

POSTAL ACCOUNTABILITY AND
ENHANCEMENT ACT

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

together with

ADDITIONAL VIEWS

TO ACCOMPANY

S. 2468

TO REFORM THE POSTAL LAWS OF THE UNITED STATES



AUGUST 25, 2004.—Ordered to be printed

Filed, under authority of the order of the Senate of July 22, 2004

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POSTAL ACCOUNTABILITY AND ENHANCEMENT ACT

AUGUST 25, 2004.—Ordered to be printed

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Ms. COLLINS, from the Committee on Governmental Affairs,
submitted the following

R E P O R T

[To accompany S. 2468]

The Committee on Governmental Affairs, to whom was referred the bill (S. 2468) to reform the postal laws of the United States, having considered the same reports favorably thereon with amendments and recommends that the bill do pass.

I. PURPOSE AND SUMMARY

The purpose of S. 2468 is to reform the postal laws of the United States. Among other things, S. 2468 preserves the basic features of universal service-affordable rates, frequent delivery, and convenient community access to retail postal services. The bill also simplifies the pricing process for Postal Service products and services and replaces the current rate-setting process for market-dominant products with a rate-cap based structure. It gives the Postal Service the authority to set rates for competitive products, such as Express Mail and Parcel Post, as long as these prices do not result in cross-subsidy from the market-dominant products. S. 2468 grants the new Postal Regulatory Commission the power to institute emergency price increases due to “unexpected and extraordinary circumstances.” It guarantees a higher degree of transparency to ensure fair treatment of customers of the Postal Service’s and those companies competing with the Postal Service’s competitive products. It requires the Postal Service to report to Congress with a strategy for how they intend to remove from the network excess processing capacity and space. Finally, the bill repeals a Civil Service Retirement System escrow fund provision from Public Law 108-18 and transfers a military pension obligation back to the U.S. Treasury, where it originated.

II. BACKGROUND AND NEED FOR LEGISLATION

By most accounts, the 1970 Postal Reorganization Act (Public Law 91-375), which created the modern Postal Service, has been a success. Today, the Postal Service receives virtually no taxpayer support and the service its approximately 710,000 career employees provide to every American, every day is second to none. More than thirty years after its birth, the Postal Service now delivers to 141 million addresses each day. It is also the anchor of a \$900 billion per year mailing industry that, according to a study conducted by the Envelope Manufacturers Association Foundation, employs roughly 11.1 million Americans nationwide in virtually every segment of the economy.

Recent years, however, have been difficult ones for the Postal Service. In late 2001, the Postal Service was projecting its third consecutive year of deficits, having lost \$199 million in fiscal year 2000 and \$1.68 billion in fiscal year 2001. It was projecting losses of up to \$4 billion in fiscal year 2002. Mail volume was falling, revenues were below projections and the Postal Service was estimating that it needed to spend \$4 billion on security enhancements in order to prevent a repeat of the tragic anthrax attacks that took several lives in the Fall of 2001. The Postal Service was also perilously close to its \$15 billion statutory debt ceiling.

Recent years have also been difficult for postal customers. While rates have now temporarily stabilized, the combination of an economic recession, terrorism and poor mail volume forced the Postal Service to increase rates three times in less than two years. These increases exceeded the rate of inflation. On January 7, 2001, the price of postage increased by 4.7 percent on average, increasing the price of a First Class stamp from 33 cents to 34 cents. On July 1, 2001, the price of a First Class stamp did not go up again but prices for other postal products increased by an additional 1.6 percent on average. On June 30, 2002, the price of postage increased by an additional 8.7 percent on average-raising the price of a First Class stamp from 34 cents to 37 cents. When mail-dependant businesses experience these kinds of price increases, they often begin mailing less and jobs can be lost.

Things have turned around somewhat for the Postal Service since the last rate increase. Postmaster General John Potter has led a commendable effort to make the Postal Service more operationally efficient. Billions of dollars in costs have been taken out of the system, thousands of positions have been eliminated through attrition and voluntary retirement and successful automation programs have resulted in improved service and productivity, along with reduced costs. More dramatically, on November 1, 2002, the Postal Service learned that an unfunded pension liability related to the cost of its employees' participation in the Civil Service Retirement System (CSRS) they once believed was as high as \$32 billion was actually \$5 billion. A study conducted by the Office of Personnel Management had found that, because pension investments have been earning interest at a higher rate than presumed in the statutory funding formula, the Postal Service would over-fund its CSRS obligation by \$78 billion if it continued to make the same payments it had been making to that point. Chairman Collins and Senator Carper introduced legislation in early 2003, the Postal

Civil Service Retirement System Funding Reform Act (P.L. 108–18), which reduced the amount the Postal Service must pay into the Civil Service Retirement System each year by nearly \$3 billion.

P.L. 108–18, however, did not provide a permanent solution to the Postal Service’s problems. The lower pension payment, coupled with Postmaster General Potter’s aggressive cost cutting, averted the need for the Postal Service Board of Governors to seek an increase to their statutory debt limit. Aggressive cost cutting, however, cannot be sustained without affecting universal service and so will not solve the Postal Service’s long-term challenges. According to the Postal Service, the total volume of mail delivered by the Postal Service has declined by more than 5 billion pieces since 2000. Over the same period, the number of homes and businesses the Postal Service delivers to increased by more than 5 million. First Class mail, the largest contributor to the Postal Service’s bottom line, is leading the decline in volume. Some of those disappearing First Class letters are being replaced by advertising mail, which earns significantly less revenue for the Postal Service.

In addition, the Postal Service has noted that only 22 percent of the Postal Service’s current mail volume is comprised of letters originating in households. A large percentage of that 22 percent is being sent to businesses, non-profit organizations and governments. Bill presentment and payment, advertising mail and other commercial correspondence account for 93 percent of total mail volume. It is highly likely that, as Americans become more comfortable conducting commercial transactions over the Internet, the Postal Service will continue to see declines in First Class mail volume.

Approximately one in four Americans today pay at least some of their bills online. Because processing an electronic payment made over the Internet costs one-third less than processing a check sent through the mail, businesses have an incentive to encourage more Americans to carry out more transactions online. In fact, many businesses no longer charge customers for the convenience of innovations like electronic bill payment but are instead offering incentives aimed at encouraging customers to give up the mail and move to the Internet.

The electronic diversion of mail and its impact on the Postal Service are among the reasons why the Postal Service has been on the Government Accountability Office’s (GAO) “high-risk” list of troubled federal programs in need of reform since 2001. Electronic diversion also comes at a time when, on top of the costs related to serving a growing number of delivery points, the Postal Service is facing more than \$90 billion in unfunded liabilities and obligations. These include \$6.5 billion in debt to the U.S. Treasury, nearly \$7 billion for Workers’ Compensation claims, \$5 billion for CSRS retirement costs, and as much as \$45 billion to cover retiree health care costs. The rate increases that will be needed to finance these liabilities, maintain the Postal Service’s current infrastructure, pay for new letter carriers, and build retail and processing facilities in growing parts of the country will only further erode mail volume. GAO has warned that the Postal Service could be on the verge of a “death spiral” in which decreasing volume and increasing rates lead to further decreases in volume.

To make matters worse, the rate and classification system created in the 1970 Postal Reorganization Act often forces the Postal

Service to wait up to 18 months to change rates, giving management little flexibility to adjust its revenues to changing market conditions or to adapt to meet the unique and changing needs of its customers. The 1970 Act also gives the Postal Rate Commission limited oversight over the Postal Service and creates a Postal Board of Governors comprised of political appointees who sometimes do not have the management experience necessary to run an organization the size of the Postal Service.

There have been a number of efforts in recent years to make some necessary reforms to the way the Postal Service does business. This Committee, led by former Chairman Fred Thompson, Ranking Member Lieberman and Senators Cochran and Akaka, former Chairman and Ranking Member of the Subcommittee on International Security, Proliferation, and Federal Services, asked GAO in March 2001 for a study of the Postal Service's precarious financial situation and its ability to continue to fulfill its universal service obligation. This report identified many of the Postal Service's serious long-term problems. Senators Thompson, Lieberman, Cochran and Akaka then sent a letter to the Postal Board of Governors then-Chairman Robert Rider in June 2001 for a report from the Postal Service on how it planned to reform itself to address the significant challenges it faced. In April of 2002, Postmaster General Potter delivered to Congress a comprehensive Transformation Plan designed to "ensure the continuation of affordable universal service and to prepare the organization for the challenges of change in a dynamic marketplace." Creation of the Plan forced the Postal Service to determine what changes could be made, within existing constraints, that would result in improved operations, performance and finances.

While the Transformation Plan was widely acknowledged as a good "first step," it was also recognized that to truly transform the Postal Service, legislative change would be necessary. In an effort to take a fresh look at the issues, in July of 2002, Chairman Collins introduced a bill to establish a Presidential Postal Commission charged with examining the problems the Postal Service faces, and developing specific recommendations and legislative proposals that Congress and the Postal Service could implement. Five months later, in December of 2002, President Bush announced the creation of the President's Commission on the United States Postal Service (hereafter referred to as "the President's Commission"), a bipartisan commission charged with identifying the operational, structural, and financial challenges facing the Postal Service. The President charged this commission with examining all significant aspects of the Postal Service with the goal of recommending legislative and administrative reforms to ensure its long-term viability.

The President's Commission conducted seven public hearings across the country at which they heard from numerous witnesses. On July 31, 2003, the Commission released its final report, making 35 legislative and administrative recommendations for the reform of the Postal Service. In issuing their report, they sent a strong message to both Congress and the Postal Service:

. . . an incremental approach to Postal Service reform will yield too little, too late given the enterprise's bleak fiscal outlook, the depth of current debt and unfunded obligations, the downward trend in First Class mail volumes and

the limited potential of its legacy postal network that was built for a bygone era.¹

Beginning in September of 2003, the Committee held a series of seven hearings specifically to review the recommendations of the President's Commission. The Committee heard from the President's Commission's Co-Chair James Johnson, Postmaster General Potter, Postal Service Board of Governors Chairman David Fineman, GAO Comptroller General David Walker, Postal Rate Commission Chairman George Omas, all four major postal unions, postmaster and supervisor associations, mail-dependent businesses, postal competitors, newspaper associations, and experts on the issues of collective bargaining and postal wages, among others. In addition, the Committee joined with the House Government Reform and Oversight Committee to hold an eighth hearing at which U.S. Department of Treasury Secretary John Snow testified.

There appeared to be a broad, general, consensus in the diverse stakeholder community on what elements of reform were necessary, such as legislative changes to the rate-setting process to allow for a more streamlined system. Postal customers wanted this new rate-setting system to provide strong incentives to hold down costs and to provide predictable rates. Many witnesses also considered improved Postal Service transparency and accountability to be essential aspects of reform; along with pricing flexibility to enable the Postal Service to better respond to its customers. The Committee was also asked by countless stakeholders to reconsider two elements of the Postal Civil Service Retirement System Funding Reform Act of 2003. The Act changed the way the Postal Service funds its Civil Service Retirement System (CSRS) obligation. The Committee was specifically asked to repeal the escrow provision of the CSRS Funding Reform Act and to transfer the military pension obligation back to the U.S. Department of Treasury. These were just a few of many legislative proposals for the reform of the Postal Service that the Committee was asked to consider.

These hearings culminated in Chairman Collins' and Senator Carper's May 20, 2004 introduction of The Postal Accountability and Enhancement Act of 2004, S. 2468.

THE POSTAL ACCOUNTABILITY AND ENHANCEMENT ACT OF 2004

Postal Service mission

Congress established the United States Postal Service "to bind the Nation together through the personal, educational, literary, and business correspondence of the people." [39 U.S.C. 101(a)]. In this legislation, the Committee reaffirms the core mission of the Postal Service and limits the Postal Service to providing postal services which comprise the physical delivery of letters, printed matter or packages weighing up to seventy pounds and other ancillary services. By focusing on the business of processing, transporting and delivering physical mail pieces, the Postal Service will avoid the distractions and the associated financial costs that have arisen when the Postal Service has ventured away from its core business. To further this focus on core mail products, the Postal

¹The President's Commission on the U.S. Postal Service, *Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service* (July 31, 2003), Introduction, p. v.

Service will not be permitted to offer nonpostal products except in cooperation with other government agencies, for example, sale of federal migratory bird hunting and conservation stamps or acceptance of passport applications.

The definition of postal services and the associated definitions of products and rates form a product framework within which the Postal Service will operate and for which the Postal Regulatory Commission will design a regulatory structure. These definitions do not direct the Postal Regulatory Commission or the Postal Service to adopt any specific costing or rate design methodologies.

Regulatory structure

The Postal Service currently operates under a regulatory structure created more than thirty years ago in the 1970 Postal Reorganization Act, a bill enacted at a time when nobody imagined that innovations like fax machines, cell phones and the Internet would one day compete with hard copy mail. The current structure offers the Postal Service little opportunity to innovate or even to quickly change the prices it charges for its products in response to changes in the market. It also gives the Postal Service little incentive to cut costs, even though the cost of a growing delivery network coupled with falling mail volume and massive debt demands greater efficiency. Meanwhile, the Postal Rate Commission is given limited authority to exercise oversight over the Postal Service. The President's Commission acknowledged these concerns, stating in its report that the laws governing the way the Postal Service operates need to be updated to meet the challenges of the Internet age.² The Postal Service acknowledged this itself in the Transformation Plan:

While the basic charter of the Postal Service has remained static since its inception in 1970, the mailing industry and private sector delivery companies have evolved to meet the changing needs of the marketplace. Indeed, innovation and competition were not primary concerns of the 1970 Act. The Act was designed to allow the Postal Service to do what it did in 1970 in a more businesslike manner. By definition and structure, a government entity has goals and mandates that the private sector does not have, and these inhibit the flexibility needed for direct competition. In the far different and more competitive environment of 2002, a revision of the Postal Service's 1970 charter is overdue.³

This legislation makes that long overdue revision by establishing a regulatory structure that balances the Postal Service's need for increased pricing and product flexibility with the need for effective oversight and accountability. The Committee has considered that the Postal Service faces little or no competition in providing many products and, for some products, has been granted a legal monopoly which prohibits private sector firms from providing alternative services. Therefore, the Postal Service's current products are divided into two categories: market-dominant products for which there is little or no competition and competitive products for which private sector alternatives exist. The regulatory structure grants

²Ibid., 8.

³U.S. Postal Service, TRANSFORMATION PLAN, (April 2002), 3.

the Postal Regulatory Commission enhanced review and oversight responsibilities for market-dominant products while streamlining the rate-making procedure for those products to allow a more rapid Postal Service response to changes in market conditions. In addition, the Postal Service's Board of Governors is permitted to more directly manage and price the Postal Service's competitive products; subject to minimal Regulatory Commission oversight to ensure that the Postal Service competes fairly with the private sector delivery services.

Current Postal Service products classified in S. 2468 as market-dominant include First Class Mail Letters, First Class Mail Cards, Periodicals, Standard Mail, single-piece Parcel Post, media mail, bound printed matter, library mail, special services and single-piece international mail. Current Postal Service products classified by this bill as competitive include Priority Mail, expedited mail, bulk parcel post, bulk international mail, and mailgrams.

The Committee considered classifying single-piece Parcel Post as a competitive product. In many parts of the country where a number of private sector delivery services compete with the Postal Service in the package delivery market, classifying single-piece Parcel Post in this way would not be likely to have much of an impact on postal customers. However, the Committee decided to make single-piece Parcel Post a market-dominant product because of the negative impact we feared a competitive classification would have on those postal customers who live in parts of the country with fewer package delivery options. The Postal Service has traditionally kept prices for single-piece Parcel Post low to facilitate universal access to affordable package delivery in all parts of the country. It charges the same rate for single-piece Parcel Post in rural communities as it does in urban or suburban communities with more competitive package delivery markets. If single-piece Parcel Post were made a competitive product subject to the language in new section 3633 of title 39 of the U.S. Code setting cost coverage requirements for all competitive products, it is possible that the Postal Service would be forced to increase the price it charges for the product. This could make single-piece Parcel Post unaffordable for some postal customers. That said, nothing in this bill prevents single-piece Parcel Post from one day being moved from the market-dominant to the competitive category under the new section 3642 of title 39. If the Postal Regulatory Commission considers making this change at any point in the future, the Committee urges them to pay particular attention during their deliberations to the impact their decision could have on the affordability and availability of package delivery services in those communities without a fully-developed competitive package delivery market.

Regulation of market-dominant products

The Postal Service currently operates under a regulatory structure that has changed little since it was established by the Postal Reorganization Act in 1970 (Public Law 91-375). However, the economy and the market place in which the Postal Service operates have changed in ways that could not have been foreseen more than thirty years ago. Today, electronic and other alternatives to mail have the potential to significantly reduce Postal Service mail volumes; volume reductions are already being seen. These market

pressures combined with a continual growth of the Postal Service's network and the number of postal delivery points threaten the ability of the Postal Service to provide universal service. In addition, a rigid, and overly litigious rate-setting process limits the Postal Service's ability to adjust rates as needed and to adapt postal prices and products to a changing marketplace. This bill proposes needed reforms that will not only address these critical needs but will also enhance oversight ensuring that the Postal Service is accountable to the American people.

In designing the regulatory structure for market-dominant products, the Committee carefully considered whether Congress itself should legislatively establish the details of the regulatory system. On balance, however, the Committee determined that relying on the Postal Regulatory Commission's expertise to develop the price cap will result in a more flexible system that can be adapted to changing market conditions. In implementing this authority, the Postal Regulatory Commission should develop regulations that will give the Postal Service the maximum pricing flexibility possible consistent with the overarching financial and policy goals set forth in this legislation. Replacing one inflexible system with another will not address the needs of the postal community or ensure long-term survival of the American public's postal system.

For market-dominant products, the Postal Regulatory Commission is directed to design, within 12 months, a modern system for regulating rates and classes for market-dominant products. This regulatory system shall be designed to meet nine objectives. These objectives recognize the importance of the postal rate-setting process to both the Postal Service and its customers and the need to ensure that the Postal Service remains a financially viable institution capable of providing the mail services that the American public need. Specifically, these objectives direct the Postal Regulatory Commission to establish a more streamlined regulatory system which will reduce the time and resources needed to litigate and establish new postal rates while giving the Postal Service increased pricing flexibility (Objectives 1 and 5). In addition, the new regulatory system should address postal customers' concerns that rate changes be both predictable and stable (Objective 2), that the mail system be secure and terrorism be deterred (Objective 4), and that an equitable distribution of the Postal Service's institutional costs result (Objective 7). The long term financial viability of the Postal Service is addressed by requiring that the Postal Regulatory Commission maximize incentives for the Postal Service to reduce costs and increase efficiency (Objective 3) thus maintaining affordable and cost-effective postal services. Lastly, the Postal Regulatory Commission is directed to include a provision for the Postal Service to earn adequate revenues, including the ability to retain earnings, both to maintain the Postal Service's financial stability and to meet established service standards (Objective 6). It is the Committee's expectation that the new rate and classification system will be fair and equitable for mailers of all types of sizes.

The Committee believes that the provision for retained earnings will address two concerns expressed during hearings conducted prior to the introduction of this bill. First, the ability to retain earnings will provide the Postal Service with revenues necessary to fund network expansion and necessary capital improvements. In

the current environment the Postal Service faces the need to expand its network as the number of delivery points increases; however, if the concurrent downward trend in mail volumes continues, it will become increasingly difficult to fund this needed expansion. Retained earnings will provide a resource that can be used by the Postal Service to meet its universal service obligation. Secondly, the Committee's determination that a rate cap mechanism is the appropriate regulatory structure is based on a determination that a rate cap can result in downward pressure on costs through restrictions on price changes. If retained earnings are not permitted, that is if revenues must equal costs, the incentive to control costs and thus generate funds for long-term capital investments, network growth or other needs will not exist.

In designing the regulatory structure, the Postal Regulatory Commission shall take into account twelve factors. These factors encompass the current pricing and classification criteria [39 U.S.C. 3622(b) and 3623(c)] used by the Postal Rate Commission to evaluate the Postal Service's Governors' rate and classification requests. The Committee believes that these factors have served a useful role in evaluating rate and classification changes under the current regulatory structure and will provide similar policy guidance for the development of the new regulatory system.

Accurate attribution of costs

The existing regulatory structure focuses considerable attention on ascertaining what postal costs could reliably be said to have been incurred to provide which specific postal services. Current law requires that the rates for each class of mail and type of service be set so as to recover the direct and indirect costs that were caused by that class or type, in addition to providing a reasonable contribution toward institutional costs. Institutional costs are those 40 percent of the Postal Service's costs, such as salaries for management and other overhead costs, that the Postal Service says cannot be attributed to any specific product. While considering this legislation the Committee heard testimony suggesting that currently accepted levels of cost attributions were both too low and too high, and that specific rules for cost attribution should be incorporated into law. The Committee has decided that the technical decision of what cost analysis methodologies are sufficiently reliable at any given time to form the basis for attribution should be left to the Postal Regulatory Commission, acting with benefit of counsel from all interested persons in open public proceedings.

Identifying costs which can reliably be found to have been caused by each specific subclass and service is essential to maintaining economically efficient rates and avoiding inequitable cross-subsidization, which occurs when rates from one product are used to pay costs associated with another. Over the history of the Postal Reorganization Act the ability to accurately attribute costs has continually evolved, and the Committee expects that with greater transparency about the Postal Service's operations, this process will continue. The current analysis has been guided by a Supreme Court decision, *National Assoc. of Greeting Card Publishers v. USPS*, 462 U.S. 810, 829-34, (1982), that carefully analyzed how the term attributable should be interpreted. This definition has been further refined by U.S. Courts of Appeals and is well under-

stood in the industry. The NAGCP Court rejected a contention that it was appropriate to make classes responsible for the recovery of costs for which an extended inference of causation was claimed. It emphasized the need for reliable indicators of causality without specifying any specific method for identifying causality. Governed by this ruling since 1982, the Postal Rate Commission must have reasonable assurance that any costs attributed to a class of mail are incurred as a result of providing that class of mail. The Committee finds no reason for changing this standard.

Establishment of a regulatory system for market-dominant products

In hearings, witnesses from the mailing industry cited the need for predictable and stable rates. Predictability and stability, the Committee learned, allows mailers to better plan their mailing and could allow them to increase the amount of business they do with the Postal Service. Of primary importance, then, is the establishment of a regulatory system that will provide for limits on the percentage changes in Postal Service rates. This system—frequently referred to as a rate or price cap—shall be designed to limit annual rate changes based on the level of inflation. While the Committee considered directing the use of a specific inflation measure as the basis for the rate cap, concern existed that such a determination would unreasonably restrict the flexibility of the Postal Regulatory Commission to establish the best and most effective rate cap mechanism. The Committee expects that the Postal Regulatory Commission, in public proceedings and with the input of all interested parties, will fully and carefully evaluate the merits of a wide range of rate cap structures. This consideration should include, but should not be limited to, the relative merits of different inflation indices including the Consumer Price Index, the Employment Cost Index, and the Gross Domestic Product Price Index; the definition of the product groupings to which the caps will be applied, and the use of productivity factors or offsets. In addition, the Postal Regulatory Commission should consider the experience gained and lessons learned from the construction and application of rate or price caps in other industries. Overall, the Committee believes that the rate cap structure established by the Postal Regulatory Commission should provide for the maximum possible pricing flexibility while maintaining adequate financial safeguards and incentives for cost control.

To provide for predictable rate changes which will allow Postal Service customers to budget for postage expenditures, the Postal Regulatory Commission shall establish a schedule under which rates will change at regular intervals by predictable amounts. While the establishment of a rate cap per se will increase the predictability of postal rate changes by imposing a known cap, the Postal Regulatory Commission must consider whether additional requirements are necessary and appropriate. The Committee believes that the characteristics and relative sophistication of various customer groups may suggest differing rate change schedules are appropriate for specified product groupings. Similarly, market conditions and the relative speed with which market conditions change may also inform the Postal Regulatory Commission's decision in establishing any rate change schedule. The Postal Regulatory Commission may determine that more or less frequent rate changes are

appropriate for different product groupings. However, establishment of schedules for rate changes should be designed to provide a necessary and appropriate level of predictability; it should not be designed to unreasonably restrict the ability of the Postal Service to adjust prices within the rate cap.

To provide for adequate review of any proposed changes in market-dominant product price, a 45-day prior review period is established. This period begins with the Postal Service's public notice of a price adjustment affecting a market-dominant product or products and will provide the Postal Regulatory Commission an opportunity to review the adjustment. If the Postal Regulatory Commission finds that the price adjustment is not in compliance with the established statutory and regulatory requirements, it must notify the Postal Service within the 45-day notice period. In response to this notice, the Postal Service shall describe the actions to be taken to ensure that the rate change is in compliance with the statutory and regulatory requirements. While the Postal Service is expected to respond adequately to any Postal Regulatory Commission determination of noncompliance prior to the scheduled rate implementation, the burden is on the Postal Regulatory Commission to provide adequate notice of noncompliance permitting a Postal Service response prior to the expiration of the 45-day period. If either intentionally or inadvertently, the Postal Regulatory Commission does not notify the Postal Service of any noncompliance, the Committee believes that there would be no impediments to the Postal Service implementing the rate adjustment as noticed at the end of the 45-day period. The Committee clearly recognizes that the 45-day review period is short and has determined that a short review period is consistent with the goals of increasing Postal Service pricing flexibility. To facilitate review of rate adjustments, the Committee presumes that extremely clear and well-defined standards will be established by regulation allowing the Postal Service and the Postal Regulatory Commission to make a rapid determination of whether a rate adjustment meets the applicable criteria. The review period is not intended to be used to evaluate the regulatory structure; if a full review of the regulatory structure is deemed to be necessary, the Committee expects that, during the period of any review of the regulatory structure, the Postal Service will be permitted to adjust rates under the regulatory requirements in effect as of the date of public notice of the adjustment. Therefore, any changes in the regulatory structure will be applicable only to rate adjustments noticed by the Postal Service after the date the new regulations are established.

The Committee believes that the rate cap system to be established under this statute by the Postal Regulatory Commission should give the Postal Service the flexibility to respond to all circumstances it is likely to face in the normal course of business. However, the terrorist attacks of September 11, 2001 and the subsequent use of the mail to transmit anthrax highlight the need to address unexpected and extraordinary circumstances and their effect on the Postal Service and its financial requirements. Therefore, the Postal Regulatory Commission shall establish procedures under which the Postal Service can adjust rates on an expedited basis due to unexpected and extraordinary circumstances. The Committee hopes that these procedures will never be needed; however, it

would be unwise not to recognize the potential need for rapid changes to the postal rate structure in the event of a national emergency.

Workshare discounts

The Committee has heard testimony from many parties describing the benefits of the Postal Service's worksharing program. This program was developed by the Postal Service and the Postal Rate Commission to enable customers to pay lower rates when they perform mail preparation or transportation activities such as presorting, prebarcoding, and certain other mail handling activities that would otherwise be performed by the Postal Service. This worksharing program has induced mailers to invest in equipment and processes that facilitate the Postal Service's automation program, has reduced mailing costs, and has otherwise made mail a more economically attractive medium.

The Committee agrees with the principle, supported by the Postal Service, the Postal Rate Commission, and postal employees, that workshare discounts should generally not exceed the costs that the Postal Service avoids as a result of the worksharing activity. When discounts are kept below the costs saved by the Postal Service, mailers have a financial incentive to do work more efficiently than the Postal Service can do it, yielding savings to the participating mailers, to the Postal Service, and to other postal customers whose rates are kept down by the Postal Service's savings under the program.

However, there are four circumstances under which workshare discounts in excess of avoided costs have historically been allowed by the Postal Rate Commission and are warranted, and the Committee has codified these exceptions in the legislation:

- The first exception applies when a discount is associated with a new or changed postal product and is needed, for up to 4 years, to induce mailer behavior that furthers the economically efficient operation of the Postal Service. Such a discount can encourage mailers to invest in new technologies or practices that will save the Postal Service money, and can then provide the Postal Service an opportunity to achieve the resulting efficiencies. For discounts already in effect on the date of enactment, the 4-year period begins on that date.
- The second exception provides that a workshare discount may exceed costs avoided if a reduction in the discount would—(i) lead to a loss in volume of the affected category of mail and thereby reduce the aggregate contribution to institutional costs, (ii) result in a further increase in rates paid by mailers not able to take advantage of the discount, or (iii) impede the efficient operation of the Postal Service.
- The third exception allows a workshare discount to exceed costs avoided if that excess portion of the discount is necessary to mitigate rate shock and will be phased out over time. Discounts under this exception, like those under the first exception, are time-limited.
- The fourth exception applies to discounts that are provided in connection with subclasses of mail consisting exclusively of material having educational, cultural, or scientific value. Discounts

under this fourth exception, like those under the second, are not time-limited.

To ensure that the economic rationale for workshare discounts is transparent and clearly understood, the Postal Service will be required to submit to the Postal Regulatory Commission a report whenever it establishes or maintains a workshare discount. This report must include an explanation of the Postal Service's reasons for establishing or maintaining the rate and must set forth the data, economic analyses, and other information relied upon by the Postal Service to justify the rate.

Service agreements for market-dominant products

In the hearings, the Committee heard from numerous witnesses who argued that increased pricing and product flexibility was necessary to provide the Postal Service with the ability to respond quickly and effectively to customers' needs. The current regulatory structure places roadblocks in the way of responsive and cost-effective pricing initiatives. For example, the Capital One service agreement required eight months of litigation, hundreds of pages of testimony, hearings, and extensive legal argument before being recommended by the Postal Rate Commission. The Committee fully supports the Postal Rate Commission's determination that service agreements establishing customer-specific rates and classifications are legal and permissible under current law. In addition, the Committee believes that the regulatory structure established by this legislation, absent the provisions of this section, would permit customer-specific service agreements for both market-dominant and competitive products. However, in evaluating the concerns of postal stakeholders, the Committee has determined that the limited experience to date with service agreements suggests that prudent safeguards might reasonably be included in this legislation. While future review may determine that the requirements we have instituted are unnecessary, we believe these requirements will provide useful legislative guidance in evaluating future service agreements for market-dominant products. Consistent with the Committee's determination that increased pricing discretion should be granted to the Governors, the requirements for service agreements for competitive products decisions for competitive products do not differ from those for any other competitive product rate change as set out in section 3631.

Specifically, the Postal Service is authorized to negotiate service agreements with individual customers or groups of customers for market-dominant products. These agreements would provide for the provision of postal services under terms, conditions, or service standards that differ from those generally available to other users of the mails. Service agreements will, therefore, serve as a vehicle by which the Postal Service and its customers can evaluate unique opportunities to reduce costs, change product offerings to meet specific customer needs or undertake other actions that will provide a benefit to the participating customer. While many view service agreements as a way for the participating customer to reduce its costs (through lowered rates or acceptance of reduced services), the Committee encourages the Postal Service to investigate opportunities that may provide additional or premium (possibly at a higher price) services that would not otherwise be available to customers.

We do not intend for service agreements to be a limited substitute for more broadly applicable classifications. The Postal Service should continue to make every effort to provide products and services of value available to as many customers as possible.

In fact, the conditions established in this legislation will ensure that no one is made worse off as a result of a customer-specific service agreement. Every service agreement must provide sufficient total revenue to ensure that all Postal Service costs attributable to the agreement are covered and that the contribution to the Postal Service's institutional costs from the mail covered by the agreement will not decline; therefore, no other customer will bear an increased institutional cost burden because the Postal Service has entered into the service agreement. In addition, rates or fees for other mailers cannot increase as a result of the agreement. Lastly, the Postal Service will be required to enter into agreements on the same (or substantially similar) conditions with customers who are not party to the agreement; this will result in the benefits from a service agreement being made accessible to any customers who can meet the requirements of the service agreement. Lastly, the Postal Regulatory Commission may suspend, cancel or prevent an agreement if it does not meet the requirements of this section, or following review under the same procedures used for other rate and service complaints as established in section 3662.

Administrative requirements are also established by this legislation that will ensure that the terms and conditions of any service agreements are publically known and to permit the open evaluation of the agreements by both the Postal Regulatory Commission and any customer who may want to determine whether it could benefit under the terms of the agreement. The Postal Service is required to publish the terms of a service agreement in the Federal Register at least thirty days before the service agreement is to take effect. This publication must describe the postal services the agreement involves and the functions the Postal Service and the customer respectively must perform, and the rates and fees payable by the customer during the term of the agreement. In addition, the notice must provide sufficient information (based to the extent practicable on customer specific data) to demonstrate the bases for the Postal Service's view that the agreement meets the legislatively established conditions for a permissible service agreement. As a safeguard for regional or local businesses who may not routinely review Federal Register notices, the Postal Service shall publish this information in a manner that would provide reasonable notice to persons within any geographic area if the agreement pertains to that area specifically.

Pricing of competitive products

This bill establishes a flexible system of pricing the Postal Service's competitive products which reduces regulatory burdens and permits more customer- and market-responsive pricing. It does this while establishing appropriate safeguards to ensure that a level playing field is maintained and that the Postal Service does not unfairly compete. The competitive products are defined as priority mail, expedited mail, bulk parcel post, bulk international mail and mailgrams. As appropriate, the Postal Regulatory Commission may adjust the list of competitive products in response to changes in

market conditions such as a significant increase in the number or type of non-postal alternatives for a specific product. In the market for each of these products, substantial private sector competition exists giving customers alternatives to Postal Service products. Unlike market-dominant products, where a lack of competition leads the Committee to specify a rate cap mechanism to ensure that costs and prices are controlled; for the competitive products the Committee believes that the open and fair competition with private sector firms will encourage the cost-effective provision of Postal Service competitive products.

The regulatory structure established by the Postal Reorganization Act does not distinguish between market-dominant and competitive products. See 39 U.S.C. 3622. Regardless of the availability of competitive alternatives to postal products, the same litigious and lengthy postal rate-making process is applied to all products. Under this legislation, the Presidentially-appointed Postal Service Governors are permitted to establish rates and classes for competitive products as needed under a streamlined review process.

To protect both customers and competitors of the Postal Service, this legislation establishes a prior review process to ensure that the Postal Service is not pricing competitive products inappropriately and to ensure that the Postal Regulatory Commission and all interested parties have the opportunity to review the proposed competitive products prices and to determine that the requirements of this act are met. The public notice and concurrent Postal Regulatory Commission review period for competitive product price change is limited to thirty days. As compared to current statute, which allows the Postal Rate Commission up to ten months to review all Postal Service price requests, the limited thirty day review period should substantively increase the ability of the Postal Service to adjust its competitive pricing and products to react to market changes and customer needs. If the Postal Regulatory Commission finds that any proposed competitive product price change does not meet the requirements of the regulatory structure, it is required to notify the Governors of the noncompliance and the Governors are required to respond to this notice by describing the actions to be taken to comply.

The Postal Regulatory Commission is required, within 180 days of enactment, to promulgate regulations that prohibit the cross-subsidization of competitive products by market-dominant products, ensure that each competitive product covers its attributable costs, and that all competitive products collectively cover their share of the Postal Service's institutional costs. These regulations are intended to ensure that the Postal Service competes fairly in the provision of competitive products. However, the Committee feels that the regulation of competitive products should be constructed to result in the minimum possible regulatory burden and to facilitate a short and limited review of proposed competitive product price changes. As a result, established regulations are expected to be clear and easily interpreted to facilitate the short prior review process established by this legislation. The Governors, in turn, are expected to provide a clear and concise explanation of how and why the proposed rate changes meet the established requirements to facilitate Postal Regulatory Commission review. The review process is intended to ensure that the Governors' proposed

competitive price adjustments meet the established requirements, not to serve as an evaluation of the merits of each proposed rate as compared to any other alternative rates.

Experimental and new products

The Committee recognizes that, to remain financially viable and to continue to meet the evolving needs of its customers, the Postal Service must innovate and develop new products and services. While this legislation limits the scope of the Postal Service's product offerings to "postal products," we do not intend for this limitation to restrict the Postal Service's ability to develop new postal products. In fact, developing an organizational culture of innovation and market responsiveness, can help the Postal Service to address its financial difficulties by increasing the attractiveness of mail to both new and existing customers. Therefore, this legislation sets out procedures under which the Postal Service can offer experimental and new postal products.

Under the provisions of the Postal Reorganization Act, the Postal Service must request a recommended decision from the Postal Rate Commission prior to offering any new product or service. While the Postal Rate Commission has established rules to expedite consideration of experimental and market test classification requests, the Postal Service and other stakeholders have often observed that the current regulatory structure does not offer sufficient flexibility to innovate and offer new products and services. To increase flexibility and to facilitate a more entrepreneurial approach to product development, the Committee believes that the Postal Service should be granted additional flexibility permitting it to market test experimental products without extensive prior review by the Postal Regulatory Commission. Therefore, for market tests of experimental products for which Postal Service revenues are expected not to exceed \$10 million annually, no prior review will be required. In addition, these market tests will be limited to 24 months in duration. However, if it is necessary to determine the feasibility or desirability of the product being tested, the Postal Regulatory Commission may, upon receiving an application from the Postal Service, extend the revenue limits to \$50 million annually and the duration of the market test for an additional 12 months. The Postal Regulatory Commission shall approve any application to increase the revenue limit or duration of the market test for an experimental product if it determines that the product is likely to benefit the public and meet an expected customer demand, the product is likely to contribute to the financial stability of the Postal Service and the product is not likely to result in unfair or inappropriate competition. The ability to modestly expand the market test revenue and duration limits with Postal Regulatory Commission concurrence, will give the Postal Service additional flexibility if it finds that a more limited test will not provide sufficient information to evaluate the market demand and the financial potential of a product.

To ensure that proper safeguards exist at the outset of a market test of an experimental product, the Postal Service will be required to file with the Postal Regulatory Commission and publish in the Federal Register a notice describing the test's nature and scope and explaining why it believes the experiment should be classified as

a market test. Products eligible for provision as a market test for an experimental product must be sufficiently different from all products offered by the Postal Service in the prior two years, thus protecting against the use of the market test rules to adjust or change the rates charged for existing products outside the rate-making processes established in sections 3622 and 3623. However, this limitation is not intended to foreclose the use of the market tests of experimental products authority for enhancements to existing products. The test used to determine whether the market test provisions can be applied is a judgement that the proposed product is, from the point of view of mail users, different from those offered in the prior two years. These new products could include ancillary services that were not previously offered, product enhancements that provide services of value that differ in some respect to currently offered products, re-introductions of products that had been previously discontinued, and adjustments to product offerings under the experimental rules that change the nature or type of service provided. The intent of the market test rules is not to severely limit the type and scope of products that can be offered under these provisions, it is rather to encourage the Postal Service to expand the scope of its products to maintain the attractiveness of the mails generally.

To protect both customers and competitors of the Postal Service, the Postal Service should not be permitted to offer a product under the market tests of experimental products provisions if it would create an unfair or otherwise inappropriate competitive advantage for either the Postal Service or any mailer, especially small business concerns. In addition, if a market test for an experimental competitive product is undertaken, the protections offered for confidential business information under the new Postal Regulatory Commission subpoena powers will also apply. To ensure consistency and preserve the distinctions made under the rate-making provisions applicable to market-dominant and competitive products, costs and revenues attributable to competitive experimental products will be included in the determination of the Postal Service's compliance with the provisions applicable to competitive products generally. To prevent a potential anomaly that might otherwise permit an enhancement to a competitive product to be classified as a market-dominant product, any product developed under the market test rules that only affects competitive products or provides services ancillary to competitive products will also be classified as a competitive product even if a similar ancillary product is available for one or more market-dominant products. Lastly, as a final safeguard, the Postal Regulatory Commission may order the cancellation of a test or take other appropriate action, if it determines that a market test does not meet the requirements of the section. The Committee established this provision as an ultimate safeguard for customers and competitors of the Postal Service; however, we do not intend this safeguard to result in a de facto prior review of market tests of experimental products through the establishment of rules that institute requirements for provision of extensive information or data before the Postal Service can begin a market test.

While the bill establishes procedures setting out a simplified process allowing the Postal Service to conduct market tests of ex-

perimental products, the Committee does not intend to limit the Postal Service's product development initiatives to small-scale product enhancements. Instead, we strongly encourage the Postal Service to review its product offerings on an ongoing basis to ensure that they continue to meet the needs of the American people including customers of all sizes. Because it is not unlikely that these reviews may result in proposed product changes exceeding the scope of changes permitted under the market test for experimental products provisions, this legislation establishes a process whereby the Postal Service can adjust its product lines and respond to the market place while ensuring that the Postal Regulatory Commission can provide appropriate regulatory oversight.

As has been well demonstrated in public hearings both before this Committee and before the President's Commission on the United States Postal Service, the postal marketplace is changing, perhaps more rapidly than at any time in our nation's history. Therefore, while the Committee divided existing postal products and services into the market-dominant and competitive product groupings in this legislation, over time, we expect that these product groupings will need review and revision as circumstances change. Therefore, the Postal Regulatory Commission is given the authority to change the lists of market-dominant and competitive products by adding or removing products from the lists or by transferring products between the two lists. The Postal Service or users of the mails may request changes in the product lists and the Postal Regulatory Commission may also, upon its own initiative, change the product lists. Under current law, the Postal Service has the sole ability to request changes in the classification schedule, and absent such a request, the Postal Rate Commission has little ability to initiate classification changes even if the change would be beneficial. However, we do not intend for these provisions to result in Postal Regulatory Commission management of the Postal Service's product offerings. The goal of increased flexibility and increased responsiveness to customers' needs requires that the Postal Service manage its product offerings. But, in a changing environment, the Postal Regulatory Commission must be able to make needed alterations to the regulatory structure, including the classification of products as market-dominant or competitive, to ensure that the regulatory structure continues to meet the goals established by Congress. Consequently, any changes to the product listings should be well-reasoned and clearly justified based on changing market conditions.

To guide Postal Regulatory Commission decisions on the classification of products as either market-dominant or competitive, "market-dominant products" have been defined as including each product for which the Postal Service exercises sufficient market power that it can effectively set prices above costs, raise prices significantly, and decrease quality or output without risk of losing substantial business to other firms offering similar products. Because this legislation establishes regulatory limits on, for example, price changes, the evaluation of whether "sufficient market power" exists must recognize the potential for price, quality, or output changes and associated market effects in the absence of established regulatory constraints. All products not defined as market-dominant under these criteria shall be categorized as competitive prod-

ucts. Generally, this definition adopts the Federal Communications Commission definition of a dominant carrier.

Furthermore, in recognition that some customers have no non-Postal Service alternatives because of the Congressionally-established restrictions on the carriage of letters outside the mail, [18 U.S.C. 1696 subject to the same exception set forth in the last sentence of section 409(e)(1)] this legislation requires that any product subject to this monopoly remain within the market-dominant category. In making any decision to transfer products under this section, the Postal Regulatory Commission should give due regard to the availability and nature of services in the private sector engaged in the delivery of the product, the views on the appropriateness of the proposed action of those who use the product and the likely effect on any small business concerns. This will allow for a balanced evaluation of the merits of any proposed transfer of a product between the market-dominant and competitive product categories. Because changes in the market place may not equally affect all of the subclasses or other subordinate units or a class of mail or type of postal service, nothing in this title shall be considered to prevent transfers under this section from being made because they only affect some (but not all) of the subclasses or other subordinate units of a class of mail or type of mail service. To facilitate the effective operation of the regulatory structure, the Postal Service cannot offer any product involving the physical delivery of letters, printed matter or packages unless it has been assigned to the market-dominant or competitive category of mail.

Reporting requirements

In establishing the postal regulatory structure in the bill, the Committee has attempted to balance the Postal Service's need for additional flexibility with the public and mailing community's need for increased financial transparency and established safeguards to protect against unreasonable use of the Postal Service's statutorily-granted monopoly. We are also establishing reporting requirements for both the Postal Regulatory Commission and the Postal Service to ensure that Congress, the Postal Regulatory Commission and postal stakeholders have sufficient information to determine the ongoing effectiveness of the regulatory structure established in this legislation as well as to provide for ongoing audits of the Postal Service by the Commission. Specifically, the Postal Regulatory Commission is required to report to Congress annually on the operations of the Commission under the provisions of this title including the extent to which regulations are achieving the objectives of the rate-making requirements of sections 3622 (market-dominant products) and section 3623 (competitive products), and the service standard provisions of section 3691.

To facilitate application of the rate-making requirements of this title and to provide a basis for the evaluation of the Postal Service's compliance with these requirements, the Postal Service shall (within 90 days of the end of each year) submit a report to the Postal Regulatory Commission that analyzes costs, revenue, rates, and quality of service in sufficient detail to demonstrate that all products complied with all applicable requirements. In addition, for each market-dominant product provided, this report shall include product information, and measures of service for that product. This

information will allow the Postal Regulatory Commission and all interested parties to evaluate the provision of market-dominant products. To ensure that workshare discounts are appropriately established, the report shall include data on a per-item basis for each workshare discount including the costs-avoided, the percent of the discount that the cost-avoided represents and the contribution made to institutional costs. The Postal Service may provide summary data by service agreement and market test but must report the data that the Postal Regulatory Commission requires. This report shall be audited by the Inspector General. The results of the Inspector General's audit will be submitted with the Postal Service's report.

The Postal Regulatory Commission shall prescribe by regulation the content and form of the Postal Service's report. In doing so the Postal Regulatory Commission must give due consideration to the need to balance the requirements of full and open access to postal information against the need to avoid unnecessary or unwarranted administrative effort and expense on the part of the Postal Service and the importance of protecting the confidentiality of commercially sensitive information. The reporting requirements are intended to provide an opportunity for the Postal Regulatory Commission to review and evaluate the compliance with the rate-making provisions of this title and to evaluate the level of service provided to customers; they are not intended to impose an excessive burden on the Postal Service.

In establishing regulations implementing this section, the Postal Regulatory Commission should carefully weigh the need for and utility of any data it may request against the expected benefit in increased transparency of postal operations and finances. The reporting requirements are not intended to serve as an unlimited opportunity to access any and all Postal Service data including that which may be, at best, tangentially-related to evaluating compliance with the rate and service provisions of this title. However, in recognition that circumstances and data needs may change over time, the Postal Regulatory Commission may (on its own motion or upon request of an interested party) initiate proceedings to improve the quality, accuracy, or completeness of data provided it appears that costs or revenue attribution data or service quality data has become significantly inaccurate or can be significantly improved or if revisions are necessitated by the public interest. If the Postal Service determines that any information provided in a nonpublic annex to a report under this section contains information as described in 39 U.S.C. 410(c) or exempt from disclosure under 5 U.S.C. 552(b) including commercially sensitive information which under good business practice would not be publically disclosed, the Postal Service shall notify the Postal Regulatory Commission of its determinations and describe the documents for which confidentiality is sought and the reasons for this determination. Lastly, to ensure that the Postal Regulatory Commission has access to up-to-date Postal Service data to facilitate its statutory mission, the Postal Service shall also provide copies of its most recent comprehensive statement, strategic plan, performance plan and program performance reports.

After receiving the required annual reports, the Postal Regulatory Commission shall provide an opportunity for public comment

and shall determine within 90 days whether the rates and fees in effect were not in compliance with the applicable provisions of this chapter or whether any service standards were not met. This compliance determination will serve as a check on the Postal Service's rate-setting decisions and provide a safeguard ensuring that the rate-making requirements of this legislation have been met. However, this compliance assessment is not intended to serve as an after-the-fact review of the appropriateness of each individual rate in comparison with any other possible alternative rates; the review is intended to ensure that the rates for market-dominant products meet the requirements of the established rate cap at the time the rates were implemented and that the competitive products meet the rate requirements established to ensure that inappropriate cross-subsidy or competition does not occur. If noncompliance is found, the Postal Regulatory Commission is required to take appropriate remedial action by, for example, ordering that a cross subsidy be ended or that a rate that has exceeded the Commission-established price cap be lowered. To avoid the potential for duplicative review of prior Postal Service and Postal Regulatory Commission decisions, once the Postal Regulatory Commission determines that the Postal Service was in compliance with the applicable standard for any year, this shall establish a rebuttable presumption of compliance by the Postal Service for the purpose of any rate or service complaint.

Rate and service complaints

Under current statute, rate and service complaints can be filed; however, relatively little recourse is available if the complaint is found to be justified. This legislation strengthens the authority of the Postal Regulatory Commission to act on a complaint and to require the Postal Service to take action if the complaint is found to be justified. Any person who believes that the Postal Service is not operating in conformance with the statute may lodge a complaint with the Postal Regulatory Commission which then is required (within 90 days) to either begin proceedings on the complaint or issue an order dismissing the complaint. If the Postal Regulatory Commission does not act on a complaint in a timely manner it shall be treated as if it were dismissed. If, after open proceedings the Postal Regulatory Commission finds that the complaint is justified, this act gives the Commission broad authority to correct violations by ordering the Postal Service to take whatever steps the Commission considers appropriate. In cases of deliberate non-compliance with the law, the Commission is authorized to levy fines based on the seriousness of the noncompliance. To ensure that customers using market-dominant products are not unfairly penalized, fines resulting from unlawful provision of competitive products must be paid using revenues from the Postal Service's competitive products. All fines will be paid into the U.S. Treasury's General Fund.

Appellate review and enforcement of orders

The Committee recognizes that persons, including the Postal Service, may be adversely affected or aggrieved by decisions of the Postal Regulatory Commission. If this occurs, within thirty days after a Postal Regulatory Commission decision becomes final, any

person, including the Postal Service may petition for judicial review of a Postal Regulatory Commission decision. These petitions shall be filed in the United States Court of Appeals for the District of Columbia. In addition, the district courts shall have jurisdiction to enforce, and to enjoin and restrain the Postal Service from violating any order issued by the Postal Regulatory Commission.

Modern service standards

The bill also requires the Postal Regulatory Commission to establish by regulation a set of modern service standards for the Postal Service's market-dominant products. These regulations, and the revised regulations the Regulatory Commission would be authorized to issue from time to time, would in effect serve as the Regulatory Commission's interpretation of universal service as defined in sections 101(a), 101(b) and 403 of title 39 of the United States Code.

The Committee believes that sections 101(a), 101(b) and 403 of title 39 fully define the universal service obligation. Section 101(a) states that the Postal Service shall "bind the Nation together through the mail" and serve "all patrons" in "all communities." Section 101(b) elaborates on these requirements, stating that "effective and regular postal services" shall be provided to "rural areas, communities, and small towns where post offices are not self-sustaining." Section 403 further elaborates on the requirements of Section 101(a), stating generally that the Postal Service "shall serve as nearly as practicable the entire population of the United States" and "establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services." Section 403 states further that the Postal Service shall not "make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.

The Committee's main intent in giving the Regulatory Commission the authority to interpret universal service through regulation is to ensure that the service the Postal Service provides its customers is consistent with the statutory definition of universal service. The service standards established by the Regulatory Commission, however, should be reasonable. They should not force the Postal Service to charge higher rates or make dramatic changes to its retail and mail processing networks in order to meet them. In establishing and revising such standards, the Regulatory Commission should take into account the level of service the Postal Service provides now and how successfully that service has met the needs of its customers. The Regulatory Commission should also take into account the fact that many Americans now use other forms of communication, such as e-mail, electronic bill pay, and fax machines, to conduct business and keep in touch with friends and family. Over the years, the service standards established by the Regulatory Commission should reflect the fact that more and more Americans are likely to turn to these, and other, electronic forms of communication. They should also reflect the cost to the Postal Service of providing universal service as the number of addresses they must serve grows at the same time that mail volume is declining.

The other major goal in giving the Regulatory Commission the authority to interpret universal service through regulation is to

preserve, and where possible enhance, the value of the various market-dominant products offered by the Postal Service. The Committee believes this is especially important at a time when poor mail volume is having a major impact on postal finances and there may be some temptation to erode service quality in an effort to cut costs. On April 3, 2001 the Postal Service's Board of Governors requested a study from postal management of the cost savings associated with eliminating the Saturday delivery of mail. While the Committee is strongly supportive of any effort on the part of the Postal Service to cut costs, we believe postal management should do all it possibly can to find efficiencies before using cuts in service to find savings. We were pleased, then, when the Board of Governors announced in July 2001 that they would maintain six-day delivery. Making the Regulatory Commission the body responsible for determining the appropriate minimum delivery speed and frequency for market-dominant products as mail volume and the Postal Service's financial condition change will ensure that postal customers receive an appropriate level of service for the rates they pay. It also ensures that those parts of the country with post offices and delivery routes that are not profitable continue to receive a level of service consistent with the definition of universal service contained in sections 101(a), 101(b) and 403 of title 39, even when mail volume and revenues are poor.

The service standards established by the Regulatory Commission should also serve as a benchmark for measuring the Postal Service's performance. The Postal Service should strive to exceed the standards set by the Regulatory Commission, but the Regulatory Commission should regularly measure the Postal Service's performance to ensure that these standards are met. The Regulatory Commission is required to inform Congress in the annual reports required of them under section 204 of the bill whenever the Postal Service has failed to meet any existing service standards. The Committee expects the Postal Service to provide the Regulatory Commission with the data the Regulatory Commission believes necessary to determine whether or not service standards are being met. We also expect the Regulatory Commission to make use of the new information gathering authority made available to them in the bill to collect this data should the Postal Service be unwilling to provide it.

There is some concern that the authority given the Regulatory Commission to establish service standards would allow that body to micromanage the Postal Service and involve itself in product design. This is not the Committee's intent. One of the overarching goals of S. 2468 is to give the Postal Service the flexibility necessary to act more like a private business. The bill, in section 203, gives the Postal Service streamlined authority to introduce new and experimental products. The Committee believes, then, that the Postal Service should be free to innovate and to do what it needs to do to make the products it offers valuable to its customers. We have no intention through the service standards authority given the Regulatory Commission to restrict the Postal Service's commercial freedom, only to ensure that it lives up to its universal service obligation and the obligation it has to its captive customers to give them the service they pay for.

Processing facilities

The establishment by the Regulatory Commission of a set of modern service standards for market-dominant products will give the Postal Service a once-in-a-generation opportunity to realign its operations, from its processing and retail facilities to its delivery and transportation network, in a way that allows it to most efficiently carry out its universal service obligation. Section 302 of S. 2468 gives the Postal Service six months from the establishment of the Regulatory Commission's first set of service standards to put its realignment plan in writing through a report to the Regulatory Commission and Congress. The report will be a plan for how the Postal Service intends to meet the service standards and will include performance goals along with discussion of any changes that need to be made to the way the Postal Service operates.

The Committee is particularly interested in learning through this report some key information on any plans the Postal Service has to change its network of processing and retail facilities, a network that currently includes 446 processing facilities and more than 37,000 retail facilities. In its report, the President's Commission on the United States Postal Service found that the Postal Service's facilities network, particularly its network of processing facilities, is outdated and not closely related to its current mission. At one point, the Commissioners argue that "the legacy postal network is not what would be built from scratch if the Postal Service were created in the 21st Century." They go on to say: "Without question, the Postal Service has far more facilities than it needs and those facilities it does require are often not used in the most efficient manner."⁴

In addition, the President's Commission found that productivity often varies from facility to facility. They argue that "much of the Postal Service's legacy network could be retired." Those that remain, they say, could be "standardized, modernized and given a common footprint."⁵ While processing facilities should not be closed for the sake of closing them, or simply as a way to cut costs, it will certainly be possible for the Postal Service to close and consolidate some facilities in the coming years without jeopardizing its ability to meet the service standards that will be established by the Regulatory Commission. In fact, as both the number of addresses the Postal Service must serve and the pace of electronic diversion of mail continues to grow, the Committee believes it will no longer be possible for the Postal Service to continue to operate inefficient or unnecessary processing facilities.

The Postal Service appears to recognize the need to modernize its processing network. In the Transformation Plan it submitted to Congress in April 2002, the Postal Service rightly pointed out: "The Postal Service's present financial position coupled with rapid advances in supply chain management technology make this the ideal time to initiate sweeping logistics changes in transportation and distribution processes throughout the organization."⁶ In order to seize this opportunity, the Postal Service launched the Network Integration and Alignment (NIA) initiative. According to the Trans-

⁴Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service, 77.

⁵Ibid., 12.

⁶Transformation Plan, 30.

formation Plan, the NIA would be an effort to create a long-term blueprint for operations management at the Postal Service. It was billed as an opportunity to look at future service needs and logistics costs and build a new, more modern processing network. By the Postal Service's own estimates, it would affect \$5 billion in transportation costs and \$20 billion in processing and distribution costs.⁷

In its report, the President's Commission praised the Postal Service for pursuing the NIA.⁸ The Transformation Plan stated that the strategy to be used in the NIA would be announced by the Fall of 2002 along with plans for plant consolidations. Nearly two years later, however, no details on the NIA have been forthcoming. The plan the Postal Service will submit pursuant to section 302 will give Congress and the public the information necessary to understand how the NIA, or whatever other facilities realignment strategy the Postal Service intends to use, will work. The Committee does not believe it is necessary for the Postal Service to include in this plan a list of facilities it intends to close. But the report must include the information necessary to understand the strategy the Postal Service will be using in its facilities realignment, the methods that will be used to involve the public and policy makers in the process, and the impact the process will have on the Postal Service's workforce and on other Postal Service initiatives, such as ongoing automation efforts.

The Committee recognizes that closing or consolidating processing facilities will be difficult for the Postal Service to do. No community will want to lose the jobs associated with a large processing facility. No Senator, Member of Congress or local elected official will ever want to have a postal facility in their state or district close on their watch. This is why we believe it is vitally important that the Postal Service go about its facilities realignment in the most transparent manner possible. Transparency will not prevent communities and elected officials from raising concerns about the Postal Service's actions. It will, however, make it possible for those affected by the Postal Service's actions to see the connection between those actions and the need to preserve the vital services the Postal Service provides.

Post Offices

S. 2468 maintains the current prohibition on closing post offices solely because they operate at a deficit, ensuring that rural and inner-city communities where post offices do not earn a profit continue to have access to retail services. It also in no way makes it any easier for the Postal Service to close a post office for any reason. However, the report the Postal Service will submit pursuant to section 302 should include a detailed discussion of the Postal Service's plans to expand access to alternate retail options, such as vending machines and contract stations.

The President's Commission on the United States Postal Service found that postal customers today can access the products and services offered by the Postal Service at about 5,000 locations, such as grocery stores and banks, where they conduct other necessary

⁷ *Ibid.*, 31.

⁸ *Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service*, 75-76.

business each day. They can also buy stamps, the Commission found, over the Internet, at 17,000 vending machines and from 20,000 private retailers. While the vast majority of postal transactions still take place in post offices, the Commission found that it is substantially cheaper to conduct a postal transaction via alternate retail than at a post office. According to the Commission's report, about eighty percent of stamp sales still occur in the post office. However, the eight percent of sales that occur through Automatic Teller Machines (ATMs) or at grocery stores, drug stores and other large retailers are nearly seven times cheaper to conduct.⁹

The Committee is not suggesting that the Postal Service close post offices and replace them with alternate retail. It is not even clear it would be possible to close a post office and fully replace the services it provides with a vending machine or a window in a private retailer. It is even less clear that postal customers would be pleased with such an effort. Just as with inefficient processing facilities, however, it will no longer be possible for the Postal Service to continue to operate low-activity post offices as both the number of addresses it must serve and the pace of electronic diversion of mail continue to grow. As it found when it examined the Postal Service's processing facilities, the President's Commission found that "many of the nation's post offices are no longer necessary to the fulfillment of its universal service obligation." The Committee, however, believes that most of the nation's post offices are vital parts of their communities and need to remain open for the Postal Service to be able to fulfill its obligations under title 39, and meet the service standards to be established by the Regulatory Commission, to provide all parts of the country reasonable access to essential postal services.

That said, the Committee believes it is vitally important that the Postal Service begin expanding access to alternate retail options. It is equally important, we believe, that the Postal Service also begin to more aggressively market alternate retail options so that more postal customers are aware that they exist and grow more comfortable making use of them. Because transactions conducted in alternate retail settings do appear to be less expensive than transactions conducted in post offices, it is possible that the Internet, vending machines, contract stations and other innovations could be reasonable and efficient replacements for post offices at a time in the future when the demand for postal services is not as great as it is today. It is also possible that alternate retail options could serve as a substitute for a post office, but possibly only a temporary one, in growing communities where it may be necessary to construct additional post offices or expand existing ones at some point. The Committee is certain, however, that the aggressive expansion and marketing of alternate retail will benefit all postal customers, regardless of how accessible postal services are to them right now. The convenience and often 24-hour-a-day, seven-day-a-week access some alternate retail options offer will only make postal services more valuable.

The Committee believes it is also important that the Postal Service consult with stakeholders and its customers when pursuing any initiatives that would change its retail network. The Government

⁹ Ibid., 83.

Accountability Office (GAO) says in a recent report that, despite surveys showing that the vast majority of the Postal Service's customers are generally satisfied with the services it provides, those same customers have expressed concerns about such issues as long lines at post offices and post office closings.¹⁰ Efforts have been made in the past, through a 1976 amendment to the 1971 Postal Reorganization Act and later a set of regulations issued by the Postal Service in 1998, to give customers and local officials more of a role in shaping the Postal Service's retail network. The Postal Service has also taken steps, described in the Transformation Plan, to create new low-cost retail alternatives, to move stamp-only transactions out of post offices and to close redundant or low-activity post offices.¹¹ Concerns remain, however, about the details of these strategies. It is not clear, according to GAO, if the Postal Service has consulted its customers in developing its retail plans. It is also not clear, GAO points out, how the Postal Service's stated goal of closing redundant or low-activity post offices will work with the existing process for closing post offices.¹² Just as it must do when realigning its processing network, the Postal Service must be as transparent as possible when pursuing its retail strategy and must give customers, local officials and other stakeholders the information they need to fully understand how that strategy will affect their communities.

Fair competition

S. 2468 contains a number of provisions the Committee believes are necessary to ensure that the Postal Service competes fairly with the private sector, particularly when offering products and services classified as competitive. The Postal Service, in our view, plays an important role in offering competitive products, even though a number of private sector businesses provide alternative services. We also believe, however, that steps need to be taken to level the playing field between the Postal Service and its competitors in the competitive product market. This is especially important now that this legislation gives the Postal Service significant new commercial flexibilities, particularly in the area of pricing. The language in Title IV ensures that the benefits the Postal Service gets by virtue of its status as a government entity do not give it an opportunity to abuse its new commercial freedom.

As the President's Commission points out in its report, the Postal Service's competitors are not able to borrow from the U.S. Treasury. They do not benefit from a monopoly market that provides a vast majority of their operating revenues. They are not exempt from most taxes and laws imposed on private businesses, as the Postal Service is, and they do not have the rulemaking powers Congress has granted the Postal Service in some areas.¹³ The Committee strongly believes that the Postal Service should operate more like a private business but, when competing head to head with a private business, we believe just as strongly that the advan-

¹⁰ Government Accountability Office, USPS Needs to Clearly Communicate How Postal Services May Be Affected by Its Retail Optimization Plan, GAO-04-803 (July 2004), 31-32.

¹¹ Transformation Plan, 13-18.

¹² GAO-04-803, 36.

¹³ Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service, 93.

tages the Postal Service has as a government entity should be blunted.

This legislation provides a clear separation between market-dominant and competitive products by creating a new Postal Service Competitive Products Fund. The Postal Service will deposit in this fund any revenue it earns from its competitive products. The Postal Service will use that revenue to pay all costs related to providing competitive products. Any judgment against the Postal Service or the federal government related to the Postal Service's competitive products will also be paid out of the fund. The Postal Service will be free to invest any surplus revenue deposited in the fund, subject to regulations issued by the Department of the Treasury, and to borrow money against any assets related to competitive products. Receipts into and disbursements from the Postal Service Competitive Products Fund will be treated the same way as receipts and disbursements of the existing Postal Service Fund pursuant to section 2009a of title 39. Like the Postal Service Fund, then, the Postal Service Competitive Products Fund will not be included in either the budget submitted by the President or the congressional budget, will not be factored into the calculation of the federal budget deficit and will be exempt from any statutory budget limitation or deficit control measures.

The legal advantages the Postal Service enjoys over its private sector competitors are also erased in this legislation. The Postal Service will be required to pay an annual "assumed Federal income tax" on income earned by its competitive products. The amount of the tax each year would equal the income tax a corporation would pay if its only activities were those activities conducted by the Postal Service that are related to competitive products. The Postal Service will compute its "assumed Federal income tax" itself and pay it by January 15. Instead of paying the tax to the Treasury, the tax will be deposited into the Postal Service Fund.

This legislation makes clear that the Postal Service is barred from using its rulemaking authority to put itself at a competitive advantage or put another party at a competitive disadvantage. In addition it is put on the same legal ground as its private sector competitors in seven key ways. First, all Postal Service activities are subjected to those provisions in federal laws prohibiting fraudulent business conduct. Second, all Postal Service activities outside the postal monopoly are subjected to federal antitrust laws and all prohibitions on unfair competition. Third, the Postal Service Competitive Products Fund is made a "person" for purposes of federal bankruptcy laws. Fourth, the Postal Service is required to consider local zoning, planning or land use regulations and building codes when constructing new buildings. Fifth, U.S. customs law and any other laws related to the import and export of postal services are applied to the Postal Service's international postal products classified as competitive in the same manner that they apply to items shipped by the Postal Service's private sector competitors. Sixth, the Postal Service's sovereign immunity protection from suits in Federal Court for violations of Federal law is eliminated. Seventh, and finally, the Postal Service is required to represent itself in most legal proceedings permitted under this legislation as well as in cases involving administrative subpoenas issued by the Postal

Regulatory Commission and appeals of decisions by the Commission or the Postal Service's Board of Governors.

The Committee recognizes that the Postal Service may enjoy other advantages in the competitive product market that are not addressed in this legislation. For this reason, we require in section 703 that the Federal Trade Commission submit a report to the President, Congress and the Postal Regulatory Commission within one year of the enactment of this Act identifying any federal and state laws that apply differently to the Postal Service than they do to the Postal Service's private sector competitors. If any discriminatory laws are identified, the Trade Commission's report will include recommendations for either ending the discrimination or accounting for them in some way through the rates the Postal Service charges for its competitive products. The Regulatory Commission will take the Trade Commission's recommendations into account when revising the regulations on rates for competitive products required under section 3633 of title 39.

Improved accounting

To make the financial separation between the Postal Service's market-dominant and competitive products even clearer, S. 2468 also calls on the Secretary of the Treasury to develop recommended accounting practices and principles for the Postal Service. The Secretary will consult with the Postal Service and an independent certified public accounting firm in making these recommendations. The recommendations, which will also include guidance on how the Postal Service should determine its "assumed Federal income tax", which will be submitted to the Postal Regulatory Commission within one year of enactment. The Regulatory Commission will then establish a set of rules on accounting and the calculation of the tax after giving the Postal Service and other groups an opportunity to comment.

The goal of this process is to prevent the subsidization of competitive products by market-dominant products by better identifying the costs incurred by the Postal Service in providing competitive products. The President's Commission points out that the Postal Service today is able to attribute less than 60 percent of its costs among its various products. This means that more than 40 percent of costs are labeled as institutional.¹⁴ The Postal Service itself admits that a disproportionate amount of these so-called institutional costs are paid for with revenue generated by First-Class mail, which is covered by the postal monopoly and, under this Act, will be classified as market-dominant. According to the Transformation Plan, First-Class mail comprises roughly half of the Postal Service's mail volume but pays more than two-thirds of the Postal Service's institutional costs.¹⁵ The Committee agrees with the President's Commission when they say that this situation should be improved.¹⁶ The Postal Service should be able to attribute a greater percentage of its costs. If they do this, it is likely that a greater share of costs can be attributed to competitive products and, to the

¹⁴Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service, 93.

¹⁵Transformation Plan, 4.

¹⁶Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service, 93.

extent that they can be, should be reflected in the rates charged for those products.

The fact that the Committee believes the Postal Service can improve on its 60 percent attribution rate does not mean we believe the Postal Service should strive to attribute 100 percent of its costs, or any other arbitrary percentage. We also do not believe that the Postal Service should be forced to attribute such a large percentage of its costs to competitive products that those products will no longer be affordable and will no longer be made available to the customers who need them, particularly those customers living in parts of the country that are not well-served by the Postal Service's private sector competitors. We do believe, however, that Treasury, the Postal Service and the Postal Regulatory Commission should partner with private sector accounting experts and postal stakeholders in an open, transparent and continuous process to improve cost accounting and cost attribution at the Postal Service, especially as it applies to competitive products.

International postal arrangements

This legislation also makes it clear that the Department of State, not the Postal Service, is the federal agency that will take the lead in formulating U.S. foreign policy related to international postal services. The Secretary of State is given the authority to lead U.S. delegations in intergovernmental meetings devoted to postal matters and is barred from concluding agreements that, with respect to any competitive product, give preference to any entity, including the Postal Service. In carrying out his responsibilities during international postal negotiations, the Secretary is required to maintain appropriate liaison with other federal agencies, with the Postal Service, and with affected members of the public. He or she is also required to establish an advisory committee under the Federal Advisory Committee Act to help perform the necessary coordination and liaison with entities in the public and private sectors as U.S. foreign policy related to international postal services is developed. Before concluding an international agreement establishing a rate or classification for a postal product subject to regulation by the Postal Regulatory Commission, the Secretary will request the Commission to submit views on whether the terms of the agreement are consistent with the rate and classification system they will establish.

This language does nothing to prevent the Postal Service from entering into commercial or operational contracts related to providing international postal services. Any such agreement involving an agency of a foreign government, however, must be solely contractual in nature and must apply only to the Postal Service and those agencies party to the contract. No contracts entered into by the Postal Service will be treated as binding international law.

USPS Board of Governors

At present, the U.S. Postal Service Board of Governors is comprised of nine Governors who serve with the PMG and Deputy PMG on an 11 member Board of Governors. The Governors are appointed by the President and confirmed by the Senate. They serve staggered nine year terms, and by law, no more than five members may belong to the same political party. The President's Commis-

sion recommended that the Postal Service Board of Governors be comprised of 12 individuals—eight independent members, three Presidential appointees, and the Postmaster General (who would be selected by the 11 other members). The Commission felt strongly that an independent, depoliticized Board is crucial to the future success of the Postal Service.

The President’s Commission proposed that the President appoint the first three members of the Board. Initially, these three appointees would select the first eight independent Board members whose selection would be dependent on the concurrence of the Secretary of the Treasury. Thereafter, independent members would be selected by the Board as a whole.

The Commission further recommended that all Board members be selected based on business acumen and other experience necessary to manage an enterprise of the Postal Service’s size and significance. They recommend three year terms for all members with a mandatory minimum retirement age of seventy.

The Committee felt strongly that the Senate’s role of “advise and consent” must be retained for all nominees to the Board. The Committee also believed that a five year term seemed more practical than a three year term, and would allow Board members to be perceived as less partisan by serving across Presidential terms of office. Finally, the Committee agreed with the President’s Commission that qualifications are appropriate, therefore S. 2468 requires that future Board members be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size.

Private carriage of letters

This legislation reduces the Postal Service’s monopoly over the carriage of letters by permitting private carriage when the amount paid for the private carriage is at least six times the rate charged for the first-ounce of a single-piece First Class Mail letter or when the letter weighs at least twelve-and-one-half ounces. Under the existing statute, the scope of the postal monopoly is defined by content and may not be readily understood. By establishing a clear price- and weight-based monopoly definition, both customers and competitors will be able easily to determine when a mail piece is subject to monopoly protections.

The Committee adopts the price-weight monopoly definition based, in part, on the recommendation of the President’s Commission.¹⁷ While the Commission recommended a 12 ounce weight limit, the Committee has adopted a twelve-and-one-half ounce weight restriction that is closely correlated with the monopoly definition (350 grams or 12.5 ounces) adopted by the European Union in 1997. Linking the price limit to the first-ounce, First Class Mail stamp rate permits automatic adjustments of the price-based monopoly definition as stamp prices change. In addition, as in the case of the weight limit, the price limit is similar to that established by the European Union in 1997 (five times the stamp rate); but less than the current European Union threshold. While both the weight and price limits are greater than the current limits established by the European Union, the Committee believes that the

¹⁷ *Ibid.*, 23.

higher thresholds are appropriate, and provides significant additional competition in the marketplace. Given the scope and size of the postal marketplace as well as the number of American jobs that depend, directly or indirectly, on the provision of postal services, we are reluctant to move towards a narrower monopoly definition (such as the current European Union definition) without additional experience with a more flexible Postal Service.

In addition, the postal monopoly definition is revised to explicitly incorporate those Postal Service regulations (in effect as of July 1, 2001) which permit the private carriage of letters by suspension of the postal monopoly. Doubt exists as to the Postal Service's current legal authority to suspend the Congressionally-granted postal monopoly; however, under its interpretation of existing law, the Postal Service has voluntarily suspended the private carriage of letters in a number of instances (sections 310.1 and 320.2–320.8 of title 39 of the Code of Federal Regulations). The Committee believes that defining the extent of the postal monopoly falls within the purview of Congress, not the Postal Service, and in this legislation strikes current 39 U.S.C. 601(b) (which has been used by the Postal Service to justify unilateral suspensions of restrictions on the private carriage of letters) and replaces it with language codifying the current postal monopoly suspensions thus permitting continued private sector provision of services to these markets. To ensure the consistent and objective application of the postal monopoly, the Postal Regulatory Commission shall promulgate any necessary regulations.

Rulemaking authority

By revision of 39 U.S.C. 401(2), the Postal Service is granted authority to adopt, amend and repeal rules and regulations that are necessary for the execution of its functions under this title or assigned under any provisions of law outside this title. However, these rules and regulations must not be inconsistent with the provisions of this title. This provision clarifies that the Postal Service's rulemaking authority extend to rules and regulations "necessary" to carry out its statutorily-defined functions not to rules and regulations that the Postal Service, in its judgement, "deems necessary."

Enhanced Regulatory Commission

Under current law, the Postal Rate Commission has very narrow authority. They issue recommended decisions on mail rates and classifications, and fees for postal services. Their other job is to review changes in postal services that would generally affect service on a nationwide basis and offer advisory opinions. In their final report, the President's Commission concluded that, "The Postal Service's need for oversight today is as broad as the Postal Rate Commission's authority is narrow." On the basis of this assessment, the President's Commission recommended that a Postal Regulatory Board be vested with substantially expanded regulatory authority. The Committee agreed.

S. 2468 requires the new Postal Regulatory Commission to develop—with appropriate input from the postal community—a new, highly streamlined, rate-setting process. This new process should apply rigorous standards to rate-setting, but at the same time, give

postal officials the ability to manage and lead. The process should also proactively encourage the Postal Service to improve productivity and efficiency and not rely solely on rate increases to secure its fiscal health. Although S. 2468 specifies that market dominant products would be subject to a rate cap, the actual design of the rate cap mechanism, including choice of inflator, is left to the Regulatory Commission. The Regulatory Commission would be required to pre-approve any rate increases that exceed the rate ceilings. The legislation also requires the Regulatory Commission to engage in prior review periods for both market-dominant and competitive products. In addition, the Regulatory Commission will ensure that retained earnings are accumulated at an appropriate level, and consistent with the public interest.

S. 2468 places the Regulatory Commission in charge of overseeing Postal Service cost distribution, ensuring that the Service is appropriately allocating costs across its competitive and non-competitive products and services. In addition to verifying that cross-subsidies between products are not occurring, such analysis is necessary for assessing the fairness of the rates the Postal Service is currently charging, or proposes to charge. The Regulatory Commission would also exercise a new form of oversight regarding services the Postal Service provides. It would monitor the types of products and services offered by the Postal Service to ensure it does not exceed its core mission.

S. 2468 grants to the Regulatory Commission the role of ensuring the financial transparency of the Postal Service, obtaining information from the Service—if need be—through the use of subpoena power. The bill also requires strong enforcement of financial transparency by the Regulatory Commission, in part by requiring the Postal Service to report periodically on allocation of costs among mail products and services for auditing purposes.

The President's Commission recommended that the Regulatory Commission be comprised of three members who are appointed by the President and confirmed by the Senate. Members would be selected solely on the basis of their demonstrated experience and professional standing. At present, the Postal Rate Commission is comprised of five presidentially-appointed members who serve six year terms. Given the significantly expanded authority S. 2468 grants to the Regulatory Commission, the Committee felt it was appropriate to maintain the current size of the Commission. The Committee, however, agreed with the President's Commission that the Regulatory Commission would benefit from strengthened qualification requirements. S. 2468 requires that all new Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration.

S. 2468 also changes the manner in which the Postal Rate Commission's annual budget is approved. Under current law, the Commission submits their budget request to the Board of Governors. By unanimous agreement, the Board may adjust the total amount of money requested in the budget. Funding for the PRC's budget comes from the Postal Service Fund, established under title 39 of the U.S. Code. S. 2468 directs the PRC to instead submit their annual budget request to Congress, through the appropriations process. Funding will continue to be paid out of the Postal Service

Fund. The budget, however, will no longer be subject to disapproval by the Governors. This will ensure the financial independence of the new Regulatory Commission.

USPS retirement and health benefit funding and military pension obligation

On April 23, 2003, President Bush signed into law the Postal Civil Service Retirement System Funding Reform Act of 2003, P.L. 108–18. The Act was originally introduced by Chairman Collins and Senator Carper. It changed the way the Postal Service funds its Civil Service Retirement System (CSRS) obligation. According to a 2003 GAO report, the Postal Service had overfunded its pension obligation and, without this legislation, was on course to overfund by approximately \$73 billion. This overfunding was due to higher than assumed historical interest earnings and lower than assumed outlays, plus other factors.

The Act also transferred to the Postal Service from the U.S. Treasury the responsibility for funding the costs of CSRS benefits that current and former Postal Service employees have earned through military service. Thus, the Act transferred \$27 billion in cost from U.S. taxpayers to postal ratepayers. The Committee had reservations about making the Postal Service the only agency to bear these costs. The Administration, however, felt differently. In a January 30, 2004 letter to Chairman Collins, OPM Director Kay Coles James described the Administration's reason for making the Postal Service responsible for this military pension cost:

One of the primary goals for the reorganization of the Post Office into the USPS was to ensure that all the costs associated with the organization be paid through stamp revenue and not through taxpayer dollars. Therefore, all pension costs for employees that are attributable to service after the reorganization should be borne by the Postal Service.

The Act provided an opportunity for the Committee to reconsider this transfer by requiring the Postal Service, the Department of the U.S. Treasury and OPM to submit proposals detailing whether and to what extent the Department of the Treasury or the Postal Service should be responsible for the funding of benefits attributable to the military service of current and former employees of the Postal Service. In a September 30, 2003 letter to Chairman Collins, Postmaster General Potter recommended that the responsibility for these costs should be returned to the U.S. Treasury, in part, because the military service had no connection with Postal Service functions or operations. The Postal Service also notes that the funding of these costs has been the responsibility of the Treasury since 1969 and Treasury has already paid the great majority of this \$27 billion in costs. Therefore, charging the Postal Service for these past payments of the U.S. Treasury would be a retroactive cost transfer to postal ratepayers.

The President's Commission reviewed the recommendations made by the Postal Service, the U.S. Treasury Department and OPM. While the Commission understood the stance taken by the Administration, they did not agree with it. In their final report, they concluded:

No other Federal agency is required to pay such costs for its retirees under CSRS. In the Commission's view, it is inappropriate to require the Postal Service, as a self-financing entity that is charged with operating as a business, to fund costs that would not be borne by a private-sector corporation (costs associated with benefits earned while the retiree was employed by another employer). . . . It asks those who use the nation's postal system to subsidize the U.S. military every time they use the mail. . . . The Commission supports returning responsibility for this portion of retiree benefits to the Department of Treasury, where it resided before the recent legislation, and where this liability can be financed through funds generated by taxpayers.¹⁸

Having had the opportunity to reconsider the issue, the Committee agreed with the President's Commission and included language in S. 2468 to repeal this requirement, thereby returning the military pension obligation to the U.S. Treasury. It is important to point out that over ninety percent of the financial obligation related to military retirees is the result of military service performed before the creation of the Postal Service in 1971. Besides being unrelated to postal operations, the Committee does not believe the Postal Service should be held responsible for paying a component of their employees' military service that was performed before the Postal Service was even created.

P.L. 108-18 placed additional requirements on the Postal Service. Specifically, the Act identified as "savings" the difference between the contributions the Postal Service would have made to the CSRS Fund if the Act had not been enacted and the contributions the Postal Service makes under the Act. In 2003 and 2004, the Act required USPS to use the "savings" to reduce their outstanding debt to the U.S. Treasury. The Committee made clear, through "Sense of Congress" language, that the Postal Service should also use the "savings" to hold postal rates unchanged until at least 2006; to pay some portion of its postretirement health benefit obligation for current and future employees; and that none of the "savings" should be used to pay bonuses to Postal Service executives. It also required the Postal Service to begin making payments into an escrow account beginning in fiscal year 2006 in an amount equal to the annual "savings". The amount of the payments into the escrow account would have to be included in the Postal Service's rate base. Under P.L. 108-18, the Postal Service cannot use the funds in the escrow account unless Congress eliminates the escrow requirement or specifies by law how the escrow funds may be used. The legislation also required the Postal Service to report to Congress by September 30, 2003, on how it proposed to use those pension savings.

The Postal Service provided a report to Congress predicated on the assumption that the Postal Service is relieved of responsibility for military service costs. Specifically, the Postal Service recommended making annual payments to cover one of its major operating costs—postretirement health benefits—for all employees and

¹⁸Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service, 125, 126.

retirees, currently estimated at \$47 to \$57 billion. Under this proposal, the Postal Service would be the only federal agency to fully pay all pension and postretirement health benefits for its employees and retirees. S. 2468 sets up within the U.S. Treasury, a “Postal Service Retiree Health Benefits Fund”. This fund shall be administered by OPM. Beginning in fiscal year 2006, the Postal Service will be required to pre-fund its post-retirement health benefits costs for all employees on a current basis and to fund one-fortieth of the unfunded post-retirement health benefits obligations each year through 2031 after which one-fifteenth would be funded each year. Any remaining “savings” will be used to pay down the outstanding debt to Treasury and for operating expenses—thereby holding down rate increases as well.

During the Committee’s eight hearings on postal reform, many disparate voices were heard from—the Postal Service unions and associations; the CEOs of major companies; representatives of the newspaper and direct marketing associations—and the two things they all had in common were the desire to see the escrow account requirement repealed and the return of the military pension obligation to the Treasury Department.

The amount due from postal ratepayers for the first annual escrow payment in FY 2006 will be \$3.2 billion. The cost to fund the military pension obligations will cost postal ratepayers, roughly, another \$2 billion in FY 2006. Should the military pension obligation remain with the Postal Service, and the escrow fund fail to be released, according to the Postal Service, mailers could potentially incur rate increases 5–6 percent higher in 2006 than they otherwise would be—at a time when American businesses can ill afford it.

Based on its impact on postage rates and its effects on the mailing industry, the general public and the economy as a whole, the Committee chose to incorporate into S. 2468 the repeal of the escrow requirement. Though S. 2468 does not specify a percentage of the escrow account that must be used to pay down obligations such as retiree health care benefits, with approximately \$90 billion in unfunded liabilities and obligations, the Committee believes it is critical to the Postal Service’s future viability that it work aggressively to pay down all outstanding liabilities and obligations.

Workers’ compensation reforms

The Federal Employees’ Compensation Act (FECA), enacted in 1916, is a comprehensive workers’ compensation law designed to provide medical and death benefits, income replacement, and other services to employees with work-related injuries. FECA does not place age or time limitations on an injured worker’s receipt of workers’ compensation benefits. Employees who fully or partially recover from their injuries are expected to return to work.

The President’s Commission found that under FECA, the Postal Service has maintained a broad and effective workers’ compensation program and acknowledged recent efforts that have lowered injury rates considerably. The Commission, however, also concluded that the Service, given its unique status, should be provided relief from FECA provisions that are creating costly unintended consequences. The Commission recommended making the Service’s workers’ compensation program more comparable to State-run pro-

grams in order to control costs, provide adequate benefits, and address the Service's unfunded liability in this area. A similar stance was taken by Postal Service Inspector General David Williams, who wrote in his semi-annual report to Congress that, "Given the Postal Service's current \$7.2 billion liability for workers' compensation, there is an urgent need to reconsider the Postal Service's obligations under FECA."¹⁹

The Postal Service is self-insured for workers' compensation costs, and these costs have continued to escalate. According to a March 2003 audit by the Postal Service Office of Inspector General, 21 percent (2,819) of the approximately 13,400 postal employees on the periodic workers' compensation roll were classified as totally disabled, and, as a result, not expected to return to work. (Employees on the periodic roll have injuries or disabilities that have lasted or are expected to last for periods over one year.) Approximately 89 percent of those 2,819 employees were age 55 or older as of September 30, 2003 and likely to be, for the most part, retirement-eligible. The Postal Service's rolls include 81 cases that originated 40 to 50 years ago; 778 cases that originated 30 to 39 years ago; and 1,189 cases that originated 20 to 29 years ago.²⁰ The IG's audit also noted that if an employee dies from a non-work related injury while receiving Workers' Compensation benefits and has not applied for disability with the Office of Personnel Management, their survivors receive no benefits.²¹

With no maximum dollar cap on FECA payments, employees often opt not to retire, staying permanently on the more generous workers' compensation rolls. All State plans, on the other hand, apply either a cap or a maximum limitation, which is usually defined in law as a percentage of the State average weekly wage. In their report, the Commission provided an example of the disparity in pay between those employees who retire and those who choose to stay on the more lucrative workers' compensation rolls:

Over a nine year period, a retirement eligible EAS-13 level postal employee with dependents could earn \$434,000 by not retiring and continuing to collect workers' compensation (75% of pre-injury salary plus COLAs, tax free). If that same employee were to retire, their CSRS retirement net pay over that same period would be \$249,000 (56% of High 3, taxable)—a difference of \$185,000.²²

S. 2468 converts workers' compensation benefits for total or partial disability to a retirement annuity when the affected employee reaches retirement age as defined by the Social Security Act (SSA). The annuity would equal fifty percent of the monthly pay of the employee. This change reflects the fact that disabled postal employees would likely retire at some point were they not on the rolls of the Office of Workers' Compensation Programs. It will also help to ensure continued benefits for survivors of workers' compensation recipients who may die from a non-work related injury. Enactment

¹⁹ Williams, David C., Inspector General, U.S. Postal Service, Semiannual Report to Congress (April 1, 2004), 28.

²⁰ U.S. Postal Service Office of Inspector General, Audit Report—Comparison of Retirement Benefits to Workers' Compensation Benefits for Employee on the Periodic Roll (Report No. HM-AR-04-001) (December 12, 2003), 2.

²¹ *Ibid.*, 8.

²² Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service, 134.

of this provision would change neither the time at which an employee would become eligible for regular or disability retirements benefits under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS) nor the amount of the benefit for which he or she would be eligible under CSRS or FERS.

Unlike most State-run plans, FECA also imposes no waiting period before benefits begin. Instead, FECA has a provision that allows employees who sustain disabling job-related traumatic injuries to receive continuation of their regular pay for 45 calendar days after the injuries—a benefit unique to the federal program—with a three-day waiting period at the end of the continuation of pay (COP) period. A primary purpose of the waiting period is to discourage the filing of frivolous claims. According to Elliot Lewis, Assistant Inspector General for Audit at the Department of Labor’s Office of Inspector General, placing the waiting period at the end of the COP period does nothing to discourage frivolous claims.²³ S. 2468, therefore, places the three-day waiting period at the beginning of the COP period.

In addition, S. 2468 allows the three days of annual leave, sick leave, or leave-without-pay used by the injured employee to be reimbursed, should the employee be out of work due to injury for a period no less than 15 days (beginning on day one of the injury). This “qualifying period” is standard practice in State workers’ compensation plans. The average qualifying period for State plans is between 14 and 16 days.

Both the President’s Commission and the Postal Service recommended that any changes to FECA should be made on a prospective basis. The Committee agreed. By lowering the workers’ compensation payments for retirement-eligible employees (as defined by the SSA), the Congressional Budget Office estimates the Postal Service will save \$50 million over the 2005–2014 period.

Report on universal service and the postal monopoly

The President’s Commission believed that the Regulatory Commission would be the appropriate body to regularly review, and refine if necessary, the Postal Service’s universal service obligation. (The “universal service obligation” refers, in general, to regular delivery at uniform rates across the country.) With steadily declining volumes of First Class mail, it is clear that the nation’s correspondence needs are changing. The President’s Commission recommended, therefore, that an independent entity—the Regulatory Commission—be charged with, “refining key aspects of universal service as circumstances require/permit.”²⁴ Similarly, the President’s Commission recommended that the Regulatory Commission be granted the authority to refine the scope of the mail monopoly [generally believed to cover all First Class and Standard (mostly advertising) Mail], noting that,

. . . the nation’s postal monopoly law predates not only the computer, e-mail and the fax machine, but also the radio, the telephone and the electric light bulb. . . Sev-

²³ Lewis, Elliot P., Assistant Inspector General for Audit, Office of Inspector General, U.S. Department of Labor, before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives (May 13, 2004), 5.

²⁴ Embracing the Future: Making Tough Choices to Preserve Universal Services, 63.

eral years into the nation's Information Revolution, it is clear that these archaic laws should be clarified and modernized.²⁵

From the perspective of the Committee, both the postal monopoly and universal service are issues of broad public policy—not regulatory issues. For that reason, the Committee decided that the power to refine either the monopoly or the universal service obligation should remain in the hands of Congress. However, the Committee thought it would be helpful to hear from the Regulatory Commission what potential changes to either the monopoly or the universal service obligation they believed made sense. Congress would then have the option to enact any of the Regulatory Commission's recommendations with which they agreed. Therefore, S. 2468 requires that the Regulatory Commission, at least every three years, submit a report to Congress detailing any recommended changes to universal service and the postal monopoly they consider appropriate, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service.

Bulk fuel program

The Committee notes that the U.S. Postal Service has instituted a program to require vendors to purchase fuel from designated sources. To insure that the program is generating the maximum possible savings and is not burdening contractors with unfair costs, the Committee expects the Postal Service to periodically re-examine the Bulk Fuel program it has instituted for Highway Contract Route (HCR) contracts under Section 5005 of title 39. The Committee suggests that the Postal Service confer with the GAO when conducting these periodic reviews.

III. LEGISLATIVE HISTORY

S. 2468 was introduced on May 20, 2004 by Chairman Collins and Senator Carper. Senators Lieberman, Stevens, Akaka, Voinovich, Durbin and Sununu were original cosponsors. S. 2468 was referred to the Committee on Governmental Affairs. On June 2, 2004, the Committee took up S. 2468.

A manager's amendment in the nature of a substitute, offered by Chairman Collins, was adopted by voice vote. The manager's amendment provided for the following: (1) established an Officer of the Postal Regulatory Commission to represent the general public in proceedings; (2) required reporting on postal workplace safety and workplace-related injuries to ensure that postal employees' health and personal safety are protected while they serve the nation's postal customers; (3) provided for employment of postal police officers in connection with the protection of property owned or occupied by the Postal Service; (4) expanded Postal Service transportation contracting authority to permit the Postal Service to better manage costs; (5) provided for payments for the first three days following an injury for those employees who are on leave due to injury for a minimum of 14 days; and (6) established as an objective of the new ratemaking system, that interested parties be afforded

²⁵ *Ibid.*, 22.

a reasonable opportunity to participate in the new process designed by the Postal Regulatory Commission.

By a vote of 9–8, the Committee voted to pass a worksharing amendment by Senator Lieberman. The Lieberman amendment limited to four years workshare discounts that exceed costs avoided when associated with a new postal service or with a change to an existing postal service that is necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service. The amendment also struck language from S. 2468 that granted the Postal Regulatory Commission the authority to approve discounts in excess of avoided costs for situations outside of the following four exceptions: (1) any discount associated with a new postal service or with a change to an existing postal service that is necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service; (2) if a reduction in the discount would (i) lead to a loss in volume of the affected category of mail and reduce the aggregate contribution to institutional costs, (ii) result in a further increase in rates paid by mailers not able to take advantage of the discount, or (iii) impede the efficient operation of the Postal Service; (3) if the amount above the costs avoided (i) is necessary to mitigate rate shock, and (ii) will be phased out over time; and (4) if the discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, or scientific value.

Yeas: Lieberman, Levin, Akaka, Durbin, Carper, Dayton, Lautenberg, Pryor, Specter.

Nays: Collins, Stevens, Voinovich, Coleman, Bennett, Fitzgerald, Sununu, Shelby.

The Committee adopted by voice vote an amendment offered by Senator Durbin that calls for a study by GAO and submission of a report, including recommendations for legislative action and administrative action, to Congress, the Postal Service Board of Governors, and the Postal Regulatory Commission. The report will address the economic and environmental efficacy of establishing rate incentives for mailers linked to the use of recycled paper, what initiatives the Postal Service has undertaken during the past five years to use recycled paper and other products and to provide for recycling of undeliverable and discarded mail, including revenue generated and savings achieved as a result, and what additional opportunities may be available for enhanced recycling of paper and other products and the projected costs and revenues of such opportunities. The report is due within one year of enactment of the Act.

Senators present were Collins, Voinovich, Coleman, Bennett, Fitzgerald, Sununu, Lieberman, Levin, Akaka, Durbin, Carper, Lautenberg and Pryor.

The Committee also adopted by voice vote an amendment offered by Senator Sununu. The Sununu amendment requires the Secretary of the U.S. Treasury, in consultation with the Postal Service, a certified public accounting firm, and other advisors, to develop recommendations regarding the accounting practices and principles that should be followed by the Postal Service when doing the following: (1) identifying and valuing the assets and liabilities of the Postal Service associated with providing, and the capital and operating costs incurred by the Postal Service in providing competitive products; and (2) preventing the cross-subsidization of competitive

products by market-dominant products. The Treasury Department would also consult with the Postal Service on the rules that should be followed in determining the Postal Service's assumed Federal income tax on competitive products income. Treasury will submit their final recommendations to the Postal Regulatory Commission. After hearing from all interested parties, the Regulatory Commission shall make a final decision as to which rules the Postal Service will be required to incorporate into their current accounting practices.

Senators present were Collins, Voinovich, Coleman, Bennett, Fitzgerald, Sununu, Lieberman, Levin, Akaka, Durbin, Carper, Lautenberg and Pryor.

The Committee then ordered the bill reported by voice vote, with no members present dissenting. Senators present were Collins, Voinovich, Coleman, Bennett, Fitzgerald, Sununu, Lieberman, Levin, Akaka, Durbin, Carper and Lautenberg.

IV. SECTION BY SECTION ANALYSIS

TITLE I—DEFINITIONS; POSTAL SERVICES

Section 101—Definitions

Section 101 proposes, for the first time, a clear definition of "postal services." A "postal service" is defined as "the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, and other services ancillary thereto." This definition clarifies the jurisdiction of the Postal Rate Commission (renamed the "Postal Regulatory Commission") and the scope of commercial activities that the Postal Service is authorized to pursue. In addition, the term "product" is defined to mean "any postal service with a distinct cost or market characteristic" which thus encompasses all classes, subclasses, and rate categories that comprise the mail classification system. Section 101 further defines "market-dominant product" to refer to "a product subject to subchapter I of chapter 36" and "competitive product" to refer to "a product subject to subchapter II of chapter 36."

Section 102—Postal Services

Section 102 limits the Postal Service to offering "postal services." If the Postal Service unlawfully offers a non-postal service or product, the Postal Regulatory Commission may order that the Postal Service cease providing the product under the complaint procedures outlined in section 202 of the bill.

TITLE II—MODERN RATE REGULATION

In the new regulatory regime proposed in the bill, the classes of mail and services are classified as either market-dominant or competitive products. In general, Title II requires the Postal Regulatory Commission to design, within 12 months, a new rate cap system of rate regulation for market-dominant products. With respect to competitive products, the Postal Service is given pricing flexibility comparable to that exercised by private competitors.

To prevent abuse, the new regulatory regime proposed in the bill substantially enhances the authority of the Regulatory Commission

to define, audit, and remedy cross-subsidization of competitive products from revenues earned from market-dominant products.

Section 201—Provisions relating to market-dominant products

Section 201 of the bill establishes a new, modern system for regulation of market-dominant products. In the current title 39, chapter 36 deals with regulation of postal rates. The bill re-designates subchapter I of chapter 36 (establishing the Postal Regulatory Commission) as chapter 5 (see section 501, below). Section 201 revises subchapter II, which currently sets out the process of rate regulation, and re-designates it as subchapter I. As amended, subchapter I relates only to the regulation of market-dominant products. Section 201(a) adds three new provisions to title 39, sections 3621, 3622 and 3623, as follows.

Section 3621—Applicability; definitions

Section 3621 lists the postal products to be regulated as market-dominant products immediately after enactment: First-Class Mail Letters, First-Class Mail Cards, Periodicals, Standard Mail, single-piece Parcel Post, media mail, bound printed matter, library mail, special services and single-piece international mail. After enactment, the Commission may revise the list of market dominant products under new section 3642 set out in section 203 of the bill.

Section 3622—Modern rate regulation

Subsection 3622(a) requires the Commission to design, within 12 months of enactment, a modern system for regulating postage rates and classes for market-dominant products.

Subsection 3622(b) provides that the objectives of the new system shall be: (1) to reduce the administrative burden of the ratemaking process; (2) to create predictability and stability in rates; (3) to maximize incentives to reduce costs and increase efficiency; (4) to enhance mail security and deter terrorism by promoting secure, sender-identified mail; (5) to allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent and encourage increased mail volume during non-peak periods; (6) to assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards the Regulatory Commission will establish under section 301 of the bill; and (7) to allocate institutional costs equitably.

Subsection 3622(c) requires that the Commission consider the rate and classification factors found in sections 3622 and 3623 of current law in addition to other factors when developing the new system.

Subsection 3622(d) requires the Postal Regulatory Commission to establish a rate cap system setting annual limitations, based on measures of inflation as chosen by the Commission, on percentage changes in rates. The rate-setting system should establish a schedule whereby rates, when necessary and appropriate, would increase at regular intervals by predictable amounts. In addition, this subsection establishes a 45-day Postal Regulatory Commission review and approval process for rate changes for market-dominant products. If the Postal Regulatory Commission notifies the Postal Service of any noncompliance with the established rate cap mechanism, the Postal Service shall respond to the notice and describe the ac-

tions to be taken to comply with the rate cap mechanism. Lastly, the Postal Regulatory Commission shall establish procedures whereby rates may be adjusted on an expedited basis due to unexpected or extraordinary circumstances such as the September 11, 2001 terrorist attacks or the use of the mails to transmit anthrax.

Subsection 3622(e) defines a “workshare discount” as a rate discount provided to mailers for presorting, prebarcoding, handling, or transportation of mail. These are activities that would ordinarily be performed by the Postal Service. The Postal Regulatory Commission is required to establish rules for workshare discounts that ensure that these discounts do not exceed the cost that the Postal Service avoids as a result of the worksharing activities performed by the mailers, subject only to four exceptions. Those exceptions authorize workshare discounts that exceed the costs avoided—(1) when a discount is associated with a new or changed postal product and is needed, for up to 4 years, to induce mailer behavior that furthers the economically efficient operation of the Postal Service; (2) if a reduction in the discount would—(i) lead to a loss in volume in the affected category of mail and thereby reduce the aggregate contribution to institutional costs, (ii) result in a further increase in rates paid by mailers not able to take advantage of the discount, or (iii) impede the efficient operation of the Postal Service; (3) if the discount is necessary to mitigate rate shock and will be phased out over time; or (4) if the discounts are provided in connection with subclasses of mail consisting exclusively of material having educational, cultural, or scientific value. Whenever the Postal Service establishes or maintains a workshare discount, the Postal Service shall, at the time it publishes the workshare discount rate, submit a report to the Postal Regulatory Commission explaining the reasons for establishing or maintaining the rate and setting forth the data, economic analyses and other information relied on by the Postal Service to justify the rate.

Subsection 3622(f) provides that, until regulations under this section take effect, the rate making and classification provisions of current law shall remain in effect.

Section 3623—Service agreements for market-dominant products

Section 3623(a) authorizes the Postal Service to negotiate service agreements with individual mailers or groups of mailers of market-dominant products. Service agreements authorized under this section could involve the contracting mailer performing additional functions, such as the preparation, processing, and transportation of the mail; the Postal Service performing additional mail preparation, processing, transportation, or other functions; or other terms and conditions that meet the requirements of this section.

Subsection 3623(b) requires that the revenues generated under any service agreement: (1) cover all costs attributable to the postal services covered by the agreement and result in no less contribution to the institutional costs of the Postal Service; (2) not result in higher rates or fees for other mailers; (3) pertain exclusively to market-dominant products; and (4) not preclude or hinder any similarly-situated mailer from entering into an agreement with the Postal Service.

Subsection 3623(c) limits the service agreements to no more than three years in duration and makes any service agreement subject to the cancellation authority of the Commission.

Subsection 3623(d) requires that the Postal Service notify the Regulatory Commission at least 30 days prior to a service agreement taking effect and publish the terms of the agreement in the Federal Register. This notice shall include a description of the agreement, the rates and fees payable by the customer under the agreement, and sufficient information to demonstrate the basis for the Postal Service's view that the agreement meets the requirements of sections 3623(b). If the agreement is less-than-national in scope, this information shall also be published in a manner designed to afford reasonable notice to persons within that geographic area.

Subsection 3623(e) requires the Postal Service to make any service agreement available to similarly-situated mailers on functionally-equivalent terms and conditions provided that any distinctions based on mailer profiles would not render the agreement uneconomic or impractical.

Subsection 3623(f) permits persons who believe that a service agreement is not in compliance with the requirements of this section to file a complaint with the Postal Regulatory Commission under section 3662.

Subsection 3623(g) defines the Postal Regulatory Commission's role with respect to service agreements. The Postal Regulatory Commission may promulgate regulations regarding service agreements. In addition, the Postal Regulatory Commission may review any agreement under section 3623, and may suspend or cancel any service agreement that does not meet the requirements of this section.

Subsection 3623(h) requires that the determination of whether a service agreement meets the requirements of subsection (b) be based, to the extent practicable, on the actual contribution of the mail involved, not on the average contribution of the mail classification most similar to the services performed under the agreement. If mailer-specific data is not available, the Postal Service shall provide the bases for the determination that the revenue generated will meet the requirements of subsection (b) and shall discuss the suitability of the data used to make this determination in accordance with regulations established by the Postal Rate Commission.

Section 201(b) repeals §§ 3624, 3625, and 3628 of title 39 United States Code.

Section 201(c) redesignates Chapter 36 of title 39 United States Code as by striking the heading for Subchapter II and inserting "Subchapter I—Provisions relating to market-dominant products"

Section 202—Provisions relating to competitive products

Section 202 of the bill adds a new subchapter II to chapter 36 of title 39. Subchapter II establishes a flexible system for regulation of competitive products. Section 202 adds three new sections to title 39, as follows.

Section 3631—Applicability; definitions and updates

Section 3631 lists the postal products to be regulated as competitive products immediately after enactment: Priority Mail, Expedited Mail, bulk parcel post, bulk international mail, and mailgrams. After enactment, the Regulatory Commission may revise the list of competitive products under new section 3642 set out in section 203 of the bill.

Section 3632—Action of the Governors

Subsection 3632(a) provides that the Governors of the Postal Service may establish rates and classes for all products in the competitive category of mail.

Subsection 3632(b) requires the Governors to give notice in the Federal Register of changes in competitive products rates and classes no later than 30 days before implementation and to provide an opportunity for review by the Postal Regulatory Commission. Following this notice, the Postal Regulatory Commission shall notify the Governors of any noncompliance with requirements of section 3633 and the Governors shall respond to the notice describing the actions to be taken to comply with section 3633.

Subsection 3632(c) provides that, until regulations under section 3633 take effect, the rate making and classification provisions of current law shall remain in effect.

Section 3633—Provisions applicable to rates for competitive products

Section 3633 requires the Commission to promulgate regulations within 180 days of enactment prohibiting subsidization of competitive products by market-dominant products; ensuring that each competitive product covers its attributable costs; and ensuring that all competitive products collectively cover their share of the institutional costs of the Postal Service.

Section 203—Provisions relating to experimental and new products

Section 203 of the bill adds a new subchapter III to chapter 36 of title 39. Subchapter III provides rules for market tests of experimental products and for transferring products between the market-dominant and competitive product categories. The new subchapter III replaces, and thus repeals, the current subchapter III dealing with temporary rates and classes. Section 203 adds two new provisions to title 39 as follows.

Section 3641—Market tests of experimental products

Section 3641 authorizes the Postal Service to conduct limited market tests that are exempt from most specific pricing requirements. Market tests under this section can last no longer than two years and must earn less than \$10 million annually.

Subsection 3641(b) states that, a market test must involve a product “significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test” and may not be conducted under this section if it will “create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns.” In addition, the Postal Service must identify the product as either market-dominant or competitive. Any product

that solely affects competitive products or only provides services ancillary to competitive products shall be presumed to be competitive even if a similar product exists within the market-dominant category.

Subsection 3641(c) requires that the Postal Service notify the Regulatory Commission at least 30 days prior to the start of a test and publish the details of the test in the Federal Register including the basis for the Postal Service's determination that it meets the requirements of this section.

Paragraph 3641(c)(2) extends the right the Postal Service currently has to protect certain commercially sensitive information to any competitive product tested this section.

Subsection 3641(d) limits tests to two years in duration but permits the Postal Service to seek a 12-month extension. Subsection 3641(e) requires that the test result in additional annual revenue of no more than \$10 million. The Commission shall raise the earnings limit to \$50 million upon the Postal Service's request and upon a determination that the product is (1) likely to benefit the public and meet an expected demand; (2) likely to contribute to the financial stability of the Postal Service; and, (3) not likely to result in unfair or inappropriate competition.

Subsection 3641(f) provides that the Postal Regulatory Commission may order the cancellation of a test at any time if it does not meet the requirements of this section. Subsection 3641(g) provides that the dollar amounts contained in this section be adjusted for the changes in the Consumer Price Index. Subsection 3641(h) defines a small business concern for the purposes of this section. Subsection 3641(i) establishes that market tests under this subchapter may be conducted in any year beginning with the first year in which the Postal Service's first report under section 3652(a) to the Postal Regulatory Commission occurs.

Section 3642—New products and transfers of products between the market-dominant and competitive categories of mail

Subsection 3642(a) authorizes the Regulatory Commission to classify new products as either market-dominant or competitive and to transfer existing products between the two categories upon the request of the Postal Service, users of the mails or upon its own initiative.

Subsection 3642(b) adopts criteria for the two categories that reflect the Federal Communications Commission's (FCC) approach to defining "dominant" carriers for the purpose of regulation. Paragraph 3642(b)(1) provides that: "The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output without risk of losing business to other firms offering similar products. The competitive category of products shall embrace all postal products not in the market-dominant category." Paragraph 3642(b)(2) states that the products covered by the postal monopoly may not be transferred to the competitive category. Paragraph 3642(b)(3) requires the Postal Regulatory Commission to consider three other factors when deciding whether a product should be classified as market-dominant or competitive: (1) the availability of private sector alter-

natives to the product in question; (2) the views of those who use the product; and (3) the impact the decision will have on small businesses.

Subsection 3642(c) permits the transfer of some but not all of the subclasses or “subordinate units” of a class of mail.

Subsection 3642(d) requires that any change in the lists of products in the market-dominant and competitive categories requested by the Postal Service be published in the Federal Register and that the Postal Regulatory Commission, whenever it changes the list of products in the market-dominant or competitive category, publish new lists in the Federal Register.

Subsection 3642(e) prohibits the Postal Service from offering any product involving the physical delivery of letters, printed matter, or packages until it is categorized as either a market-dominant or a competitive product.

Section 204—Reporting requirements and related provisions

Section 204 of the bill adds a new subchapter IV to chapter 36 of title 39. In general, subchapter IV provides for annual audits of Postal Service operations by the Commission to ensure compliance with the ratemaking criteria of the act. Section 204 adds three new provisions to title 39 as follows.

Section 3651—Annual reports by the Commission

Section 3651 requires the Regulatory Commission to submit a report to the President and Congress each year detailing its activities and the extent to which regulations are achieving the objectives set forth for the new rate and classification system to be established under section 201 and the service standards to be established under section 301. Section 3651 also requires that the Postal Service provide the Commission any information that the Commission, in its judgment, believes it needs to prepare its report.

Section 3652—Annual reports to the Commission

Subsection 3652(a) requires the Postal Service to submit information to the Commission no later than three months after the last day of each fiscal year demonstrating that the rates in effect for all products during the year are in compliance with the requirements of this title and that established service standards are being met. The report will include information on mail volume, service quality and customer satisfaction and must be audited by the Inspector General. Subsection 3652(b) requires annual reporting on the extent of cost savings reflected in worksharing discounts. Subsection 3652(c) requires that the Postal Service provide in its annual report such data as the Commission requires on service agreements and market tests.

Subsection 3652(d) requires that the Commission have access to all the working papers and supporting materials of the Postal Service and the Inspector General in connection with the required reports. Subsection 3652(e) requires that the Commission, in developing regulations prescribing the content and form of the required annual reports, consider the need to provide the public with adequate information to justify the lawfulness of rates charged, the need to avoid unnecessary or unwarranted administrative effort or expense on the part of the Postal Service, and the need to protect

the confidentiality of commercially sensitive information. As a result, the section authorizes the Commission to specify what information will be provided as either public reports or to accommodate the confidentiality protections in subsection 3652 (f), which allows the Postal Service to obtain confidential treatment for commercially sensitive information that is protected from disclosure under current law, in accordance with provisions outlined in sections 502 and 504 of the bill. Subsection 3652 (d) also allows the Commission, on its own motion or at the request of an interested party, to initiate a proceeding to improve the quality, accuracy, or completeness of Postal Service data.

Subsection 3652(g) requires the Postal Service to provide the Commission, as part of the information to be examined in the annual audit, specific reports that are submitted to Congress, including the comprehensive statement required under section 2401 and the performance plan and program reports required under the Government Performance and Results Act. The Postal Service is also required to provide reports detailing the operations of the Competitive Products Fund created in section 301 of the bill.

Section 3653—Annual determination of compliance

Section 3653 requires the Commission to provide an opportunity for public comment after receiving annual reports from the Postal Service. The Commission will then, within 90 days, make a written determination as to whether any rates or fees were not in compliance with the law or whether any service standards were not met. If noncompliance is found, the Commission is required to take appropriate action under the revised complaint procedure in new section 3662 laid out in section 205 of the bill. A determination of compliance creates a rebuttable presumption of compliance in any complaint proceeding.

Section 205—Rate and service complaints

Section 402 of the bill revises the complaint and appellate review provisions set out in subchapter V of chapter 36, title 39 as re-designated by the bill. In general, the bill strengthens the authority of the Regulatory Commission to act on a complaint in lieu of the current reliance on Rate Commission review of postage rates prior to implementation. Section 205 repeals current sections 3662 and 3663 and adds three sections to title 39 as follows.

Section 3662—Rate and service complaints

Section 3662 provides the Regulatory Commission with enhanced authority to respond to complaints of pricing, service, or other actions by the Postal Service in violation of law. As revised, this section requires the Commission to investigate or dismiss complaints within 90 days. Subsection 3662(c) gives the Commission broad authority to correct violations by ordering the Postal Service to take whatever steps the Commission considers appropriate. For instance, the Commission may order the Postal Service to adjust the rates of competitive products to lawful levels if they are set below attributable costs. The current Rate Commission has no such authority under current law. In cases of deliberate noncompliance with the law, the Commission is authorized to levy fines based on the seriousness of the noncompliance. Fines resulting from unlaw-

ful provision of competitive products must be paid out of the Competitive Products Fund. All fines will be paid into the U.S. Treasury.

Section 3663—Appellate review

Section 3663 provides for appeals of any order or decision by the Commission to the United States Court of Appeals for the District of Columbia Circuit in accordance with chapter 706 of title 5 and chapter 158 and section 2112 of title 28.

Section 3664—Enforcement of orders

Section 3664 gives any United States District Court the authority to enforce orders from the Commission.

Section 206—Clerical amendment

Section 206 of the bill revises the analysis of chapter 36, title 39, in accordance with the changes made by the bill.

TITLE III—MODERN SERVICE STANDARDS

Title II of the bill requires the Postal Regulatory Commission to design, within 12 months, a new system of rate regulation for market-dominant products. Title III requires the Commission to establish, within 12 months, a set of service standards for market-dominant products. The Postal Service currently sets its own service standards. Title III also requires the Postal Service to submit a plan for how it will meet the new standards established by the Commission. The Postal Service's plan will include a list of facilities that can be closed and consolidated without hindering their ability to meet the new service standards. Title III maintains the universal service requirements included in sections 101(a), 101(b) and 403 of title 39 and the post office closing procedures in section 404(b) of title 39.

Section 301—Establishment of modern service standards

Section 301 creates a new section 3691 in title 39. Section 3691 requires the Regulatory Commission to design, within 12 months, a set of new service standards for market-dominant products. The new standards shall be consistent with the requirements in sections 101(a), 101(b), and 403 of title 39 requiring that the Postal Service "bind the Nation together through the mail" and serve all parts of the country in a non-discriminatory fashion. Subsection 3691(b) provides that the objectives of the new system shall be: (1) to increase the value of postal services to both senders and recipients; (2) to provide a benchmark for Postal Service performance goals; and (3) to guarantee Postal Service customers delivery speed and frequency consistent with reasonable rates and best business practices.

Subsection 3691(c) requires that, as they develop the new service standards, the Commission take into consideration: (1) actual level of service under any service standards previously established by the Postal Service; (2) customer satisfaction with Postal Service performance; (3) mail volume and revenues projected in future years; (4) the projected growth in the number of addresses the Postal Service will be required to serve in future years; (5) the current and projected future cost of serving Postal Service customers;

(6) the effect of changes in technology, demographics and population distribution on the efficient and reliable operation of the postal delivery system; and, (7) the policies of this title and such other factors as the Commission determines appropriate.

Section 302—Postal Service plan

Section 302 requires the Postal Service to submit to Congress, within 6 months of the establishment of the new service standards for market-dominant products, a plan for meeting the new standards. The Postal Service will develop the plan in consultation with the Regulatory Commission. Subsection 302 (b) requires that the plan: (1) establish performance goals; (2) describe any changes to the Postal Service’s processing, transportation, delivery and retail networks necessary to allow the Postal Service to meet the new performance goals; and (3) describe any changes to planning and performance documents previously submitted to Congress to reflect the new performance goals.

Subsection 302(c) requires that the Postal Service’s plan also include a description of its long-term vision for rationalizing its infrastructure and workforce and its plan for implementing that vision, including (1) a strategy for how it intends to rationalize the postal facilities network and remove excess processing capacity and space from the network, (2) an update on how postal decisions related to mail changes, security, automation initiatives, worksharing, information technology systems and other areas will affect network rationalization plans; (3) a discussion of what impact any facility changes may have on the postal workforce and whether the Postal Service has sufficient flexibility to make needed workforce changes; and, (4) an identification of anticipated costs, cost savings and other benefits associated with the infrastructure rationalization alternatives discussed in the plan.

Subsection 302(d) requires that the Postal Service include plans to provide retail postal services by other means, including vending machines, the Internet and retail facilities in which overhead costs can be shared with private businesses and other government agencies. Subsection 302(e) requires that the Postal Service include plans to provide re-employment assistance or early retirement benefits to employees displaced as a result of automation or the closing and consolidation of facilities.

Subsection 302(f) requires that the Postal Service’s plan be submitted to the Postal Service Inspector General for study before it is submitted to Congress. The Inspector General will then issue a report detailing the extent to which the plan is consistent with the Postal Service’s obligations under title 39 and the degree to which the plan allows them to meet the new service standards.

TITLE IV—PROVISIONS RELATED TO FAIR COMPETITION

Section 401—Postal Service Competitive Products Fund

Section 401 adds a new section 2011 to title 39. Section 2011 establishes an off-budget fund within the Treasury for revenues and expenditures associated with competitive products. The “Competitive Products Fund” is in addition to the current Postal Service Fund. The intent of this section is to level the playing field for the Postal Service and its competitors in the competitive product mar-

ket by requiring the Postal Service to keep separate financial accounts for market-dominant and competitive products. Separation of accounts also protects taxpayers and the interests of postal consumers in the market-dominant category.

Section 2011—Provisions relating to competitive products

Section 2011 establishes the rules under which the Postal Service will manage the Competitive Products Fund. The Postal Service may invest money from the new fund in accordance with rules that the Secretary of Treasury shall prescribe within 12 months after the date of enactment. The Postal Service may also borrow against any assets related to its competitive products. The Postal Service must regularly report to the Secretary of the Treasury and the Postal Regulatory Commission on the operation of the Fund. The Secretary of the Treasury in consultation with the Postal Service, and independent, certified public accounting firm and other appropriate advisors shall, within 12 months of enactment, develop recommendations regarding the accounting practices and principles to be used by the Postal Service with the intent of preventing cross-subsidy of market-dominant products by competitive products. In addition, the Secretary of the Treasury shall develop recommendations for the computation of the Postal Service's assumed Federal income tax on competitive products income. The Postal Regulatory Commission shall review these recommendations and following consideration of recommendations of interested parties, shall issue rules on the Postal Service's accounting practices and principles and the method of computing the assumed Federal income tax.

Section 402—Assumed Federal income tax on competitive products income

Section 402 adds a new section 3634 to title 39. Section 3634 requires the Postal Service to compute an assumed Federal income tax on income from competitive products each year and to transfer from the Competitive Products Fund to the Postal Service Fund the amount of that assumed tax.

Section 403—Unfair competition prohibited

Section 403 adds a new section 404(a) to title 39. The new section 404(a) prohibits the Postal Service from: (1) establishing rules or regulations which preclude competition or give the Postal Service an unfair competitive advantage; (2) compelling disclosure, transfer, or licensing of intellectual property; or (3) offering any product or service that makes use of information obtained from a person that provides or seeks to provide a product to the Postal Service unless the person has consented to such use or the information can be obtained from another source. The Regulatory Commission is required to prescribe regulations to carry out the purposes of this section, and the prohibitions will be enforced through the Commission's strengthened complaint process and remedies, which include ordering rescission of any regulation.

Section 404—Suits by and against the Postal Service

Section 404 amends section 409 of title 39 to make the Postal Service subject to other laws regulating the conduct of commercial activities. First, the amendment subjects all Postal Service activi-

ties to federal laws prohibiting the conduct of business in a fraudulent manner. Second, the amendment subjects all Postal Service activities outside the postal monopoly to federal antitrust laws and unfair competition prohibitions and eliminates sovereign immunity protection from suits in Federal Court for violations of Federal law. Third, the amendment makes the Postal Service's Competitive Products Fund a "person" for purposes of federal bankruptcy laws. Fourth, the amendment requires the Postal Service to consider local zoning, planning, environmental, or land use regulations and building codes when constructing new buildings.

Section 409 as amended further requires the Postal Service to represent itself in most legal proceedings permitted by the amendment as well as in cases involving administrative subpoenas issued by the Regulatory Commission and appeals of decisions by the Commission or the Governors. The amendment requires that judgments arising out of violations of law involving competitive products be paid out of revenues earned from competitive products.

Section 405—International postal arrangements

Section 405 amends section 407 of title 39, United States Code. Paragraph 407(a) states that it is the policy of the United States to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes; to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services except where provision of those services by private companies may be prohibited by U.S. law; to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services; and to participate in multilateral and bilateral agreements with other countries to accomplish the objective.

Paragraph 407(b) provides that the Secretary of State shall be responsible for the formulation, coordination, and oversight of foreign policy related to international postal services. However, the Secretary cannot conclude any postal treaty or convention that would grant an undue or unreasonable preference for the Postal Service with respect to any competitive product. The Secretary of State shall coordinate with other agencies having authority vested by law such as the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative. In addition, the Secretary shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery issues; the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives; and the Postal Service and representatives of users and private providers of international postal and delivery services.

Paragraph 407(c) requires that, before concluding any treaty or convention that establishes a rate or classification for a market-dominant product, the Secretary of State shall request that the Postal Regulatory Commission submit its views on whether such a rate is consistent with section 3622.

Paragraph 407(d) states that the Postal Service can enter into commercial or operational contracts related to international postal

services as long as they are solely contractual and do not purport to be binding under international law. A copy of each contract shall be forwarded to the Secretary of State and the Postal Regulatory Commission.

Paragraph 407(e) requires that the customs laws of the United States be applied in the same manner to both shipments of the Postal Service and private companies and that to the extent practicable, the Secretary of State shall encourage governments of other countries to make available a range of nondiscriminatory customs procedures.

Subsection 405(b) permits the Postal Service to establish postage rates for international mail until regulations under section 3622 and 3633 are promulgated by the Postal Regulatory Commission for market-dominant products and competitive products respectively.

TITLE V—GENERAL PROVISIONS

Section 501—Qualification requirements for Governors

Section 501 amends section 202 of title 39. As revised, section 202 provides that the nine members of the Board of Governors shall represent the public interest generally. The amendment also adds a requirement that the Governors shall be selected by the President based solely on their demonstrated ability in managing large organizations or corporations, in either the public or the private sector. The amendment requires the President to consult with the Speaker and minority leader of the House and the majority and minority leaders of the Senate in selecting individuals to nominate to the Board. The term of office for Governor is five years instead of nine. Those Governors serving under an appointment made prior to enactment will not be affected, however, when that office becomes vacant, the appointment of any person to fill that office shall be made in accordance with this amendment. This section also establishes transition rules for vacancies occurring in terms of Governors incumbent as of the date of enactment.

Section 502—Obligations

Section 502 amends section 2005 of title 39 to delete specified limits on borrowing for capital improvements and for operational expense by the Postal Service. The Postal Service Fund's \$2 billion annual cap on borrowing for capital investments and \$1 billion annual cap on borrowing for operational expenses is modified to a \$3 billion total annual combined cap for both purposes.

Section 503—Private carriage of letters

Section 503 amends section 601 of title 39 to provide limited additional statutory exemptions to the postal monopoly. Subsection 503(b) provides that a letter may be carried outside the mail under three new circumstances: (1) when the amount paid to a private carrier is at least 6 times the rate then currently charged for the first ounce of a single-piece first-class letter; (2) when the letter weighs at least 12 and one-half ounces; and (3) when private carriage is within the scope of current Postal Service regulations that purport to suspend the operation of current law. By setting the limit at 6 times the first-class stamp price, the amended section

601 provides that the price limit on the postal monopoly will rise as the stamp price increases.

Section 601 as amended also codifies the exemptions to the postal monopoly referenced in subsection 503(b)(3) that have been administratively adopted by the Postal Service and widely used by private carriers and the public even though they are based on a questionable interpretation of current law. Entities in both the government and the private sector have testified that the Postal Service has misinterpreted the suspension power found in section 601(b) of current law. Since 1974, the Postal Service has, under color of section 601(b), issued regulations that, in effect, suspend the postal monopoly. Subsection 601(b), however, is derived from section 7 of an 1864 postal act. This provision was originally intended to authorize the Postmaster General to suspend the exception to the postal monopoly now found in section 601(a), which allows private carriage of letters if postage is paid by applying and canceling postage stamps. There is no evidence that Congress intended to grant the Postal Service authority to suspend the postal monopoly itself. The proposed amendment would repeal the Postal Service's authority to suspend the postal monopoly exception for stamped letters—an antiquated and never used authority—and to codify the exemptions to the postal monopoly that the Postal Service has adopted to date in apparent misinterpretation of the suspension provision. The intent of this provision to continue to allow private carriage under those circumstances in which private carriage is purportedly permitted by current Postal Service “suspensions” of the monopoly but not to continue provisions in the Postal Service regulations that purport to condition or limit use of such “suspensions,” e.g., a requirement that customers of private carriers must permit otherwise unauthorized inspections by postal inspectors.

The Regulatory Commission is authorized to adopt regulations necessary to carry out the exceptions to the postal monopoly set out in section 601 as amended. This amendment does not take effect until the Postal Regulatory Commission promulgates regulations for the competitive pricing system under section 3633.

Section 504—Rulemaking authority

Section 504 amends section 401(2) of title 39 to clarify the rulemaking function of the Postal Service. Amended section 401(2) authorizes the Postal Service “to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title.” This amendment is intended to make clear that the Postal Service is not empowered to adopt regulations implementing other parts of the U.S. Code unless explicitly authorized to do so by Congress. This amendment is modeled on the Federal Communications Commission's rulemaking authority in 47 U.S.C. 154(i). The amendment recognizes that the rulemaking authority of the Postal Service is affected by its obligations under title 5 and certain other limited provisions of law outside title 39.

Section 505—Noninterference with collective bargaining agreements

Section 505 revises the current procedures regarding collective bargaining with unions representing postal employees. It eliminates the fact-finding process in current law and provides for the appointment of a mediator to try to resolve collective bargaining disputes. Subsection 505(a) amends section 1207 of title 39 to state that if there is a collective bargaining agreement in effect, no party shall terminate or modify such agreement unless they serve no less than 90 days notice on the other party. The party serving such notice shall notify the Federal Mediation and Conciliation Service of the existence of a dispute within 45 days of such notice. If no agreement is reached, the Director of the Federal Mediation and Conciliation Service shall, within 10 days, appoint a mediator. If no agreement is reached within 60 days after the expiration or termination of the agreement or if the parties decide upon arbitration but do not agree upon the arbitration procedures, then a three member arbitration panel shall be established with one member selected by the Postal Service, one member selected by the bargaining representative of the employees and the third jointly selected. Decisions of the arbitration board shall be binding and final and the costs shall be shared by both parties. In the case of a bargaining unit whose recognized representative does not have an agreement with the Postal Service, if the parties fail to reach agreement within 90 days of the commencement of collective bargaining, a mediator shall be appointed. If the parties fail to reach agreement within 180 days of the commencement of collective bargaining, and they have not agreed to another procedure for binding resolution, an arbitration board shall be established to provide conclusive and binding arbitration.

Subsection 505(b) states that except as provided in subsection (a), nothing in this act shall restrict, expand or otherwise affect any of the rights, privileges, or benefits of either employees or of labor organizations representing employees of the Postal Service.

Subsection 505(c) provides that nothing in the bill will affect free mail as currently provided by law for: (1) correspondence of members of the diplomatic corps and consuls of the countries of the Postal Union of Americas and Spain; (2) the blind and the disabled; and (3) mailing of balloting materials under the Uniformed and Overseas Citizens Absentee Voting Act.

TITLE VI—ENHANCED REGULATORY COMMISSION

Section 601—Reorganization and modification of certain provisions relating to the Postal Regulatory Commission

Section 601 creates a new chapter 5 in title 39 to establish the Postal Regulatory Commission, which will replace the current Postal Rate Commission. It recognizes the Regulatory Commission's enhanced responsibilities by establishing it in provisions set out in a chapter located in part I of title 39, dealing with general matters, rather than, as in current law, provisions set out in a subchapter of chapter 36, dealing with rate regulation. In addition, this section establishes qualification requirements for Postal Regulatory Commissioners. Lastly, it directs the Postal Regulatory Commission to designate an officer of the Postal Regulatory Commission in all public proceedings to represent the interests of the general public.

Section 602—Authority of the Postal Regulatory Commission to issue subpoenas

Section 602 amends section 504 of title 39, i.e., section 3604 of current law as re-designated by section 601 of the bill. Section 504, as amended, provides that Commissioners, any administrative law judge appointed by the Commission, and any designated employee of the Commission may administer oaths, examine witnesses, take depositions, and receive evidence. In addition, the Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge appointed by the Commission may subpoena officers, employees, contractors, and agents of the Postal Service to require attendance, presentation of testimony, production of documents or to order depositions and responses to written interrogatories. Any subpoena requires the written concurrence of a majority of Commissioners then holding office in advance of its issuance. The Commission may seek an order enforcing the subpoena in U.S. District Court in the event of a failure to comply. Failure to obey the court's order is punishable as a contempt of court.

The amendment also provides for the handling of proprietary information requested from the Postal Service by the Commission. Section 504, as amended, provides that, if the Postal Service determines requested information is proprietary and so notifies the Commission in writing, the Commission may use the information only for the purpose for which it is supplied and must restrict access to the information to Commission officials. The amendment further provides for the possibility of discovery of such information by private parties in proceedings under sections 556 and 557 of title 5 and requires the Commission to adopt rules to protect the confidentiality of such information similar to the rules that govern protective orders issued by the federal courts under the Federal Rules of Civil Procedure.

Section 603—Appropriations for the Postal Regulatory Commission

Section 603 further amends section 504 of title 39 to ensure the financial independence of the Postal Regulatory Commission. Under the amendment, funding for the Commission will be paid out of the Postal Service Fund, as under current law, but the budget of the Commission will no longer be subject to disapproval by the Governors.

Section 604—Redesignation of the Postal Regulatory Commission

Section 604 changes the name of the "Postal Rate Commission" to the "Postal Regulatory Commission" in various statutes.

Section 605—Financial transparency

Section 605 amends section 101 of title 39 by including a requirement that the Postal Service shall be subject to "a high degree of transparency to ensure fair treatment of customers of the Postal Service's market-dominant products and companies competing with the Postal Service's competitive products."

TITLE VII—EVALUATIONS

Section 701—Assessments of ratemaking, classification and other provisions

Section 701 requires the Regulatory Commission to report to the President and the Congress at least every 3 years, in conjunction with the Postal Service, on the operation of the amendments made by this bill, with recommendations for any legislative or other measures necessary to improve the effectiveness or efficiency of the nation's postal laws.

Section 702—Report on universal postal service and the postal monopoly.

Section 702(a) requires the Postal Regulatory Commission, no later than 12 months after enactment, to submit a report to the President and Congress on the universal postal service and the postal monopoly including the monopoly on the delivery of mail and access to mailboxes. The report shall include (1) a comprehensive review of the history and development of universal service and the postal monopoly; (2) the scope and standards of universal service and the postal monopoly under current law; (3) a description of any geographic areas or communities that are not currently covered by universal service or that are covered but that are receiving deficient services; and (4) the scope and standards of universal service and the postal monopoly likely to be required in the future to meet the needs and expectations of the public. Section 702(b) requires the Postal Regulatory Commission to include in the report any recommended changes to universal service and the postal monopoly as the Commission considers appropriate and an estimate of the costs and likely benefits of the obligation to provide universal service. The Regulatory Commission will update the report in each report submitted to the President and Congress pursuant to section 701.

Section 703—Study on equal application of laws to competitive products.

Section 703 requires the Federal Trade Commission (FTC) to prepare and submit to the President, Congress and the Postal Regulatory Commission within one year after enactment a comprehensive report identifying Federal and State laws that apply differently to the Postal Service with respect to the competitive category of mail and similar products provided by private companies, including recommendations as it considers appropriate to bring such legal discrimination to an end. In preparing the report, the FTC shall consult with the Postal Service, the Postal Regulatory Commission and other federal agencies, mailers, private delivery companies and the general public and append any comments to its report. The Postal Regulatory Commission shall take the FTC's recommendations into account in establishing regulations for competitive products under section 3633 of title 39.

Section 704—Report on postal workplace safety and workplace-related injuries

Subsection 704(a) directs the Inspector General of the United States Postal Service, not later than six months after enactment, to submit a report to Congress and the Postal Service that details

and assesses any progress the Postal Service has made in improving workplace safety and reducing workplace-related injuries nationwide and identifies opportunities for improvement. This report shall: discuss any injury reduction goals established by the Postal Service; describe actions that the Postal Service has taken to improve workplace safety and reduce injuries; identify areas where the Postal Service has failed to meet its injury reduction goals; explain the reasons why these goals were not met; and identify opportunities for making further progress in meeting these goals.

Subsection 704(b) requires the Postal Service, no later than 6 months after receiving the report under Subsection 704(a), to submit a report to Congress detailing how it plans to improve workplace safety and reduce workplace-related injuries, including goals and metrics. The Postal Service's report shall also include plans developed in conjunction with the Inspector General and employee representatives, including representatives of each postal labor union and management association, for addressing the problem areas identified by the Inspector General.

Section 705—Study on recycled paper

Subsection 705(a) directs the Government Accountability Office (GAO), within 12 months of enactment, to submit to the Congress, the Board of Governors of the Postal Service and the Postal Regulatory Commission a report concerning the economic and environmental efficacy of establishing rate incentives for mailers linked to the use of recycled paper. The GAO report shall also include a description of the Postal Service's accomplishments in each of the preceding 5 years involving recycling activities, including the amount of revenue generated and savings achieved by the Postal Service as a result of its use of recycled paper and other recycled products. Finally, the GAO report shall discuss the Postal Service's efforts to recycle undeliverable mail and other material and additional opportunities that may be available for the Postal Service to engage in recycling initiatives, including the projected costs and revenues associated with undertaking such opportunities.

Subsection 705(b) specifies that the report under Subsection 705(a) shall include recommendations for any appropriate administrative or legislative actions.

TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS
FUNDING

Section 801—Short title

Section 801 provides that title VIII may be cited as the "Postal Civil Service Retirement and Health Benefits Funding Amendments of 2004".

Section 802—Civil Service Retirement System

In general, section 802 provides for transfer of the costs of providing military service credit under the Civil Service Retirement System (CSRS) from the Postal Service to the U.S. Treasury. It also modifies the existing provisions for funding CSRS benefits for Postal employees. Paragraph (a)(1) eliminates the current requirement that the Postal Service make a contribution to the Retirement Fund based upon a percentage of the salaries of Postal Serv-

ice employees. Paragraph (a)(2) amends the existing provisions of 5 U.S.C. § 8348(h).

As amended, § 8348(h)(1) defines “Postal surplus or supplemental liability” as the estimated difference, as determined by the Office of Personnel Management (OPM), between the actuarial present value of future CSRS retirement benefits attributable to civilian employment with the United States Postal Service, and the sum of the actuarial present value of future Postal Service CSRS deductions from the salaries of current Postal employees plus the net portion of the Fund balance attributable to Postal civilian employment (taking into account contributions, payments and earnings); plus any other appropriate amount, as determined by OPM in accordance with generally accepted actuarial practices and principles.

As amended, § 8348(h)(2)(A) provides that by June 30, 2006, OPM will determine the Postal surplus or supplemental liability, as of September 30, 2005. Any surplus will be transferred to the Postal Service Retiree Health Benefit Fund established by the new 5 U.S.C. § 8909a. If there is a supplemental liability, OPM will establish an amortization schedule providing for the liquidation of the liability by September 30, 2043.

As amended, § 8348(h)(2)(B) provides that OPM will each year thereafter through FY 2038 recompute whether there is a Postal surplus or supplemental liability. Any surplus will remain in the Fund until transfers are authorized under subparagraph (C). If there is a liability, OPM will establish a new amortization schedule providing for the liquidation of the liability by September 30, 2043, and superceding earlier amortization schedules.

As amended, § 8348(h)(2)(C) provides that if there is a surplus at the end of FY’s 2015, 2025, 2035, and 2039, it shall be transferred to the Postal Service Retiree Health Benefits Fund, terminating any prior amortization schedules.

As amended, § 8348(h)(2)(D) and (E) provide that the amortization schedules shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the CSRS, with Postal payments due not later than the date scheduled by OPM.

As amended, § 8348(h)(3) provides that in computing payments under any other subsection of § 8348 based upon unfunded liability, OPM will compute those payments taking into account payments under the amended § 8348(h).

Section 802(b) provides that since the amounts paid in FY’s 2003 through 2005 by the Postal Service for CSRS military service costs will be recredited to the Postal Service towards its civilian CSRS obligations, the Treasury shall make the contributions for those years.

Section 803—Health insurance

Section 803(a)(1) also amends 5 U.S.C. § 8906(g)(2)(A) to provide that future payments for the employer share of health benefits premiums for retired Postal employees shall be made from the Postal Service Retiree Health Benefit Fund established by the new 5 U.S.C. § 8909a up to the amount in the Fund, with any additional amount contributed by the Postal Service.

Section 803(a)(1) also adds a new 5 U.S.C. § 8909a establishing a Postal Service Retiree Health Benefit Fund, administered by OPM.

New § 8909a(c) provides that the new Fund shall be invested in the same manner as the Retirement Fund.

New § 8909a(d)(1) provides that at the end of 2006 and each year thereafter, OPM will compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

New § 8909a(d)(2)(A) provides that at the end of 2006 and each year thereafter, OPM will compute the net present value of the unfunded liability for future payments required by 5 U.S.C. § 8906(g)(2)(A), taking into account the Fund balance and the amount computed under § 8909a(d)(1) that will be paid by the Postal Service.

New § 8909a(d)(2)(B) provides that at the end of 2006 OPM will compute, and each year thereafter recompute, an amortization schedule providing for the liquidation by January 31, 2046, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

New § 8909a(d)(3) provides that at the end of 2006 and each year thereafter, the Postal service will pay into the Postal Service Retiree Health Benefit Fund the amounts computed under §§ 8909a(d)(1) and (2)(B).

New § 8909a(d)(4) provides that computations under subsection (d) will be made consistent with the assumptions and methodology used by OPM for financial reporting under the Chief Financial Officers Act of 1990.

New § 8909a(d)(4) provides that any necessary regulations shall be promulgated by OPM after consultation with the Postal Service.

Section 804—Repeal of disposition of savings provision

Section 804 repeals section 3 of the Postal Civil Service Retirement System Funding Reform Act of 2003, Public Law 108–18, which made provision for disposition of savings under the provisions of that Act.

Section 805—Effective dates

Section 805(a) provides that title VIII generally takes effect on October 1, 2005.

Section 805(b) provides that paragraph (1) of section 802(a), providing for the elimination of the Postal Service contributions to the Retirement Fund based on a percentage of employee salary, takes effect on the first day of the first pay period beginning on or after October 1, 2005.

TITLE IX—COMPENSATION FOR WORK INJURIES

Section 901—Temporary disability; continuation of pay

Section 901 amends section 8117 of title 5 to put into place a three-day waiting period before an employee of the Postal Service injured on the first day of the first pay period beginning on or after October 1, 2005 is eligible to receive 45 days of continuation of pay.

The affected postal employee may use annual leave, sick leave, or leave without pay during this period. If the disability exceeds 14 days or is followed by permanent disability, the employee may have any annual leave or sick leave used reinstated or may receive pay for the time spent on leave without pay.

Section 902—Disability retirement for postal employees

Section 902 amends sections 8105 and 8106 of title 5 by converting compensation benefits for total or partial disability to a retirement annuity when an affected postal employee injured on the first day of the first pay period beginning on or after October 1, 2005 reaches an appropriate retirement age as defined by section 216(l) of the Social Security Act. This change would reflect the fact that disabled postal employees would likely retire at some point were they not on the rolls of the Office of Workers' Compensation Programs.

The compensation entitlement for partial disability is converted to 50 percent of the difference between an employee's monthly pay and his or her monthly wage earning capacity after the beginning of partial disability when the injured employee reaches his or her "retirement age" as defined in section 216 of the Social Security Act.

The compensation entitlement for total disability is converted to 50 percent of the monthly pay of the employee when the injured employee reaches his or her "retirement age" as defined in section 216 of the Social Security Act.

Under current law, employees with dependents are eligible for 75 percent of their pre-injury salary plus cost-of-living adjustments (COLAs), tax-free. Employees with no dependents receive 66 $\frac{2}{3}$ percent of their pre-injury salary plus COLAs, tax-free. There is no maximum dollar cap on workers' compensation payments.

TITLE X—MISCELLANEOUS

Section 1001—Employment of Postal Police Officers

Section 1001 amends section 404 of title 39, United States Code to permit the Postal Service to employ guards for buildings owned and operated by the Postal Service or under the charge and control of the Postal Service. The Postal Service may give such guards with respect to this property the powers of special policemen provided under section 1315 of title 40. The Postmaster General or his or her designee may take any action that the Secretary of Homeland Security may take under section 1315 of title 40 with respect to that property.

Section 1002—Expanded contracting authority

Subsection 1002(a) amends 39 U.S.C 5402(d) to provide that the Postal Service may contract with any air carrier for transportation of mail in interstate air transportation, including the rates therefor, through negotiations or competitive bidding. The Postal Service may contract with any air carrier or foreign air carrier for transportation of mail in foreign air transportation, including the rates therefor, through negotiations or competitive bidding except that (1) any such contract may be awarded only to an air carrier holding a certificate required by section 41101 of title 49 or an exemption

therefrom issued by the Secretary of Transportation, or any such contract may be awarded only to a foreign air carrier holding a permit required by section 41301 of title 49 or an exemption therefrom issued by the Secretary of Transportation, or a combination of such air carriers and foreign air carriers; (2) mail transported under any such contract shall not be subject to any duty-to-carry requirement imposed by any provision of subtitle VII of title 49 or any certificate, permit, or corresponding authority issued by the Secretary of Transportation; (3) every contract awarded to a foreign air carrier shall be subject to the requirement that air carriers shall be provided the same opportunity to carry the mail of the country to and from which the mail is transported and the flag country of the foreign air carrier; (4) the Postmaster General shall consult with the Secretary of Defense concerning actions that affect the carriage of military mail in foreign air transportation.

Section 1002(b) amends section 41901(a) of title 49 to permit the Postal Service to provide for the transportation of mail by aircraft in air transportation and deletes restrictions on the foreign air transportation of mail and prices for foreign transportation of mail.

V. EVALUATION OF REGULATORY IMPACT

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory impact that would be incurred in carrying out the bill.

S. 2468 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

VI. ESTIMATED COST OF LEGISLATION

Section 11(a) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill include an estimate of the costs which would be incurred in carrying out such bill. The following estimate was prepared by the Congressional Budget Office:

S. 2468—Postal Accountability and Enhancement Act

Summary: S. 2468 would change the laws that govern the operation of the United States Postal Service (USPS), particularly those regarding the cost of pensions and health care benefits of retired workers and the requirement to hold certain funds in escrow. CBO estimates that enacting this legislation would result in on-budget savings of \$20.2 billion and off-budget costs of \$35.8 billion over the 2005–2014 period. (The net expenditures of the USPS are classified as “off-budget.”) Thus, CBO estimates the net cost to the unified budget would be \$15.7 billion over the 2005–2014 period. Those costs would constitute direct spending. (The bill would not affect revenues.) In addition, we estimate that implementing S. 2468 would cost about \$90 million (less than \$10 million a year) over the 2005–2014 period, assuming appropriation of the necessary amounts.

Enacting S. 2468 would not affect how much the federal government spends on pension or health care benefits for USPS retirees. By increasing how much the Postal Service pays to finance those benefits and by eliminating the current-law escrow account require-

ments, however, the bill would increase future budget deficits as measured by the unified federal budget. Eliminating the escrow account requirement for the USPS would allow that agency to increase spending for capital improvements or other projects, pay down its outstanding debt, postpone or diminish future rate increases, or some combination of these options. Enacting the bill also would reduce direct spending by making the costs of the Postal Rate Commission subject to appropriation and by reducing payments made by the Postal Service for workers' compensation.

S. 2468 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Major provisions of S. 2468 would:

- Eliminate a requirement in Public Law 108–18 (P.L. 108–18), the Postal Civil Service Retirement Funding Reform Act of 2003, that the Postal Service place savings from reduced pension contributions in escrow.

- Transfer from the Postal Service to the Department of the Treasury responsibility for paying pension costs associated with military service credits.

- Replace direct payments the Postal Service is making for retiree health care costs with payments designed to prefund the health care costs of current employees when they retire.

- Revise the procedure for raising postal rates.

- Strengthen the USPS Board of Governors and the Postal Rate Commission, which would be redesignated the Postal Regulatory Commission (PRC).

- Make other changes designed to increase the Postal Service's competitiveness with private industry.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2468 is shown in Table 1. The costs of this legislation fall within budget functions 370 (commerce and housing credit), 550 (health), 900 (net interest), and 950 (undistributed off-setting receipts).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 2468

	By fiscal year, in billions of dollars—									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
CHANGES IN DIRECT SPENDING										
On-Budget Effects:										
Estimated Budget Authority	0.0	2.4	-2.3	-2.4	-2.5	-2.7	-2.9	-3.1	-3.3	-3.5
Estimated Outlays	0.0	2.4	-2.3	-2.4	-2.5	-2.7	-2.9	-3.1	-3.3	-3.5
Off-Budget Effects:										
Estimated Budget Authority	*	2.9	3.2	3.5	3.6	3.9	4.2	4.4	4.8	5.2
Estimated Outlays	*	2.9	3.2	3.5	3.6	3.9	4.2	4.4	4.8	5.2
Total Unified Budget Effect:										
Estimated Budget Authority	*	5.4	0.9	1.1	1.1	1.2	1.4	1.4	1.6	1.7
Estimated Outlays	*	5.4	0.9	1.1	1.1	1.2	1.4	1.4	1.6	1.7

¹ Implementing the bill also would affect discretionary spending, subject to the availability of appropriated funds. CBO estimates that those discretionary costs would be less than \$10 million a year.

Notes.—Components may not add to totals because of rounding.

* = savings of less than \$50 million.

Basis of estimate: For this estimate, CBO assumes that S. 2468 will be enacted near the start of fiscal year 2005. CBO estimates that enacting the bill would result in on-budget savings of \$20.2 billion and off-budget costs of \$35.8 billion over the 2005–2014 pe-

riod, for a net cost to the unified budget of \$15.7 billion over the 10-year period. In addition, we estimate that implementing S. 2468 would cost about \$90 million over the 2005–2014 period, assuming appropriation of the necessary amounts, mostly to fund the PRC.

Background

The following paragraphs present background information relating to the major provisions of S. 2468, mostly for postal finances affected by the bill.

Budgetary Treatment of USPS. Although the Postal Service is a federal agency, its financial operations are classified as off-budget. Despite this treatment, federal budget documents present the net income (gross income minus expenses) of the agency in the unified budgetary totals for the federal government. The Postal Service is required by law to set postage rates to cover its full costs, although from year to year its net income may be positive or negative. In fiscal year 2003, the Postal Service generated \$69.5 billion in collections, mostly from postage and user fees, and had \$64.2 billion in expenses, for a net cash surplus of \$5.3 billion in that year.

USPS and Federal Retirement Plans. Postal Service employees participate in the federal government's two main defined benefit pension programs. Those workers initially hired prior to 1984 are covered by the Civil Service Retirement System (CSRS) while those initially hired after 1983, as well as former CSRS workers who elected to change federal retirement plans in 1987 or 1998, participate in the Federal Employees' Retirement System (FERS). In 2003, about 30 percent of the USPS workforce was covered by CSRS, and the rest were under FERS.

The Postal Service and its employees each make payroll contributions toward the civilian retirement system (CSRS and FERS). Unlike other agencies, the agency contribution rate for most CSRS employees is 17.4 percent of basic pay (most other agencies contribute 7 percent), while the employee contribution rate is 7 percent.¹ For FERS employees, the agency contribution rate for most employees is 10.7 percent, while the employee rate is 0.8 percent, plus Social Security payroll taxes on both employers and employees. Workers in CSRS receive generally higher benefits than those in FERS, but unlike FERS, those in CSRS do not participate in Social Security and do not receive agency contributions toward the Thrift Savings Plan. In addition to its payroll contributions, the Postal Service also makes annual amortization payments toward an unfunded liability within CSRS. In 2003, that payment was about \$300 million.

USPS and Federal Health Benefits. The Postal Service also pays a portion of health care premiums for currently retired USPS employees who are eligible to participate in the Federal Employees Health Benefits (FEHB) program. Currently, there are over 400,000 Postal Service retirees who participate in the FEHB program. On average, the Postal Service currently pays about 45 percent of the health care premiums for its retirees. Retirees pay

¹ P.L. 108–18 increased the contribution rate the Postal Service pays for its CSRS employees from 7 percent to 17.4 percent. That legislation also eliminated a series of amortization payments the Postal Service was required to make for unfunded CSRS liabilities. For more details, see CBO's cost estimates of the Postal Civil Service Retirement System Funding Reform Act of 2003 (S. 380 and H.R. 735 from the 108th Congress). These estimates are posted on www.cbo.gov.

about 30 percent of their FEHB premiums with general revenues accounting for the remaining amount, roughly 25 percent. In 2003, the Postal Service paid \$1.1 billion to FEHB for premiums for current retirees.

USPS Escrow Fund. Starting in October 2006, the Postal Service will be required under current law to begin holding funds in an escrow account equal to the difference between what the Postal Service currently pays toward CSRS and what it would have paid for CSRS benefits prior to the enactment P.L. 108–18. Under current law, CBO estimates the Postal Service will need to hold in escrow nearly \$3 billion in 2006 and \$36 billion over the 2006–2014 period. S. 2468 would eliminate the requirement that USPS collect and hold these funds in escrow.

Effects on the Unified Budget

S. 2468 would not affect how much the federal government spends on pension or health benefits for USPS retirees. However, by increasing how much the Postal Service pays to finance those benefits and by eliminating the current-law escrow requirements, the bill would increase future budget deficits as measured by the unified federal budget.

Off-budget payments made by the Postal Service for CSRS and FEHB are transfers to on-budget federal accounts, and are counted as offsetting receipts (a credit against direct spending). Eliminating the USPS transfer to CSRS for military service credits would reduce on-budget offsetting receipts by \$13.5 billion over the 2005–2014 period. Under the bill, that reduction would be offset by a \$33.6 billion net increase in on-budget offsetting receipts paid by the Postal Service for the new health benefits fund. Taken together, those provisions would increase on-budget offsetting receipts by \$20.2 billion over the 2005–2014 period.

The collection of funds to be held in escrow by the Postal Service is recorded as an off-budget offsetting receipt. Eliminating the requirement to fund the escrow account would allow the USPS to pay down debt, increase spending for capital improvements or other projects, postpone or diminish future rate increases, or some combination of these activities. CBO estimates that this provision would increase net off-budget spending by \$36 billion over the 2006–2014 period. (Much of that spending would be to fund the new health benefits payments mentioned above as on-budget offsetting receipts.) Making the costs of the PRC subject to appropriation would reduce direct spending by the Postal Service by about \$90 million over the next 10 years. Furthermore, reducing USPS costs for workers' compensation could reduce direct spending by an additional \$50 million over the 2005–2014 period.

The combined effect of the \$20.2 billion increase in on-budget receipts, the \$36 billion reduction in off-budget offsetting receipts, and a \$140 million reduction in USPS direct spending would produce a \$15.7 billion cost to the unified budget deficit over the 2005–2014 period. Those effects are presented in Table 2 and explained in more detail below.

TABLE 2.—ESTIMATED CHANGES IN DIRECT SPENDING FOR S. 2468

	By fiscal year, outlays in billions of dollars—									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
CHANGES IN DIRECT SPENDING										
On-Budget Effects										
Civil Service Retirement System	0	2.0	1.9	1.8	1.7	1.5	1.4	1.2	1.1	0.9
Postal Service Retiree Health Benefits Fund net of retiree premium payments to FEHB ¹	0	0.4	-4.2	-4.2	-4.2	-4.2	-4.3	-4.3	-4.3	-4.4
Total On-Budget Effects	0	2.4	-2.3	-2.4	-2.5	-2.7	-2.9	-3.1	-3.3	-3.5
Off-Budget Effects										
Eliminate Escrow Account	0	2.9	3.2	3.5	3.7	3.9	4.3	4.5	4.8	5.2
Funding for PRC Costs Subject to Appropriation and Workers' Compensation Savings	*	*	*	*	*	*	*	*	*	*
Total Off-Budget Effects	*	2.9	3.2	3.5	3.6	3.9	4.2	4.4	4.8	5.2
Total Unified Budget Effects	*	5.4	0.9	1.1	1.1	1.2	1.4	1.4	1.6	1.7
MEMORANDUM										
Payments from the Postal Service received by PSRHBF	0	0	-5.9	-6.1	-6.4	-6.6	-6.8	-7.1	-7.4	-7.8
FEHB premiums paid from PSRHBF	0	0.4	1.8	2.0	2.2	2.4	2.6	2.8	3.1	3.4
Net outlays of PSRHBF ..	0	0.4	-4.2	-4.2	-4.2	-4.2	-4.3	-4.3	-4.3	-4.4

¹ Starting in July 2006, CBO assumes that payments of FEHB premiums for Postal Service retirees would be paid out of the Postal Service Retiree Health Benefits Fund instead of being paid directly by the Postal Service as under current law. S. 2468 would require the first payment prefunding and amortization amounts to be made by January 31, 2007. The bill would have no effect on spending by the FEHB program for health benefits for Postal Service annuitants.

Notes.—FEHB = Federal Employees Health Benefits program; PSRHBF = Postal Service Retiree Health Benefits Fund; PRC = Postal Regulatory Commission; USPS = United States Postal Service.

* = savings of less than \$50 million.

Components may not add to totals because of rounding.

Amounts in the table represent net changes in offsetting receipts, which are recorded in the budget as changes in direct spending. A positive sign indicates lower offsetting receipts, thus an increase in outlays; negative numbers represent increased offsetting receipts, or a reduction in net outlays.

On-Budget Effects (Direct Spending)

CBO estimates the total on-budget effect of the pension and health care provisions in S. 2468 would be a decrease in offsetting receipts of \$2.4 billion in 2006, an increase of \$4.8 billion over the 2006–2009 period, and \$20.2 billion over the 2006–2014 period. That increase in on-budget collections would come from increased transfers (off-budget outlays) coming from the USPS. (The off-budget effects are discussed in the following section.)

Civil Service Retirement Contributions. S. 2468 would change the way the Postal Service finances retirement benefits for current and retired employees. Starting in October 2005, the bill would transfer financial responsibility for military service credits earned by Postal Service employees and retirees participating in CSRS from the Postal Service to the Department of Treasury. Military service credits represent time served in the U.S. military that is credited toward benefits under the civilian retirement system. Most federal agencies are not responsible for the cost to the pension system of the military service credits incurred by their CSRS employees, but P.L. 108–18 transferred responsibility for military service credits from the Treasury to the Postal Service beginning in June 2004.

The Office of Personnel Management (OPM) estimates that transferring responsibility for military service credits from the Postal Service back to the Treasury would cause the Postal Service to have overfunded its obligation to CSRS by about \$19.4 billion through September 2005.² Consequently, under S. 2468 the Postal Service would no longer be obligated to make either agency contributions or any further annual amortization payments for CSRS. (Employee contributions would continue at 7 percent of basic pay and retirement benefits under CSRS would not change.)

Spending by the Postal Service—including amounts paid into other federal accounts—is considered off-budget spending. However, the Civil Service Retirement and Disability Fund (CSRDF) is an on-budget account, so the amounts the CSRDF collects from the Postal Service are on-budget offsetting receipts. Reducing payments the Postal Service makes to the CSRDF would result in a reduction in off-budget spending and a reduction in on-budget offsetting receipts. CBO estimates transferring responsibility for military service credits, and the attendant reduction in CSRS contributions such a change would bring, would reduce on-budget receipts by \$2 billion in 2006 and \$13.5 billion over the 2006–2014 period. Although the Treasury Department would then be responsible for the costs associated with those pension liabilities under the bill, the Treasury payment and receipt by CSRDF are both on-budget intragovernmental transactions. That is, the bill would replace one intragovernmental transfer with another. Instead of a transfer from the off-budget Postal Service to the on-budget CSRDF, there would be a transfer from the Treasury to the CSRDF.

Postal Service Retiree Health Benefits Fund. S. 2468 also would change the way the Postal Service finances its share of the cost of providing health care to retirees. Instead of directly paying a portion of the health premiums incurred by current retirees each year, the USPS would begin paying for estimated costs of retiree health care as such costs are accrued by current workers. Starting in 2007, S. 2468 would require the USPS to make payments equal to the annual increase in retiree health care liabilities accrued by current employees. These payments would be deposited into a new on-budget account, the Postal Service Retiree Health Benefits Fund (PSRHBF), which would earn interest at the same rate as the CSRDF. The Postal Service's share of health care premiums for current retirees would be paid out of the PSRHBF as soon as adequate funds are available in the account to do so.

Under S. 2468, any overfunding toward CSRS liabilities (after financial responsibility for military service credits reverts to the Treasury) would be transferred from the CSRDF to the PSRHBF by June 30, 2006. Based on information provided by OPM, CBO anticipates that the transfer to the new fund would total \$20.2 billion and would occur in June 2006. (This amount reflects the \$19.4 billion in estimated CSRS overfunding plus interest that would accrue between the end of the valuation period in September 2005 and

²This overfunding, which is calculated on a net-present-value basis, represents an estimate of the total amount of money the Postal Service will have contributed toward CSRS from 1971 through September 30, 2005, minus the agency's CSRS liabilities if USPS bears not financial responsibility for the pension costs associated with military service credits. The projected overfunding is due primarily to larger-than-expected returns on assets held in the CSRDF.

when CBO assumes the asset transfer would take place in June 2006.)

Under the bill, the Postal Service also would make annual amortization payments toward the unfunded liabilities for health care costs of both current and future retirees. The unfunded liability would be the difference between the assets held in the PSRHBFB and the net present value of accrued liabilities projected for retiree health care. The bill would direct OPM to compute the required prefunding and amortization payments consistent with assumptions and methodologies for financial reporting used by OPM under current law. The bill specifies that payment would be made by January 31st of each year, starting in 2007, for the prior fiscal year. (CBO assumes those payments would include interest accrued between the end of the valuation period and the payment date each year.) Based on information provided by OPM, CBO anticipates the net present value of the unfunded liability for the health care costs of retirees would amount to \$43.2 billion at the end of 2006 and would shrink to \$39.9 billion by the end of 2014. CBO estimates that payments by the Postal Service for prefunding health care costs of retirees and amortization payments for the remaining unfunded liability would be \$5.9 billion in 2007, \$18.4 billion over the 2007–2009 period, and \$54.2 billion over the 2007–2014 period.

CBO expects that the transfer of \$20.2 billion from the CSRDF to the PSRHBFB resulting from the shift in responsibility for military service credits would occur in June 2006.

Therefore, the Postal Service would cease making payments under current law for its share of FEHB premiums for annuitants beginning in July 2006; with those premium payments instead being drawn from the PSRHBFB. CBO estimates that change in the funding mechanism for retiree health benefits would reduce off-budget payments by the Postal Service for FEHB premiums by \$0.4 billion in 2006 (which reflects premium payments, under current law, for the last three months of 2006), \$6.3 billion over the 2006–2009 period, and \$20.5 billion over the 2006–2014 period. On-budget payments for those amounts would then be transferred from the PSRHBFB to the FEHB and any payments that would be made into the new PSRHBFB would be considered on-budget offsetting receipts. CBO estimates the increase in on-budget receipts as a result of changes in how the Postal Service finances its health care obligations would be \$4.2 billion in 2007, \$12.2 billion over the 2007–2009 period, and \$33.6 billion over the 2007–2014 period.

Off-Budget Effects (Direct Spending)

CBO estimates that enacting S. 2468 would result in net off-budget costs of \$2.9 billion in fiscal year 2006, \$13.2 billion over the 2005–2009 period, and \$35.8 billion over the 2005–2014 period because it would eliminate the requirement to fund the escrow account, allowing the Postal Service to increase other spending, reduce postal rates, or some combination of these actions. The bill also would make the costs of the PRC subject to appropriation, thus reducing direct spending by about \$90 million over the next 10 years. In addition, S. 2468 would reduce USPS payments for workers' compensation, which would reduce direct spending by \$50 million over the next 10 years. The bill contains many other provisions that could affect USPS cash flows in each year, but we esti-

mate they would not have a significant net effect on the USPS over the long term.

Elimination of Escrow Fund. P.L. 108–18 permanently reduced payments by the USPS to the CSRDF. As a result of that act, USPS payments to the CSRDF declined by \$2.5 billion to \$5 billion annually, beginning in 2003. For fiscal years starting in 2006, P.L. 108–18 requires that savings resulting from reduced payments to the CSRDF be considered an operating expense of the Postal Service and held in escrow, remaining unavailable for obligation unless authorized by subsequent legislation.

S. 2468 would amend P.L. 108–18 to eliminate the escrow fund requirement. As a result of this provision, the Postal Service could lower rates and thus reduce its revenues, or maintain rates and increase spending, or some combination of these actions. The net outlays of the Postal Service would increase because collections would not be deposited in escrow. CBO estimates that eliminating the escrow requirement would increase net spending by about \$2.9 billion in 2006, \$13.3 billion over the 2006–2009 period, and \$36 billion over the 2006–2014 period. Much of the spending would go toward making new payments to the on-budget account for health care costs.

Make Cost of PRC Subject to Appropriation. Under current law, the PRC is funded from the Postal Service Fund without annual Congressional appropriation. This office spent about \$8 million in 2003. S. 2468 would authorize the appropriation of such sums as may be necessary from the Postal Service Fund for the PRC. Thus, enacting this legislation would reduce direct spending—and therefore, increase spending subject to appropriation—by about \$8 million annually beginning in fiscal year 2005.

Workers' Compensation Costs. The bill would lower workers' compensation payments made by the USPS by reducing an injured postal worker's long-term disability payments when the individual reaches retirement age as defined by the Social Security Act. Based on information provided by the USPS, CBO estimates that these savings would total roughly \$50 million over the 2005–2014 period. In addition, CBO estimates that there would be a negligible net savings to the Department of Labor's workers' compensation account, which is on-budget.

Changes to USPS Rate-Setting Procedures. Under the bill the Postal Service would be directed to define the cost basis for the different products and services it supplies. These products and services would broadly be categorized as market-dominant products and competitive products. Different rate-setting procedures would apply to these different categories of products and services.

Market-Dominant Products. Under S. 2468, market-dominant products would include: first-class mail, special services, periodicals, standard mail, media mail, library mail, bound printed matter, single-piece parcel post, and single-piece international mail.

S. 2468 would require the PRC to establish, within one year of enactment, a new system for regulating postage rates for market-dominant products. This new system would include annual limitations on the percentage changes in rates based on inflation-related indices, such as the Consumer Price Index, the Employment Cost Index, or similar measures. Under the legislation, however, these

annual limits could be exceeded under extraordinary circumstances.

Later this year we expect the Postal Service to begin preparations for a rate case in 2006. Assuming the PRC would need the full year that the bill would provide to establish the new system for regulating rates for market dominant products, we assume that the new rate setting system would not be effective until after 2006.

Since 1970, increases in postage rates have largely tracked the rate of inflation. Over the past 10 years, rates were increased in 1995, 1999, 2001, and 2002 as a result of rate cases. After 2006, we expect that the Postal Service would increase rates for market-dominant mail services more frequently than under current law, but by smaller increments (as defined by the annual limitation). Over the long term, CBO does not expect that enacting S. 2468 would significantly change the revenues from market-dominant products that the Postal Service would be expected to receive under current law.

Competitive Products. Under S. 2468, competitive products would include the following: priority mail, express mail, mailgrams, bulk international mail, and bulk parcel post. Competitive products currently contribute less than 15 percent of total postal revenues.

S. 2468 would direct the PRC to prohibit subsidizing competitive products by market-dominant products, ensure that each competitive product covers its attributable costs, and ensure that all competitive products collectively cover their share of the institutional costs of the Postal Service. After these requirements have been implemented, the USPS could change rates for competitive products as long as the cost coverage requirements are met and the PRC has reviewed the proposed changes. In addition, the Postal Service would have to provide public notice and justification of changes in rates.

In addition, S. 2468 would require the Postal Service to establish a new off-budget fund, the Competitive Products Fund, solely for revenues and expenditures associated with competitive products. We expect that it could be difficult to differentiate postal expenses related only to competitive products, as USPS uses the same employees and facilities to handle both market dominant and competitive products.

CBO cannot predict the bill's effect on Postal Service revenues from competitive products because the agency could set and change prices with few restrictions, although we would expect that yearly cash flows under the bill would differ from those estimated under current law. CBO also cannot predict how successfully the Postal Service might compete in the open market. However, the highly competitive nature of the mailing industry would tend to keep prices and revenues down, while the labor-intensive cost structure of the USPS would maintain upward pressure on expenses. Thus, over the long term under this legislation, CBO expects the Postal Service to attempt to recover its costs and break even as it did before the enactment of P.L. 108-18.

Other Off-Budget Effects. S. 2468 would make many other changes to the laws governing the Postal Service, the PRC, and the delivery of mail and other postal products. Some of these provisions, such as the expansion of USPS contracting authority for the interstate air transportation of mail, would yield savings. Other

provisions, including the requirement for numerous additional USPS reports, would increase costs. In total, CBO does not expect the net effects of these provisions to be significant.

Spending subject to appropriation

S. 2468 would authorize the appropriation of such sums as may be necessary, out of the Postal Service Fund, for the PRC. (Currently, the Postal Rate Commission is funded out of the Postal Service Fund without Congressional action.) Beginning in 2005, this provision would entail about \$8 million a year in spending, subject to appropriation of the necessary amounts. Enacting the bill would reduce direct spending by about the same amount. Spending on this activity would likely still be considered off-budget, since funds would come from the Postal Service Fund.

In addition, S. 2468 would require OPM to make actuarial computations related to the CSRS and PSRHBFB trust funds and would increase OPM's administrative workload to comply with the requirements under the bill. CBO estimates that such activities would cost less than \$500,000 annually, assuming the availability of appropriated funds.

Intergovernmental and private-sector impact: S. 2468 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On June 23, 2004, CBO transmitted a revised cost estimate for H.R. 4341, the Postal Accountability and Enhancement Act, as ordered reported by the House Committee on Government Reform on May 12, 2004. CBO estimates that enacting that legislation would result in on-budget savings of \$25.7 billion and off-budget costs of \$34.5 billion over the 2005–2014 period, for a net cost to the unified budget of \$8.7 billion over that period.

A key difference between S. 2468 and H.R. 4341 concerns how the Postal Service would finance the health care costs of retirees. Both of the bills would require payments to prefund the costs associated with the annual retiree health liabilities accrued by current employees although the proposed payment schedules would differ. H.R. 4341 would require payments for prefunding and interest to be made at the end of each fiscal year, starting in fiscal year 2006. The first payment under S. 2468, however, would be made in fiscal year 2007, and annual payments made in January of each year would reflect estimated costs for the prior fiscal year.

Another important difference between these bills concerns how they address the unfunded liabilities for the health care costs of current and future retirees. H.R. 4341 would require the Postal Service to pay annual interest costs on the unfunded liability, while S. 2468 would require USPS to make amortization payments toward that liability. Also, H.R. 4341 would require a minimum level of prefunding by the Postal Service, net of premium disbursement from the PSRHBFB. S. 2468 does not include a similar provision.

H.R. 4341 also would authorize the appropriation of such sums as may be necessary for the USPS Office of Inspector General. Thus, CBO estimated that implementing H.R. 4341 would cost about \$1.6 billion over the 2005–2014 period, assuming appropriation of the necessary amounts, and an equivalent amount of off-budget direct spending savings over that period.

In addition, H.R. 4341 did not reduce USPS costs for workers' compensation, and the cost estimates reflect that difference.

Estimate prepared by: Federal Costs: Mark Grabowicz for USPS, Geoffrey Gerhardt for retirement costs, and Julia Christensen for health care costs; Impact on State, Local, and Tribal Governments: Sarah Puro; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

ADDITIONAL VIEWS

In total, we are pleased with the outcome of the legislation reported by the Committee. However, we are concerned about the specific issue of negotiated service agreements (NSA). This issue was raised during Committee consideration of the bill and a number of Senators expressed their concerns with the specific language addressing NSA's. Similar concerns were raised during hearings on the legislation. We are troubled by the inclusion of report language that appears to endorse the NSA language that was ultimately stricken from the bill. To that end, we do not believe that the report accurately reflect the views expressed during Committee consideration nor does it appropriately reflect the legislative history.

We believe that the report should have pointed out that while the existing regulatory system allows for negotiated service agreements, if certain conditions are met, some mailers in the committee's hearings expressed concerns that this type of private sector pricing mechanism may not be appropriate for a governmental organization such as the Postal Service. During mark-up of the legislation, committee members expressed reservations about the appropriateness of negotiated service agreements, articulating concerns that service agreements for individual mailers could result in discriminatory rates that favor one mailer over other mailers, and thereby unfairly distort the downstream markets in which those mailers compete.

This information, coupled with that which was included in the underlying report more accurately reflect the views of the Committee as a whole and more fairly represent the legislative history of the issue. We appreciate the hard work of the Chairman and Ranking Member of the Committee to complete this important legislation and believe that the reforms included herein are vital to the future of the United States Postal Service.

RICHARD SHELBY.
JOHN E. SUNUNU.
GEORGE V. VOINOVICH.

VII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of the Standing Rules of the Senate, changes in existing law made by S. 2468, as reported, are shown as follows: existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

TITLE 39, POSTAL SERVICE**PART I—GENERAL****CHAPTER 1.—POSTAL POLICY AND DEFINITIONS****§ 101. Postal policy**

(a) The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.

(b) The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.

(c) As an employer, the Postal Service shall achieve and maintain compensation for its officers and employees comparable to the rates and types of compensation paid in the private sector of the economy of the United States. It shall place particular emphasis upon opportunities for career advancements of all officers and employees and the achievement of worthwhile and satisfying careers in the service of the United States.

(d) As an independent establishment of the executive branch of the Government of the United States, the Postal Service shall be subject to a high degree of transparency to ensure fair treatment of customers of the Postal Service's market-dominant products and companies competing with the Postal Service's competitive products.

[(d)] (e) Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis.

[(e)] (f) In determining all policies for postal services, the Postal Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail.

[(f)] (g) In selecting modes of transportation, the Postal Service shall give highest consideration to the prompt and economical delivery of all mail and shall make a fair and equitable distribution

of mail business to carriers providing similar modes of transportation services to the Postal Service. Modern methods of transporting mail by containerization and programs designed to achieve overnight transportation to the destination of important letter mail to all parts of the Nation shall be a primary goal of postal operations.

[(g)] (h) In planning and building new postal facilities, the Postal Service shall emphasize the need for facilities and equipment designed to create desirable working conditions for its officers and employees, a maximum degree of convenience for efficient postal services, proper access to existing and future air and surface transportation facilities, and control of costs to the Postal Service.

§ 102. Definitions

As used in this title—

(1) “Postal Service” means the United States Postal Service established by section 201 of this title;

(2) “Board of Governors,” and “Board,” unless the context otherwise requires, mean the Board of Governors established under section 202 of this title;

(3) “Governors” means the 9 members of the Board of Governors appointed by the President, by and with the advice and consent of the Senate, under section 202(a) of this title; [and]

(4) “Inspector General” means the Inspector General appointed under section 202(e) of this title[.];

(5) “postal service” refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other services ancillary thereto;

(6) “product” means a postal service with a distinct cost or market characteristic for which a rate or rates are applied;

(7) “rates”, as used with respect to products, includes fees for postal services;

(8) “market-dominant product” or “product in the market-dominant category of mail” means a product subject to subchapter I of chapter 36; and

(9) “competitive product” or “product in the competitive category of mail” means a product subject to subchapter II of chapter 36; and

(10) “year”, as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.

* * * * *

CHAPTER 2.—ORGANIZATION

§ 202. Board of Governors

[(a)] (a)(1) The exercise of the power of the Postal Service shall be directed by a Board of Governors composed of 11 members appointed in accordance with this section. Nine of the members, to be known as Governors, shall be appointed by the President, by and with the advice and consent of the Senate, not more than 5 of whom may be adherents of the same political party. The Governors shall elect a Chairman from among the members of the Board. [The Governors shall be chosen to represent the public interest

generally, and shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.] *The Governors shall represent the public interest generally, and shall be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.* Each Governor shall receive a salary of \$30,000 a year plus \$300 a day for not more than 42 days of meetings each year and shall be reimbursed for travel and reasonable expenses incurred in attending meetings of the Board. Nothing in the preceding sentence shall be construed to limit the number of days of meetings each year to 42 days.

(2) *In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, the President should consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate.*

(b)(1) The terms of the 9 Governors shall be **[9 years]** *5 years*, except that the terms of the 9 Governors first taking office shall expire as designated by the President at the time of appointment, 1 at the end of 1 year, 1 at the end of 2 years, 1 at the end of 3 years, 1 at the end of 4 years, 1 at the end of 5 years, 1 at the end of 6 years, 1 at the end of 7 years, 1 at the end of 8 years, and 1 at the end of 9 years, following the appointment of the first of them. Any Governor appointed to fill a vacancy before the expiration of the term for which his predecessor was appointed shall serve for the remainder of such term. A Governor may continue to serve after the expiration of his term until his successor has qualified, but not to exceed one year.

(2) *No person may serve more than 3 terms as a Governor.*

* * * * *

CHAPTER 4—GENERAL AUTHORITY

§ 401. General powers of the Postal Service

[The] *Subject to the provisions of section 404a, the Postal Service shall have the following general powers:*

(1) to sue and be sued in its official name;

[(2) to adopt, amend, and repeal such rules and regulations as it deems necessary to accomplish the objectives of this title;]

(2) to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title;

* * * * *

§ 404. Specific powers

(a) **[Without]** *Subject to the provisions of section 404a, but otherwise without limitation of the generality of its powers, the Postal Service shall have the following specific powers, among others:*

(1) to provide for the collection, handling, transportation, delivery, forwarding, returning, and holding of mail, and for the disposition of undeliverable mail;

(2) to prescribe, in accordance with this title, the amount of postage and the manner in which it is to be paid;

(3) to determine the need for post offices, postal and training facilities and equipment, and to provide such offices, facilities, and equipment as it determines are needed;

(4) to provide and sell postage stamps and other stamped paper, cards, and envelopes and to provide such other evidences of payment of postage and fees as may be necessary or desirable;

(5) to provide philatelic services;

[(6)] to provide, establish, change, or abolish special nonpostal or similar services;]

[(7)] (6) to investigate postal offenses and civil matters relating to the Postal Service;

[(8)] (7) to offer and pay rewards for information and services in connection with violations of the postal laws, and, unless a different disposal is expressly prescribed, to pay one-half of all penalties and forfeitures imposed for violations of law affecting the Postal Service, its revenues, or property, to the person informing for the same, and to pay the other one-half into the Postal Service Fund; and

[(9)] (8) to authorize the issuance of a substitute check for a lost, stolen, or destroyed check of the Postal Service.

* * * * *

(c) *Except as provided in section 411, nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services.*

(d) *The Postal Service may employ guards for all buildings and areas owned or occupied by the Postal Service or under the charge and control of the Postal Service, and may give such guards, with respect to such property, any of the powers of special policemen provided under section 1315 of title 40. The Postmaster General, or the designee of the Postmaster General, may take any action that the Secretary of Homeland Security may take under section 1315 of title 40, with respect to that property.*

§404a. Specific limitations

(a) *Except as specifically authorized by law, the Postal Service may not—*

(1) *establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;*

(2) *compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or*

(3) *obtain information from a person that provides (or seeks to provide) any product, and then offer any postal service that*

uses or is based in whole or in part on such information, without the consent of the person providing that information, unless substantially the same information is obtained (or obtainable) from an independent source or is otherwise obtained (or obtainable).

(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.

* * * * *

§ 407. International postal arrangements

[(a)(1) The Secretary of State shall have primary responsibility for formulation, coordination and oversight of policy with respect to United States participation in the Universal Postal Union, including the Universal Postal Convention and other Acts of the Universal Postal Union, amendments thereto, and all postal treaties and conventions concluded within the framework of the Convention and such Acts.

[(2) Subject to subsection (d), the Secretary may, with the consent of the President, negotiate and conclude treaties, conventions and amendments referred to in paragraph (1).

[(b)(1) Subject to subsections (a), (c), and (d), the Postal Service may, with the consent of the President, negotiate and conclude postal treaties and conventions.

[(2) The Postal Service may, with the consent of the President, establish rates of postage or other charges on mail matter conveyed between the United States and other countries.

[(3) The Postal Service shall transmit a copy of each postal treaty or convention concluded with other governments under the authority of this subsection to the Secretary of State, who shall furnish a copy to the Public Printer for publication.

[(c) The Postal Service shall not conclude any treaty or convention under the authority of this section or any other arrangement related to the delivery of international postal services that is inconsistent with any policy developed pursuant to subsection (a).

[(d) In carrying out their responsibilities under this section, the Secretary and the Postal Service shall consult with such federal agencies as the Secretary or the Postal Service considers appropriate, private providers of international postal services, users of international postal services, the general public, and such other persons as the Secretary or the Postal Service considers appropriate.]

(a) It is the policy of the United States—

(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of

such services by private companies may be prohibited by law of the United States;

(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services; and

(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and shall have the power to conclude postal treaties and conventions, except that the Secretary may not conclude any postal treaty or convention if such treaty or convention would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal services, or any other person.

(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

(A) shall coordinate with other agencies as appropriate, and in particular, should consider the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

(C) shall maintain continuing liaison with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives;

(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

(c) Before concluding any postal treaty or convention that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or clas-

sification is consistent with the standards and criteria established by the Commission under section 3622.

(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services as it deems appropriate, except that—

(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be binding under international law; and

(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

(2) In exercising the authority under subsection (b) to conclude new postal treaties and conventions related to international postal services and to renegotiate such treaties and conventions, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

(3) The provisions of this subsection shall take effect 6 months after the date of the enactment of this subsection or such earlier date as the Customs Service may determine in writing.

* * * * *

§ 409. Suits by and against the Postal Service

(a) [Except as provided in section 3628 of this title] Except as otherwise provided in this title, the United States district courts shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service. Any action brought in a State court to which the Postal Service is a party may be removed to the appropriate United States district court under the provisions of chapter 89 of title 28 [1. 28 USCS §§ 1441 et seq.].

(b) Unless otherwise provided in this title, the provisions of title 28 relating to service of process, venue, and limitations of time for bringing action in suits in which the United States, its officers, or employees are parties, and the rules of procedure adopted under title 28 for suits in which the United States, its officers, or employees are parties, shall apply in like manner to suits in which the Postal Service, its officers, or employees are parties.

(c) The provisions of chapter 171 [28 USCS §§2671 et seq.] and all other provisions of title 28 relating to tort claims shall apply to tort claims arising out of activities of the Postal Service.

[(d) The Department of Justice shall furnish, under section 411 of this title, the Postal Service such legal representation as it may require, but with the prior consent of the Attorney General the Postal Service may employ attorneys by contract or otherwise to conduct litigation brought by or against the Postal Service or its officers or employees in matters affecting the Postal Service.]

[(e) A judgment against the Government of the United States arising out of activities of the Postal Service shall be paid by the Postal Service out of any funds available to the Postal Service.]

(d)(1) For purposes of the provisions of law cited in paragraphs (2)(A) and (2)(B), respectively, the Postal Service—

(A) shall be considered to be a “person”, as used in the provisions of law involved; and

(B) shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service.

(2) This subsection applies with respect to—

(A) the Act of July 5, 1946 (commonly referred to as the “Trademark Act of 1946” (15 U.S.C. 1051 and following)); and

(B) the provisions of section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair or deceptive acts or practices.

(e)(1) To the extent that the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, engages in conduct with respect to any product which is not reserved to the United States under section 1696 of title 18, the Postal Service or other Federal agency (as the case may be)—

(A) shall not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof; and

(B) shall be considered to be a person (as defined in subsection (a) of the first section of the Clayton Act) for purposes of—

(i) the antitrust laws (as defined in such subsection); and

(ii) section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

For purposes of the preceding sentence, any private carriage of mail allowable by virtue of section 601 shall not be considered a service reserved to the United States under section 1696 of title 18.

(2) No damages, interest on damages, costs or attorney’s fees may be recovered, and no criminal liability may be imposed, under the antitrust laws (as so defined) from any officer or employee of the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, acting in an official capacity.

(3) This subsection shall not apply with respect to conduct occurring before the date of the enactment of this subsection.

(f) *To the extent that the Postal Service engages in conduct with respect to the provision of competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.*

(g)(1) *Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with 1 of the nationally recognized model building codes and with other applicable nationally recognized codes.*

(2) *Each building constructed or altered by the postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.*

(3) *For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—*

(A) *in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;*

(B) *upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and*

(C) *permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—*

(i) *a copy of such schedule before construction of the building begins; and*

(ii) *reasonable notice of their intention to conduct any inspection before conducting such inspection.*

Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding sentence, nor shall anything in this subsection require the Postal Service or any of its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

(4) *Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.*

(5) *In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.*

(6) *For purposes of this subsection, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.*

(h)(1) Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising, in whole or in part, under any of the following:

(A) Subsection (d) or (e) of this section.

(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

(C) Section 3663 (relating to appellate review). The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph.

(2) In any circumstance not covered by paragraph (1), the Department of Justice shall, under section 411, furnish the Postal Service such legal representation as it may require, except that, with the prior consent of the Attorney General, the Postal Service may, in any such circumstance, employ attorneys by contract or otherwise to conduct litigation brought by or against the Postal Service or its officers or employees in matters affecting the Postal Service.

(3)(A) In any action, suit, or proceeding in a court of the United States arising in whole or in part under any of the provisions of law referred to in subparagraph (B) or (C) of paragraph (1), and to which the Commission is not otherwise a party, the Commission shall be permitted to appear as a party on its own and as of right.

(B) The Department of Justice shall, under such terms and conditions as the Commission and the Attorney General shall consider appropriate, furnish the Commission such legal representation as it may require in connection with any such action, suit, or proceeding, except that, with the prior consent of the Attorney General, the Commission may employ attorneys by contract or otherwise for that purpose.

(i) A judgment against the Government of the United States arising out of activities of the Postal Service shall be paid by the Postal Service out of any funds available to the Postal Service, subject to the restriction specified in section 2011(g).

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CHAPTER 5—POSTAL REGULATORY COMMISSION

§ 501. Establishment

The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.

§ 502. Commissioners

(a) The Postal Regulatory Commission is composed of 5 Commissioners, appointed by the President, by and with the advice and consent of the Senate. The Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration, and may be removed by the President only for cause. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability

and Enhancement Act. Not more than 3 of the Commissioners may be adherents of the same political party.

(b) No Commissioners shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.

(c) A Commissioner may continue to serve after the expiration of his term until his successor has qualified, except that a Commissioner may not so continue to serve for more than 1 year after the date upon which his term otherwise would expire under subsection (f).

(d) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

(e) The Commissioners shall by majority vote designate a Vice Chairman of the Commission. The Vice Chairman shall act as Chairman of the Commission in the absence of the Chairman.

(f) The Commissioners shall serve for terms of 6 years.

§ 503. Rules; regulations; procedures

The Postal Regulatory Commission shall promulgate rules and regulations and establish procedures, subject to chapters 5 and 7 of title 5 [5 USCS §§ 501 et seq. and 701 et seq.], and take any other action they deem necessary and proper to carry out their functions and obligations to the Government of the United States and the people as prescribed under this chapter [9 USCS §§ 3601 et seq.]. Such rules, regulations, procedures, and actions shall not be subject to any change or supervision by the Postal Service.

§ 504. Administration

(a) The Chairman of the Postal Regulatory Commission shall be the principal executive officer of the Commission. The Chairman shall exercise or direct the exercise of all the executive and administrative functions of the Commission, including functions of the Commission with respect to (1) the appointment of personnel employed under the Commission, except that the appointment of heads of major administrative units under the Commission shall require the approval of a majority of the members of the Commission, (2) the supervision of the personnel employed under the Commission and the distribution of business among them and among the Commissioners, and (3) the use and expenditure of funds.

(b) In carrying out any of his functions under this section, the Chairman shall be governed by the general policies of the Commission.

(c) The Chairman may obtain such facilities and supplies as may be necessary to permit the Commission to carry out its functions. Any officer or employee appointed under this section shall be paid at rates of compensation and shall be entitled to programs offering employee benefits established under chapter 10 or chapter 12 of this title [39 USCS §§ 1001 et seq. or 1201 et seq.], as appropriate.

(d) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Postal Regulatory Commission. In requesting an appropriation under this subsection for a fiscal year, the Commission shall prepare and submit to Congress under section 2009 a budget of the Commission's ex-

penses, including expenses for facilities, supplies, compensation, and employee benefits.

(e) *The provisions of section 410 and chapter 10 of this title [39 USCS §§ 410 and 1001 et seq.] shall apply to the Commission, as appropriate.*

(f)(1) *Any Commissioner of the Postal Regulatory Commission, any administrative law judge appointed by the Commission under section 3105 of title 5, and any employee of the Commission designated by the Commission may administer oaths, examine witnesses, take depositions, and receive evidence.*

(2) *The Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge appointed by the Commission under section 3105 of title 5 may, with respect to any proceeding conducted by the Commission under this title or to obtain information to be used to prepare a report under this title—*

(A) *issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and*

(B) *order the taking of depositions and responses to written interrogatories by a covered person. The written concurrence of a majority of the Commissioners then holding office shall, with respect to each subpoena under subparagraph (A), be required in advance of its issuance.*

(3) *In the case of contumacy or failure to obey a subpoena issued under this subsection, upon application by the Commission, the district court of the United States for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.*

(4) *For purposes of this subsection, the term “covered person” means an officer, employee, agent, or contractor of the Postal Service.*

(g)(1) *If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission under a subpoena issued under subsection (f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).*

(2) *Except as provided in paragraph (3), no officer or employee of the Commission may, with respect to any information as to which the Commission has been notified under paragraph (1)—*

(A) *use such information for purposes other than the purposes for which it is supplied; or*

(B) *permit anyone who is not an officer or employee of the Commission to have access to any such information.*

(3)(A) *Paragraph (2) shall not prohibit the Commission from publicly disclosing relevant information in furtherance of its duties under this title, provided that the Commission has adopted regula-*

tions under section 553 of title 5, that establish a procedure for according appropriate confidentiality to information identified by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service under paragraph (1), the Commission shall balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

(B) Paragraph (2) shall not prevent the Commission from requiring production of information in the course of any discovery procedure established in connection with a proceeding under this title. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for information furnished to any party.

§505. Officer of the Postal Regulatory Commission representing the general public

The Postal Regulatory Commission shall designate an officer of the Postal Regulatory Commission in all public proceedings who shall represent the interests of the general public.

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CHAPTER 6—PRIVATE CARRIAGE OF LETTERS

§ 601. Letters carried out of the mail

(a) A letter may be carried out of the mails when—

- (1) it is enclosed in an envelope;
- (2) the amount of postage which would have been charged on the letter if it had been sent by mail is paid by stamps, or postage meter stamps, on the envelope;
- (3) the envelope is properly addressed;
- (4) the envelope is so sealed that the letter cannot be taken from it without defacing the envelope;
- (5) any stamps on the envelope are canceled in ink by the sender; and
- (6) the date of the letter, of its transmission or receipt by the carrier is endorsed on the envelope in ink.

【(b) The Postal Service may suspend the operation of any part of this section upon any mail route where the public interest requires the suspension.】

(b) A letter may also be carried out of the mails when—

- (1) the amount paid for the private carriage of the letter is at least the amount equal to 6 times the rate then currently charged for the 1st ounce of a single-piece first class letter;
- (2) the letter weighs at least 12¹/₂ ounces; or
- (3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that permit private carriage by suspension of the operation of this section (as then in effect).

(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.

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PART II—PERSONNEL

CHAPTER 12—EMPLOYEE-MANAGEMENT AGREEMENTS

§ 1207. Labor disputes

(a) If there is a collective-bargaining agreement in effect, no party to such agreement shall terminate or modify such agreement unless the party desiring such termination or modification serves written notice upon the other party to the agreement of the proposed termination or modification not less than 90 days prior to the expiration date thereof, or not less than 90 days prior to the time it is proposed to make such termination or modification. The party serving such notice shall notify the Federal Mediation and Conciliation Service of the existence of a dispute within 45 days of such notice, if no agreement has been reached by that time.

(b) If the parties fail to reach agreement or to adopt a procedure providing for a binding resolution of a dispute by the expiration date of the agreement in effect, or the date of the proposed termination or modification, the Director of the Federal Mediation and Conciliation Service shall **direct the establishment of a factfinding panel consisting of 3 persons. For this purpose, he shall submit to the parties a list of not less than 15 names, from which list each party, within 10 days, shall select 1 person. The 2 so selected shall then choose from the list a third person who shall serve as chairman of the factfinding panel. If either of the parties fails to select a person or if the 2 members are unable to agree on the third person within 3 days, the selection shall be made by the Director. The factfinding panel shall issue after due investigation a report of its findings, with or without recommendations, to the parties no later than 45 days from the date the list of names is submitted.** *within 10 days appoint a mediator of nationwide reputation and professional stature, and who is also a member of the National Academy of Arbitrators. The parties shall cooperate with the mediator in an effort to reach an agreement and shall meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, shall direct.*

(c)(1) If no agreement is reached within **[90]** 60 days after the expiration or termination of the agreement or the date on which the agreement became subject to modification under subsection (a) of this section, or if the parties decide upon arbitration but do not agree upon the procedures therefor, an arbitration board shall be established consisting of 3 members, **[not members of the factfinding panel,]** 1 of whom shall be selected by the Postal Service, 1 by the bargaining representative of the employees, and the third by the 2 thus selected. If either of the parties fails to select a member, or if the members chosen by the parties fail to agree on the third person within 5 days after their first meeting, the selection shall be made *from a list of names provided by the Director. This list shall consist of not less than 9 names of arbitrators of nationwide reputation and professional nature, who are also members of the National Academy of Arbitrators, and whom the Director has determined are available and willing to serve.* **[If the parties do not agree on the framing of the issues to be submitted, the factfinding**

panel shall frame the issues and submit them to the arbitration board.】

(2) The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel or by other representative as they may elect. Decisions of the arbitration board shall be conclusive and binding upon the parties. The arbitration board shall render its decision within 45 days after its appointment.

(3) Costs of the arbitration board and 【factfinding panel】 *mediation* shall be shared equally by the Postal Service and the bargaining representative.

(d) In the case of a bargaining unit whose recognized collective-bargaining representative does not have an agreement with the Postal Service, if the parties fail to reach agreement within 90 days of the commencement of collective bargaining, a 【factfinding panel will be established】 *mediator shall be appointed* in accordance with the terms of subsection (b) of this section, unless the parties have previously agreed to another procedure for a binding resolution of their differences. If the parties fail to reach agreement within 180 days of the commencement of collective bargaining, and if they have not agreed to another procedure for binding resolution, an arbitration board shall be established to provide conclusive and binding arbitration in accordance with the terms of subsection (c) of this section.

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PART III—MODERNIZATION AND FISCAL ADMINISTRATION

CHAPTER 20—FINANCE

§ 2001. Definitions

As used in this chapter [39 USCS §§ 2001 et seq.]—

(1) “Fund” means the Postal Service Fund established by section 2003 of this chapter; 【and】

(2) “*Competitive Products Fund*” means the Postal Service *Competitive Products Fund* established by section 2011; and

【(2)】 (3) “Obligations,” when referring to debt instruments issued by the Postal Service, means notes, bonds, debentures, mortgages, and any other evidence of indebtedness.

§ 2002. Capital of the Postal Service

(a) The initial capital of the Postal Service shall consist of the equity, as reflected in the budget of the President, of the Government of the United States in the former Post Office Department. The value of assets and the amount of liabilities transferred to the Postal Service upon the commencement of operations of the Postal Service shall be determined by the Postal Service subject to the approval of the Comptroller General, in accordance with the following guidelines:

* * * * *

(b) The capital of the Postal Service at any time shall consist of its assets, including the balance in the **[Fund]** *Fund and the balance in the Competitive Products Fund*, less its liabilities.

* * * * *

§ 2003. The Postal Service Fund

(a) There is established in the Treasury of the United States a revolving fund to be called the Postal Service Fund which shall be available to the Postal Service without fiscal-year limitation to carry out the purposes, functions, and powers authorized by this **[title]** *title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available)*.

(b) **[There]** *Except as otherwise provided in section 2011, there shall be deposited in the Fund, subject to withdrawal by check by the Postal Service—*

- (1) revenues from postal [and nonpostal] services rendered by the Postal Service;
- (2) amounts received from obligations issued by the Postal Service;
- (3) amounts appropriated for the use of the Postal Service;
- (4) interest which may be earned on investments of the Fund;
- (5) any other receipts of the Postal Service;
- (6) the balance in the Post Office Department Fund established under former section 2202 of title 39 as of the commencement of operations of the Postal Service;
- (7) amounts (including proceeds from the sale of forfeited items) from any civil forfeiture conducted by the Postal Service; and
- (8) any transfers from the Secretary of the Treasury from the Department of the Treasury Forfeiture Fund which shall be available to the Postmaster General only for Federal law enforcement related purposes.

* * * * *

(e)(1) **[The Fund shall be available for the payment of all expenses incurred by the Postal Service in carrying out its functions as provided by law and, subject to the provisions of section 3604 of this title, all of the expenses of the Postal Rate Commission.]** *The Fund shall be available for the payment of (A) all expenses incurred by the Postal Service in carrying out its functions as provided by law, subject to the same limitation as set forth in the parenthetical matter under subsection (a); (B) all expenses of the Postal Regulatory Commission, subject to the availability of amounts appropriated under section 504(d); and (C) all expenses of the Office of the Inspector General, subject to the availability of amounts appropriated under section 8G(f) of the Inspector General Act of 1978.* The Postmaster General shall transfer from the Fund to the Secretary of the Treasury for deposit in the Department of the Treasury Forfeiture Fund amounts appropriate to reflect the degree of participation of Department of the Treasury law enforcement organizations (described in section 9703(p) of title 31) in the law enforcement effort resulting in the forfeiture pursuant to laws enforced or administered by the Postal Service. Neither the Fund nor

any of the funds credited to it shall be subject to apportionment under the provisions of subchapter II of chapter 15 of title 31 [31 USCS §§ 1511 et seq.].

(2) Funds appropriated to the Postal Service under section 2401 of this title shall be apportioned as provided in this paragraph. From the total amounts appropriated to the Postal Service for any fiscal year under the authorizations contained in section 2401 of this title, the Secretary of the Treasury shall make available to the Postal Service 25 percent of such amount at the beginning of each quarter of such fiscal year.

* * * * *

§ 2005. Obligations

(a)(1) The Postal Service is authorized to borrow money and to issue and sell such obligations as it determines necessary to carry out the purposes of this [title] *title, other than any of the purposes for which the corresponding authority is available to the Postal Service under section 2011.* The aggregate amount of any such obligations outstanding at any one time shall not exceed the maximum amount then allowable under paragraph (2) of this subsection. [In any one fiscal year the net increase in the amount of obligations outstanding issued for the purpose of capital improvements shall not exceed \$2,000,000,000, and the net increase in the amount of obligations outstanding issued for the purpose of defraying operating expenses of the Postal Service shall not exceed \$1,000,000,000.]

(2) The maximum amount allowable under this paragraph is—

- (A) \$10,000,000,000 for fiscal year 1990;
- (B) \$12,500,000,000 for fiscal year 1991; and
- (C) \$15,000,000,000 for fiscal year 1992 and each fiscal year thereafter.

[(b)](b)(1) The Postal Service may pledge the assets of the Postal Service and pledge and use its revenues and receipts for the payment of the principal of or interest on [such obligations] *obligations issued by the Postal Service under this section,* for the purchase or redemption thereof, and for other purposes incidental thereto, including creation of reserve, sinking, and other funds which may be similarly pledged and used, to such extent and in such manner as it deems necessary or desirable. The Postal Service is authorized to enter into binding covenants with the holders of such obligations, and with the trustee, if any, under any agreement entered into in connection with the issuance thereof with respect to the establishment of reserve, sinking, and other funds, application and use of revenues and receipts of the Postal Service, stipulations concerning the subsequent issuance of obligations or the execution of leases or lease purchases relating to properties of the Postal Service and such other matters as the Postal Service deems necessary or desirable to enhance the marketability of such obligations.

(2) *Notwithstanding any other provision of this section—*

- (A) *the authority to pledge assets of the Postal Service under this subsection shall be available only to the extent that such assets are not related to the provision of competitive products*

(as determined under section 2011(h) or, for purposes of any period before accounting practices and principles under section 2011(h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)); and

(B) any authority under this subsection relating to the pledging or other use of revenues or receipts of the Postal Service shall be available only to the extent that they are not revenues or receipts of the Competitive Products Fund.

* * * * *

§ 2006. Relationship between the Treasury and Postal Service

* * * * *

(b) Subject to the conditions of subsection (a) of this section, the Postal Service may require the Secretary of the Treasury to purchase obligations of the Postal Service in such amounts as will not cause the holding by the Secretary of the Treasury resulting from such required purchases to exceed \$2,000,000,000 at any one time. This subsection shall not be construed as limiting the authority of the Secretary to purchase obligations of the Postal Service in excess of such amount. *Nothing in this chapter shall be considered to permit or require the Secretary of the Treasury to purchase any obligations of the Postal Service other than those issued under section 2005.*

(c) Notwithstanding section 2005(d)(5) of this title, obligations issued by the Postal Service *under section 2005* shall be obligations of the Government of the United States, and payment of principal and interest thereon shall be fully guaranteed by the Government of the United States, such guaranty being expressed on the face thereof, if and to the extent that—

(1) the Postal Service requests the Secretary of the Treasury to pledge the full faith and credit of the Government of the United States for the payment of principal and interest thereon; and

(2) the Secretary, in his discretion, determines that it would be in the public interest to do so.

* * * * *

§ 2009. Annual budget

The Postal Service shall cause to be prepared annually a budget program which shall be submitted to the Office of Management and Budget, under such rules and regulations as the President may establish as to the date of submission, the form and content, the classifications of data, and the manner in which such budget program shall be prepared and presented. The budget program shall be a business-type budget, or plan of operations, with due allowance given to the need for flexibility, including provision for emergencies and contingencies, in order that the Postal Service may properly carry out its activities as authorized by law. The budget program shall contain estimates of the financial condition and operations of the Postal Service for the current and ensuing fiscal years and the actual condition and results of operation for the last completed fis-

cal year. Such budget program shall include a statement of financial condition, a statement of income and expense, an analysis of surplus or deficit, a statement of sources and application of funds, and such other supplementary statements and information as are necessary or desirable to make known the financial condition and operations of the Postal Service. Such statements shall include estimates of operations by major types of activities, together with estimates of administrative expenses and estimates of borrowings. **【**The budget program shall also include separate statements of the amounts which the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401 of this title.**】** *The budget program shall also include separate statements of the amounts which (1) the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401, (2) the Office of Inspector General of the United States Postal Service requests to be appropriated, out of the Postal Service Fund, under section 8G(f) of the Inspector General Act of 1978, and (3) the Postal Regulatory Commission requests to be appropriated, out of the Postal Service Fund, under section 504(d) of this title.* The President shall include these amounts, with his recommendations but without revision, in the budget transmitted to Congress under section 1105 of title 31.

§ 2010. Restrictions on agreements

The Postal Service shall promote modern and efficient operations and should refrain from expending any funds, engaging in any practice, or entering into any agreement or contract, other than an agreement or contract under chapter 12 of this title [39 USCS §§ 1201 et seq.], which restricts the use of new equipment or devices which may reduce the cost or improve the quality of postal services, except where such restriction is necessary to insure safe and healthful employment conditions.

§ 2011. Provisions relating to competitive products

(a) There is established in the Treasury of the United States a revolving fund, to be called the Postal Service Competitive Products Fund, which shall be available to the Postal Service without fiscal year limitation for the payment of—

- (1) costs attributable to the competitive products; and*
- (2) all other costs incurred by the Postal Service, to the extent allocable to competitive products.*

For purposes of this subsection, the term “costs attributable” has the meaning given such term by section 3631.

(b) There shall be deposited in the Competitive Products Fund, subject to withdrawal by the Postal Service—

- (1) revenues from competitive products;*
- (2) amounts received from obligations issued by the Postal Service under subsection (e);*
- (3) interest and dividends earned on investments of the Competitive Products Fund; and*
- (4) any other receipts of the Postal Service (including from the sale of assets), to the extent allocable to competitive products.*

(c) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, it may invest such amounts as it considers appropriate in accordance with regu-

lations which the Secretary of the Treasury shall prescribe within 12 months after the date of enactment of the Postal Accountability and Enhancement Act.

(d) The Postal Service may, in its sole discretion, provide that the moneys of the Competitive Products Fund be deposited in a Federal Reserve bank or a depository for public funds.

(e)(1) Subject to the limitations specified in section 2005(a), the Postal Service is authorized to borrow money and to issue and sell such obligations as it determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund, except that the Postal Service may pledge only assets related to the provision of competitive products (as determined under subsection (h) or, for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)), and the revenues and receipts from such products, for the payment of the principal of or interest on such obligations, for the purchase or redemption thereof, and for other purposes incidental thereto, including creation of reserve, sinking, and other funds which may be similarly pledged and used, to such extent and in such manner as the Postal Service determines necessary or desirable.

(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with the trustee, if any, under any agreement entered into in connection with the issuance thereof with respect to—

(A) the establishment of reserve, sinking, and other funds;

(B) application and use of revenues and receipts of the Competitive Products Fund;

(C) stipulations concerning the subsequent issuance of obligations or the execution of leases or lease purchases relating to properties of the Postal Service; and

(D) such other matters as the Postal Service considers necessary or desirable to enhance the marketability of such obligations.

(3) Obligations issued by the Postal Service under this subsection—

(A) may not be purchased by the Secretary of the Treasury;

(B) shall not be exempt either as to principal or interest from any taxation now or hereafter imposed by any State or local taxing authority;

(C) shall not be obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the Government of the United States, and the obligations shall so plainly state; and

(D) notwithstanding the provisions of the Federal Financing Bank Act of 1973 or any other provision of law (except as specifically provided by reference to this subparagraph in a law enacted after this subparagraph takes effect), shall not be eligible for purchase by, commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

(4)(A) This paragraph applies with respect to the period beginning on the date of the enactment of this paragraph and ending at the

close of the 5-year period which begins on the date on which the Postal Service makes its submission under subsection (h)(1).

(B) During the period described in subparagraph (A), nothing in subparagraph (A) or (D) of paragraph (3) or the last sentence of section 2006(b) shall, with respect to any obligations sought to be issued by the Postal Service under this subsection, be considered to affect such obligations' eligibility for purchase by, commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

(C) The Federal Financing Bank may elect to purchase such obligations under such terms, including rates of interest, as the Bank and the Postal Service may agree, but at a rate of yield no less than the prevailing yield on outstanding marketable securities of comparable maturity issued by entities with the same credit rating as the rating then most recently obtained by the Postal Service under subparagraph (D), as determined by the Bank.

(D) In order to be eligible to borrow under this paragraph, the Postal Service shall first obtain a credit rating from a nationally recognized credit rating organization. Such rating—

(i) shall be determined taking into account only those assets and activities of the Postal Service which are described in section 3634(a)(2) (relating to the Postal Service's assumed taxable income from competitive products); and

(ii) may, before final rules of the Postal Regulatory Commission under subsection (h) are issued (or deemed to have been issued), be based on the best information available from the Postal Service, including the audited statements required by section 2008(e).

(f) The receipts and disbursements of the Competitive Products Fund shall be accorded the same budgetary treatment as is accorded to receipts and disbursements of the Postal Service fund under section 2009a.

(g) A judgment against the Postal Service or the Government of the United States (or settlement of a claim) shall, to the extent that it arises out of activities of the Postal Service in the provision of competitive products, be paid out of the Competitive Products Fund.

(h)(1) The Secretary of the Treasury, in consultation with the Postal Service, an independent, certified public accounting firm, and such other advisers as the Secretary considers appropriate, shall develop recommendations regarding—

(A) the accounting practices and principles that should be followed by the Postal Service with the objectives of—

(i) identifying and valuing the assets and liabilities of the Postal Service associated with providing, and the capital and operating costs incurred by the postal Service in providing, competitive products; and

(ii) preventing the subsidization of such products by market-dominant products; and

(B) the substantive and procedural rules that should be followed in determining the Postal Service's assumed Federal income tax on competitive products income for any year (within the meaning of section 3634).

Such recommendations shall be submitted to the Postal Regulatory Commission not earlier than 6 months, and not later than 12 months, after the effective date of this section.

(2)(A) Upon receiving the recommendations of the Secretary of the Treasury under paragraph (1), the Commission shall give interested parties, including the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public, an opportunity to present their views on those recommendations through submission of written data, views, or arguments with or without opportunity for oral presentation, or in such other manner as the Commission considers appropriate.

(B) After due consideration of the views and other information received under subparagraph (A), the Commission shall by rule—

(i) provide for the establishment and application of the accounting practices and principles which shall be followed by the Postal Service;

(ii) provide for the establishment and application of the substantive and procedural rules described in paragraph (1)(B); and (iii) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

Final rules under this subparagraph shall be issued not later than 12 months after the date on which the Secretary of the Treasury makes his submission to the Commission under paragraph (1) (or by such later date as agreed to by the Commission and the Postal Service). The Commission is authorized to promulgate regulations revising such rules.

(C) Reports described in subparagraph (B)(iii) shall be submitted at such time, in such form, and shall include such information, as the Commission by rule requires. The Commission may, on its own motion or on requires of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data under such subparagraph whenever it shall appear that—

(i) the quality of the information furnished in those reports has become significantly inaccurate or can be significantly improved; or

(ii) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

(D) A copy of each report described in subparagraph (B)(iii) shall also be transmitted by the Postal Service to the Secretary of the Treasury and the Inspector General of the United States Postal Service.

(i) The Postal Service shall render an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund, in which it shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses. A copy of its then most recent report under this subsection shall be included with any other submission that it is required to make to the Postal Regulatory Commission under section 3652(g).

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PART IV—MAIL MATTER

CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES [SUBCHAPTER I—POSTAL RATE COMMISSION]

【§ 3601. Establishment

【(a) The Postal Rate Commission is an independent establishment of the executive branch of the Government of the United States. The Commission is composed of 5 Commissioners, appointed by the President, by and with the advice and consent of the Senate. The Commissioners shall be chosen on the basis of their professional qualifications and may be removed by the President only for cause. Not more than 3 of the Commissioners may be adherents of the same political party.

【(b) A Commissioner may continue to serve after the expiration of his term until his successor has qualified, except that a Commissioner may not so continue to serve for more than 1 year after the date upon which his term otherwise would expire under section 3602 of this title.

【(c) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

【(d) The Commissioners shall by majority vote designate a Vice Chairman of the Commission. The Vice Chairman shall act as Chairman of the Commission in the absence of the Chairman.】

【§ 3602. Terms of office

【The Commissioners of the Postal Rate Commission shall serve for terms of 6 years except that—

【(1) the terms of the Commissioners first taking office shall expire as designated by the President at the time of appointment, 1 at the end of 2 years, 2 at the end of 4 years, and 2 at the end of 6 years, following the appointment of the first of them; and

【(2) any Commissioner appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall serve for the remainder of such term.

【§ 3603. Rules; regulations; procedures

【The Postal Rate Commission shall promulgate rules and regulations and establish procedures, subject to chapters 5 and 7 of title 5 [5 USCS §§ 501 et seq. and 701 et seq.], and take any other action they deem necessary and proper to carry out their functions and obligations to the Government of the United States and the people as prescribed under this chapter [9 USCS §§ 3601 et seq.]. Such rules, regulations, procedures, and actions shall not be subject to any change or supervision by the Postal Service.】

【§ 3604. Administration

【(a) The Chairman of the Postal Rate Commission shall be the principal executive officer of the Commission. The Chairman shall exercise or direct the exercise of all the executive and administrative functions of the Commission, including functions of the Commission with respect to (1) the appointment of personnel employed under the Commission, except that the appointment of heads of

major administrative units under the Commission shall require the approval of a majority of the members of the Commission, (2) the supervision of the personnel employed under the Commission and the distribution of business among them and among the Commissioners, and (3) the use and expenditure of funds.

[(b) In carrying out any of his functions under this section, the Chairman shall be governed by the general policies of the Commission.]

[(c) The Chairman may obtain such facilities and supplies as may be necessary to permit the Commission to carry out its functions. Any officer or employee appointed under this section shall be paid at rates of compensation and shall be entitled to programs offering employee benefits established under chapter 10 or chapter 12 of this title [39 USCS §§ 1001 et seq. or 1201 et seq.], as appropriate.]

[(d) (1) The Commission shall periodically prepare and submit to the Postal Service a budget of the Commission's expenses, including, but not limited to, expenses for facilities, supplies, compensation, and employee benefits. The budget shall be considered approved—

[(A) as submitted if the Governors fail to act in accordance with subparagraph (B) of this paragraph; or

[(B) as adjusted if the Governors holding office, by unanimous written decision, adjust the total amount of money requested in the budget. Subparagraph (B) shall not be construed to authorize the Governors to adjust any item included within the budget.]

[(2) Expenses incurred under any budget approved under paragraph (1) of this subsection shall be paid out of the Postal Service fund established under section 2003 of this title.]

[(e) The provisions of section 410 and chapter 10 of this title [39 USCS §§ 410 and 1001 et seq.] shall apply to the Commission, as appropriate.]

CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

Subchapter II—Permanent Rates and Classes of Mail

§ 3621. Authority to fix rates and classes

【Except as otherwise provided, the Governors are authorized to establish reasonable and equitable classes of mail and reasonable and equitable rates of postage and fees for postal services in accordance with the provisions of this chapter [39 USCS §§ 3601 et seq.]. Postal rates and fees shall be reasonable and equitable and sufficient to enable the Postal Service under honest, efficient, and economical management to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States. Postal rates and fees shall provide sufficient revenues so that the total estimated income and appropriations to the Postal Service will equal as nearly as practicable total estimated costs of the Postal Service. For purposes of this section, “total estimated costs” shall include (without limitation) operating expenses, depreciation on capital facilities and equipment, debt service (including interest, amortization of debt discount and ex-

pense, and provision for sinking funds or other retirements of obligations to the extent that such provision exceeds applicable depreciation charges), and a reasonable provision for contingencies.】

§ 3621. Applicability; definitions

(a) *Applicability.*—*This subchapter shall apply with respect to—*

- (1) *first-class mail letters and sealed parcels;*
- (2) *first-class mail cards;*
- (3) *periodicals;*
- (4) *standard mail;*
- (5) *single-piece parcel post;*
- (6) *media mail;*
- (7) *bound printed matter;*
- (8) *library mail;*
- (9) *special services; and*
- (10) *single-piece international mail, subject to any changes the Postal Regulatory Commission may make under section 3642.*

(b) *RULE OF CONSTRUCTION.*—*Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.*

【§ 3622. Rates and fees

【(a) From time to time the Postal Service shall request the Postal Rate Commission to submit a recommended decision on changes in a rate or rates of postage or in a fee or fees for postal services if the Postal Service determines that such changes would be in public interest and in accordance with the policies of this title. The Postal Service may submit such suggestions for rate adjustments as it deems suitable.

【(b) Upon receiving a request, the Commission shall make a recommended decision on the request for changes in rates or fees in each class of mail or type of service in accordance with the policies of this title and the following factors:

【(1) the establishment and maintenance of a fair and equitable schedule;

【(2) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;

【(3) the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

【(4) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

【(5) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

【(6) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

[(7) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

[(8) the educational, cultural, scientific, and informational value to the recipient of mail matter; and

[(9) such other factors as the Commission deems appropriate.

[(c) Regular rates for each class or subclass of mail that includes 1 or more special rate categories for mail under former section 4358(d) or (e), 4452(b) or (c), or 4554(b) or (c) of this title shall be established by applying the policies of this title, including the factors of section 3622(b) of this title, to the costs attributable to the regular rate mail in each class or subclass combined with the mail in the corresponding special rate categories authorized by former section 4358(d) or (e), 4452(b) or (c), or 4554(b) or (c) of this title.

[(d) Compliance with any provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) shall not be considered by the Commission in determining whether to increase rates and shall not otherwise affect the service of the Postal Service.】

§ 3622. Modern rate regulation

(a) *AUTHORITY GENERALLY.*—*The Postal Regulatory Commission shall, within 12 months after the date of the enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.*

(b) *OBJECTIVES.*—*Such system shall be designed to achieve the following objectives:*

(1) *To reduce the administrative burden and increase the transparency of the ratemaking process while affording reasonable opportunities for interested parties to participate in that process.*

(2) *To create predictability and stability in rates.*

(3) *To maximize incentives to reduce costs and increase efficiency.*

(4) *To enhance mail security and deter terrorism by promoting secure, sender-identified mail.*

(5) *To allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent mail and encourage increased mail volume during nonpeak periods.*

(6) *To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.*

(7) *To allocate the total institutional costs of the Postal Service equitably between market-dominant and competitive products.*

(c) *FACTORS.*—*In establishing or revising such system, the Postal Regulatory Commission shall take into account—*

(1) *the establishment and maintenance of a fair and equitable schedule for rates and classification system;*

(2) *the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;*

(3) *the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail service plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;*

(4) *the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;*

(5) *the available alternative means of sending and receiving letters and other mail matter at reasonable costs;*

(6) *the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;*

(7) *simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;*

(8) *the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;*

(9) *the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;*

(10) *the desirability of special classifications from the point of view of both the user and of the Postal Service;*

(11) *the educational, cultural, scientific, and informational value to the recipient of mail matter; and*

(12) *the policies of this title as well as such other factors as the Commission deems appropriate.*

(d) *REQUIREMENTS.—The system for regulating rates and classes for market-dominant products shall—*

(1) *require the Postal Regulatory Commission to set annual limitations on the percentage changes in rates based on inflation using indices, such as the Consumer Price Index, the Employment Cost Index, the Gross Domestic Product Price Index, or any similar measure as the Postal Regulatory Commission may prescribe;*

(2) *establish a schedule whereby rates, when necessary and appropriate, would change at regular intervals by predictable amounts;*

(3) *not later than 45 days before the implementation of any adjustment in rates under this section—*

(A) *require the Postal Service to provide public notice of the adjustment;*

(B) *provide an opportunity for review by the Postal Regulatory Commission;*

(C) *provide for the Postal Regulatory Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under paragraph (1); and*

(D) *require the Postal Service to respond to the notice provided under subparagraph (C) and describe the actions to be taken to comply with the limitation under paragraph (1).*

(4) notwithstanding any limitation set under paragraphs (1) and (3), establish procedures whereby rates may be adjusted on an expedited basis due to the unexpected and extraordinary circumstances.

(e) **WORKSHARE DISCOUNTS.**—

(1) **DEFINITION.**—In this subsection, the term “workshare discount” refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

(2) **REGULATIONS.**—As part of the regulations established under subsection (a), the Postal Regulatory Commission shall establish rules for workshare discounts that ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless—

(A) the discount is—

(i) associated with a new postal service or with a change to an existing postal service; and

(ii) necessary, over a period of time not to exceed 4 years, to induce mailer behavior that furthers the economically efficient operation of the Postal Service;

(B) a reduction in the discount would—

(i) lead to a loss of volume in the affected category of mail and reduce the aggregate contribution to institutional costs of the Postal Service from the mail matter subject to the discount below what it otherwise would have been if the discount had not been reduced to costs avoided;

(ii) result in a further increase in the rates paid by mailers not able to take advantage of the discount; or

(iii) impede the efficient operation of the Postal Service;

(C) the amount of the discount above costs avoided—

(i) is necessary to mitigate rate shock; and

(ii) will be phased out over time; or

(D) the workshare discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, or scientific value.

(3) **REPORT.**—Whenever the Postal Service establishes or maintains a workshare discount, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report and explanation of the Postal Service’s reasons for establishing or maintaining the rate, setting forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate.

(f) **TRANSITION RULE.**—Until regulations under this section first take effect, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of the enactment of this section.

§ 3623. Mail classification

[(a) Within 2 years after the effective date of this subchapter [effective Jan. 20, 1971], the Postal Service shall request the Postal Rate Commission to make a recommended decision on establishing a mail classification schedule in accordance with the provisions of this section.

[(b) Following the establishment of the mail classification schedule requested under subsection (a) of this section, the Postal Service may from time to time request that the Commission submit, or the Commission may submit to the Governors on its own initiative, a recommended decision on changes in the mail classification schedule.

[(c) The Commission shall make a recommended decision on establishing or changing the schedule in accordance with the policies of this title and the following factors:

[(1) the establishment and maintenance of a fair and equitable classification system for all mail;

[(2) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

[(3) the importance of providing classifications with extremely high degrees of reliability and speed of delivery;

[(4) the importance of providing classifications which do not require an extremely high degree of reliability and speed of delivery;

[(5) the desirability of special classifications from the point of view of both the user and of the Postal Service; and

[(6) such other factors as the Commission may deem appropriate.

[(d) The Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection. The rate for each such class shall be uniform throughout the United States, its territories, and possessions. One such class shall provide for the most expeditious handling and transportation afforded mail matter by the Postal Service. No letter of such a class of domestic origin shall be opened except under authority of a search warrant authorized by law, or by an officer or employee of the Postal Service for the sole purpose of determining an address at which the letter can be delivered, or pursuant to the authorization of the addressee.]

§ 3623. Service agreements for market-dominant products

(a) *IN GENERAL.*—

(1) *AUTHORITY.*—*The Postal Service may enter into service agreements with a customer or group of customers that provide for the provision of postal services under terms, conditions, or service standards that differ from those that would apply under the otherwise applicable classification of market-dominant mail.*

(2) *AGREEMENTS.*—*An agreement under this section may involve—*

(A) *performance by the contracting mail user of mail preparation, processing, transportation, or other functions;*

(B) performance by the Postal Service of additional mail preparation, processing, transportation, or other functions;
or

(C) other terms and conditions that meet the requirements of subsections (b) and (c).

(b) **REQUIREMENTS.**—A service agreement under this section may be entered into only if each of the following conditions is met:

(1) The total revenue generated under the agreement—

(A) will cover all Postal Service costs attributable to the postal services covered by the agreement; and

(B) will result in no less contribution to the institutional costs of the Postal Service than would have been generated had the agreement not been entered into.

(2) Rates or fees for other mailers will not increase as a result of the agreement.

(3) The agreement pertains exclusively to products in the market-dominant category of mail.

(4) The agreement will not preclude or materially hinder similarly situated mail users from entering into agreements with the Postal Service on the same, or substantially the same terms or conditions, and the Postal Service remains willing and able to enter into such.

(c) **LIMITATIONS.**—A service agreement under this section shall—

(1) be for a term not to exceed 3 years; and

(2) provide that such agreement shall be subject to the cancellation authority of the Commission under section 3662.

(d) **NOTICE REQUIREMENTS.**—

(1) **IN GENERAL.**—At least 30 days before a service agreement under this section is to take effect, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register the following information with respect to such agreement:

(A) A description of the postal services the agreement involves.

(B) A description of the functions the customer is to perform under the agreement.

(C) A description of the functions the Postal Service is to perform under the agreement.

(D) The rates and fees payable by the customer during the term of the agreement.

(E) With respect to each condition under subsection (b), information sufficient to demonstrate the bases for the view of the Postal Service that such condition would be met.

(2) **AGREEMENTS LESS THAN NATIONAL IN SCOPE.**—In the case of a service agreement under this section that is less than national in scope, the information described under paragraph (1) shall also be published by the Postal Service in a manner designed to afford reasonable notice to persons within any geographic area to which such agreement (or any amendment to that agreement) pertains.

(e) **EQUAL TREATMENT REQUIRED.**—If the Postal Service enters into a service agreement with a mailer under this section, the Postal Service shall make such agreement available to similarly situated mailers on functionally equivalent terms and conditions consistent

with the regulatory system established under section 3622 without unreasonable distinctions based on mailer profiles, provided that such distinctions, if ignored, would not render any subsequent agreement uneconomic or impractical.

(f) COMPLAINTS.—Any person who believes that a service agreement under this section is not in conformance with the requirements of this section, or who is aggrieved by a decision of the Postal Service not to enter into an agreement under this section, may file a complaint with the Postal Regulatory Commission in accordance with section 3662.

(g) POSTAL REGULATORY COMMISSION ROLE.—

(1) REGULATIONS.—The Postal Regulatory Commission may promulgate such regulations regarding service agreements as the Commission determines necessary to implement the requirements of this section.

(2) REVIEW.—The Postal Regulatory Commission may review any agreement or proposed agreement under this section and may suspend, cancel, or prevent such agreement if the Commission finds that the agreement does not meet the requirements of this section.

(h) INTERPRETATION.—The determination of whether the revenue generated under the agreement meets the requirements of subsection (b)(1)(B) shall be based, to the extent practicable, on the actual contribution of the mail involved, not on the average contribution made by the mail classification most similar to the services performed under the agreement. If mailer-specific data is not available, the bases for the determination used shall be provided and shall include a discussion of the suitability of the data used, in accordance with regulations established by the Postal Regulatory Commission.

§ 3624. Recommended decisions of Commission

[(a) The Postal Rate Commission shall promptly consider a request made under section 3622 or 3623 of this title, except that the Commission shall not recommend a decision until the opportunity for a hearing on the record under sections 556 and 557 of title 5 has been accorded to the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public.

[(b) In order to conduct its proceedings with utmost expedition consistent with procedural fairness to the parties, the Commission may (without limitation) adopt rules which provide for—

[(1) the advance submission of written direct testimony;

[(2) the conduct of prehearing conferences to define issues, and for other purposes to insure orderly and expeditious proceedings;

[(3) discovery both from the Postal Service and the parties to the proceedings;

[(4) limitation of testimony; and

[(5) the conduct of the entire proceedings off the record with the consent of the parties.

[(c)(1) Except as provided by paragraph (2) of this subsection, in any case in which the Postal Service makes a request under section 3622 of this title for a recommended decision by the Commission on changes in a rate or rates of postage or in a fee or fees for postal services the Commission shall transmit its recommended decision

to the Governors under subsection (d) of this section no later than 10 months after receiving any such request from the Postal Service.

[(2) In any case in which the Commission determines that the Postal Service has unreasonably delayed consideration of a request made by the Postal Service under section 3622 by failing to respond within a reasonable time to any lawful order of the Commission, the Commission may extend the 10-month period described in paragraph (1) of this subsection by one day for each day of such delay.

[(d) The Commission shall transmit its recommended decision in a rate, fee, or classification matter to the Governors. The recommended decision shall include a statement specifically responsive to the criteria established under section 3622 or 3623, as the case may be.]

[(§ 3625. Action of the Governors

[(a) Upon receiving a recommended decision from the Postal Rate Commission, the Governors may approve, allow under protest, reject, or modify that decision in accordance with the provisions of this section.

[(b) The Governors may approve the recommended decision and order the decision placed in effect.

[(c) The Governors may, under protest, allow a recommended decision of the Commission to take effect and (1) seek judicial review thereof under section 3628 of this title, or (2) return the recommended decision to the Commission for reconsideration and a further recommended decision, which shall be acted upon under this section and subject to review in accordance with section 3628 of this title.

[(d) The Governors may reject the recommended decision of the Commission and the Postal Service may resubmit its request to the Commission for reconsideration. Upon resubmission, the request shall be reconsidered, and a further recommended decision of the Commission shall be acted upon under this section and subject to review in accordance with section 3628 of this title. However, with the unanimous written concurrence of all of the Governors then holding office, the Governors may modify any such further recommended decision of the Commission under this subsection if the Governors expressly find that (1) such modification is in accord with the record and the policies of this chapter [39 USCS §§ 3601 et seq.], and (2) the rates recommended by the Commission are not adequate to provide sufficient total revenues so that total estimated income and appropriations will equal as nearly as practicable estimated total costs.

[(e) The decision of the Governors to approve, allow under protest, reject, or modify a recommended decision of the Commission shall be in writing and shall include an estimate of anticipated revenue and a statement of explanation and justification. The decision, the record of the Commission's hearings, and the Commission's recommended decision shall be made generally available at the time the decision is issued and shall be printed and made available for sale by the Public Printer within 10 days following the day the decision is issued.

[(f) The Board shall determine the date on which the new rates, fees, the mail classification schedule, and changes in such schedule under this subchapter [39 USCS §§ 3621 et seq.] shall become effective.]

* * * * *

[§ 3628. Appellate review

[A decision of the Governors to approve, allow under protest, or modify the recommended decision of the Postal Rate Commission may be appealed to any court of appeals of the United States, within 15 days after its publication by the Public Printer, by an aggrieved party who appeared in the proceedings under section 3624(a) of this title. The court shall review the decision, in accordance with section 706 of title 5, and chapter 158 [28 USCS §§ 2341 et seq.] and section 2112 of title 28, except as otherwise provided in this section, on the basis of the record before the Commission and the Governors. The court may affirm the decision or order that the entire matter be returned for further consideration, but the court may not modify the decision. The court may not suspend the effectiveness of the changes, or otherwise prevent them from taking effect until final disposition of the suit by the court. No court shall have jurisdiction to review a decision made by the Commission or Governors under this chapter [39 USCS §§ 3601 et seq.] except as provided in this section.]

CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

[Subchapter II—Permanent Rates and Classes of Mail]

Subchapter I—Provisions Relating to Market-Dominant Products

§ 3629. *Reduced rates for voter registration purposes [Caution: For effective date of section, see § 13 of Act May 20, 1993, P.L. 103–31, which appears as a note to this section]*

The Postal Service shall make available to a State or local voting registration official the rate for any class of mail that is available to a qualified nonprofit organization under section 3626 for the purpose of making a mailing that the official certifies is required or authorized by the National Voter Registration Act of 1993.

Subchapter II—Provisions Relating to Competitive Products

§ 3631. *Applicability; definitions and updates*

- (a) *APPLICABILITY.*—This subchapter shall apply with respect to—
- (1) *priority mail;*
 - (2) *expedited mail;*
 - (3) *bulk parcel post;*
 - (4) *bulk international mail; and*
 - (5) *mailgrams; subject to subsection (d) and any changes the Postal Regulatory Commission may make under section 3642.*

(b) *DEFINITION.*—For purposes of this subchapter, the term “costs attributable”, as used with respect to a product, means the direct and indirect postal costs attributable to such product.

(c) *RULE OF CONSTRUCTION.*—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

(d) *LIMITATION.*—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply with respect to any product then currently in the market-dominant category of mail.

§ 3632. Action of the Governors

(a) *AUTHORITY TO ESTABLISH RATES AND CLASSES.*—The Governors, with the written concurrence of a majority of all of the Governors then holding office, shall establish rates and classes for products in the competitive category of mail in accordance with the requirements of this subchapter and regulations promulgated under section 3633.

(b) *PROCEDURES.*—

(1) *IN GENERAL.*—Rates and classes shall be established in writing, complete with a statement of explanation and justification, and the date as of which each such rate or class takes effect.

(2) *PUBLIC NOTICE; REVIEW; AND COMPLIANCE.*—Not later than 30 days before the date of implementation of any adjustment in rates under this section—

(A) the Governors shall provide public notice of the adjustment and an opportunity for review by the Postal Regulatory Commission;

(B) the Postal Regulatory Commission shall notify the Governors of any noncompliance of the adjustment with section 3633; and

(C) the Governors shall respond to the notice provided under subparagraph (B) and describe the actions to be taken to comply with section 3633.

(c) *TRANSITION RULE.*—Until regulations under section 3633 first take effect, rates and classes for competitive products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were as last in effect before the date of the enactment of this section.

§ 3633. Provisions applicable to rates for competitive products

The Postal Regulatory Commission shall, within 180 days after the date of the enactment of this section, promulgate (and may from time to time thereafter revise) regulations to—

(1) prohibit the subsidization of competitive products by market-dominant products;

(2) ensure that each competitive product covers its costs attributable; and

(3) ensure that all competitive products collectively cover their share of institutional costs of the Postal Service.

§ 3634. Assumed Federal income tax on competitive products income

(a) *DEFINITIONS.*—*For purposes of this section—*

(1) *the term “assumed Federal income tax on competitive products income” means the net income tax that would be imposed by chapter 1 of the Internal Revenue code of 1986 on the Postal Service’s assumed taxable income from competitive products for the year; and*

(2) *the term “assumed taxable income from competitive products”, with respect to a year, refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—*

(A) *the only activities of such corporation were the activities of the Postal Service allocable under section 2011(h) to competitive products; and*

(B) *the only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.*

(b) *COMPUTATION AND TRANSFER REQUIREMENTS.*—*The Postal Service shall, for each year beginning with the year in which occurs the deadline for the Postal Service’s first report to the Postal Regulatory Commission under section 3652(a)—*

(1) *compute its assumed Federal income tax on competitive products income for such year; and*

(2) *transfer from the Competitive Products Fund to the Postal Service Fund the amount of that assumed tax.*

(c) *DEADLINE FOR TRANSFERS.*—*Any transfer required to be made under this section for a year shall be due on or before the January 15th next occurring after the close of such year.*

CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

[Subchapter III—Temporary Rates and Classes]

Subchapter III—Provisions Relating to Experimental and New Products

【§ 3641. Temporary changes in rates and classes

【(a) In any case in which the Postal Rate Commission fails to transmit a recommended decision on a change in rates of postage or in fees for postal services to the Governors in accordance with section 3624(c) of this title, the Postal Service may establish temporary changes in rates of postage and in fees for postal services in accordance with the proposed changes under consideration by the Commission. Such temporary changes may take effect upon such date as the Postal Service may determine, except that such temporary changes may take effect only after 10 days’ notice in the Federal Register.

【(b) Any temporary rate or fee established by the Postal Service under subsection (a) of this section shall be in accordance with the policies of this title and shall not exceed such amount as may be necessary for sufficient revenues to assure that the total estimated income, including appropriations, of the Postal Service shall, to the

extent practicable, be equal to the total estimated costs of the Postal Service.

[(c) Notwithstanding the provisions of subsection (b) of this section, the Postal Service may not establish any temporary rate for a class of mail or any temporary fee for a postal service which is more than the permanent rate or fee requested for such class or postal service by the Postal Service under section 3622 of this title.

[(d) Any temporary change in rates of postage or in fees for postal services made by the Postal Service under this section shall remain in effect no longer than 150 days after the date on which the Commission transmits its recommended decision to the Governors under section 3624(d) of this title, unless such temporary change is terminated by the Governors before the expiration of such period.

[(e) If the Postal Rate Commission does not transmit to the Governors within 90 days after the Postal Service has submitted, or within 30 days after the Postal Service has resubmitted, to the Commission a request for a recommended decision on a change in the mail classification schedule (after such schedule is established under section 3623 of this title), the Postal Service, upon 10 days' notice in the Federal Register, may place into effect temporary changes in the mail classification schedule in accordance with proposed changes under consideration by the Commission. Any temporary change shall be effective for a period ending not later than 30 days after the Commission has transmitted its recommended decision to the Governors.

[(f) If, under section 3628 of this title, a court orders a matter returned to the Commission for further consideration, the Postal Service, with the consent of the Commission, may place into effect temporary changes in rates of postage, and fees for postal services, or in the mail classification schedule.]

§ 3641. Market tests of experimental products

(a) *AUTHORITY.*—

(1) *IN GENERAL.*—*The Postal Service may conduct market tests of experimental products in accordance with this section.*

(2) *PROVISIONS WAIVED.*—*A product shall not, while it is being tested under this section, be subject to the requirements of sections 3622, 3633, or 3642, or regulations promulgated under those sections.*

(b) *CONDITIONS.*—*A product may not be tested under this section unless it satisfies each of the following;*

(1) *SIGNIFICANTLY DIFFERENT PRODUCT.*—*The product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2 year period preceding the start of the test.*

(2) *MARKET DISRUPTION.*—*The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns (as defined under subsection (h)).*

(3) *CORRECT CATEGORIZATION.*—*The Postal Service identifies the product, for the purpose of a test under this section, as either market-dominant or competitive, consistent with the cri-*

teria under section 3642(b)(1). Costs and revenue attributable to a product identified as competitive shall be included in any determination under section 3633(3) (relating to provisions applicable to competitive products collectively). Any test that solely affects products currently classified as competitive, or which provides services ancillary to only competitive products, shall be presumed to be in the competitive product category without regard to whether a similar ancillary product exists for market-dominant products.

(c) NOTICE.—

(1) *IN GENERAL.*—At least 30 days before initiating a market test under this section, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register a notice—

(A) setting out the basis for the Postal Service's determination that the market test is covered by this section; and

(B) describing the nature and scope of the market test.

(2) *SAFEGUARDS.*—For a competitive experimental product, the provisions of section 504(g) shall be available with respect to any information required to be filed under paragraph (1) to the same extent and in the same manner as in the case of any matter described in section 504(g)(1). Nothing in paragraph (1) shall be considered to permit or require the publication of any information as to which confidential treatment is accorded under the preceding sentence (subject to the same exception as set forth in section 504(g)(3)).

(d) DURATION.—

(1) *IN GENERAL.*—A market test of a product under this section may be conducted over a period of not to exceed 24 months.

(2) *EXTENSION AUTHORITY.*—If necessary in order to determine the feasibility or desirability of a product being tested under this section, the Postal Regulatory Commission may, upon written application of the Postal Service (filed not later than 60 days before the date as of which the testing of such product would otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.

(e) DOLLAR-AMOUNT LIMITATION.—

(1) *IN GENERAL.*—A product may only be tested under this section if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed \$10,000,000 in any year, subject to paragraph (2) and subsection (g).

(2) *EXEMPTION AUTHORITY.*—The Postal Regulatory Commission may, upon written application of the Postal Service, exempt the market test from the limit in paragraph (1) if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed \$50,000,000 in any year, subject to subsection (g). In reviewing an application under this paragraph, the Postal Regulatory Commission shall approve such application if it determines that—

(A) the product is likely to benefit the public and meet an expected demand;

(B) the product is likely to contribute to the financial stability of the Postal Service; and

(C) the product is not likely to result in unfair or otherwise inappropriate competition.

(f) CANCELLATION.—If the Postal Regulatory Commission at any time determines that a market test under this section fails to meet 1 or more of the requirements of this section, it may order the cancellation of the test involved or take such other action as it considers appropriate. A determination under this subsection shall be made in accordance with such procedures as the Commission shall by regulation prescribe.

(g) ADJUSTMENT FOR INFLATION.—For purposes of each year following the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a), each dollar amount contained in this section shall be adjusted by the change in the Consumer Price Index for such year (as determined under regulations of the Commission.)

(h) DEFINITION OF A SMALL BUSINESS CONCERN.—The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns shall, for purposes of this section, be established by the Postal Regulatory Commission in conformance with the requirements of section 3 of the Small Business Act.

(i) EFFECTIVE DATE.—Market tests under this subchapter may be conducted in any year beginning with the first year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a).

§3642. New products and transfers of products between the market-dominant and competitive categories of mail

(a) IN GENERAL.—Upon request of the Postal Service or users of the mails, or upon its own initiative, the Postal Regulatory Commission may change the list of market-dominant products under section 3621 and the list of competitive products under section 3631 by adding new products to the lists, removing products from the lists, or transferring products between the lists.

(b) CRITERIA.—All determinations by the Postal Regulatory Commission under subsection (a) shall be made in accordance with the following criteria:

(1) The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing substantial business to other firms offering similar products. The competitive category of products shall consist of all other products.

(2) EXCLUSION OF PRODUCTS COVERED BY POSTAL MONOPOLY.—A product covered by the postal monopoly shall not be subject to transfer under this section from the market-dominant category of mail. For purposes of the preceding sentence, the term "product covered by the postal monopoly" means any product the conveyance or transmission of which is reserved to the

United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(e)(1).

(3) *ADDITIONAL CONSIDERATIONS.—In making any decision under this section, due regard shall be given to—*

(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

(B) the views of those who use the product involved on the appropriateness of the proposed action; and

(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

(c) *TRANSFERS OF SUBCLASSES AND OTHER SUBORDINATE UNITS ALLOWABLE.— Nothing in this title shall be considered to prevent transfers under this section from being made by reason of the fact that they would involve only some (but not all) of the subclasses or other subordinate units of the class of mail or type of postal service involved (without regard to satisfaction of minimum quantity requirements standing alone.)*

(d) *NOTIFICATION AND PUBLICATION REQUIREMENTS.—*

(1) NOTIFICATION REQUIREMENT.—The Postal Service shall, whenever it requests to add a product or transfer a product to a different category, file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for its determination that the product satisfies the criteria under subsection (b) and, in the case of a request to add a product or transfer a product to the competitive category of mail, that the product meets the regulations promulgated by the Postal Regulatory Commission under section 3633. The provisions of section 504(g) shall be available with respect to any information required to be filed.

(2) PUBLICATION REQUIREMENT.—The Postal Regulatory Commission shall, whenever it changes the list of products in the market-dominant or competitive category of mail, prescribe new lists of products. The revised lists shall indicate how and when any previous lists (including the lists under sections 3621 and 3631) are superseded, and shall be published in the Federal Register.

(e) *PROHIBITION.—Except as provided in section 3641, no product that involves the physical delivery of letters, printed matter, or packages may be offered by the Postal Service unless it has been assigned to the market-dominant or competitive category of mail (as appropriate) either—*

(1) under this subchapter; or

(2) by or under any other provision of law.

CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

[Subchapter IV—Postal Services and Complaints]

Subchapter V—Postal Services, Complaints, and Judicial Review

CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

[Subchapter V—General]

Subchapter VI—General

Subchapter IV—Reporting Requirements and Related Provisions

§ 3651. Annual reports by the Commission

(a) *IN GENERAL.*—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title, including the extent to which regulations are achieving the objectives under sections 3622, 3633, and 3691.

(b) *INFORMATION FROM POSTAL SERVICE.*—The Postal Service shall provide the Postal Regulatory Commission with such information as may, in the judgment of the Commission, be necessary in order for the Commission to prepare its reports under this section.

§ 3652. Annual reports to the Commission

(a) *COSTS, REVENUES, RATES, AND SERVICE.*—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex to the report as the Commission may require under subsection (e))—

(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

(2) which shall, for each market-dominant product provided in such year, provide—

(A) product information, including mail volumes; and

(B) measures of the service afforded by the Postal Service in connection with such product, including—

(i) the level of service (described in terms of speed of delivery and reliability) provided; and

(ii) the degree of customer satisfaction with the service provided.

Before submitting a report under this subsection (including any annex to the report and the information required under subsection (b)), the Postal Service shall have the information contained in such report (and annex) audited by the Inspector General. The results of any such audit shall be submitted along with the report to which it pertains.

(b) *INFORMATION RELATING TO WORKSHARE DISCOUNTS.*—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product

for which a workshare discount was in effect during the period covered by such report:

(1) The per-item cost avoided by the Postal Service by virtue of such discount.

(2) The percentage of such per-item cost avoided that the per-item workshare discount represents.

(3) The per-item contribution made to institutional costs.

(c) **SERVICE AGREEMENTS AND MARKET TESTS.**—In carrying out subsections (a) and (b) with respect to service agreements (including service agreements entered into under section 3623) and experimental products offered through market tests under section 3641 in a year, the Postal Service—

(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

(2) shall report such data as the Postal Regulatory Commission requires.

(d) **SUPPORTING MATTER.**—The Postal Regulatory Commission shall have access, in accordance with such regulations as the Commission shall prescribe, to the working papers and any other supporting matter of the Postal Service and the Inspector General in connection with any information submitted under this section.

(e) **CONTENT AND FORM OF REPORTS.**—

(1) **IN GENERAL.**—The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating to the report) to be provided by the Postal Service under this section. In carrying out this subsection, the Commission shall give due consideration to—

(A) providing the public with timely, adequate information to assess the lawfulness of rates charged;

(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and

(C) protecting the confidentiality of commercially sensitive information.

(2) **REVISED REQUIREMENTS.**—The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this subsection whenever it shall appear that—

(A) the attribution of costs or revenues to products has become significantly inaccurate or can be significantly improved;

(B) the quality of service data has become significantly inaccurate or can be significantly improved; or

(C) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

(f) **CONFIDENTIAL INFORMATION.**—

(1) **IN GENERAL.**—If the Postal Service determines that any document or portion of a document, or other matter, which it provides to the Postal Regulatory Commission in a nonpublic annex under this section or under subsection (d) contains information which is described in section 410(c) of this title, or ex-

empt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefor.

(2) TREATMENT.—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

(g) OTHER REPORTS.—The Postal Service shall submit to the Postal Regulatory Commission, together with any other submission that the Postal Service is required to make under this section in a year, copies of its then most recent—

- (1) comprehensive statement under section 2401(e);*
- (2) strategic plan under section 2802;*
- (3) performance plan under section 2803; and*
- (4) program performance reports under section 2804.*

§ 3653. Annual determination of compliance

(a) OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3652 for any year, the Postal Regulatory Commission shall promptly provide an opportunity for comment on such reports by users of the mails, affected parties, and an officer of the Commission who shall be required to represent the interests of the general public.

(b) DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3652 with respect to a year, the Postal Regulatory Commission shall make a written determination as to—

- (1) whether any rates or fees in effect during such year (for products individually or collectively) were not in compliance with applicable provisions of this chapter (or regulations promulgated thereunder); or*
- (2) whether any service standards in effect during such year were not met.*

If, with respect to a year, no instance of noncompliance is found under this subsection to have occurred in such year, the written determination shall be to that effect.

(c) IN ANY NONCOMPLIANCE IS FOUND.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take any appropriate remedial action authorized by section 3662(c).

(d) REBUTTABLE PRESUMPTION.—A timely written determination described in the last sentence of subsection (b) shall, for purposes of any proceeding under section 3662, create a rebuttable presumption of compliance by the Postal Service (with regard to the matters described in paragraphs (1) through (3) of subsection (b)) during the year to which such determination relates.

* * * * *

[§ 3662. Rate and service complaints

[Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in this title or who believe that they are not receiving postal service in accordance with the policies of this title may lodge a complaint with the Postal Rate Commission in such form and in such manner as it may prescribe. The Commission may in its discretion hold hearings on such complaint. If the Commission, in a matter covered by subchapter II of this chapter [39 USCS §§ 3621 et seq.], determines the complaint to be justified, it shall, after proceedings in conformity with section 3624 of this title, issue a recommended decision which shall be acted upon in accordance with the provisions of section 3625 of this title and subject to review in accordance with the provisions of section 3628 of this title. If a matter not covered by subchapter II of this chapter [39 USCS §§ 3621 et seq.] is involved, and the Commission after hearing finds the complaint to be justified, it shall render a public report thereon to the Postal Service which shall take such action as it deems appropriate.]

§ 3662. Rate and service complaints

(a) *IN GENERAL.*—Any person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of chapter 1, 4, or 6, or this chapter (or regulations promulgated under any of those chapters) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

(b) *PROMPT RESPONSE REQUIRED.*—

(1) *IN GENERAL.*—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a), either—

(A) begin proceedings on such complaint; or

(B) issue an order dismissing the complaint (together with a statement of the reasons therefor).

(2) *TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.*—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

(c) *ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.*—If the Postal Regulatory Commission finds the complaint to be justified, it shall order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance including ordering unlawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, and requiring the Postal Service to make up for revenue shortfalls in competitive products.

(d) *AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.*—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Reg-

ulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid out of the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

【§ 3663. Annual report on international services

[(a) Not later than July 1 of each year, the Postal Rate Commission shall transmit to each House of Congress a comprehensive report of the costs, revenues, and volumes accrued by the Postal Service in connection with mail matter conveyed between the United States and other countries for the previous fiscal year.

[(b) Not later than March 15 of each year, the Postal Service shall provide to the Postal Rate Commission such data as the Commission may require to prepare the report required under subsection (a) of this section. Data shall be provided in sufficient detail to enable the Commission to analyze the costs, revenues, and volumes for each international mail product or service, under the methods determined appropriate by the Commission for the analysis of rates for domestic mail.]

§ 3663. Appellate review

A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

§ 3664. Enforcement of orders

The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain the Postal Service from violating, any order issued by the Postal Regulatory Commission.

* * * * *

CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

Subchapter VII—Modern Service Standards

§ 3691. Establishment of modern service standards

(a) *AUTHORITY GENERALLY.*—*The Postal Regulatory Commission shall, within 12 months after the date of the enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with sections 101 (a) and (b) and 403.*

(b) *OBJECTIVES.*—*Such standards shall be designed to achieve the following objectives:*

(1) *To enhance and preserve the value of postal services to both senders and recipients.*

(2) *To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.*

(3) *To guarantee Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.*

(c) **FACTORS.**—*In establishing or revising such standards, the Postal Regulatory Commission shall take into account—*

(1) *the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;*

(2) *the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail;*

(3) *mail volume and revenues projected for future years;*

(4) *the projected growth in the number of addresses the Postal Service will be required to serve in future years;*

(5) *the current and projected future cost of serving Postal Service customers;*

(6) *the effect of changes in technology, demographics and population distribution on the efficient and reliable operation of the postal delivery system; and*

(7) *the policies of this title as well as such other factors as the Commission determines appropriate.*

* * * * *

PART V—TRANSPORTATION OF MAIL

CHAPTER 54—TRANSPORTATION OF MAIL BY AIR

§ 5402. Contracts for transportation of mail by air

* * * * *

[(d) If the Postal Service determines that service by certificated air carriers or combination of air carriers between any pair or pairs of points in foreign air transportation is not adequate for its purposes, it may contract for a period of not more than 4 years, without advertising for bids, in such manner and under such terms and conditions as it may deem appropriate, with any air taxi operator or combination thereof for such air transportation service. Contracts made under this subsection may be renewed at the existing rate by mutual agreement between the holder and the Postal Service. The Postal Service, with the consent of the air taxi operator, may adjust the compensation under such contracts for increased or decreased costs occasioned by changed conditions occurring during the contract term. The Postal Service shall cancel such a contract when the Secretary of transportation authorizes an additional certificated carrier or carriers to provide service between any pair or pairs of points covered by the contract, and such carrier or carriers inaugurate schedules adequate for its purposes.]

(d)(1) *The Postal Service may contract with any air carrier for the transportation of mail by aircraft in interstate air transportation, including the rates therefor, either through negotiations or competitive bidding.*

(2) *Notwithstanding subsections (a) through (c), the Postal Service may contract with any air carrier or foreign air carrier for the transportation of mail by aircraft in foreign air transportation, including the rates therefor, either through negotiations or competitive bidding, except that—*

(A) any such contract may be awarded only to (i) an air carrier holding a certificate required by section 41101 of title 49 or an exemption therefrom issued by the Secretary of Transportation, (ii) a foreign air carrier holding a permit required by section 41301 of title 49 or an exemption therefrom issued by the Secretary of Transportation, or (iii) a combination of such air carriers or foreign air carriers (or both);

(B) mail transported under any such contract shall not be subject to any duty-to-carry requirement imposed by any provision of subtitle VII of title 49 or by any certificate, permit, or corresponding exemption authority issued by the Secretary of Transportation under that subtitle;

(C) every contract that the Postal Service awards to a foreign air carrier under this paragraph shall be subject to the continuing requirement that air carriers shall be afforded the same opportunity to carry the mail of the country to and from which the mail is transported and the flag country of the foreign air carrier, if different, as the Postal Service has afforded the foreign air carrier; and

(D) the Postmaster General shall consult with the Secretary of Defense concerning actions that affect the carriage of military mail transported in foreign air transportation.

(3) Paragraph (2) shall not be interpreted as suspending or otherwise diminishing the authority of the Secretary of Transportation under section 41310 of title 49.

[(e)

[(1) The Postal Service may determine rates and contract with any air carrier for the transportation of mail by aircraft in interstate air transportation either through negotiations or competitive bidding.

[(2)(A) In the exercise of its authority under paragraph (1), the Postal Service may require any air carrier to accept as mail shipments of day-old poultry, honeybees, and such other live animals as postal regulations allow to be transmitted as mail matter. The authority of the Postal Service under this subparagraph shall not apply in the case of any air carrier who commonly and regularly refuses to accept any live animals as cargo.

[(B) Notwithstanding any other provision of law, the Postal Service is authorized to assess, as postage to be paid by the mailers of any shipments covered by subparagraph (A), a reasonable surcharge that the Postal Service determines in its discretion to be adequate to compensate air carriers for any necessary additional expense incurred in handling such shipments.]

(e) For purposes of this section, the terms “air carrier”, “air transportation”, “foreign air carrier”, “foreign air transportation”, “inter-

state air transportation”, and “mail” shall have the meanings given such terms in section 40102 of title 49.

* * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

PART I—THE AGENCIES GENERALLY

CHAPTER 1—ORGANIZATION

§ 104. Independent establishment

For the purpose of this title [5 USCS §§ 101 et seq.], “independent establishment” means—

- (1) an establishment in the executive branch (other than the United States Postal Service or the [Postal Rate Commission] *Postal Regulatory Commission*) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment; and
- (2) the General Accounting Office.

* * * * *

CHAPTER 3—POWERS

§ 306. Strategic plans

* * * * *

(f) For purposes of this section the term “agency” means an Executive agency defined under section 105, but does not include the Central Intelligence Agency, the General Accounting Office, the Panama Canal Commission, the United States Postal Service, and the [Postal Rate Commission.] *Postal Regulatory Commission*.

* * * * *

PART III—EMPLOYEES

Subpart A—General Provisions

Chapter 21—DEFINITIONS

§ 2104. Officer

* * * * *

(b) Except as otherwise provided by law, an officer of the United States Postal Service or of the [Postal Rate Commission] *Postal Regulatory Commission* is deemed not an officer for purposes of this title.

* * * * *

Subpart B—Employment and Retention

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

Subchapter VI—Assignments to and from States

§ 3371. Definitions

For the purpose of this subchapter [5 USCS §§ 3371 et seq.]—

* * * * *

(3) “Federal agency” means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the [Postal Rate Commission] *Postal Regulatory Commission*, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management; and

* * * * *

Subpart D—Pay and Allowances

CHAPTER 53—PAY RATES AND SYSTEMS

Subchapter II—Executive Schedule Pay Rates

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2 [2 USCS §§ 351 et seq.], as adjusted by section 5318 of this title:

* * * * *

Chairman, [Postal Rate Commission] *Postal Regulatory Commission*.

* * * * *

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2 [1. 2 USCS §§351 et seq.], as adjusted by section 5318 of this title:

* * * * *

Members, [Postal Rate Commissions] *Postal Regulatory Commission* (4).

* * * * *

CHAPTER 55—PAY ADMINISTRATION

Subchapter II—Withholding Pay

§ 5514. Installment deduction for indebtedness to the United States

* * * * *

(5) For purposes of this subsection—

(A) “disposable pay” means that part of pay of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld; and

(B) “agency” includes executive departments and agencies, the United States Postal Service, the [Postal Rate Commission] *Postal Regulatory Commission*, the United States Senate, the United States House of Representatives, and any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government, and government corporations.

* * * * *

Subpart F—Labor-Management and Employee Relations

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

Subchapter IV—Foreign Gifts and Decorations

§ 7342. Receipt and disposition of foreign gifts and decorations

(a) For the purpose of this section—

(1) “employee” means—

(A) an employee as defined by section 2105 of this title and an officer or employee of the United States Postal Service or of the [Postal Rate Commission] *Postal Regulatory Commission*;

* * * * *

CHAPTER 75—ADVERSE ACTIONS

Subchapter II—Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

§ 7511. Definitions; application

(a) For the purpose of this subchapter [5 USCS §§ 7511 et seq.]—

(1) “employee” means—

(A) an individual in the competitive service—

(i) who is not serving a probationary or trial period under an initial appointment; or

(ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

(B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions—

- (i) in an Executive agency; or
- (ii) in the United States Postal Service or [Postal Rate Commission] *Postal Regulatory Commission*; and

* * * * *

CHAPTER 81—COMPENSATION FOR WORK INJURIES

Subchapter I—Generally

§ 8105. Total disability

(a) If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of his monthly pay, which is known as his basic compensation for total disability. *This section applies to a Postal Service employee, except as provided under subsection (c).*

(b) The loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes, is prima facie permanent total disability.

(c)(1) *In this subsection, the term “retirement age” has the meaning given under section 216(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1)).*

(2) *Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of the Postal Accountability and Enhancement Act, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for total disability is converted to 50 percent of the monthly pay of the employee on the later of—*

(A) *the date on which the injured employee reaches retirement age; or*

* * * * *

(B) *1 year after the employee begins receiving compensation.*

* * * * *

§ 8106. Partial disability

(a) If the disability is partial, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of the difference between his monthly pay and his monthly wage-earning capacity after the beginning of the partial disability, which is known as his basic compensation for partial disability. *This section applies to a Postal Service employee, except as provided under subsection (d).*

(b) The Secretary of Labor may require a partially disabled employee to report his earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies. The employee shall include in the affidavit or report the value of housing, board, lodging, and other advantages which are part of his earnings in employment or self-employment and which can be estimated in money. An employee who—

- (1) fails to make an affidavit or report when required; or

(2) knowingly omits or understates any part of his earnings;
 forfeits his right to compensation with respect to any period for which the affidavit or report was required. Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under section 8129 of this title, unless recovery is waived under that section.

- (c) A partially disabled employee who—
 (1) refuses to seek suitable work; or
 (2) refuses or neglects to work after suitable work is offered to, procured by, or secured for him; is not entitled to compensation.

(d)(1) *In this subsection, the term “retirement age” has the meaning given under section 216(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1)).*

(2) *Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of this subsection, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for partial disability is converted to 50 percent of the difference between the monthly pay of an employee and the monthly wage earning capacity of the employee after the beginning of partial disability on the later of—*

- (A) *the date on which the injured employee reaches retirement age; or*
 (B) *1 year after the employee begins receiving compensation.*

* * * * *

Subpart G—Insurance and Annuities

CHAPTER 81—COMPENSATION FOR WORK INJURIES

Subchapter I—Generally

§ 8117. Time of accrual of right

[An employee] (a) *An employee other than a Postal Service employee is not entitled to compensation for the first 3 days of temporary disability, except—*

- (1) *when the disability exceeds 14 days;*
 (2) *when the disability is followed by permanent disability;*

or

- (3) *as provided by sections 8103 and 8104 of this title.*

(b) *A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period, except that if the disability exceeds 14 days or is followed by permanent disability, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.*

* * * * *

§ 8118. Continuation of pay; election to use annual or sick leave

(a) The United States shall authorize the continuation of pay of an employee, as defined in section 8101(1) of this title (other than those referred to in clause (B) or (E)), who has filed a claim for a period of wage loss due to a traumatic injury with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.

(b) Continuation of pay under this subchapter [1. 5 USCS §§ 8101 et seq.] shall be furnished—

【(1) without a break in time unless controverted under regulations of the Secretary;】

(1) without a break in time, except as provided under section 8117(b), unless controverted under regulations of the Secretary.

2. (2) for a period not to exceed 45 days; and

(3) under accounting procedures and such other regulations as the Secretary may require.

* * * * *

Subpart G—Insurance and Annuities

CHAPTER 83—RETIREMENT

Subchapter III—Civil Service Retirement

§ 8334. Deductions, contributions, and deposits

(a)(1)(A) The employing agency shall deduct and withhold from the basic pay of an employee, Member, Congressional employee, law enforcement officer, firefighter, bankruptcy judge, judge of the United States Court of Appeals for the Armed Forces, United States magistrate, Court of Federal Claims judge, member of the Capitol Police, member of the Supreme Court Police, or nuclear materials courier, as the case may be, the percentage of basic pay applicable under subsection (c).

(B)(i) Except as provided in clause (ii), an equal amount shall be contributed from the appropriation or fund used to pay the employee or, in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment. When an employee in the legislative branch is paid by the Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts of the House of Representatives the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee.

【(ii) In the case of an employee of the United States Postal Service, the amount to be contributed under this subparagraph shall (instead of the amount described in clause (i)) be equal to the product derived by multiplying the employee's basic pay by the percentage equal to—

(I) the normal-cost percentage for the applicable employee category listed in subparagraph (A), minus

(II) the percentage deduction rate that applies with respect to such employee under subparagraph (A).】

(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph.

* * * * *

§ 8348. Civil Service Retirement and Disability Fund

* * * * *

[(h)(1)(A) For purposes of this subsection, “Postal supplemental liability” means the estimated excess, as determined by the Office, of—

[(i) the actuarial present value of all future benefits payable from the Fund under this subchapter [5 USCS §§ 8331 et seq.] attributable to the service of current or former employees of the United States Postal Service, over

[(ii) the sum of—

[(I) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter [5 USCS §§ 8331 et seq.] pursuant to section 8334;

[(II) the actuarial present value of the future contributions to be made pursuant to section 8334 with respect to employees of the United States Postal Service currently subject to this subchapter [5 USCS §§ 8331 et seq.];

[(III) that portion of the Fund balance, as of the date the Postal supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, including earnings on those payments; and

[(IV) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

[(B)(i) In computing the actuarial present value of future benefits, the Office shall include the full value of benefits attributable to military and volunteer service for United States Postal Service employees first employed after June 30, 1971, and a prorated share of the value of benefits attributable to military and volunteer service for United States Postal Service employees first employed before July 1, 1971.

[(ii) Military service so included shall not be included in the computation of any amount under subsection (g)(2).

[(2)(A) Not later than June 30, 2004, the Office shall determine the Postal supplemental liability as of September 30, 2003. The Office shall establish an amortization schedule, including a series of equal annual installments commencing September 30, 2004, which provides for the liquidation of such liability by September 30, 2043.

[(B) The Office shall redetermine the Postal supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2003, through the fiscal year ending September 30, 2038, and shall establish a new amortization schedule, including a series of equal annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

[(C) The Office shall redetermine the Postal supplemental liability as of the close of the fiscal year for each fiscal year beginning

after September 30, 2038, and shall establish a new amortization schedule, including a series of equal annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability over 5 years.

[(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent dynamic actuarial valuation of the Civil Service Retirement System.

[(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

[(F) An amortization schedule established under subparagraph (B) or (C) shall supersede any amortization schedule previously established under this paragraph.

[(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.

[(4) Notwithstanding any other provision of this subsection, any determination or redetermination made by the Office under this subsection shall, upon request of the Postal Service, be subject to reconsideration and review (including adjustment by the Board of Actuaries of the Civil Service Retirement System) to the same extent and in the same manner as provided under section 8423(c).]

(h)(1) In this subsection, the term "Postal surplus or supplemental liability" means the estimated difference, as determined by the Office, between—

(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

(B) the sum of—

(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

(2)(A) Not later than June 30, 2006, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2005. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a. If the result is a supplemental liability, the Of-

Office shall establish an amortization schedule, including a series of annual installments commencing September 30, 2006, which provides for the liquidation of such liability by September 30, 2043.

(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2006, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C), and any prior amortization schedule for payments shall be terminated. If the result is a supplemental liability, the Office shall establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.

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Subpart G—Insurance and Annuities

CHAPTER 84—FEDERAL EMPLOYEES’ RETIREMENT SYSTEM

Subchapter I—General Provisions

§ 8402. Federal Employees’ Retirement System; exclusions

* * * * *

(c)(1) The Office may exclude from the operation of this chapter [5 USCS §§8401 et seq.] an employee or group of employees in or under an Executive agency, the United States Postal Service, or the [Postal Rate Commission] *Postal Regulatory Commission*, whose employment is temporary or intermittent, except an employee whose employment is part-time career employment (as defined in section 3401(2)).

* * * * *

Subchapter II—Basic Annuity

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§ 8423. Government contributions

* * * * *

(b)

(1) The Office shall compute—

(A) the amount of the supplemental liability of the Fund with respect to individuals other than those to whom subparagraph (B) relates, and

(B) the amount of the supplemental liability of the Fund with respect to current or former employees of the United States Postal Service (and the [Postal Rate Commission] *Postal Regulatory Commission*) and their survivors;

* * * * *

Subpart G—Insurance and Annuities

Chapter 84—FEDERAL EMPLOYEES’ RETIREMENT SYSTEM

Subchapter VII—Federal Retirement Thrift Investment Management System

§ 8474. Executive Director

* * * * *

(c) The Executive Director may—

(1) prescribe such regulations as may be necessary to carry out the responsibilities of the Executive Director under this section, other than regulations relating to fiduciary responsibilities;

(2) appoint such personnel as may be necessary to carry out the provisions of this subchapter and subchapter III of this chapter [5 USCS §§ 8471 et seq., 8431 et seq.];

(3) subject to approval by the Board, procure the services of experts and consultants under section 3109 of this title;

(4) secure directly from an Executive agency, the United States Postal Service, or the [Postal Rate Commission] *Postal Regulatory Commission* any information necessary to carry out the provisions of this subchapter or subchapter III of this chapter [5 USCS §§ 8471 et seq., 8431 et seq.] and policies of the Board;

* * * * *

CHAPTER 89—HEALTH INSURANCE

§ 8906. Contribution

* * * * *

(g)

(1) Except as provided in paragraphs (2) and (3), the Government contributions authorized by this section for health benefits for an annuitant shall be paid from annual appropriations

which are authorized to be made for that purpose and which may be made available until expended.

(2)(A) The Government contributions authorized by this section for health benefits for an individual who first becomes an annuitant by reason of retirement from employment with the United States Postal Service on or after July 1, 1971, or for a survivor of such an individual or of an individual who died on or after July 1, 1971 while employed by the United States Postal Service, [shall be paid by the United States Postal Service.] *shall be paid first from the Postal Service Retiree Health Benefit Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service.*

(B) In determining any amount for which the Postal Service is liable under this paragraph, the amount of the liability shall be prorated to reflect only that portion of total service which is attributable to civilian service performed (by the former postal employee or by the deceased individual referred to in subparagraph (A), as the case may be) after June 30, 1971, as estimated by the Office of Personnel Management.

(3) The Government contribution for persons enrolled in a health benefits plan as part of the demonstration project under section 1108 of title 10 shall be paid as provided in subsection (i) of that section.

* * * * *

§ 8909. Employees Health Benefits Fund

(a) There is in the Treasury of the United States an Employees Health Benefits Fund which is administered by the Office of Personnel Management. The contributions of enrollees and the Government described by section 8906 of this title shall be paid into the Fund. The Fund is available—

(1) without fiscal year limitation for all payments to approved health benefits plans; and (2) to pay expenses for administering this chapter [5 USCS §§8901 et seq.] within the limitations that may be specified annually by Congress.

* * * * *

(g) The fund described in subsection (a) is available to pay costs that the Office incurs for activities associated with implementation of the demonstration project under section 1108 of title 10.

§ 8909a. Postal Service Retiree Health Benefit Fund

(a) *There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.*

(b) *The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).*

(c) *The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.*

(d)(1) Not later than December 31, 2006, and by December 31 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

(2)(A) Not later than December 31, 2006, the Office shall compute, and by December 31 of each succeeding year, the Office shall recompute the difference between—

(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

(II) the net present value computed under paragraph (1).

(B) Not later than December 31, 2006, the Office shall compute, and by December 31 of each succeeding year shall recompute, an amortization schedule including a series of annual installments which provide for the liquidation by January 31, 2046, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

(3) Not later than January 31, 2007, and by January 31 of each succeeding year, the United States Postal Service shall pay into such Fund—

(A) the net present value computed under paragraph (1); and

(B) the annual installment computed under paragraph (2)(B).

(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

(5) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.

* * * * *

TITLE 5—APPENDIX

ETHICS IN GOVERNMENT ACT OF 1978

TITLE I, FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

§ 101. Persons required to file

* * * * *

(f) The officers and employees referred to in subsections (a), (d), and (e) are—

* * * * *

(6) the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or [Postal Rate Commission] *Postal Regulatory Commission* who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule;

* * * * *

TITLE 29, LABOR

CHAPTER 16—VOCATIONAL REHABILITATION AND OTHER REHABILITATION SERVICES RIGHTS AND ADVOCACY

§ 791. Employment of individuals with disabilities

* * * * *

(b) Federal agencies; affirmative action program plans. Each department, agency, and instrumentality (including the United States Postal Service and the [Postal Rate Commission] *Postal Regulatory Commission*) in the executive branch and the Smithsonian Institution shall, with one hundred and eighty days after the date of enactment of this Act [enacted Sept. 26, 1973], submit to the Commission and to the Committee an affirmative action program plan for the hiring, placement, and advancement of individuals with disabilities in such department, agency, instrumentality, or Institution. Such plan shall include a description of the extent to which and methods whereby the special needs of employees who are individuals with disabilities are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Commission, if the Commission determines, after consultation with the Committee, that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for individuals with disabilities.

* * * * *

TITLE 42, THE PUBLIC HEALTH AND WELFARE

CHAPTER 112—VICTIM COMPENSATION AND ASSISTANCE

§ 10601. Crime Victims Fund

(a) Establishment. There is created in the Treasury a separate account to be known as the Crime Victims Fund (hereinafter in this chapter referred to as the “Fund”).

(b) Fines deposited in Fund; penalties; forfeited appearance bonds. Except as limited by subsection (c), there shall be deposited in the Fund—

(1) all fines that are collected from persons convicted of offenses against the United States except—

(A) fines available for use by the Secretary of the Treasury pursuant to—

(i) section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)); and

(ii) section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)); and

(B) fines to be paid into—

(i) the railroad unemployment insurance account pursuant to the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.);

(ii) the Postal Service Fund pursuant to sections 2601(a)(2) and 2003 of title 39 of the United States Code and for the purposes set forth in section **[404(a)(8)] 404(a)(7)** of such title 39;

(iii) the navigable waters revolving fund pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) and

(iv) county public school funds pursuant to section 3613 of title 18 of the United States Code;

* * * * *

TITLE 44, PUBLIC PRINTING AND DOCUMENTS

CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

Subchapter I—Federal Information Policy

§ 3502. Definitions

As used in this subchapter [44 USCS §§ 3501 et seq.]—

* * * * *

(5) the term “independent regulatory agency” means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the **[Postal Rate Commission]** *Postal Regulatory Commission*, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

* * * * *

TITLE 49, TRANSPORTATION
Subtitle VII—Aviation Programs
PART A—AIR COMMERCE AND SAFETY
Subpart II—Economic Regulation
CHAPTER 411—AIR CARRIER CERTIFICATES

§ 41107. Transportation of mail

When the United States Postal Service finds that the needs of the Postal Service require the transportation of mail by aircraft [in foreign air transportation or] between places in Alaska, in addition to the transportation of mail authorized under certificates in effect, the Postal Service shall certify that finding to the Secretary of Transportation with a statement about the additional transportation and facilities necessary to provide the additional transportation. A copy of each certification and statement shall be posted for at least 20 days in the office of the Secretary. After notice and an opportunity for a hearing, the Secretary shall issue a new certificate under section 41102 of this title, or amend or modify an existing certificate under section 41110(a)(2)(A) of this title, to provide the additional transportation and facilities if the Secretary finds the additional transportation is required by the public convenience and necessity.

* * * * *

CHAPTER 419—TRANSPORTATION OF MAIL

§ 41901. General authority

[(a) TITLE 39.—The United States Postal Service may provide for the transportation of mail by aircraft in interstate air transportation under section 5402(e) and (f) of title 39.]

(a) *TITLE 39.—The United States Postal Service may provide for the transportation of mail by aircraft in air transportation under this chapter and under chapter 54 of title 39.*

(b) Authority to prescribe prices. Except as provided in section 5402 of title 39, on the initiative of the Secretary of Transportation or on petition by the Postal Service or an air carrier, the Secretary shall prescribe and publish—

(1) after notice and an opportunity for a hearing on the record, reasonable prices to be paid by the Postal Service for the transportation of mail by aircraft [in foreign air transportation or] between places in Alaska, the facilities used in and useful for the transportation of mail, and the services related to the transportation of mail for each carrier holding a certificate that authorizes that transportation;

(2) the methods used, whether by aircraft-mile, pound-mile, weight, space, or a combination of those or other methods, to determine the prices for each air carrier or class of air carriers; and

(3) the effective date of the prices.

* * * * *

§ 41902. Schedules for certain transportation of mail

(a) REQUIREMENT.—Except as provided in section 41906 of this title and section 5402 of title 39, an air carrier may transport mail by aircraft [in foreign air transportation or] between places in Alaska only under a schedule designated or required to be established under subsection (c) of this section for the transportation of mail.

(b) STATEMENTS ON PLACES AND SCHEDULES.—Every air carrier shall file with the Secretary of Transportation and the United States Postal Service a statement showing—

- (1) the places between which the carrier is authorized to provide foreign air transportation (other than foreign air transportation of mail);
- (2) the places between which the carrier is authorized to transport mail in Alaska;
- (3) every schedule of aircraft regularly operated by the carrier between places described in clauses (1) and (2) of this subsection and every change in each schedule; and
- (4) for each schedule, the places served by the carrier and the time of arrival at, and departure from, each place.

* * * * *

§ 41903. Duty to provide certain transportation of mail

(a) AIR CARRIERS.—Subject to subsection (b) of this section, an air carrier authorized by its certificate to transport mail by aircraft [in foreign air transportation or] between places in Alaska shall—

- (1) provide facilities and services necessary and adequate to provide that transportation; and
- (2) transport mail between the places authorized in the certificate for transportation of mail when required, and under regulations prescribed, by the United States Postal Service.

(b) MAXIMUM MAIL LOAD.—The Secretary of Transportation may prescribe the maximum mail load for a schedule or for an aircraft or type of aircraft for the transportation of mail by aircraft [in foreign air transportation or] between places in Alaska. If the Postal Service tenders to an air carrier mail exceeding the maximum load for transportation by the carrier under a schedule designated or required to be established for the transportation of mail under section 41902(c) of this title, the carrier, as nearly in accordance with the schedule as the Secretary decides is possible, shall—

* * * * *

§ 41907. Prices for foreign transportation of mail

[(a) LIMITATIONS.]—When air transportation is provided between the United States and a foreign country both by aircraft owned or operated by an air carrier holding a certificate under chapter 411 of this title [49 USCS §§ 41101 et seq.] and by aircraft owned or operated by a foreign air carrier, the United States Postal Service may not pay to or for the account of the foreign air carrier a price for transporting mail by aircraft between the United States and the

foreign country that the Postal Service believes will result (over a reasonable period determined by the Postal Service considering exchange fluctuations and other factors) in the foreign air carrier receiving a price for transporting the mail that is higher than the price—

(1) the government of a foreign country or foreign postal administration pays to air carriers for transporting mail of the foreign country by aircraft between the foreign country and the United States; or

(2) determined by the Postal Service to be comparable to the price the government of a foreign country or foreign postal administration pays to air carriers for transporting mail of the foreign country by aircraft between the foreign country and an intermediate country on the route of the air carrier between the foreign country and the United States.

[(b) CHANGES.—The Secretary of Transportation shall act expeditiously on proposed changes in prices for transporting mail by aircraft in foreign air transportation. When prescribing those prices, the Secretary shall consider—

[(1) the prices paid for transportation of mail under the Universal Postal Union Convention as ratified by the United States Government;

[(2) the price-making elements used by the Universal Postal Union in prescribing its airmail prices; and

[(3) the competitive disadvantage to United States flag air carriers resulting from foreign air carriers receiving Universal Postal Union prices for transporting United States mail and national origin mail of their own countries.]