Id.* at 10. UPS contends that any standard or criterion established by the Commission "under" section 3622 must

be consistent with section 3622 because agencies' jurisdiction and substantive powers are limited by statute, and they can only act in conformance with their statutory mandate. *Id*.

UPS also states that having empowered and required the Commission to craft regulations in conformance with section 3622, it is implausible that Congress would require that the Commission ignore section 3622 when evaluating UPU proposals. *Id*. at 11. It states that agencies must always consider their governing statutes when taking any action and must ensure that their actions are consistent with those statutes. *Id*. UPS contends that at a minimum, 39 U.S.C. 407(c)(1) should not be read as preventing the Commission from considering the objectives and factors of 39 U.S.C. 3622. *Id*. UPS asserts that 39 U.S.C. 407(c)(1) is most sensibly read as affirmatively encouraging the Commission to consider the objectives and factors. *Id*.

FedEx agrees, in principle, with the Postal Service's assertion that the Commission's approach to reviewing proposed UPU rates and classifications for market dominant products should closely parallel the agency's review of rates and classifications for market dominant domestic products, but disagrees with the Postal Service on the implications of this observation for the proposed rules. FedEx Reply Comments at 1. FedEx disagrees with the Postal Service's conclusion that 39 CFR parts 3010 and 3020 prohibit commenters and the Commission from considering the consistency of relevant UPU proposals with title 39 requirements other than those explicitly mentioned in 39 CFR parts 3010

and 3020. *Id*. at 3. It observes, for example, that 39 CFR 3010.11(c) provides that public comments may address other relevant statutory provisions and applicable Commission orders and directives. *Id*. Moreover, FedEx notes that the Postal Service's position that 39 CFR parts 3010 and 3020 constrain the Commission's review rests on the assumption that UPU rates are considered a Type 1 rate adjustments, an issue that the Commission has not decided. *Id*.

FedEx asserts that given the intense reconsideration of product definitions now underway at the UPU, it is hardly self-evident that the rates and classifications that will be proposed for consideration at the next UPU Congress should be considered analogous to Type 1 rate adjustments. *Id*. It also argues that the international nature of UPU rates necessarily requires the Commission to consider some elements of title 39 that are not involved in a review of domestic rates and classifications. *Id*.

Commission analysis. The Commission declines to adopt the revision proposed by the Postal Service. The Commission concludes that the definition as originally proposed, which defines *modern rate regulation* in terms "identical to the statutory language of [39 U.S.C. 407(c)(1)]," is appropriate. *See* Postal Service Comments at 9. In addition to being consistent with the statute, the definition is also consistent with the Commission's past practices with respect to

providing its views to the Secretary of State on the consistency of such rate or classification with modern rate setting criteria.[16]

The Postal Service's proposed modification would also artificially detach the Commission's views from the underlying objectives and factors of modern rate regulation, which are the basis of the "standards and criteria established by the Commission under section 3622." 39 U.S.C. 407(c)(1). Moreover, the Postal Service's proposed analogy to Type 1 rate cases seemingly conflicts with its comments in light of the fact that sections in 39 CFR part 3010 request expansive comments (*i.e.,* 39 CFR 3010.11(c)) and explicitly refer to the objectives and factors enumerated in 39 U.S.C. 3622 (*i.e.,* 39 CFR 3010.12(b)(7) and (8)). Furthermore, the Postal Service's suggestion to restrict the definition to 39 CFR parts 3010 and 3020 is too limiting. For example, the Commission's authority to regulate service performance standards was also drawn from 39 U.S.C. 3622. *See* 39 CFR part 3055. Consequently, the Commission declines to adopt the Postal Service's proposed modification and adopts the proposed paragraph (a) as a final rule, without change.

D. Section 3017.1(b)—Definition of Views

Proposed rule. Proposed § 3017.1(b) defines views as the opinion the Commission provides to the Secretary of State in the context of certain UPU

[16] *See e.g.,* Order No. 2602 at 1-2; Docket No. PI2012-1, Comments of the United States Postal Service, August 27, 2012, at 2-4.

proceedings on the consistency of a proposal affecting a market dominant rate or classification with modern rate regulation.

Commenters' positions. FedEx and the Public Representative suggest revisions to the definition of views. FedEx asserts that the definition should correspond to the scope of the Commission's obligations under section 407(c)(1), and should not be limited only to the opinion the Commission provides to the Secretary of State in the context of certain UPU proceedings. FedEx Comments at 12-13. Instead, FedEx contends that the definition should encompass each opinion the Commission is obliged to provide to the Secretary of State before a treaty, convention, or amendment that establishes a rate or classification for a product subject to subchapter I of chapter 36 is concluded. *Id.* FedEx asserts that section 407(c)(1) applies to all rates and classifications for international market dominant products established by the Secretary of State by intergovernmental agreement. *Id*. at 13.

In response, the Public Representative asserts that FedEx's proposed revision is unnecessary. PR Reply Comments at 6. She nonetheless states that the proposed rules may benefit from clarifying that part 3017 does not preclude the Commission from initiating a docket and soliciting comments on a relevant non-UPU treaty, convention, or amendment. *Id.* at 6-7.

The Public Representative also recommends, in conjunction with a suggestion to add a definition of relevant proposal, that the proposed definition of views be limited to opinions on "relevant proposals." PR Comments at 6-7. She

notes that the proposed rules indicate that the Commission will provide views on proposals that affect a market dominant rate or classification but would not exclude proposals that are unable to be assessed because they are for future rates or classifications and lack the detail needed to make an assessment, or proposals that were rejected or withdrawn. *Id.* at 7. The Public Representative recommends that the Commission amend § 3017.1 to limit views to relevant proposals and then offer a separate definition of relevant proposal in § 3017.1. *Id*. at 7; Attachment 1 at 1.

Commission analysis. FedEx proposes to define views as opinions the Commission provides to the Secretary of State before the Secretary of State concludes any treaty, convention, or amendment that establishes a rate or classification for a product subject to subchapter I of chapter 36. This accurately reflects the language of 39 U.S.C. 407(c)(1). However, each applicable "treaty, convention, or amendment" since the PAEA was enacted has occurred in the context of certain UPU proceedings. It appears that the two suggested approaches have identical practical effects and that tying each docket to a specific UPU Congress will allow interested persons to more easily track relevant proposed changes. As a result, the Commission adjusts the definition of views in § 3017.1 to accommodate the scope of the statute as discussed above. Part 3017 is not intended to preclude the Commission from establishing a docket, accepting comments, or giving views in non-UPU contexts that meet the requirements of 39 U.S.C. 407(c)(1).

The Commission also concludes that the proposals on which it provides its views do not require clarification. According to the proposed definition, the Commission only gives views on ". . . the consistency of a proposal affecting a market dominant rate or classification with modern rate regulation." The requirement that the proposal affect a market dominant rate or classification excludes proposals that will not have an effect because they have been withdrawn or rejected, as well as proposals with effects unable to be assessed because they lack the requisite detail to make an assessment. Consequently, except for the changes in the definition section as explained above, the Commission adopts the proposed rule as a final rule without any additional changes relating to the comments regarding proposals.

E. Section 3017.2—Purpose

Proposed rule. The proposed rule states that the proposed part 3017's purpose is to facilitate public participation in, and promote the transparency of, the development of Commission views.

Commenters' positions. No commenter specifically addresses this proposed rule.

Commission analysis. The Commission has reviewed this section and concludes that it accurately describes the purpose of the rules. Consequently, it adopts the proposed rule as a final rule, without change.

F. Section 3017.3—Establishment and Scope of Docket

Proposed § 3017.3 consists of three paragraphs. As proposed, paragraph (a) establishes the target date for establishing a public inquiry docket as on or about 150 days before a UPU Congress convenes, and states that the Commission will solicit comments on the general principles that should guide the Commission's development of views on relevant proposals, in a general way, and, if available, on specific relevant proposals. Proposed paragraph (b) states that the public inquiry docket established pursuant to paragraph (a) of this section may also encompass matters related to development of the Commission's views, such as the availability of relevant proposals, the views, other documents, and related actions. Proposed paragraph (c) provides that the notice establishing each public inquiry docket will be published in the **Federal Register.**

1. Scope of the docket

Commenters' positions. FedEx seeks expansion of the scope of the public inquiry docket to include all international agreements that impact rates or classifications of market dominant products. FedEx Comments at 13. It asserts that the wording of paragraph (a) suggests that the Commission can limit its views to a high level review of proposed rates and classifications; however, it contends that 39 U.S.C. 407(c)(1) clearly requires the Commission to consider carefully all of the criteria set out in 39 U.S.C. 3622. *Id*. FedEx also asserts that the Commission cannot fail to provide views on relevant proposals merely because they are not available on or about 150 days before a UPU Congress

convenes. *Id*. It further asserts that the Commission is obliged by 39 U.S.C. 407(c)(1) to develop views on specific proposals as they become available. *Id*.

The Postal Service characterizes FedEx's position as "directly counter to the plain reading of section 407(c)(1)." Postal Service Reply Comments at 5. It notes that FedEx uses the word "agreement," which is different and distinct from what is set forth in the statute. *Id*. The Postal Service asserts that 39 U.S.C. 407(c)(1) requires the Secretary of State to seek the Commission's view prior to concluding any treaty, convention, amendment. *Id*. at 5-6. The Postal Service asserts that these terms are distinct from an "agreement" as interpreted by FedEx, and that the Commission has properly focused the proposed rules on issues governed by the UPU Congress. *Id*. at 6. The Postal Service further asserts that 39 U.S.C. 407(c)(1) "only applies to decisions taken by the United States, [through] the Secretary of State, at the UPU Congress, and thus the Commission need not create a procedure for public solicitation of comments for every UPU proposal at meetings between UPU Congresses." *Id.*

In response to FedEx, the Public Representative notes that proposed § 3017.3 can be interpreted as providing a docket for each UPU Congress, including the relevant proposals for UPU meetings following that Congress but prior to the next Congress. PR Reply Comments at 7. She nonetheless does not object to a clarification of the rule. *Id.* The Public Representative also responds to FedEx's statement that proposed § 3017.3(a) suggests that the Commission can limit its views to a high level review. *Id.* She argues that the

language from the proposed rule that FedEx applies to views was intended to apply to commenters. It was also intended to allow comments on both specific proposals and general principles that can be applied to various proposals or in cases where specific proposals are unavailable. *Id.* at 7-8. The Public Representative concludes that she supports § 3017.3 as proposed. *Id.* at 8.

Commission analysis. FedEx highlights a need to revise the wording of § 3017.3 to clarify that it is the solicitation of comments that may be limited due to the Commission's inability to make proposals available. FedEx Comments at 13. The Commission intends for § 3017.3(a) to allow for comments to cover both approaches and principles that pertain to the proposals generally as well as specific proposals when the Commission is able to make these available.

FedEx also is concerned the proposed rules are too narrowly tailored to UPU Congresses. *Id.* at 13. As noted in Order No. 2602, each docket will cover a UPU Congress and related meetings. Order No. 2602 at 2-3. To further clarify its intent in the proposed regulations, the Commission will insert into section 3017.3 the phrase, “or such advance time as the Commission determines for any other 39 U.S.C. 407(c)(1) matter.” The Commission adopts the proposed § 3017.3 as a final rule, with clarifications outlined above concerning the scope of comments and revisions to reflect the intention to use the IM designation.

2. Availability of Proposals

Commenters' positions. The Public Representative suggests that the Commission make every effort to provide the text or a detailed summary of the

relevant proposals to the public. PR Comments at 3. She believes this will facilitate discussion by providing potential commenters with a lexicon of terms and titles for use in referencing specific proposals and with better information about the scope of issues in each docket. *See generally* PR Comments at 3-5. By not providing proposals, the Public Representative is concerned the public is segregated into those who have independent knowledge of proposals and those who do not. *Id.* at 5. The Public Representative acknowledges that circumstances may prevent the Commission from providing text or summaries of all proposals, but nonetheless asserts that the Commission should provide information regarding specific proposals in advance. *Id.* at 6. UPS supports this suggestion, and further supports any and all efforts by the Commission to provide as much information as soon as possible. Corrected UPS Reply Comments at 6. It asserts that "[o]therwise, any discussion of the proposals would likely lack meaningful impact." *Id*.

The Postal Service observes that UPU proposals generally are not publicly available documents, and states that the Commission should not release documents that are not publicly available. Postal Service Reply Comments at 2. In addition, the Postal Service contests the Public Representative's contention that absent the Commission's provision of the proposals, the public is not in a position to provide meaningful feedback. *Id*. The Postal Service states that the ability to provide comments on how the Commission should undertake its statutory role is not dependent on access to specific proposals. *Id*. It states that

the prior public inquiry docket shows that the public can comment on broad policy objectives and principles. *Id*.

The Postal Service also asserts that comments on specific proposals "will significantly burden the commenters and the Commission without providing the overarching opinions of the commenters that are most beneficial to the Commission in developing its views." *Id*. In addition, the Postal Service states that the proposed rule 3017.3(a) already sets forth that when a specific proposal is relevant and deemed significant to assist in developing the Commission's view, the Commission will seek comments on that specific proposal. *Id*. The Postal Service asserts that the proposed rules appropriately seek general comments on relevant proposals that impact market dominant rates and classifications and specific proposals when determined necessary. *Id*. at 2-3.

Commission analysis. The Commission appreciates commenters' interest in access to specific proposals. The Commission is neither the originator nor the official custodian of these documents and as such, it is not in a position to guarantee their availability. As commenters also acknowledge, the proposals are not usually publicly available. However, the rule expresses the Commission's intent to solicit comments on specific proposals if it can make them available.

In addition, the Commission found comments on the general principles that should guide the Commission's development of views useful and informative in Docket No. PI2012-1. The inclusion of a reference to specific proposals in the proposed set of rules does not diminish the importance the Commission places

on receiving general comments concerning suggested principles and approaches.

G. Section 3017.4—Comment Deadline(s)

Proposed rule. Proposed § 3017.4 consists of two paragraphs. Proposed paragraph (a) provides that the deadline for public comments will be established consistent with the Commission's assessment of its ability to file timely views with the Secretary of State. Proposed § 3017.4(b) employs the same standard for suspending or foregoing solicitation of public comments if receiving comments would impede the Commission's ability to provide timely submission of views to the Secretary of State.

1. Suspending or Foregoing Solicitation of Public Comments

Commenters' positions. FedEx, consistent with its position on the applicability of APA notice and comment requirements to a part 3017 docket, suggests that provisions for deadlines and abbreviated procedures should conform to 5 U.S.C. 553. FedEx Comments at 14. FedEx does not consider timely submission of the Commission views to the Secretary of State an adequate justification for curtailing or eliminating notice and comment procedures required by the APA. *Id*.

Joyce Dillard states comments should not be suspended or foregone because "all public comment should be welcomed on any United States treaty, convention, amendment, or any other transactions." Dillard Comments at 1. She also states that privatization of the government should not be the Commission's

objective. *Id*. She further asserts that the public needs a voice and representation. *Id*.

FedEx agrees with Joyce Dillard's position on the public's need for a voice and representation. FedEx Reply Comments at 4. However, it suggests that Joyce Dillard's implication that the proposed procedures also imply the Commission's intent to foster privatization of the government may be due to a misunderstanding of the Commission's notice. *Id*. at 4-5. The Postal Service opposes Joyce Dillard's suggestions, arguing that "the Commission should maintain the ability to forego solicitation of comments when necessary, especially when the submission of the Commission's views to the Secretary of State would otherwise be delayed." Postal Service Reply Comments at 6-7.

The Public Representative states that circumstances may require suspending or foregoing comments in order to allow the Commission to provide views to the Secretary of State in a timely manner.[17] She opposes FedEx's approach because it "would negatively impact the United States' ability to negotiate and conclude international agreements." PR Reply Comments at 6. However, she suggests including a requirement for issuance of a notice of suspension as new § 3017.4(b)(1). PR Comments at 9-10; *id*. Attachment 1 at 2.

Commission analysis. As explained in section IV.B *supra*, the requirements of 5 U.S.C. 553 are inapplicable to Commission views. Although

[17] PR Comments at 9-10; PR Reply Comments at 5.

the APA notice and comment requirements do not apply, the Commission shares the commenters' interests in having procedures that enhance opportunities for public participation and has crafted part 3017 for that reason. At the same time, Docket No. PI2012-1 demonstrated for the Commission that providing an opportunity for input must be balanced with the Commission's primary statutory responsibility under 39 U.S.C. 407—the timely submission of its views to the Secretary of State. The Commission concludes that the standard for suspending and foregoing comments that appears in proposed § 3017.4(b) appropriately balances an opportunity for comment with the Commission's statutory responsibility. The Commission will endeavor to keep commenters informed when comments are suspended. Nonetheless, the Commission declines to adopt the Public Representative's suggestion of the issuance of a formal notice of suspension (or of foregoing) solicitation of comments on grounds that a formal requirement may reduce the Commission's ability to file timely comments with the Secretary of State.

The Commission adopts proposed § 3017.4 as a final rule, with minor editorial revisions to reflect the intention to use the IM designation and the replacement of "public comment" with "comment."

2. Absence of Provision for Reply Comments

The Public Representative acknowledges that the Commission has explained that it is not initiating reply comments due to time constraints, but reads the proposed rules to allow interested parties the opportunity to submit

reply comments at the Commission's discretion. PR Comments at 7-8. She encourages the Commission to provide interested parties an opportunity to submit reply comments if time permits and suggests incorporating reply comments into § 3017.4. *Id*. at 8; Attachment 1 at 2. She also suggests that the Commission provide advance notice of the opportunity to file reply comments as she believes this will facilitate timely public participation. *Id*. at 9; Attachment 1 at 2.

UPS agrees with the Public Representative's suggestion with respect to providing for reply comments. Corrected UPS Reply Comments at 8. UPS's rationale is that reply comments are valuable because they allow parties to point out flaws in other parties' initial comments. UPS states that reply comments should expedite rather than delay development of the Commission's views. *Id*.

The Postal Service contends that reply comments are unnecessary and would delay the proceedings. Postal Service Reply Comments at 3. It asserts that in the past, the Commission specifically set forth the policies and scope of the comments it was soliciting from the public, resulting in ample opportunity to develop and submit comments. *Id*. The Postal Service further asserts that the proposed dockets are not adversarial proceedings requiring counter arguments and that a single round of comments is sufficient to allow commenters to provide their own views to the Commission. *Id*.

Commission analysis. As the Public Representative and the Postal Service note, the Commission did not originally include an opportunity to file reply

comments when it established Docket No. P2012-1. However, the Commission subsequently granted a request to file reply comments, but due to the timetable concluded that it could only allow 3 days for reply comments.[18] The limited time for reply comments allowed in Docket No. PI2012-1 strained the Commission's preparation of views and, as the Public Representative observes, the limited time also may not have provided all commenters with adequate time to review the initial comments and file responses.

The Commission appreciates that reply comments may provide additional useful insights; however, as the Postal Service observes, the purpose of a part 3017 docket is not to facilitate an adversarial proceeding, but rather to provide an opportunity for commenters to provide input on how the views should be developed. This can be accomplished without reply comments. As such, the Commission does not plan to provide an opportunity for reply comments in the ordinary course of a part 3017 docket.

H. Section 3017.5—Commission discretion

Proposed rule. Proposed rule 3017.5 states that the Commission will review timely filed comments prior to submitting its views to the Secretary of State.

Commenter's position. FedEx asserts that proposed § 3017.5 overstates the Commission’s discretion. FedEx Comments at 14. It asserts that the

[18] Docket No. PI2012-1, Order No. 1451, Order Allowing for Reply Comments, August 28, 2012.

Commission's discretion with respect to its review of comments is limited by the APA and principles of administrative law and draws an analogy to the Commission's review of domestic rates. *Id*. FedEx suggests that proposed § 3017.5 be deleted. *Id*.

Commission analysis. As explained in section IV.B *supra*, Commission views are not subject to the requirements of 5 U.S.C. 553. As such, the Commission is not required to follow the APA's notice and comment requirements prior to submitting its views. Despite no legal requirement that it do so, the Commission is creating a new part 3017 to allow for increased public input and transparency into the development of its views pursuant to 39 U.S.C. 407(c). Proposed § 3017.5 is intended to place the public on notice that comments submitted in response to a part 3017 solicitation will be reviewed by the Commission, and that the review will be limited to timely filed comments. Limiting review to timely filed comments is consistent with the necessity that an opportunity to provide comments in a part 3017 docket does not hinder the Commission's ability to submit its views to the Secretary of State in a timely manner. However, the Commission concludes that it would be useful to clarify that comments must not only be timely filed, but filed in response to a Commission solicitation under this part.

The Commission adopts proposed § 3017.5 as a final rule, with minor revisions to the caption and text for clarity.

I. Publication of Views in the **Federal Register**

Commenter's position. UPS proposes that the Commission publish its views in the **Federal Register** when the views are sent to the Department of State. Corrected UPS Reply Comments at 6. It asserts that publishing the Commission's views engenders greater public confidence that the objectives of 39 U.S.C. 3622 and 39 U.S.C. 407 are being followed, increases transparency, and encourages participation in part 3017 dockets. *Id*. at 7-8.

Commission analysis. As indicated in § 3017.3(b), the Commission intends to post its views in the docket with which it is associated after conclusion of deliberations on a related treaty, convention, or amendment. The Commission believes that posting its views on the agency website will address UPS's concerns.

V. Ordering Paragraphs

It is ordered:

1. The Commission adopts 39 CFR part 3017 as a final rule, effective 30 days following publication in the **Federal Register**.

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

List of Subjects in 39 CFR Part 3017

Administrative practice and procedure, International agreements, Postal Service.

For the reasons discussed in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations by adding part 3017 to read as follows:

Part 3017—PROCEDURES RELATED TO COMMISSION VIEWS

Sec.

Authority: 39 U.S.C. 407; 503.

§ 3017.1 Definitions in this part.

(a) *Modern rate regulation* refers to the standards and criteria the Commission has established pursuant to 39 U.S.C. 3622.

(b) *Views* refers to the opinion the Commission provides to the Secretary of State pursuant to 39 U.S.C. 407(c)(1) on the consistency with modern rate regulation of a proposed treaty, convention, or amendment that establishes a market dominant rate or classification.

§ 3017.2 Purpose.

The rules in this part are intended to facilitate public participation in, and promote the transparency of, the development of Commission views.

§ 3017.3 Establishment and scope of docket.

(a) On or about 150 days before a Universal Postal Union Congress convenes or such advance time as the Commission determines for any other 39

U.S.C. 407 (c)(1) matter, the Commission will establish a docket to solicit comments on the general principles that should guide the Commission's development of views on relevant proposals, in a general way, and on specific relevant proposals, if the Commission is able to make these available.

(b) The docket established pursuant to paragraph (a) of this section may also include matters related to development of the Commission's views, such as the availability of relevant proposals, Commission views, other documents, or related actions.

(c) The Commission shall arrange for publication in the **Federal Register** of the notice establishing each docket authorized under this part.

§ 3017.4 Comment deadline(s).

(a) The Commission shall establish a deadline for comments upon establishment of the docket that is consistent with timely submission of the Commission's views to the Secretary of State. The Commission may establish other deadlines for comments as appropriate.

(b) The Commission may suspend or forego solicitation of comments if it determines that such solicitation is not consistent with timely submission of Commission views to the Secretary of State.

§ 3017.5 Commission discretion as to treatment of comments.

The Commission will review timely filed comments responding to a Commission solicitation under this part prior to submitting its views to the Secretary of State.

By the Commission.

Stacy L. Ruble,

Secretary.

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