

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

Before Commissioners:

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

Procedures Related to
Commission Views

Docket No. RM2020-3

NOTICE OF PROPOSED RULEMAKING TO AMEND
PROCEDURES RELATED TO COMMISSION VIEWS

(Issued December 17, 2019)

I. INTRODUCTION

In this Notice of Proposed Rulemaking, the Commission proposes revisions to its procedural rules related to the issuance of Commission views on certain international mail matters pursuant to 39 U.S.C. 407(c)(1). Proposed revisions reflect the Commission's experience participating in recent Universal Postal Union (UPU)¹ activities over the last several years and are intended to enhance transparency and

¹ The UPU is a United Nations specialized agency comprising 192 member countries, including the United States. Member countries negotiate international agreements governing the exchange of international mail, including applicable rates for the delivery of international mail.

accountability within the Commission views process and improve public accessibility to related documents.

II. BACKGROUND

Under section 407(c)(1) of the Postal Accountability and Enhancement Act (PAEA), the Secretary of State, before concluding a treaty, convention, or amendment establishing a market dominant rate or classification, shall request the Commission's views on the consistency of such rate or classification with the modern rate-setting criteria of 39 U.S.C. 3622.² Commission views are developed mainly in the context of the United States' membership in the UPU, the Secretary of State's lead role in foreign policy related to international postal services, and UPU procedures for regulating international mail. Commission views entail the review and analysis of numerous proposals from the UPU councils and UPU member countries. The UPU posts these proposals on its website following submission and finalization.³ Since enactment of the PAEA, the Secretary of State has requested — and the Commission has transmitted⁴ — its views on several relevant proposals considered at UPU Congresses.⁵

² See Postal Accountability and Enhancement Act, Pub. L. 109-435, 120 Stat. 3198 (2006), section 405(a); see also 39 U.S.C. 407(c)(1). Section 407(c)(1) refers to products subject to subchapter I of chapter 36 of the title 39, United States Code, which are market dominant products. Section 407(c)(1) also refers to the standards and criteria established by the Commission under section 3622.

³ The UPU has established deadlines for member countries to submit proposals or amendments to proposals in accordance with Article 29 of the UPU Constitution, Berne 2017, and Article 138 of the UPU General Regulations, Berne 2017. See http://www.upu.int/uploads/tx_sbdownloader/actsActsOfTheExtraordinaryCongressGenevaEn.pdf. Proposals from either the UPU Councils or UPU member countries are finalized by the UPU councils at their last session before the Congress.

⁴ See, e.g., Docket No. IM2018-1, Notice of Posting of Views, September 10, 2018 and Notice of Posting of Views, November 7, 2018; see also Docket No. IM2019-1, Notice of Filing Correspondence, July 8, 2019 and Notice of Filing Correspondence and the Second Additional Proposal to the Universal Postal Convention, October 17, 2019.

⁵ In accordance with Article 14 of the UPU Constitution, the UPU Congress is the UPU's supreme body and consists of the representatives of member countries meeting no later than four years after the end of the year in which the previous Congress was held, unless exceptional circumstances justify the

In Docket No. RM2015-14, the Commission adopted rules formalizing its procedures related to Commission views submitted pursuant to 39 U.S.C. 407(c)(1).⁶ The rules provided for the establishment of a docket approximately 150 days before a UPU Congress or related meeting was scheduled to convene.⁷ This timeframe was intended to provide adequate time for commenters to prepare submissions and for the Commission to consider those submissions and prepare its views. Order No. 2602 at 3. The adopted rules reflected the Commission's commitment to both transparency and improved public accessibility by establishing dockets that informed the public about the availability of relevant proposals, Commission views, and other related documents, and by allowing all documents to be incorporated into one comprehensive record. *Id.*

In the years since the procedures related Commission views were established, the Commission has participated in both traditional UPU Congresses as well as two extraordinary Congresses. In light of that experience, the Commission is proposing minor improvements to enhance transparency and accountability within the Commission views process as well as to improve the accessibility of relevant proposals, Commission views, and related documents. Mainly, the proposed rules make clarifying changes to the Commission's procedures related to the posting of relevant proposals and Commission views. A section-by-section description of proposed revisions to 39 CFR part 3017 is presented below.

convening of an extraordinary Congress. See http://www.upu.int/uploads/tx_sbdownloader/actInThreeVolumesConstitutionAndGeneralRegulationsEn.pdf. Functions of the UPU Congress can be found in Article 103 of the General Regulations. See *id.*

⁶ See generally, Docket No. RM2015-14, Order Adopting Final Rules on Procedures Related to Commission Views, December 30, 2015 (Order No. 2960).

⁷ Docket No. RM2015-14, Notice of Proposed Rulemaking, July 21, 2015, at 2-3 (Order No. 2602).

III. SECTION-BY-SECTION DESCRIPTION OF PROPOSED RULES

Proposed § 3017.1, Definitions in this part. Proposed § 3017.1 makes minor reorganizational changes to the list of definitions that apply to 39 CFR part 3017. In proposed § 3017.1(a), the term for the definition of Commission views is changed from “Views” to “Commission views,” and the definition is simplified to reflect the language provided in 39 U.S.C. 407(c)(1). Proposed § 3017.1(c) provides the definition for “relevant proposal” in order to clarify the types of UPU proposals that the Commission is required to provide views on pursuant to 39 U.S.C. 407(c)(1).

Proposed § 3017.2, Purpose. No changes to existing rule § 3017.2 are proposed. With the proposed revisions to 39 CFR part 3017, the Commission continues its efforts to promote transparency and facilitate public participation in the development of Commission views.

Proposed § 3017.3, Establishment and scope of docket. Proposed § 3017.3(a) maintains the 150-day timeframe for establishing dockets under 39 CFR part 3017 and continues to focus on the solicitation of comments as part of the development of Commission views. Proposed § 3017.3(b) clarifies that relevant proposals will be posted in each docket and that other materials may also be posted. Using language found in existing § 3017.3(a), proposed § 3017.3(c) describes the focus of public comments. As part of proposed § 3017.3(c), the Commission proposes to continue to solicit comments relating to both general principles that should guide the development of Commission views as well as comments related to specific relevant proposals. See Order No. 2960 at 24. Existing § 3017.3(c) is redesignated as proposed § 3017.3(d) and continues to require the Commission’s publication of notices established under 39 CFR part 3017 in the *Federal Register*.

Proposed § 3017.4, Comment deadline(s). Proposed § 3017.4(a) contains one minor change. Proposed § 3017.4(a) revises the phrase “timely submission of the Commission’s views” to “timely submission of Commission views” in order to be

consistent with the language used in existing § 3017.4(b). No changes to existing rule § 3017.4(b) are proposed.

Proposed § 3017.5, Commission views. Proposed § 3017.5 revises the section heading from “Commission discretion as to the treatment of comments” to “Commission views.” The majority of existing § 3017.5(a) is retained; however, proposed § 3017.5(a) revises the phrase “under this part” to “pursuant to § 3017.3(a).” To improve transparency, proposed § 3017.5(b) indicates that Commission views on relevant proposals will be posted in the applicable docket and submitted to the Secretary of State pursuant to 39 U.S.C. 407(c)(1) contemporaneously.

IV. ADMINISTRATIVE ACTIONS

The Commission establishes Docket No. RM2020-3 for consideration of the matters raised in this Order. Pursuant to 39 U.S.C. 505, the Commission designates Samuel M. Poole to serve as an officer of the Commission (Public Representative) in this proceeding. The Commission invites public comment on the proposed rules. Comments are due no later than 30 days from the date of publication of this Order in the *Federal Register*.

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

In the context of this rulemaking, the Commission’s primary responsibility is in the regulatory oversight of the United States Postal Service. The rules that are the subject of this rulemaking have a regulatory impact on the Postal Service, but do not impose any regulatory obligation upon any other entity. Based on these findings, the Chairman

of the Commission certifies that the rules that are the subject of this rulemaking will not have a significant economic impact on a substantial number of small entities.

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

V. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket No. RM2020-3 for consideration of the matters raised in this Order.
2. Comments are due no later than 30 days after the date of publication in the *Federal Register*.
3. Pursuant to 39 U.S.C. 505, the Commission appoints Samuel M. Poole to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Ruth Ann Abrams
Acting Secretary

List of Subjects for 39 CFR Part 3017

Administrative practice and procedure, Postal Service, Treaties.

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

1. Revise part 3017 to read as follows:

PART 3017—PROCEDURES RELATED TO COMMISSION VIEWS

Sec.

3017.1 Definitions in this part.

3017.2 Purpose.

3017.3 Establishment and scope of docket.

3017.4 Comment deadline(s).

3017.5 Issuance of Commission views.

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

§ 3017.1 Definitions in this part.

(a) *Commission 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 of a relevant proposal with modern rate regulation.

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

(c) *Relevant proposal* means a proposed change to a 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 shall establish a docket in order to solicit public comments as part of the development of Commission views.

(b) The Commission shall post relevant proposals in the applicable docket established pursuant to paragraph (a) of this section and may also include other materials related to the development of Commission views, such as other documents or related actions.

(c) Public comments should focus on the specific relevant proposals posted by the Commission and the general principles that should guide the development of Commission views as well as any other materials posted in the applicable docket pursuant to paragraph (b) of this section.

(d) 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 Commission 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 views.

(a) The Commission will review timely filed comments responding to a Commission solicitation pursuant to § 3017.3(a) prior to submitting its views to the Secretary of State.

(b) After Commission views are developed, the Commission shall post Commission views in the applicable docket established pursuant to § 3017.3(a) and submit Commission views to the Secretary of State pursuant to 39 U.S.C. 407(c)(1).