

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
OFFERED BY MR. MCHUGH**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Postal Modernization Act of 1999”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—REDESIGNATION OF THE BOARD OF GOVERNORS, THE
POSTMASTER GENERAL, AND THE POSTAL RATE COMMISSION

- Sec. 101. Redesignation of the Board of Governors.
- Sec. 102. Redesignation of the Postmaster General.
- Sec. 103. Redesignation of the Postal Rate Commission.
- Sec. 104. Other references.

TITLE II—NEW SYSTEM RELATING TO POSTAL RATES, CLASSES,
AND SERVICES

Subtitle A—In General

- Sec. 201. Establishment.
- Sec. 202. Amendments to chapter 36.
- Sec. 203. Postal Service Competitive Products Fund.
- Sec. 204. USPS Corporation.
- Sec. 205. Postal and nonpostal products.

Subtitle B—Related Provisions

- Sec. 211. Authority for Postal Regulatory Commission to issue subpoenas.
- Sec. 212. Qualification requirements for Commissioners and Directors.
- Sec. 213. Appropriations for the Commission.
- Sec. 214. Change-of-address order involving a commercial mail receiving agency.
- Sec. 215. Rates for mail under former section 4358.

TITLE III—GENERAL AUTHORITY

- Sec. 301. Rulemaking authority.
- Sec. 302. General duties.
- Sec. 303. Employment of postal police officers.

2

- Sec. 304. Date of postmark to be treated as date of appeal in connection with the closing or consolidation of post offices.
- Sec. 305. Unfair competition prohibited.
- Sec. 306. International postal arrangements.
- Sec. 307. Suits by and against the Postal Service.

TITLE IV—MISCELLANEOUS PROVISIONS RELATING TO THE
BUDGET AND APPROPRIATIONS PROCESS

- Sec. 401. Provisions relating to benefits under chapter 81 of title 5, United States Code, for officers and employees of the former Post Office Department.
- Sec. 402. Technical and conforming amendments.

TITLE V—PROVISIONS RELATING TO TRANSPORTATION,
CARRIAGE, OR DELIVERY OF MAIL

- Sec. 501. Obsolete provisions.
- Sec. 502. Expanded contracting authority.
- Sec. 503. Private carriage of letters.
- Sec. 504. Repeal of section 5403.

TITLE VI—STUDIES

- Sec. 601. Employee-management relations.
- Sec. 602. Recommendations on universal postal services.
- Sec. 603. Study on equal application of laws to competitive products.
- Sec. 604. Greater diversity in Postal Service executive and administrative schedule management positions.
- Sec. 605. Plan for assisting displaced workers.
- Sec. 606. Contracts with women, minorities, and small businesses.
- Sec. 607. Definition.

TITLE VII—INSPECTORS GENERAL

- Sec. 701. Inspector General of the Postal Regulatory Commission.
- Sec. 702. Inspector General of the United States Postal Service to be appointed by the President.

TITLE VIII—LAW ENFORCEMENT

Subtitle A—Amendments to Title 39, United States Code

- Sec. 801. Make Federal assault statutes applicable to postal contract employees.
- Sec. 802. Sexually oriented advertising.
- Sec. 803. Allow Postal Service to retain asset forfeiture recoveries.
- Sec. 804. Hazardous matter.

Subtitle B—Other Provisions

- Sec. 811. Stalking Federal officers and employees.
- Sec. 812. Nonmailability of controlled substances.
- Sec. 813. Enhanced penalties.
- Sec. 814. Postal burglary provisions.
- Sec. 815. Mail, money, or other property of the United States.

1 **TITLE I—REDESIGNATION OF**
2 **THE BOARD OF GOVERNORS,**
3 **THE POSTMASTER GENERAL,**
4 **AND THE POSTAL RATE COM-**
5 **MISSION**

6 **SEC. 101. REDESIGNATION OF THE BOARD OF GOVERNORS.**

7 (a) AMENDMENTS TO TITLE 39, UNITED STATES
8 CODE.—Title 39, United States Code, is amended—

9 (1) in sections 102, 202, 204, 205, 402, 414,
10 1005, 3621, 3623, 3624, 3625, 3628, and 3684, in
11 the table of sections for chapter 2 (in the items re-
12 lating to sections 202 and 205, respectively), and in
13 the table of sections for chapter 36 (in the item re-
14 lating to section 3625) by striking “Governors” each
15 place it appears and inserting “Directors”; and

16 (2) in sections 202, 205, and 1002 by striking
17 “Governor” each place it appears and inserting “Di-
18 rector”.

19 (b) AMENDMENT TO THE FEDERAL SALARY ACT OF
20 1967.—Section 225(f)(E) of the Federal Salary Act of
21 1967 (2 U.S.C. 356(E)) is amended by striking “Gov-
22 ernors of the Board of Governors of the United States
23 Postal Service” and inserting “Directors of the Board of
24 Directors of the United States Postal Service”.

1 (c) AMENDMENTS TO TITLE 5, UNITED STATES
2 CODE.—Title 5, United States Code, is amended in sec-
3 tions 8344(e) and 8468(c) by striking “Governor of the
4 Board of Governors of the United States Postal Service”
5 and inserting “Director of the Board of Directors of the
6 United States Postal Service”.

7 (d) AMENDMENTS TO THE ETHICS IN GOVERNMENT
8 ACT OF 1978.—The Ethics in Government Act of 1978
9 (5 U.S.C. App.) is amended—

10 (1) in section 101(f)(6) by striking “Governor
11 of the Board of Governors of the United States
12 Postal Service” and inserting “Director of the Board
13 of Directors of the United States Postal Service”;
14 and

15 (2) in sections 103(c) and 106(b)(6) by striking
16 “Governors of the Board of Governors of the United
17 States Postal Service” and inserting “Directors of
18 the Board of Directors of the United States Postal
19 Service”.

20 (e) AMENDMENTS TO TITLE 18, UNITED STATES
21 CODE.—Title 18, United States Code, is amended in sec-
22 tions 1735 and 3061 by striking “Governors” each place
23 it appears and inserting “Directors”.

1 **SEC. 102. REDESIGNATION OF THE POSTMASTER GENERAL.**

2 (a) AMENDMENTS TO TITLE 39, UNITED STATES
3 CODE.—Section 102 of title 39, United States Code, is
4 amended by striking “and” at the end of paragraph (3),
5 by striking the period at the end of paragraph (4) and
6 inserting “; and”, and by adding at the end the following:

7 “(5) ‘Postmaster General’ means the Post-
8 master General and Chief Executive Officer of the
9 United States Postal Service appointed under sec-
10 tion 202(a) of this title.”.

11 (b) AMENDMENTS TO THE ETHICS IN GOVERNMENT
12 ACT OF 1978.—The Ethics in Government Act of 1978
13 (5 U.S.C. App.) is amended in sections 101(f)(6), 103(c),
14 and 106(b)(6) by striking “Postmaster General” and in-
15 serting “Postmaster General and Chief Executive Officer
16 of the United States Postal Service”.

17 (c) AMENDMENTS TO TITLE 18, UNITED STATES
18 CODE.—Title 18, United States Code, is amended in sec-
19 tions 501, 1703, 1704, and 1709 by striking “Postmaster
20 General” each place it appears and inserting “Postmaster
21 General and Chief Executive Officer of the United States
22 Postal Service”.

23 **SEC. 103. REDESIGNATION OF THE POSTAL RATE COMMIS-**
24 **SION.**

25 (a) AMENDMENTS TO TITLE 39, UNITED STATES
26 CODE.—Title 39, United States Code, is amended—

1 (1) in sections 404, 1001, 1002, 3601, 3602,
2 3603, 3604, 3624, 3625, 3628, and 3661 by strik-
3 ing “Postal Rate Commission” each place it appears
4 and inserting “Postal Regulatory Commission”;

5 (2) in the heading for subchapter I of chapter
6 36 by striking “POSTAL RATE COMMISSION”
7 and inserting “POSTAL REGULATORY COMMIS-
8 SION”; and

9 (3) in the table of sections for chapter 36 by
10 striking the item relating to subchapter I and insert-
11 ing the following:

12 “SUBCHAPTER I—POSTAL RATE COMMISSION”.

13 (b) AMENDMENTS TO TITLE 5, UNITED STATES
14 CODE.—Title 5, United States Code, is amended in sec-
15 tions 104(1), 306(f), 2104(b), 3371(3), 5314 (in the item
16 relating to Chairman, Postal Rate Commission), 5315 (in
17 the item relating to Members, Postal Rate Commission),
18 5514(a)(5)(B), 7342(a)(1)(A), 7511(a)(1)(B)(ii),
19 8402(c)(1), 8423(b)(1)(B), and 8474(c)(4) by striking
20 “Postal Rate Commission” and inserting “Postal Regu-
21 latory Commission”.

22 (c) AMENDMENT TO THE ETHICS IN GOVERNMENT
23 ACT OF 1978.—Section 101(f)(6) of the Ethics in Govern-
24 ment Act of 1978 (5 U.S.C. App.) is amended by striking

1 “Postal Rate Commission” and inserting “Postal Regu-
2 latory Commission”.

3 (d) AMENDMENT TO THE REHABILITATION ACT OF
4 1973.—Section 501(b) of the Rehabilitation Act of 1973
5 (29 U.S.C. 791(b)) is amended by striking “Postal Rate
6 Office” and inserting “Postal Regulatory Commission”.

7 (e) AMENDMENT TO TITLE 44, UNITED STATES
8 CODE.—Section 3502(5) of title 44, United States Code,
9 is amended by striking “Postal Rate Commission” and in-
10 serting “Postal Regulatory Commission”.

11 **SEC. 104. OTHER REFERENCES.**

12 (a) BOARD OF GOVERNORS, ETC.—Whenever ref-
13 erence is made in any provision of law (other than this
14 Act or a provision of law amended by this Act), regulation,
15 rule, document, or other record of the United States to
16 the Board of Governors of the United States Postal Serv-
17 ice (or any Governor or Governors thereof), such reference
18 shall be considered a reference to the Board of Directors
19 of the United States Postal Service (or any Director or
20 Directors thereof, as appropriate).

21 (b) POSTMASTER GENERAL.—Whenever reference is
22 made in any provision of law (other than this Act or a
23 provision of law amended by this Act), regulation, rule,
24 document, or other record of the United States to the
25 Postmaster General, such reference shall be considered a

1 reference to the Postmaster General and Chief Executive
2 Officer of the United States Postal Service.

3 (c) **POSTAL RATE COMMISSION.**—Whenever reference
4 is made in any provision of law (other than this Act or
5 a provision of law amended by this Act), regulation, rule,
6 document, or other record of the United States to the
7 Postal Rate Commission, such reference shall be consid-
8 ered a reference to the Postal Regulatory Commission.

9 **TITLE II—NEW SYSTEM RELAT-**
10 **ING TO POSTAL RATES,**
11 **CLASSES, AND SERVICES**
12 **Subtitle A—In General**

13 **SEC. 201. ESTABLISHMENT.**

14 (a) **IN GENERAL.**—Title 39, United States Code, is
15 amended by adding after chapter 36 the following:

16 **“CHAPTER 37—NEW SYSTEM FOR ESTABLISHING**
17 **POSTAL RATES, CLASSES, AND SERVICES**

“SUBCHAPTER I—DEFINITIONS

“Sec.

“3701. Definitions.

“3702. Free mailing privileges unaffected.

“SUBCHAPTER II—BASELINE RATES

“3721. Determination of baseline rates.

“3722. Provisions relating to reduced-rate categories of mail.

“3723. Automatic termination of any rate case that may be pending.

“SUBCHAPTER III—RATES FOR PRODUCTS IN THE
NONCOMPETITIVE CATEGORY OF MAIL

“3731. Applicability; definitions.

“3732. Limitations on rates.

“3733. Adjustment factor.

“3734. Action of the Board.

“SUBCHAPTER IV—RATES FOR PRODUCTS IN THE COMPETITIVE CATEGORY OF MAIL

- “3741. Applicability; definition.
- “3742. Action of the Board.
- “3743. Provisions applicable to competitive products individually.
- “3744. Provisions applicable to competitive products collectively.
- “3745. Sharing of profits with the Postal Service Fund.

“SUBCHAPTER V—MARKET TESTS OF EXPERIMENTAL PRODUCTS

- “3751. Market tests of experimental noncompetitive products.
- “3752. Market tests of experimental competitive products.
- “3753. Large-scale market tests.
- “3754. Adjustment for inflation.
- “3755. Conversion to permanence.
- “3756. Definition of a small business concern.
- “3757. Effective date.

“SUBCHAPTER VI—PROVISIONS RELATING TO THE INTRODUCTION AND CATEGORIZATION OF PRODUCTS

- “3761. Criteria for the identification of noncompetitive and competitive products.
- “3762. New noncompetitive products.
- “3763. New competitive products.
- “3764. Transfers of products from the noncompetitive category of mail.
- “3765. Transition provisions for new noncompetitive products.

“SUBCHAPTER VII—REPORTING REQUIREMENTS AND RELATED PROVISIONS

- “3771. Annual reports by the Commission.
- “3772. Annual reports to the Commission.
- “3773. Annual determination of compliance.
- “3774. Other reports.

1 “SUBCHAPTER I—DEFINITIONS

2 “§ 3701. Definitions

3 “For purposes of this chapter:

4 “(1) PRODUCT.—The term ‘product’ means a
5 postal product as defined by section 102; such term
6 includes—

7 “(A) a class of mail or type of postal serv-
8 ice;

1 “(B) a subclass and all other first-level
2 subordinate units of a product described in sub-
3 paragraph (A);

4 “(C) a rate category and all other second-
5 level subordinate units of a product described in
6 subparagraph (A); and

7 “(D) a rate cell and all other subordinate
8 units below the second level of subordinate
9 units (as referred to in subparagraph (C)) for
10 which a rate is applied.

11 “(2) RATE.—The term ‘rate’, as used with re-
12 spect to products, includes fees for postal services.

13 “(3) PRODUCT IN THE NONCOMPETITIVE CAT-
14 EGORY OF MAIL.—The term ‘product in the non-
15 competitive category of mail’ or ‘noncompetitive
16 product’ means a product subject to subchapter III.

17 “(4) PRODUCT IN THE COMPETITIVE CATEGORY
18 OF MAIL.—The term ‘product in the competitive cat-
19 egory of mail’ or ‘competitive product’ means a
20 product subject to subchapter IV.

21 “(5) CONSUMER PRICE INDEX.—The term
22 ‘Consumer Price Index’ means the Consumer Price
23 Index for All Urban Consumers published monthly
24 by the Bureau of Labor Statistics of the Depart-
25 ment of Labor.

1 “(6) YEAR.—The term ‘year’ means a fiscal
2 year.

3 **“§ 3702. Free mailing privileges unaffected**

4 “Nothing in this chapter shall be considered to affect
5 any free mailing privileges accorded under section 3217
6 or sections 3403 through 3406.

7 “SUBCHAPTER II—BASELINE RATES

8 **“§ 3721. Determination of baseline rates**

9 “(a) REQUIREMENT THAT A RATEMAKING REQUEST
10 BE MADE.—The Postal Service shall, during the 6-month
11 period beginning on the date of enactment of this chapter,
12 submit a request under section 3622 for a recommended
13 decision by the Postal Regulatory Commission on rates for
14 all products in the noncompetitive category of mail and
15 all products in the competitive category of mail.

16 “(b) POLICIES AND CRITERIA.—The request under
17 subsection (a) shall be made in accordance with the same
18 policies and criteria as would otherwise apply in the case
19 of a request made under section 3622, except that—

20 “(1) in applying section 3621, any determina-
21 tion of total estimated costs of the Postal Service
22 shall be made without including any provision for
23 contingencies; and

24 “(2) to the extent that any class of mail or kind
25 of mailer under section 3626(a) is involved, such re-

1 quest shall be made in conformance with the re-
2 quirements of section 3722.

3 “(c) PROCEDURES FOR CONSIDERATION.—

4 “(1) IN GENERAL.—Except as otherwise pro-
5 vided in paragraph (2), subsection (b), or any other
6 provision of this subchapter, the request made under
7 subsection (a) shall be considered and acted on in
8 the same way as any other request made under sec-
9 tion 3622.

10 “(2) ADDITIONAL AUTHORITY.—For purposes
11 of the request made under subsection (a), section
12 3622(b) shall be applied as if it had been amended
13 by inserting after ‘the policies of this title’ the fol-
14 lowing: ‘(including the second sentence of section
15 3621)’.

16 “(d) EFFECTIVE DATE OF ANY RATES ESTAB-
17 LISHED PURSUANT TO REQUEST.—All rates established
18 pursuant to the request made under subsection (a) shall
19 take effect as of the same date, determined in accordance
20 with applicable provisions of chapter 36, but in no event
21 later than the last day of the 18-month period beginning
22 on the date on which such request is made.

23 “(e) DEFINITION OF BASELINE RATES.—

24 “(1) IN GENERAL.—Subject to section 3722(c),
25 for purposes of this title, the baseline rate for each

1 product shall be the rate in effect for such product
2 as of the applicable date under paragraph (2), irre-
3 spective of whether—

4 “(A) any rate change is in fact requested
5 for such product under subsection (a);

6 “(B) ratemaking proceedings are in fact
7 completed by such date; or

8 “(C) the rate in effect for such product as
9 of such date is a permanent or temporary one.

10 “(2) DATE AS OF WHICH BASELINE RATES ARE
11 TO BE DETERMINED.—The applicable date under
12 this paragraph shall be—

13 “(A) the date as of which any baseline
14 rates, established pursuant to the request made
15 under subsection (a), are to take effect in ac-
16 cordance with subsection (d); or

17 “(B) if subparagraph (A) does not apply
18 (whether because proceedings under chapter 36
19 are not completed before the deadline under
20 subsection (d) or otherwise), the last day of the
21 18-month period referred to in subsection (d).

1 **“§ 3722. Provisions relating to reduced-rate cat-**
2 **egories of mail**

3 “(a) DEFINITIONS.—For purposes of this section, the
4 terms ‘costs attributable’ and ‘regular-rate category’ have
5 the same meanings as are given them by section 3626(a).

6 “(b) REQUIREMENT.—

7 “(1) IN GENERAL.—Notwithstanding any other
8 provision of this title (but subject to paragraph (3)),
9 the rate established under this chapter for a product
10 within a reduced-rate category of mail (as referred
11 to in section 3721(b)(2)), including the baseline rate
12 therefor (if applicable), may not exceed—

13 “(A) in the case of a competitive product,
14 the rate described in paragraph (2); or

15 “(B) in the case of a noncompetitive prod-
16 uct, the lesser of—

17 “(i) the rate described in paragraph
18 (2); or

19 “(ii) the highest rate allowable for
20 such product under subsection (c) or (d) of
21 section 3732, whichever is less.

22 “(2) RATE DESCRIBED.—The rate described in
23 this paragraph is, with respect to any product, the
24 rate that would then be in effect for such product
25 if established under section 3626(a) in conformance
26 with the requirement that—

1 “SUBCHAPTER III—RATES FOR PRODUCTS IN
2 THE NONCOMPETITIVE CATEGORY OF MAIL

3 “§ 3731. **Applicability; definitions**

4 “(a) **APPLICABILITY.**—This subchapter applies with
5 respect to the products in the first, second, third, and
6 fourth baskets of products, respectively.

7 “(b) **DEFINITIONS.**—For purposes of this sub-
8 chapter:

9 “(1) **FIRST BASKET OF PRODUCTS.**—The term
10 ‘first basket of products’ means—

11 “(A) single-piece first-class letters (both
12 domestic and international);

13 “(B) single-piece first-class cards (both do-
14 mestic and international);

15 “(C) single-piece parcels (both domestic
16 and international); and

17 “(D) special services.

18 “(2) **SECOND BASKET OF PRODUCTS.**—The
19 term ‘second basket of products’ means all first-class
20 mail not in the first basket of products.

21 “(3) **THIRD BASKET OF PRODUCTS.**—The term
22 ‘third basket of products’ means periodicals.

23 “(4) **FOURTH BASKET OF PRODUCTS.**—The
24 term ‘fourth basket of products’ means standard
25 mail (except for parcel post).

1 “(c) RULE OF CONSTRUCTION.—

2 “(1) IN GENERAL.—Except as provided in para-
3 graph (2), mail matter referred to in paragraphs (1)
4 through (4) of subsection (b) shall, for purposes of
5 such paragraphs, be considered to have the respec-
6 tive meanings given them under the mail classifica-
7 tion schedule (as defined by section 3623) as of the
8 effective date of this chapter.

9 “(2) UPDATES.—The Postal Regulatory Com-
10 mission shall, whenever any relevant change occurs
11 (whether pursuant to a product transfer under sec-
12 tion 3764, the reclassification of a product under
13 section 3623, or the introduction of a new non-
14 competitive product under section 3762), prescribe
15 new lists of products within the respective baskets
16 described in subsection (b). The revised lists shall
17 indicate how and when any previous lists (including
18 under subsection (b)) are superseded, and shall be
19 published in the Federal Register.

20 **“§ 3732. Limitations on rates**

21 “(a) IN GENERAL.—Except as otherwise provided in
22 this subchapter, the rate in effect for a noncompetitive
23 product may not, during any year in a ratemaking cycle
24 (as defined in section 3733(a))—

1 “(1) be less than the minimum rate required
2 for such product in such year, as determined under
3 subsection (b);

4 “(2) be greater than the maximum rate allow-
5 able for such product in such year, as determined
6 under subsection (c); or

7 “(3) be changed by a percentage that would
8 cause such rate to fall outside of the range allowable
9 for such product in such year, as determined under
10 subsection (d).

11 Nothing in paragraph (3) shall be considered to authorize
12 the establishment of any rate less than the minimum rate
13 required under paragraph (1) or greater than the maxi-
14 mum rate allowable under paragraph (2).

15 “(b) MINIMUM RATE REQUIRED.—

16 “(1) IN GENERAL.—For purposes of this sec-
17 tion, the minimum rate required for a product in a
18 year is the minimum rate which, if kept in effect for
19 such product throughout the year (or, if imple-
20 mented after the start of the year, throughout the
21 remainder of the year, but taking into account all
22 revenues from such product that are attributable to
23 earlier periods in the same year) will be sufficient to
24 ensure that such product will bear the direct and in-

1 direct postal costs attributable to such product for
2 such year.

3 “(2) WAIVER AUTHORITY.—

4 “(A) IN GENERAL.—Paragraph (1) shall
5 not apply to the rates for a product below the
6 first level of subordinate units thereof (as de-
7 scribed in section 3701(1)(B)), if or to the ex-
8 tent that the Postal Regulatory Commission de-
9 termines, in a proceeding conducted under sub-
10 paragraph (B), that the application of such
11 paragraph would be impracticable.

12 “(B) PROCEDURES FOR REVIEW.—In
13 order to carry out this paragraph, the Commis-
14 sion shall, in proceedings to be conducted in ac-
15 cordance with regulations which the Commis-
16 sion shall prescribe, review rates for products—

17 “(i) on its own motion; or

18 “(ii) on the granting by the Commis-
19 sion, in its sole discretion, of a petition for
20 such review filed by an interested person.

21 “(c) MAXIMUM RATE ALLOWABLE.—

22 “(1) IN GENERAL.—For purposes of this sec-
23 tion, the maximum rate allowable for a product in
24 a year shall be equal to the rate determined by in-
25 creasing or decreasing (as appropriate, depending on

1 whether the percentage under subparagraph (B) is
2 positive or negative)—

3 “(A) the maximum rate allowable for such
4 product under this subsection in the year pre-
5 ceding the year for which the maximum rate al-
6 lowable is being determined (disregarding any
7 rounding rules), by

8 “(B) the percentage adjustment applicable
9 for the year for which the maximum rate allow-
10 able is being determined, as determined under
11 paragraph (2).

12 “(2) PERCENTAGE ADJUSTMENT APPLICA-
13 BLE.—For purposes of this section, the percentage
14 adjustment applicable shall, for any year, be equal
15 to—

16 “(A) the change in the Consumer Price
17 Index for such year, adjusted by

18 “(B) the adjustment factor for such year.

19 “(3) DEFINITIONS.—For purposes of this sec-
20 tion:

21 “(A) CHANGE IN THE CONSUMER PRICE
22 INDEX.—The change in the Consumer Price
23 Index for a year shall be equal to the percent-
24 age (expressed as a positive value, a negative
25 value, or zero, as the case may be) by which the

1 Consumer Price Index for the preceding year
2 differs from the Consumer Price Index for the
3 second preceding year.

4 “(B) CONSUMER PRICE INDEX FOR A
5 YEAR.—The Consumer Price Index for a year is
6 the average of the Consumer Price Index for
7 the 12-month period ending on June 30th of
8 such year.

9 “(C) ADJUSTMENT FACTOR.—The adjust-
10 ment factor for any year shall be determined in
11 accordance with section 3733.

12 “(4) SPECIAL RULE.—For purposes of deter-
13 mining the maximum rate allowable for any particu-
14 lar product during the first year of the first rate-
15 making cycle, paragraph (1)(A) shall be applied by
16 substituting ‘the baseline rate for such product’ for
17 ‘the maximum rate allowable for such product under
18 this subsection in the year preceding the year for
19 which the maximum rate allowable is being deter-
20 mined (disregarding any rounding rules)’.

21 “(5) ROUNDING RULE.—The maximum rate al-
22 lowable for a product within the first basket of prod-
23 ucts shall be equal to the rate determined for such
24 product under this subsection (disregarding this

1 paragraph), rounded to the nearest cent (rounding
2 $\frac{1}{2}$ of a cent to the next higher cent).

3 “(d) RANGE ALLOWABLE.—For purposes of this sec-
4 tion, the range allowable for a product in any year is the
5 range delimited by—

6 “(1) a maximum rate equal to the rate deter-
7 mined by increasing or decreasing (as appropriate,
8 depending on whether the percentage under sub-
9 paragraph (B) is positive or negative)—

10 “(A) the rate last in effect for such prod-
11 uct before the start of such year, by

12 “(B) the percentage equal to the percent-
13 age adjustment applicable with respect to such
14 product for such year, plus 2 percent; and

15 “(2) a minimum rate equal to the rate deter-
16 mined by increasing or decreasing (as appropriate,
17 depending on whether the percentage under sub-
18 paragraph (B) is positive or negative)—

19 “(A) the rate last in effect for such prod-
20 uct before the start of such year, by

21 “(B) the percentage equal to the percent-
22 age adjustment applicable with respect to such
23 product for such year, minus 2 percent.

24 For purposes of applying paragraphs (1)(B) and (2)(B)
25 in any year, the Board of Directors may, in a manner con-

1 sistent with the policies of this title and the requirements
2 of this subchapter, establish a single percentage which
3 shall be lower than, and which shall be substituted for,
4 the percentage adjustment applicable that would otherwise
5 be applied under both of those paragraphs in such year.
6 Such single percentage shall be the same for every product
7 in the noncompetitive category.

8 **“§ 3733. Adjustment factor**

9 “(a) DEFINITION OF RATEMAKING CYCLE.—

10 “(1) IN GENERAL.—For purposes of this title,
11 the term ‘ratemaking cycle’ means—

12 “(A) the 5-year period beginning on the
13 first day of the second year beginning after the
14 date as of which the baseline rates are deter-
15 mined under section 3721(e)(2); and

16 “(B) each 5-year period beginning on the
17 day after the last day of the immediately pre-
18 ceding 5-year period under this subsection.

19 “(2) EARLIER COMMENCEMENT DATE.—The
20 Postal Regulatory Commission may advance the
21 commencement date of the first ratemaking cycle to
22 the date which occurs 1 year earlier than the date
23 that would otherwise apply under subparagraph
24 (1)(A), but only if that earlier date does not precede

1 the date as of which all requirements of this section
2 have been completed with respect to such cycle.

3 “(b) PROCEDURES FOR DETERMINING ADJUSTMENT
4 FACTOR.—

5 “(1) COMMENCEMENT OF PROCEEDINGS.—

6 “(A) IN GENERAL.—Except as provided in
7 subparagraph (B), the Postal Regulatory Com-
8 mission shall, beginning in September of the
9 second year before the start of each ratemaking
10 cycle, provide the opportunity for a hearing on
11 the record under sections 556 and 557 of title
12 5 to the Postal Service, users of the mails, and
13 an officer of the Commission who shall be re-
14 quired to represent the interests of the general
15 public, with respect to the adjustment factor to
16 be established for the upcoming ratemaking
17 cycle.

18 “(B) EXCEPTION.—For purposes of the
19 first hearing under this subsection, proceedings
20 shall be commenced during the second month
21 beginning on or after the date as of which the
22 baseline rates are determined under section
23 3721(e)(2).

24 “(2) RULES OF PROCEEDINGS.—In order to
25 conduct its proceedings with utmost expedition con-

1 sistent with procedural fairness to the parties, the
2 Commission may (without limitation) adopt rules
3 which provide for—

4 “(A) the advance submission of written di-
5 rect testimony;

6 “(B) the conduct of prehearing conferences
7 to define issues, and for other purposes to in-
8 sure orderly and expeditious proceedings;

9 “(C) discovery both from the Postal Serv-
10 ice and the parties to the proceedings;

11 “(D) limitation of testimony; and

12 “(E) the conduct of the entire proceedings
13 off the record with the consent of the parties.

14 “(3) PRINTING AND NOTICE REQUIREMENTS.—
15 The Commission’s decision and the record of the
16 Commission’s hearings shall be made generally avail-
17 able at the time the decision is issued and shall be
18 printed and made available for sale by the Public
19 Printer within 10 days following the day the decision
20 is issued.

21 “(4) TIMING.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), all actions required of the
24 Commission under this section, including those
25 required under paragraph (3), shall be com-

1 pleted by the end of the year preceding the
2 commencement of the ratemaking cycle to
3 which the decision relates.

4 “(B) EXCEPTION.—In any case in which
5 the Commission determines that the Postal
6 Service has unreasonably delayed any proceed-
7 ings under this section by failing to respond
8 within a reasonable time to any lawful order of
9 the Commission, the Commission may extend
10 the deadline described in subparagraph (A) by
11 one day for each day of such delay.

12 “(C) EFFECT OF DELAY ON RATEMAKING
13 AUTHORITY.—No rate change for any non-
14 competitive product may take effect during any
15 period of delay. For purposes of the preceding
16 sentence, the term ‘period of delay’ means, in
17 the circumstance described in subparagraph
18 (B), the period beginning on the day following
19 the original deadline (as described in subpara-
20 graph (A)) and ending on the date of the new
21 deadline (as determined under subparagraph
22 (B)).

23 “(c) REQUIREMENTS RELATING TO THE ESTABLISH-
24 MENT OF ADJUSTMENT FACTOR.—

1 “(1) IN GENERAL.—An adjustment factor shall
2 be established in accordance with—

3 “(A) the policies of this title; and

4 “(B) the best evidence of likely Postal
5 Service productivity, and of specific sources of
6 cost savings to the Postal Service, during the
7 ratemaking cycle to which an adjustment factor
8 is to apply.

9 “(2) REQUIREMENT THAT ADJUSTMENT FAC-
10 TOR BE A NEGATIVE VALUE OR ZERO.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), an adjustment factor may be
13 no greater than zero.

14 “(B) EXCEPTIONS.—A positive adjustment
15 factor may be established only upon a written
16 determination by the Postal Regulatory Com-
17 mission that an exception to subparagraph (A)
18 is necessary—

19 “(i) because of any new and signifi-
20 cant statutorily imposed funding obliga-
21 tions not fully funded through appropria-
22 tions; or

23 “(ii) because postal revenues during
24 the upcoming ratemaking cycle would oth-
25 erwise be insufficient to enable the Postal

1 Service, under best practices of honest, ef-
2 ficient, and economical management, to
3 maintain and continue the development of
4 postal services of the kind and quality
5 adapted to the needs of the United States.

6 A determination under clause (ii) shall take into
7 account costs anticipated by the Postal Service
8 for the period of time involved, such as wages,
9 benefits, and transportation costs.

10 “(d) SAME ADJUSTMENT FACTOR TO BE UNI-
11 FORMLY APPLIED TO ALL PRODUCTS.—For purposes of
12 each year in a ratemaking cycle, the same adjustment fac-
13 tor shall apply—

14 “(1) to all baskets under section 3731; and

15 “(2) to all products within each such basket.

16 “(e) HOW AN ADJUSTMENT FACTOR IS TO BE EX-
17 PRESSED AND APPLIED.—

18 “(1) HOW AN ADJUSTMENT FACTOR IS TO BE
19 EXPRESSED.—An adjustment factor established
20 under this section shall be expressed as a percent-
21 age.

22 “(2) HOW AN ADJUSTMENT FACTOR IS TO BE
23 APPLIED.—To adjust a change in the Consumer
24 Price Index by an adjustment factor, the magnitude
25 of the adjustment factor shall—

1 “(A) if the adjustment factor is a positive
2 value, be added to the change in the Consumer
3 Price Index; or

4 “(B) if the adjustment factor is a negative
5 value, be subtracted from the change in the
6 Consumer Price Index.

7 “(f) EXIGENT CIRCUMSTANCES.—

8 “(1) IN GENERAL.—Notwithstanding the re-
9 quirement under subsection (d) that the same ad-
10 justment factor be applied throughout the same
11 ratemaking cycle, upon a majority vote of the mem-
12 bers of the Board of Directors then holding office,
13 the Postal Service may request the Postal Regu-
14 latory Commission to render a decision on changing
15 the adjustment factor to be applied during the then
16 current ratemaking cycle.

17 “(2) CONDITIONS.—A request made under
18 paragraph (1) may be granted only upon a written
19 determination by the Commission that the change
20 requested is justified by one or more of the same
21 reasons as would justify the establishment of a posi-
22 tive adjustment factor (as set forth in subsection
23 (c)(2)(B)).

24 “(3) EFFECT; DURATION.—A change granted
25 under this subsection—

1 “(A) shall supersede the adjustment factor
2 that would otherwise apply under this section
3 (with appropriate changes to the respective lim-
4 itations under paragraphs (2) and (3) of section
5 3732(a)); and

6 “(B) shall remain in effect for the rest of
7 the ratemaking cycle involved, subject to para-
8 graph (5).

9 “(4) EXPEDITED CONSIDERATION.—A request
10 made under paragraph (1) shall be acted on under
11 this section in the same manner as if initiated under
12 subsection (b)(1), except that a decision on any such
13 request shall be rendered not later than 6 months
14 after the date on which the request is made.

15 “(5) FREQUENCY.—Nothing in this section
16 shall be considered to limit the number of times this
17 subsection may be invoked during a ratemaking
18 cycle.

19 “(g) POSTAL REGULATORY COMMISSION NOT TO
20 INTERFERE WITH COLLECTIVE BARGAINING.—It is the
21 sense of the Congress that nothing in this section should
22 restrict, expand, or otherwise affect any of the rights,
23 privileges, or benefits of either employees of the United
24 States Postal Service, or labor organizations representing
25 employees of the United States Postal Service, under

1 chapter 12 of this title, the National Labor Relations Act,
2 any handbook or manual affecting employee labor rela-
3 tions within the United States Postal Service, or any col-
4 lective bargaining agreement.

5 **“§ 3734. Action of the Board**

6 “(a) AUTHORITY TO ESTABLISH RATES.—The
7 Board of Directors, with the written concurrence of a ma-
8 jority of all of the members of the Board then holding
9 office, shall establish rates for products in the noncompeti-
10 tive category of mail in accordance with the requirements
11 of this subchapter and the policies of this title.

12 “(b) PROCEDURES.—

13 “(1) IN GENERAL.—Rates shall be established
14 in writing, complete with a statement of explanation
15 and justification.

16 “(2) PUBLICATION.—The Board shall cause
17 each decision under this section (complete with the
18 accompanying statement) and the record of the
19 Board’s proceedings to be published in the Federal
20 Register at least 45 days before the rate or rates to
21 which they pertain are to take effect.

22 “(c) LIMITATIONS ON AUTHORITY.—

23 “(1) IN GENERAL.—Except as provided in para-
24 graph (2)—

1 “(A) FREQUENCY.—Ratemaking authority
2 under this section may not be exercised more
3 than once for purposes of any year.

4 “(B) UNIFORM EFFECTIVE DATE.—All
5 changes in rates pursuant to this section in a
6 year shall take effect on the same date.

7 “(2) EXCEPTION FOR CHANGE DUE TO EXI-
8 GENT CIRCUMSTANCES.—

9 “(A) IN GENERAL.—If the maximum rate
10 allowable for a product in a year changes pur-
11 suant to a request granted under section
12 3733(f), then, in the event that ratemaking au-
13 thority under this section was previously exer-
14 cised with respect to such product for such
15 year, such rate may be modified, not more than
16 once more in such year, based on the change in
17 the maximum rate allowable (and the cor-
18 responding change in the range allowable).

19 “(B) UNIFORM EFFECTIVE DATE.—All
20 changes in rates pursuant to this paragraph
21 shall, to the extent based on the same set of
22 changes (as referred to in subparagraph (A)),
23 take effect beginning on the same date.

1 “SUBCHAPTER IV—RATES FOR PRODUCTS IN
2 THE COMPETITIVE CATEGORY OF MAIL

3 **“§ 3741. Applicability; definition**

4 “(a) APPLICABILITY.—This subchapter applies with
5 respect to—

6 “(1) priority mail;

7 “(2) expedited mail;

8 “(3) mailgrams;

9 “(4) international mail; and

10 “(5) parcel post;

11 except that this subchapter does not apply with respect
12 to any product then currently in the noncompetitive cat-
13 egory of mail.

14 “(b) DEFINITION.—For purposes of this subchapter,
15 the term ‘costs attributable’, as used with respect to a
16 product, means the direct and indirect postal costs attrib-
17 utable to such product.

18 “(c) RULE OF CONSTRUCTION.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), mail matter referred to in paragraphs (1)
21 through (5) of subsection (a) shall, for purposes of
22 such paragraphs, be considered to have the respec-
23 tive meanings given them under the mail classifica-
24 tion schedule (as defined by section 3623) as of the
25 effective date of this chapter.

1 “(2) UPDATES.—The Postal Regulatory Com-
2 mission shall, whenever any relevant change occurs
3 (whether pursuant to a product transfer under sec-
4 tion 3764 or an action taken under section 3763),
5 prescribe new lists of the products to which this sub-
6 chapter applies. The revised lists shall indicate how
7 and when any previous lists (including under sub-
8 section (a)) are superseded, and shall be published
9 in the Federal Register.

10 **“§ 3742. Action of the Board**

11 “(a) AUTHORITY TO ESTABLISH RATES.—The
12 Board of Directors, with the written concurrence of a ma-
13 jority of all of the members of the Board then holding
14 office, shall establish rates for products in the competitive
15 category of mail in accordance with the requirements of
16 this subchapter and the policies of this title.

17 “(b) PROCEDURES.—Section 3734(b) shall apply
18 with respect to rates and decisions under this section, ex-
19 cept that for purposes of this section, section 3734(b) shall
20 be applied by substituting ‘by such date before the effec-
21 tive date of any new rates as the Board considers appro-
22 priate’ for ‘at least 45 days before the rate or rates to
23 which they pertain are to take effect’.

24 “(c) EFFECTIVE DATE.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), the ratemaking provisions of this sub-
3 chapter shall be effective beginning with the rates to
4 be established for the first year beginning on or
5 after the date as of which the baseline rates are de-
6 termined under section 3721(e)(2).

7 “(2) EXCEPTION.—

8 “(A) RATEMAKING AUTHORITY IMME-
9 DIATELY AVAILABLE.—The ratemaking provi-
10 sions of this subchapter shall, with respect to
11 all international mail as to which this sub-
12 chapter applies, be effective beginning on the
13 date as of which the baseline rates are deter-
14 mined under section 3721(e)(2), subject (until
15 the entirety of this subchapter becomes effective
16 in accordance with paragraph (1)) only to the
17 requirement under section 3743(a).

18 “(B) SPECIAL RULE TO ACCOUNT FOR ANY
19 SHORTFALL.—If a rate is established for any
20 international mail pursuant to subparagraph
21 (A) in the year before the first year referred to
22 in paragraph (1), and the requirement under
23 section 3743(a) is not met by the international
24 postal product involved during that portion of
25 the year (before such first year) during which

1 such rate under subparagraph (A) is in effect,
2 then, the shortfall shall be made up in accord-
3 ance with section 3744(c)(1), treating such
4 shortfall as if it had occurred in the first year
5 referred to in paragraph (1).

6 **“§ 3743. Provisions applicable to competitive prod-**
7 **ucts individually**

8 “(a) IN GENERAL.—Rates for products in the com-
9 petitive category of mail shall be established in a manner
10 such that each such product shall, in each year, bear the
11 costs attributable to such product for such year. The same
12 waiver authority described in section 3732(b)(2) shall be
13 available for purposes of the requirement under the pre-
14 ceding sentence.

15 “(b) TREATMENT OF SHORTFALLS.—If revenues de-
16 rived from a competitive product in any year are not suffi-
17 cient to meet the costs attributable to such product for
18 such year, the shortfall shall be made up in accordance
19 with section 3744(c)(1).

20 “(c) MANDATORY DISCONTINUANCE OF LOSS-MAK-
21 ING PRODUCTS.—

22 “(1) IN GENERAL.—If a competitive product
23 persistently fails to substantially cover the costs at-
24 tributable to such product, the Postal Regulatory
25 Commission may, in accordance with procedures

1 which the Commission shall prescribe and after con-
2 sidering all relevant circumstances, order the Postal
3 Service to discontinue such product permanently.

4 “(2) PROCEDURES.—The procedures prescribed
5 to carry out this subsection—

6 “(A) shall provide the opportunity for a
7 hearing on the record under sections 556 and
8 557 of title 5 to the Postal Service, users of the
9 mail, and an officer of the Commission who
10 shall be required to represent the interests of
11 the general public;

12 “(B) may include rules of proceedings that
13 provide for any procedure or other matter listed
14 under section 3733(b)(2); and

15 “(C) shall require that any final decision
16 be accompanied by a statement setting forth
17 the reasons therefor.

18 “(3) PERSISTENTLY AND SUBSTANTIALLY.—
19 The Commission shall by regulation establish the
20 criteria to be used in making any determination
21 under this subsection as to whether a product per-
22 sistently fails to substantially cover the costs attrib-
23 utable to such product.

1 **“§ 3744. Provisions applicable to competitive prod-**
2 **ucts collectively**

3 “(a) COST-COVERAGE REQUIREMENT.—

4 “(1) IN GENERAL.—Rates for competitive prod-
5 ucts shall be established in a manner such that the
6 cost-coverage ratio for all competitive products (col-
7 lectively) shall, for each year to which this sub-
8 chapter applies (as referred to in section 3742(c)),
9 be at least equal to the cost-coverage ratio for such
10 year for all competitive and noncompetitive products
11 (collectively).

12 “(2) COST-COVERAGE RATIO.—For purposes of
13 this section, the term ‘cost-coverage ratio’ means,
14 for the products and year involved, the ratio that—

15 “(A) total revenues from those products in
16 such year, bears to

17 “(B) total costs attributable to those prod-
18 ucts in such year.

19 “(b) ADJUSTMENT FOR SPECIAL CIRCUMSTANCES.—

20 “(1) IN GENERAL.—The Postal Regulatory
21 Commission shall, by rule, and in order to ensure
22 that ratios under this section appropriately com-
23 pensate for any significant and objective differences
24 in the nature and composition of costs attributable
25 to competitive and noncompetitive products, respec-
26 tively, provide for the exclusion of such costs attrib-

1 utable as the Commission considers to be uniquely
2 or disproportionately associated with any particular
3 product or products or with either category of prod-
4 ucts.

5 “(2) COSTS TO BE CONSIDERED.—In making
6 any decision under this subsection, the Commission
7 shall take into consideration differences in purchased
8 transportation costs, operational costs attributable
9 to a single product, and such other factors as the
10 Commission considers appropriate.

11 “(c) SPECIAL RULES TO MAKE UP FOR CERTAIN
12 SHORTFALLS.—

13 “(1) SUBTRACTION TO MAKE UP FOR ANY
14 SHORTFALL DESCRIBED IN SECTION 3743(b).—In
15 any year in which a shortfall described in section
16 3743(b) occurs in the case of any competitive prod-
17 uct, an amount equal to the amount of such shortfall
18 shall, for purposes of determining whether the re-
19 quirement under subsection (a) has been satisfied in
20 such year, be subtracted from total revenues derived
21 from all competitive products (collectively) in such
22 year. Nothing in the preceding sentence shall be con-
23 sidered to permit or require that the same amount
24 be concurrently subtracted from total revenues de-

1 rived from competitive and noncompetitive products
2 (collectively).

3 “(2) SUBTRACTION TO MAKE UP FOR ANY
4 SHORTFALL IN CONTRIBUTIONS TOWARD INSTITU-
5 TIONAL COSTS IN A PREVIOUS YEAR.—If, in any
6 year, the requirement under subsection (a) is not
7 met (determined applying the provisions of sub-
8 section (b), paragraph (1), and this paragraph based
9 on any failure to satisfy subsection (a) in the pre-
10 vious year), the difference between the total revenues
11 considered to have been derived from competitive
12 products in the year involved (determined applying
13 such provisions), and the minimum amount of total
14 revenues from competitive products which would
15 have been required in order to satisfy subsection (a)
16 (determined applying such provisions), shall, for pur-
17 poses of determining whether the requirement under
18 subsection (a) is met in the following year, be sub-
19 tracted from total revenues derived from competitive
20 products (collectively) in such following year. Noth-
21 ing in the preceding sentence shall be considered to
22 permit or require that the same amount be concur-
23 rently subtracted from total revenues derived from
24 competitive and noncompetitive products (collec-
25 tively).

1 “(d) PHASEIN AUTHORITY.—If necessary in order to
2 afford the Postal Service an opportunity to increase effi-
3 ciency to competitive market levels, the Postal Regulatory
4 Commission may, by written determination made as part
5 of its first adjustment factor case under section 3733, pro-
6 vide for the phasein of subsection (a) over the course of
7 the first ratemaking cycle. If the Commission grants relief
8 under this subsection, it shall annually review the continu-
9 ing need for such relief and, based on its review, may pro-
10 vide for the appropriate modification thereof for the suc-
11 ceeding year in such cycle.

12 **“§ 3745. Sharing of profits with the Postal Service**

13 **Fund**

14 “(a) IN GENERAL.—If the Postal Service realizes a
15 profit under this subchapter in any year described in sub-
16 section (c), the Postal Service shall transfer from the Post-
17 al Service Competitive Products Fund to the Postal Serv-
18 ice Fund an amount equal to 50 percent of the total profit
19 under this subchapter realized in such year.

20 “(b) PROFIT UNDER THIS SUBCHAPTER DE-
21 FINED.—For purposes of this section, the amount of prof-
22 it under this subchapter realized by the Postal Service in
23 a year shall be equal to the amount by which—

24 “(1) the amount equal to total revenues derived
25 by the Postal Service from competitive products in

1 such year (determined applying subsection (c) of sec-
2 tion 3744, but disregarding subsections (b) and (d)
3 of such section), exceeds (if at all)

4 “(2) the minimum amount of total revenues
5 from competitive products which would have been re-
6 quired in order to satisfy section 3744(a) in such
7 year (determined in the same manner as under sec-
8 tion 3744(c)(2), taking into account section
9 3744(d)).

10 “(c) YEARS TO WHICH THIS SECTION APPLIES.—

11 This section applies with respect to each year throughout
12 which a corporation under section 2012 is in existence.

13 “(d) DEADLINE FOR MAKING A TRANSFER.—All
14 amounts which under subsection (a) are required to be
15 transferred with respect to any profits realized in a year
16 shall be made before the January 1st next occurring after
17 the end of such year.

18 “SUBCHAPTER V—MARKET TESTS OF

19 EXPERIMENTAL PRODUCTS

20 “§ 3751. Market tests of experimental noncompetitive
21 products

22 “(a) AUTHORITY.—

23 “(1) IN GENERAL.—The Postal Service may
24 conduct market tests of experimental noncompetitive
25 products in accordance with this section.

1 “(2) PROVISIONS WAIVED.—A product shall
2 not, while it is being tested under this section, be
3 subject to the requirements of section 3623 (relating
4 to mail classification), section 3732 (relating to limi-
5 tations on rates), or section 3762 (relating to new
6 noncompetitive products).

7 “(b) CONDITIONS.—A product may not be tested
8 under this section unless it satisfies each of the following:

9 “(1) SIGNIFICANTLY DIFFERENT PRODUCT.—
10 The product is, from the viewpoint of mail users,
11 significantly different from all products offered by
12 the Postal Service within the 2-year period preceding
13 the start of the test.

14 “(2) DOLLAR-AMOUNT LIMITATION.—The total
15 revenues that are anticipated, or in fact received, by
16 the Postal Service from such product do not exceed
17 \$10,000,000 in any year, subject to section 3754.

18 “(3) MARKET DISRUPTION.—The introduction
19 or continued offering of the product will not create
20 an unfair or otherwise inappropriate competitive ad-
21 vantage for the Postal Service, particularly in regard
22 to small business concerns (as defined under section
23 3756).

1 “(4) CORRECT CATEGORIZATION.—The testing
2 of the product under this section is consistent with
3 the criteria under section 3761(b)(2).

4 “(c) NOTICE.—At least 30 days before initiating a
5 market test under this section, the Postal Service shall
6 file with the Postal Regulatory Commission and publish
7 in the Federal Register a notice setting out the basis for
8 the Postal Service’s determination that the market test is
9 covered by this section and describing the nature and
10 scope of the market test.

11 “(d) DURATION.—

12 “(1) IN GENERAL.—A market test of a product
13 under this section may be conducted over a period
14 of not to exceed 24 months.

15 “(2) EXTENSION AUTHORITY.—If necessary in
16 order to determine the feasibility or desirability of a
17 product being tested under this section, the Postal
18 Regulatory Commission may, upon written applica-
19 tion of the Postal Service (filed not later than 60
20 days before the date as of which the testing of such
21 product would otherwise be scheduled to terminate
22 under paragraph (1)), extend the testing of such
23 product for not to exceed an additional 12 months.

24 “(e) CANCELLATION.—If the Postal Regulatory Com-
25 mission at any time determines that a market test under

1 this section fails, with respect to any particular product,
2 to meet one or more of the conditions set forth in sub-
3 section (b), it may issue any order that would be allowable
4 under section 3662(c)(6). A determination under this sub-
5 section shall be made in accordance with such procedures
6 as the Commission shall by regulation prescribe.

7 **“§ 3752. Market tests of experimental competitive**
8 **products**

9 “(a) AUTHORITY.—

10 “(1) IN GENERAL.—The Postal Service may
11 conduct market tests of experimental competitive
12 products in accordance with this section.

13 “(2) PROVISIONS WAIVED.—Any noncompliance
14 with section 3743(a) (relating to costs-attributable
15 requirement) on the part of a product shall not, if
16 it occurs while such product is being tested under
17 this section, be taken into account for purposes of
18 any sanction or other action that might otherwise be
19 permitted or required under any of the following:

20 “(A) Section 3662(c)(3) (relating to order-
21 ing the adjustment of rates to lawful levels pur-
22 suant to a rate complaint).

23 “(B) Section 3743(c) (relating to manda-
24 tory discontinuance of loss-making products).

1 “(C) Section 3773(e) (relating to use of
2 profits).

3 A product shall not, while it is being tested under
4 this section, be subject to the requirements of sec-
5 tion 3763 (relating to new competitive products).

6 “(3) PROVISIONS NOT WAIVED.—Nothing in
7 this section shall be considered to permit or require
8 the exclusion of any costs or revenues that are at-
9 tributable to a product that is being tested under
10 this section from any determination under section
11 3744 (relating to provisions applicable to competitive
12 products collectively).

13 “(b) CONDITIONS.—A product may not be tested
14 under this section unless it satisfies each of the following:

15 “(1) SIGNIFICANTLY DIFFERENT PRODUCT.—
16 The product is, from the viewpoint of mail users,
17 significantly different from all products offered by
18 the Postal Service within the 2-year period preceding
19 the start of the test.

20 “(2) DOLLAR-AMOUNT LIMITATION.—The total
21 revenues that are anticipated, or in fact received, by
22 the Postal Service from such product do not exceed
23 \$10,000,000 in any year, subject to section 3754.

24 “(3) MARKET DISRUPTION.—The introduction
25 or continued offering of the product will not create

1 an unfair or otherwise inappropriate competitive ad-
2 vantage for the Postal Service, particularly in regard
3 to small business concerns (as defined under section
4 3756).

5 “(4) CORRECT CATEGORIZATION.—The testing
6 of the product under this section is consistent with
7 the criteria under section 3761(b)(2).

8 “(c) NOTICE.—

9 “(1) IN GENERAL.—At least 30 days before ini-
10 tiating a market test under this section, the Postal
11 Service shall file with the Postal Regulatory Com-
12 mission and publish in the Federal Register a notice
13 setting out the basis for the Postal Service’s deter-
14 mination that the market test is covered by this sec-
15 tion and describing the nature and scope of the mar-
16 ket test.

17 “(2) SAFEGUARDS.—The provisions of section
18 3604(g) shall be available with respect to any infor-
19 mation required to be filed under paragraph (1) to
20 the same extent and in the same manner as in the
21 case of any matter described in section 3604(g)(1).
22 Nothing in paragraph (1) shall be considered to per-
23 mit or require the publication of any information as
24 to which confidential treatment is accorded under

1 the preceding sentence (subject to the same excep-
2 tion as set forth in section 3604(g)(3)).

3 “(d) DURATION.—

4 “(1) IN GENERAL.—A market test of a product
5 under this section may be conducted over a period
6 of not to exceed 24 months.

7 “(2) EXTENSION AUTHORITY.—If necessary in
8 order to determine the feasibility or desirability of a
9 product being tested under this section, the Postal
10 Regulatory Commission may, upon written applica-
11 tion of the Postal Service (filed not later than 60
12 days before the date as of which the testing of such
13 product would otherwise be scheduled to terminate
14 under paragraph (1)), extend the testing of such
15 product for not to exceed an additional 12 months.

16 “(e) CANCELLATION.—If the Postal Regulatory Com-
17 mission at any time determines that a market test under
18 this section fails, with respect to any particular product,
19 to meet one or more of the conditions set forth in sub-
20 section (b), it may issue any order that would be allowable
21 under section 3662(c)(6). A determination under this sub-
22 section shall be made in accordance with such procedures
23 as the Commission shall by regulation prescribe.

1 **“§ 3753. Large-scale market tests**

2 “(a) **AUTHORITY.**—The Postal Service may, in ac-
3 cordance with this section, conduct—

4 “(1) market tests involving any experimental
5 noncompetitive product that would be allowable
6 under section 3751 but for subsection (b)(2) thereof;
7 and

8 “(2) market tests involving any experimental
9 competitive product that would be allowable under
10 section 3752 but for subsection (b)(2) thereof.

11 “(b) **CONDITION.**—Notwithstanding any other provi-
12 sion of this section, a product may not be tested under
13 this section unless the total revenues that are anticipated,
14 or in fact received, by the Postal Service from such prod-
15 uct do not exceed \$100,000,000 in any year, subject to
16 section 3754.

17 “(c) **PROVISIONS WAIVED.**—Section 3751(a)(2) shall
18 apply with respect to an experimental noncompetitive
19 product being tested under this section, and section
20 3752(a)(2) shall apply with respect to an experimental
21 competitive product being tested under this section, as if
22 such test were instead being conducted section 3751 or
23 3752, as the case may be.

24 “(d) **REGULATIONS.**—The Postal Regulatory Com-
25 mission shall by regulation establish rules for the conduct
26 of market tests under this section, including rules for the

1 termination of any such test. In adopting rules under this
2 subsection, the Commission shall consider such matters
3 as—

4 “(1) the Postal Service’s interest in the develop-
5 ment and testing of new products with a minimum
6 of regulatory impediments; and

7 “(2) the public interest in preventing unfair or
8 otherwise inappropriate competition.

9 “(e) DURATION.—

10 “(1) IN GENERAL.—A market test of a product
11 under this section may be conducted over a period
12 of not to exceed 24 months.

13 “(2) EXTENSION AUTHORITY.—If necessary in
14 order to determine the feasibility or desirability of a
15 product being tested under this section, the Postal
16 Regulatory Commission may, upon written applica-
17 tion of the Postal Service (filed not later than 60
18 days before the date as of which the testing of such
19 product would otherwise be scheduled to terminate
20 under paragraph (1)), extend the testing of such
21 product for not to exceed an additional 12 months.

22 **“§ 3754. Adjustment for inflation**

23 “‘In the case of a year following the first year in which
24 any testing under this subchapter is permitted, the dollar
25 amount contained in sections 3751(b)(2), 3752(b)(2), and

1 3753(b), respectively, shall be adjusted at the same time
2 and by the same percentage adjustment as the maximum
3 rates allowable for noncompetitive products are adjusted
4 pursuant to 3732(c) (but deeming the adjustment factor
5 under paragraph (2)(B) thereof to be zero for purposes
6 of this section).

7 **“§ 3755. Conversion to permanence**

8 “A request to have an experimental product under
9 this chapter converted to a permanent one—

10 “(1) shall be made and acted on in conformance
11 with applicable provisions of subchapter VI; and

12 “(2) shall be made by the Postal Service.

13 **“§ 3756. Definition of a small business concern**

14 “The criteria used in defining small business con-
15 cerns or otherwise categorizing business concerns as small
16 business concerns shall, for purposes of sections 3751 and
17 3752, be established by the Postal Regulatory Commission
18 in conformance with the requirements of section 3 of the
19 Small Business Act.

20 **“§ 3757. Effective date**

21 “Market tests under this subchapter may be con-
22 ducted in any year beginning with the first year beginning
23 on or after the date as of which the baseline rates are
24 determined under section 3721(e)(2).

1 “SUBCHAPTER VI—PROVISIONS RELATING TO
2 THE INTRODUCTION AND CATEGORIZATION
3 OF PRODUCTS

4 “§ 3761. **Criteria for the identification of noncompeti-**
5 **tive and competitive products**

6 “(a) IN GENERAL.—Except as provided in sub-
7 chapter V, no product may be offered until such product
8 has been assigned to the noncompetitive or competitive
9 category of mail, whichever is appropriate (and, if a non-
10 competitive product, its proper basket).

11 “(b) CRITERIA.—

12 “(1) IN GENERAL.—Determinations as to the
13 category of mail to which any particular product
14 should be assigned (whether in connection with a
15 new product under section 3762 or 3763, the pro-
16 posed transfer of a product under section 3764, or
17 the proposed reclassification of an existing product
18 under subchapter II of chapter 36) shall be made in
19 conformance with paragraph (2).

20 “(2) CHARACTERISTICS BY CATEGORY.—The
21 noncompetitive category of products shall embrace
22 all products in the sale of which the Postal Service
23 exercises sufficient market power that it can effec-
24 tively set the price of such product substantially
25 above costs, raise prices significantly, decrease qual-

1 ity, or decrease output, without risk of losing busi-
2 ness to other firms offering similar products. The
3 competitive category of products shall embrace all
4 other products.

5 “(c) INITIAL AND UPDATED LISTS.—The respective
6 products which, as of any particular date, are within the
7 noncompetitive or competitive category of mail (and any
8 particular basket, if applicable) shall be as identified
9 under sections 3731 and 3741.

10 **“§ 3762. New noncompetitive products**

11 “(a) REQUEST.—The Postal Service—

12 “(1) may from time to time request that the
13 Postal Regulatory Commission submit a rec-
14 ommended decision on the classification for a new
15 noncompetitive product; and

16 “(2) shall, as part of any request made under
17 paragraph (1), also request a recommended decision
18 on the baseline rate for such product for purposes
19 of section 3765.

20 “(b) HEARINGS.—In response to any request made
21 by the Postal Service under this section, the Postal Regu-
22 latory Commission shall promptly initiate a proceeding in
23 accordance with the procedures set out in section 3624.

24 “(c) FACTORS AND RECOMMENDED DECISION.—The
25 Postal Regulatory Commission shall make a recommended

1 decision on (1) the baseline rate for the new product based
2 on the factors set out in section 3622(b), and (2) the clas-
3 sification for the new product based on the factors and
4 requirements under section 3623(b). Such recommended
5 decision shall be submitted to the Directors for action in
6 accordance with section 3625, and subject to review in ac-
7 cordance with section 3628(a).

8 **“§ 3763. New competitive products**

9 “(a) AUTHORITY.—The Postal Service may, in ac-
10 cordance with this section, offer a new competitive product
11 and, with respect to competitive products only, otherwise
12 make changes in the mail classification schedule.

13 “(b) CONDITIONS.—An action under this section may
14 not be taken unless it satisfies each of the following:

15 “(1) CRITERIA.—To the extent that the classi-
16 fication of a product is involved, the action would be
17 consistent with the criteria under section
18 3761(b)(2).

19 “(2) COSTS ATTRIBUTABLE.—To the extent
20 that the establishment of a rate for a competitive
21 product is involved, the requirement under section
22 3743(a) would be met.

23 “(c) NOTICE.—

24 “(1) IN GENERAL.—At least 20 days before it
25 offers a new competitive product or otherwise makes

1 any change in the mail classification schedule under
2 this section, the Postal Service shall file with the
3 Postal Regulatory Commission and publish in the
4 Federal Register a notice setting out the basis for
5 the Postal Service's determination that the product
6 satisfies each of the conditions under subsection (b).

7 “(2) SAFEGUARDS.—The provisions of section
8 3604(g) shall be available with respect to any infor-
9 mation required to be filed under paragraph (1) to
10 the same extent and in the same manner as in the
11 case of any matter described in section 3604(g)(1).
12 Nothing in paragraph (1) shall be considered to per-
13 mit or require the publication of any information as
14 to which confidential treatment is accorded under
15 the preceding sentence (subject to the same excep-
16 tion as set forth in section 3604(g)(3)).

17 “(d) CANCELLATION.—If the Postal Regulatory
18 Commission determines that an action proposed to be
19 taken under this section fails to meet either of the condi-
20 tions set forth in subsection (b), the Commission shall, be-
21 fore the proposed action is scheduled to be taken or to
22 commence (as applicable), order that the proposed action
23 be canceled. A determination under this subsection shall
24 be made in accordance with such procedures as the Com-
25 mission shall by regulation prescribe.

1 term ‘product covered by the postal monopoly’
2 means any product the conveyance or transmission
3 of which is reserved to the United States under sec-
4 tion 1696 of title 18, subject to the same exception
5 as set forth in the last sentence of section 409(d)(1).

6 “(3) ADDITIONAL CONSIDERATIONS.—In mak-
7 ing any decision under this section, due regard shall
8 be given to—

9 “(A) the availability and nature of enter-
10 prises in the private sector engaged in the deliv-
11 ery of the product involved; and

12 “(B) the views of those who use the prod-
13 uct involved on the appropriateness of the pro-
14 posed action.

15 “(c) TRANSFERS OF SUBCLASSES AND OTHER SUB-
16 ORDINATE OR FURTHER SUBORDINATE UNITS ALLOW-
17 ABLE.—Nothing in this title shall be considered to prevent
18 transfers under this section from being made by reason
19 of the fact that they would involve only some (but not all)
20 of the subclasses or other subordinate or further subordi-
21 nate units of the class of mail or type of postal service
22 involved.

23 “(d) REQUIREMENTS.—Proceedings required to be
24 conducted in accordance with this subsection—

1 “(1) shall provide the opportunity for a hearing
2 on the record under sections 556 and 557 of title 5
3 to the Postal Service, users of the mail, and an offi-
4 cer of the Postal Regulatory Commission who shall
5 be required to represent the interests of the general
6 public;

7 “(2) may include rules of proceedings that pro-
8 vide for any procedure or other matter listed under
9 section 3733(b)(2); and

10 “(3) shall require that any final decision be ac-
11 companied by a statement setting forth the reasons
12 therefor.

13 Paragraph (3) of section 3733(b) (relating to printing and
14 notice requirements) shall apply with respect to each Com-
15 mission decision and related record of Commission hear-
16 ings under this section.

17 **“§ 3765. Transition provisions for new noncompeti-**
18 **tive products**

19 “(a) IN GENERAL.—Rates for products which are
20 classified under section 3762 as new noncompetitive prod-
21 ucts shall be established in accordance with otherwise ap-
22 plicable provisions of this chapter, subject to succeeding
23 provisions of this section.

1 “(b) MAXIMUM RATE ALLOWABLE.—In the case of
2 a product described in subsection (a), the maximum rate
3 allowable for such product under section 3732(c) shall—

4 “(1) for purposes of the first year (or that por-
5 tion of the first year) during which such product is
6 offered, be equal (before rounding) to the baseline
7 rate established for such product under section
8 3762;

9 “(2) for purposes of the year following the year
10 referred to in paragraph (1), be determined in a
11 manner similar to that set forth in the special rule
12 under section 3732(c)(4); and

13 “(3) for purposes of each year following the
14 year referred to in paragraph (2), be determined in
15 accordance with otherwise applicable provisions of
16 this chapter.

17 “(c) RANGE ALLOWABLE.—For purposes of estab-
18 lishing a rate for a product described in subsection (a),
19 the provisions of section 3732(a)(3) (and all other provi-
20 sions of this chapter relating to the range allowable)—

21 “(1) shall be disregarded for purposes of any
22 rate which is to apply during the first year (or the
23 portion of the first year) during which such product
24 is offered; and

1 “(2) shall apply, in accordance with their terms,
2 for purposes any rate which is to apply during any
3 year following the year referred to in paragraph (1).

4 “(d) MINIMUM RATE REQUIREMENTS.—Nothing in
5 this section shall be considered to exempt any product
6 from any of the requirements under subchapter III relat-
7 ing to minimum rates.

8 “SUBCHAPTER VII—REPORTING
9 REQUIREMENTS AND RELATED PROVISIONS

10 “§ 3771. **Annual reports by the Commission**

11 “(a) IN GENERAL.—The Postal Regulatory Commis-
12 sion shall submit an annual report to the President and
13 the Congress concerning the operations of the Commission
14 under this title.

15 “(b) ADDITIONAL INFORMATION.—In addition to the
16 information required under subsection (a), each report
17 under this section shall also include, with respect to the
18 period covered by such report, an estimate of the costs
19 incurred by the Postal Service in providing—

20 “(1) postal services to areas of the Nation
21 where, in the judgment of the Postal Regulatory
22 Commission, the Postal Service either would not
23 provide services at all or would not provide such
24 services in accordance with the requirements of this
25 title if the Postal Service were not required to pro-

1 vide prompt, reliable, and efficient services to pa-
2 trons in all areas and all communities, including as
3 required under the first sentence of section 101(b);

4 “(2) free or reduced rates for postal services as
5 required by this title; and

6 “(3) other public services or activities which, in
7 the judgment of the Postal Regulatory Commission,
8 would not otherwise have been provided by the Post-
9 al Service but for the requirements of law.

10 The Commission shall detail the bases for its estimates
11 and the statutory requirements giving rise to the costs
12 identified in each report under this section.

13 “(c) INFORMATION FROM POSTAL SERVICE.—The
14 Postal Service shall provide the Postal Regulatory Com-
15 mission with such information as may, in the judgment
16 of the Commission, be necessary in order for the Commis-
17 sion to prepare its reports under this section.

18 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion shall be considered to permit or require that the Post-
20 al Regulatory Commission reassess (or otherwise supplant
21 the judgment of the Postal Service as to) the level of serv-
22 ices the Postal Service is required to provide in order to
23 fulfill its obligations under this title (including sections
24 101 and 403) relating to providing universal postal serv-
25 ices.

1 “(e) REQUIRED COMPARISON.—The Postal Regu-
2 latory Commission shall include, in the first report which
3 it submits under this section at least 12 months after re-
4 ceiving the Postal Service’s recommendations under sec-
5 tion 2806, a comparison showing how the cost information
6 included in the Commission’s report pursuant to sub-
7 section (b) would differ depending on whether or not the
8 Postal Service’s recommendations under section 2806
9 were adopted.

10 **“§ 3772. Annual reports to the Commission**

11 “(a) COSTS, REVENUES, AND RATES.—

12 “(1) IN GENERAL.—Except as provided in sub-
13 section (c), the Postal Service shall, no later than 90
14 days after the end of each year, prepare and submit
15 to the Postal Regulatory Commission a report (to-
16 gether with such nonpublic annex thereto as the
17 Commission may require under subsection (e)) ana-
18 lyzing costs, revenues, and rates in sufficient detail
19 to demonstrate that the rates in effect for all prod-
20 ucts during such year (including, for purposes of
21 section 3744, rates for all competitive products col-
22 lectively) complied with all applicable requirements
23 of this title.

24 “(2) INFORMATION RELATING TO WORKSHARE
25 DISCOUNTS.—

1 “(A) IN GENERAL.—The Postal Service
2 shall include, in each report under paragraph
3 (1), the following information with respect to
4 each noncompetitive product for which a
5 workshare discount was in effect during the pe-
6 riod covered by such report:

7 “(i) The per-item cost avoided by the
8 Postal Service by virtue of such discount.

9 “(ii) The percentage of such per-item
10 cost avoided that the per-item workshare
11 discount represents.

12 “(iii) The per-item contribution made
13 to institutional costs.

14 “(B) WORKSHARE DISCOUNT DEFINED.—
15 For purposes of this paragraph, the term
16 ‘workshare discount’ refers to presorting,
17 barcoding, dropshipping, and other similar dis-
18 counts, as further defined under regulations
19 which the Postal Regulatory Commission shall
20 prescribe.

21 “(3) AUDITING REQUIREMENT.—Before submit-
22 ting a report under paragraph (1) (including any
23 annex thereto and the information required under
24 paragraph (2)), the Postal Service shall have the in-
25 formation contained in such report (and annex) au-

1 dited by the Inspector General. The results of any
2 such audit shall be submitted along with the report
3 to which it pertains.

4 “(b) QUALITY OF SERVICES.—Except as provided in
5 subsection (c), the Postal Service shall, no later than 90
6 days after the end of each year, prepare and submit to
7 the Postal Regulatory Commission a report (together with
8 such nonpublic annex thereto as the Commission may re-
9 quire under subsection (e)) which shall, for each non-
10 competitive product provided in such year, provide—

11 “(1) market information, including mail vol-
12 umes; and

13 “(2) measures of the speed and reliability of
14 postal service, including—

15 “(A) the service standard applicable to
16 such product;

17 “(B) the actual level of service (described
18 in terms of speed of delivery and reliability)
19 provided; and

20 “(C) the degree of customer satisfaction
21 with the service provided.

22 “(c) MARKET TESTS.—In carrying out subsections
23 (a) and (b) with respect to experimental products offered
24 through market tests under subchapter V in a year—

1 “(1) the Postal Service may, to the extent that
2 a test under section 3751 or 3752 is involved, report
3 summary data on the costs, revenues, and quality of
4 service by market test; and

5 “(2) the Postal Service shall, to the extent that
6 a test under section 3753 is involved, report such
7 data as the Postal Regulatory Commission requires.

8 “(d) SUPPORTING MATTER.—The Postal Regulatory
9 Commission shall have access, in accordance with such
10 regulations as the Commission shall prescribe, to the
11 working papers and any other supporting matter of the
12 Postal Service and the Inspector General in connection
13 with any information submitted under this section.

14 “(e) CONTENT AND FORM OF REPORTS.—

15 “(1) IN GENERAL.—The Postal Regulatory
16 Commission shall, by regulation, prescribe the con-
17 tent and form of the public reports (and any non-
18 public annex and supporting matter relating thereto)
19 to be provided by the Postal Service under this sec-
20 tion. In carrying out this subsection, the Commis-
21 sion shall give due consideration to—

22 “(A) providing the public with adequate in-
23 formation to assess the lawfulness of rates
24 charged;

1 “(B) avoiding unnecessary or unwarranted
2 administrative effort and expense on the part of
3 the Postal Service; and

4 “(C) protecting the confidentiality of com-
5 mercially sensitive information.

6 “(2) REVISED REQUIREMENTS.—The Commis-
7 sion may, on its own motion or on request of an in-
8 terested party, initiate proceedings (to be conducted
9 in accordance with regulations that the Commission
10 shall prescribe) to improve the quality, accuracy, or
11 completeness of postal service data required by the
12 Commission under this subsection whenever it shall
13 appear that—

14 “(A) the attribution of costs or revenues to
15 postal products has become significantly inac-
16 curate or can be significantly improved;

17 “(B) the quality of service data has be-
18 come significantly inaccurate or can be signifi-
19 cantly improved; or

20 “(C) such revisions are, in the judgment of
21 the Commission, otherwise necessitated by the
22 public interest.

23 “(f) CONFIDENTIAL INFORMATION.—

24 “(1) IN GENERAL.—If the Postal Service deter-
25 mines that any document or portion of a document,

1 or other matter, which it provides to the Postal Reg-
2 ulatory Commission in a nonpublic annex under this
3 section or pursuant to subsection (d) contains infor-
4 mation which is described in section 410(c) of this
5 title, or exempt from public disclosure under section
6 552(b) of title 5, the Postal Service shall, at the
7 time of providing such matter to the Commission,
8 notify the Commission of its determination, in writ-
9 ing, and describe with particularity the documents
10 (or portions of documents) or other matter for which
11 confidentiality is sought and the reasons therefor.

12 “(2) TREATMENT.—Any information or other
13 matter described in paragraph (1) to which the
14 Commission gains access under this section shall be
15 subject to paragraphs (2) and (3) of section 3604(g)
16 in the same way as if the Commission had received
17 notification with respect to such matter under sec-
18 tion 3604(g)(1).

19 “(g) OTHER REPORTS.—The Postal Service shall
20 submit to the Postal Regulatory Commission, together
21 with any other submission that it is required to make
22 under this section in a year, copies of its then most
23 recent—

24 “(1) comprehensive statement under section
25 2401(e);

1 “(2) performance plan under section 2803; and

2 “(3) program performance reports under sec-
3 tion 2804.

4 **“§ 3773. Annual determination of compliance**

5 “(a) PROFITS DEFINED.—For purposes of this sec-
6 tion, the term ‘profits’, with respect to a year, means the
7 amount by which—

8 “(1) total revenues of the Postal Service attrib-
9 utable to such year, exceeds

10 “(2) total costs of the Postal Service (including
11 institutional costs) attributable to such year,
12 as determined based on the report under section 3772(a)
13 for such year.

14 “(b) OPPORTUNITY FOR PUBLIC COMMENT.—After
15 receiving the reports required under section 3772 for any
16 year, the Postal Regulatory Commission shall promptly
17 provide an opportunity for comment on such reports by
18 users of the mails, affected parties, and an officer of the
19 Commission who shall be required to represent the inter-
20 ests of the general public.

21 “(c) DETERMINATION OF COMPLIANCE OR NON-
22 COMPLIANCE.—Not later than 90 days after receiving the
23 submissions required under section 3772 with respect to
24 a year, the Postal Regulatory Commission shall make a
25 written determination as to—

1 “(1) whether any rates or fees in effect during
2 such year (for products individually or collectively)
3 were not in compliance with applicable provisions of
4 this title;

5 “(2) whether any performance goals established
6 under section 2803 or 2804 for such year were not
7 met; and

8 “(3) whether any noncompetitive product failed
9 to meet any service standard during such year.

10 If, with respect to a year, no instance of noncompliance
11 is found under this subsection to have occurred in such
12 year, the written determination shall be to that effect.

13 “(d) IF NO NONCOMPLIANCE IS FOUND.—

14 “(1) USE OF PROFITS.—If, with respect to a
15 year, a timely written determination under sub-
16 section (c) is made to the effect that no instance of
17 noncompliance is found to have occurred in such
18 year (or if no written determination under sub-
19 section (c) is timely made with respect to the year),
20 then, up to 100 percent of the profits attributable to
21 that year (if any) may be used by the Postal Service
22 for the purposes described in subsection (f).

23 “(2) REBUTTABLE PRESUMPTION.—A timely
24 written determination described in the last sentence
25 of subsection (c) shall, for purposes of any proceed-

1 ing under section 3662, create a rebuttable pre-
2 sumption of compliance by the Postal Service (with
3 regard to the matters described in paragraphs (1)–
4 (3) of subsection (c)) during the year to which such
5 determination relates.

6 “(e) IF ANY NONCOMPLIANCE IS FOUND.—If, for a
7 year, a timely written determination of noncompliance is
8 made under subsection (c)—

9 “(1)(A) the Postal Regulatory Commission may
10 order, based on the nature, circumstances, extent,
11 and seriousness of the noncompliance, that a specific
12 percentage (not to exceed 50 percent) of the profits
13 attributable to such year (if any) be set aside for the
14 purposes described in subsection (g); and

15 “(B) the remainder (or any portion) of those
16 profits may be used by the Postal Service for the
17 purposes described in subsection (f); and

18 “(2) the Commission may, in the case of any
19 violation as to which a remedy could be ordered by
20 the Commission under section 3662(c), order any
21 such remedy under this section.

22 “(f) BONUSES.—

23 “(1) IN GENERAL.—The Postal Service shall es-
24 tablish a program under which cash bonuses may be
25 paid to officers and employees of the Postal Service

1 out of any profits which are available for that pur-
2 pose.

3 “(2) REQUIREMENTS.—Under the program—

4 “(A) bonuses may be paid to officers and
5 employees of the Postal Service under criteria
6 which shall be fair and equitable;

7 “(B) the sole source of funding shall be
8 any profits from any year, subject to the appli-
9 cation of subsection (e)(1) with respect to such
10 year; and

11 “(C) bonuses shall not be precluded (in
12 whole or in part) by the limitation on com-
13 pensation under the last sentence of section
14 1003(a) in a year, if—

15 “(i) total profits attributable to the
16 preceding year, exceed

17 “(ii) the amount equal to 1 percent of
18 total revenues of the Postal Service attrib-
19 utable to such preceding year.

20 “(3) DISCRETIONARY NATURE OF PROGRAM.—

21 Nothing in this section shall be considered to create
22 any entitlement to receive bonuses or to require that
23 any portion of the profits from any year be used for
24 bonuses in excess of whatever amount the Postal
25 Service, in its sole discretion, considers appropriate.

1 “(4) CONSIDERATIONS RELATING TO THE POR-
2 TION OF PROFITS TO BE AVAILABLE FOR BO-
3 NUSES.—In any decision relating to what portion of
4 the available profits from any year shall be made
5 available or used for bonuses under this subsection,
6 there shall be taken into consideration—

7 “(A) the obligation on the part of the
8 Postal Service to provide efficient and economi-
9 cal postal services in accordance with this title;
10 and

11 “(B) the question of what portion of those
12 profits (if any) should be used—

13 “(i) to retire debts or other obliga-
14 tions of the Postal Service;

15 “(ii) to limit future increases in postal
16 rates or fees for products in the non-
17 competitive category of mail; or

18 “(iii) to carry out any other purpose.

19 “(g) DEDICATION OF FUNDS TOWARD REDUCING
20 RATES AND FEES.—

21 “(1) IN GENERAL.—Any amounts ordered to be
22 set aside under subsection (e)(1)(A) may not be
23 used for any purpose other than to defray increases
24 in future rates and fees for products in the non-

1 competitive category of mail or to reduce the rates
2 and fees already in effect for such products.

3 “(2) COMPLIANCE.—Whenever an order under
4 paragraph (1)(A) or (2) of subsection (e) is issued,
5 the Postal Service shall include in its next com-
6 prehensive statement under section 2401(e) (and
7 each subsequent statement thereunder until such
8 order has been fully complied with) a statement as
9 to—

10 “(A) what measures have been or will be
11 implemented in order to comply with the order,
12 including the schedule in accordance with which
13 any amounts set aside pursuant to an order
14 issued under subsection (e)(1)(A) shall be used
15 or made available for the purposes described in
16 paragraph (1); and

17 “(B) if (or to the extent that) an order
18 under subsection (e)(1)(A) is involved—

19 “(i) the amount of savings actually
20 passed on to mailers during the reporting
21 period (whether through reduced rates and
22 fees or otherwise), as compared to the
23 amount of savings scheduled to have been
24 passed on to mailers during such period;
25 and

1 “(ii) to the extent that the amount of
2 savings actually passed on to mailers is
3 less than the amount scheduled to have
4 been passed on to mailers during a report-
5 ing period, what measures (if any) have
6 been or will be implemented to reconcile
7 the difference.

8 “(3) NONREDUNDANT INFORMATION.—Nothing
9 in paragraph (2) shall be considered to require that
10 the same information be reported if included in a
11 previous report under this subsection.

12 “(h) REPORTING REQUIREMENT RELATING TO BO-
13 NUSES.—Included in its comprehensive statement under
14 section 2401(e) for any period shall be—

15 “(1) the name of each person receiving a bonus
16 during such period which would not have been allow-
17 able but for the provisions of subsection (f)(2)(C);

18 “(2) the amount of the bonus; and

19 “(3) the amount by which the limitation re-
20 ferred to in subsection (f)(2)(C) was exceeded as a
21 result of such bonus.

22 “(i) APPLICABILITY.—For purposes of this section,
23 the term ‘year’ has the meaning given such term under
24 section 3701, but does not include any year preceding the

1 year in which occurs the date as of which baseline rates
2 are determined under section 3721(e)(2).

3 **“§ 3774. Other reports**

4 “(a) IN GENERAL.—The Postal Regulatory Commis-
5 sion shall, at least every 6 years, submit a report to the
6 President and the Congress concerning—

7 “(1) the operation of the system consisting of
8 chapter 36 and this chapter; and

9 “(2) recommendations for any legislation or
10 other measures necessary to improve the effective-
11 ness or efficiency of that system.

12 “(b) POSTAL SERVICE VIEWS.—A report under this
13 section shall be submitted only after reasonable oppor-
14 tunity has been afforded to the Postal Service to review
15 such report and to submit written comments thereon. Any
16 comments timely received from the Postal Service under
17 the preceding sentence shall be attached to the report sub-
18 mitted under subsection (a).

19 “(c) SPECIFIC INFORMATION REQUIRED.—The Post-
20 al Regulatory Commission shall include, as part of at least
21 its first report under subsection (a), the following:

22 “(1) COST-COVERAGE REQUIREMENT RELATING
23 TO COMPETITIVE PRODUCTS COLLECTIVELY.—With
24 respect to section 3744—

1 “(A) a description of how that section has
2 operated; and

3 “(B) recommendations as to whether or
4 not that section should remain in effect and, if
5 so, any suggestions as to how it might be im-
6 proved.

7 “(2) COMPETITIVE PRODUCTS FUND.—With re-
8 spect to the Postal Service Competitive Products
9 Fund, in consultation with the Secretary of the
10 Treasury—

11 “(A) a description of how the Competitive
12 Products Fund has operated;

13 “(B) any suggestions as to how the oper-
14 ation of the Competitive Products Fund might
15 be improved; and

16 “(C) a description and assessment of alter-
17 native accounting or financing mechanisms that
18 might be used to achieve the objectives of the
19 Competitive Products Fund.

20 “(3) CORPORATION UNDER SECTION 2012.—
21 With respect to section 2012, in consultation with
22 the Attorney General and the Secretary of
23 Commerce—

24 “(A) a description of how that section has
25 operated;

1 (1) in the first sentence by striking “this chap-
2 ter” and inserting “this chapter and chapter 37”;
3 and

4 (2) by repealing the last 2 sentences.

5 (b) RATES AND FEES.—

6 (1) IN GENERAL.—The first sentence of section
7 3622(a) of title 39, United States Code, is amended
8 to read as follows: “Whenever necessary in order to
9 provide for the establishment of any baseline rate
10 needed for purposes of section 3762(a) (relating to
11 certain new noncompetitive products), the Postal
12 Service shall request the Postal Regulatory Commis-
13 sion to submit a recommended decision on changes
14 in a rate or rates of postage or in a fee or fees for
15 postal services in accordance with the policies of this
16 title and applicable provisions of chapter 37.”.

17 (2) CONFORMING AMENDMENTS.—Such section
18 3622(a) is further amended—

19 (A) by striking “(a)” and inserting
20 “(a)(1)”; and

21 (B) by adding at the end the following:

22 “(2) A request under this subsection may not be sub-
23 mitted except in the circumstance described in paragraph
24 (1).”.

25 (c) MAIL CLASSIFICATION.—

1 (1) REPEAL.—Section 3623 of title 39, United
2 States Code, is amended by striking subsection (a)
3 and by redesignating subsections (b) through (d) as
4 subsections (a) through (c), respectively.

5 (2) MODIFIED AUTHORITY.—Subsection (a) of
6 section 3623 of title 39, United States Code, as so
7 redesignated by paragraph (1), is amended to read
8 as follows:

9 “(a) The Postal Service may from time to time re-
10 quest that the Postal Regulatory Commission submit, or
11 the Commission may submit to the Directors on its own
12 initiative, a recommended decision on changes in the mail
13 classification schedule for noncompetitive products (within
14 the meaning of subchapter III of chapter 37).”.

15 (d) RECOMMENDED DECISIONS OF COMMISSION.—
16 Subsection (c) of section 3624 of title 39, United States
17 Code, is amended—

18 (1) in paragraph (1) by striking “a request
19 under section 3622 of this title for a recommended
20 decision by the Commission on changes in a rate or
21 rates of postage or in a fee or fees for postal serv-
22 ices” and inserting “a request under section 3623
23 for a recommended decision by the Commission on
24 changes in the mail classification schedule or a re-
25 quest under section 3762 for a recommended deci-

1 sion by the Commission on the baseline rate and
2 classification for a new noncompetitive product,”;
3 and

4 (2) in paragraph (2) by striking “3622” and in-
5 serting “3623 or 3762 (as applicable)”.

6 (e) APPELLATE REVIEW.—

7 (1) APPEALABILITY OF ADJUSTMENT FACTOR
8 AND PRODUCT TRANSFER DECISIONS.—The first
9 sentence of section 3628 of title 39, United States
10 Code, is amended—

11 (A) by striking “A decision” and inserting
12 “(a) A decision”;

13 (B) by inserting before “may be appealed”
14 the following: “on a request made under section
15 3623 or 3762, and any final decision by the
16 Commission under section 3733 or 3764,”; and

17 (C) by striking “3624(a) of this title” and
18 inserting “3624(a), 3733(b), 3762(b), or
19 3764(d) (as the case may be)”.

20 (2) APPEALS FROM ALL OTHER FINAL ORDERS
21 OF THE COMMISSION.—

22 (A) TITLE 39 AMENDMENT.—Section 3628
23 of title 39, United States Code, is amended by
24 adding at the end the following:

1 “(b) Any proceeding to enjoin, set aside, annul, or
2 suspend any order of the Postal Regulatory Commission
3 (except any order appealable under subsection (a)) shall
4 be brought as provided by and in the manner prescribed
5 in chapter 158 of title 28.”.

6 (B) TITLE 28 AMENDMENTS.—

7 (i) DEFINITIONS.—Subparagraph (A)
8 of section 2341(3) of title 28, United
9 States Code, is amended by inserting “the
10 Postal Regulatory Commission,” after “the
11 Federal Maritime Commission,”.

12 (ii) ORDERS APPEALABLE.—Section
13 2342 of title 28, United States Code, is
14 amended by striking “and” at the end of
15 paragraph (6), by striking the period at
16 the end of paragraph (7) and inserting “;
17 and”, and by adding at the end the follow-
18 ing:

19 “(8) all final orders of the Postal Regulatory
20 Commission made reviewable by section 3628(b) of
21 title 39.”.

22 (3) CONFORMING AMENDMENTS.—Sections
23 3625 and 3681 of title 39, United States Code, are
24 amended by striking “3628” each place it appears
25 and inserting “3628(a)”.

1 (f) TEMPORARY RATES AND CLASSES.—

2 (1) NEGOTIATED SERVICE AGREEMENTS.—Sec-
3 tion 3641 of title 39, United States Code, is amend-
4 ed to read as follows:

5 **“§ 3641. Negotiated service agreements**

6 “(a) The Postal Service may enter into negotiated
7 service agreements with users of postal services in accord-
8 ance with this section. A negotiated service agreement
9 under this section shall—

10 “(1) pertain exclusively to products in the non-
11 competitive category of mail (within the meaning of
12 subchapter III of chapter 37);

13 “(2) require that the contracting mail user per-
14 form mail preparation, processing, transportation,
15 administration, or other functions that are in addi-
16 tion to or greater than those required of mailers
17 under provisions of the mail classification schedule
18 established pursuant to section 3623(b);

19 “(3) provide for the payment by the contracting
20 mail user of liquidated damages to the Postal Serv-
21 ice for nonperformance or breach of any of the ma-
22 terial terms of the agreement, including any mini-
23 mum volume commitments; the amount of such liq-
24 uidated damages shall not be less than the difference
25 between postage and fees paid by such mail user

1 pursuant to the agreement and the amounts such
2 user would have paid under the otherwise applicable
3 schedule of rates and fees;

4 “(4) be for a term of not to exceed 3 years;

5 “(5) include appropriate provisions under which
6 the contracting mail user shall be allowed to resell
7 or otherwise make available the benefits under such
8 agreement to other mail users; and

9 “(6) provide that such agreement shall be sub-
10 ject to the cancellation authority of the Commission
11 under section 3662(c).

12 “(b) A negotiated service agreement may not be en-
13 tered into (or amended) unless each of the following condi-
14 tions is met:

15 “(1) The agreement (as proposed or as pro-
16 posed to be amended, as applicable)—

17 “(A) meets the conditions and require-
18 ments of subsection (a);

19 “(B) does not preclude or materially
20 hinder similarly situated mail users (determined
21 without regard to size) from entering into
22 agreements with the Postal Service on the
23 same, or substantially the same, terms and con-
24 ditions; and

1 “(C) can reasonably be expected to result
2 in net benefits to the operation of a nationwide
3 postal system.

4 “(2) The Postal Service remains willing and
5 able to enter into such negotiated service agreements
6 with other similarly situated mail users (determined
7 without regard to size).

8 “(3) Rates and fees payable during the term of
9 the negotiated service agreement (as proposed or as
10 proposed to be amended, as applicable) are reason-
11 ably calculated to yield to the Postal Service total
12 revenues that equal or exceed the sum of—

13 “(A) the direct and indirect postal costs
14 attributable to services performed by the Postal
15 Service under the agreement; and

16 “(B) a portion of all other costs of the
17 Postal Service that are equal, on an average
18 unit basis, to the portion of such costs reason-
19 ably assignable to the classification or classi-
20 fications of mail service most similar to the
21 services performed under the agreement.

22 “(c) At least 20 days before a negotiated service
23 agreement (or an amendment to such an agreement) is
24 to take effect, the Postal Service shall file with the Postal
25 Regulatory Commission and publish in the Federal Reg-

1 lister the following information with respect to such agree-
2 ment (as proposed or as proposed to be amended, as appli-
3 cable):

4 “(1) With respect to each condition under sub-
5 section (b), information in sufficient detail to dem-
6 onstrate the bases for the Postal Service’s view that
7 such condition would be met.

8 “(2) A description of the type of mail the agree-
9 ment involves.

10 “(3) The mail preparation, processing, trans-
11 portation, administration, or other additional func-
12 tions the mail user is to perform under the agree-
13 ment.

14 “(4) The services or other benefits the Postal
15 Service is to provide under the agreement.

16 “(5) The rates and fees payable by the mail
17 user during the term of the agreement.

18 “(d) If the Postal Regulatory Commission receives a
19 complaint from an interested party (including an officer
20 of the Commission representing the interests of the gen-
21 eral public) alleging that a negotiated service agreement
22 is not (or, in the case of a proposed agreement or a pro-
23 posed amendment to a negotiated service agreement,
24 would not be) in conformance with the requirements of

1 this section, the Commission shall act on such complaint
2 in accordance with section 3662.

3 “(e) Nothing in this section shall be considered to
4 limit or otherwise affect any authority available to the
5 Postal Service under section 3763.”.

6 (2) CONFORMING AMENDMENT.—The table of
7 sections at the beginning of chapter 36 of title 39,
8 United States Code, is amended by striking the item
9 relating to section 3641 and inserting the following:

“3641. Negotiated service agreements.”.

10 (g) RATE AND SERVICE COMPLAINTS.—Section 3662
11 of title 39, United States Code, is amended to read as
12 follows:

13 **“§ 3662. Rate and service complaints**

14 “(a) Interested parties (including an officer of the
15 Postal Regulatory Commission representing the interests
16 of the general public) who believe the Postal Service is
17 charging rates which do not conform to the policies set
18 out in this title, who believe that the Postal Service is not
19 providing postal service in accordance with the policies of
20 this title, or who believe that the Postal Service is other-
21 wise not acting in conformance with the policies of this
22 title, may lodge a complaint with the Postal Regulatory
23 Commission in such form and in such manner as it may
24 prescribe.

1 “(b)(1) The Postal Regulatory Commission shall,
2 within 90 days after receiving a complaint under sub-
3 section (a), either—

4 “(A) begin proceedings on such complaint in
5 conformity with section 3764(d)(1); or

6 “(B) issue an order dismissing the complaint
7 (together with a statement of the reasons therefor).

8 “(2) For purposes of section 3628(b), any complaint
9 under subsection (a) on which the Commission fails to act
10 in the time and manner required by paragraph (1) shall
11 be treated in the same way as if it had been dismissed
12 pursuant to an order issued by the Commission on the
13 last day allowable for the issuance of such order under
14 paragraph (1).

15 “(c) If the Postal Regulatory Commission finds the
16 complaint to be justified, it shall—

17 “(1) in a classification matter covered by sec-
18 tion 3623 or 3762, after proceedings in conformity
19 with section 3624, issue a recommended decision
20 which shall be acted upon in accordance with the
21 provisions of section 3625;

22 “(2) in a matter involving a violation of any
23 limitation under section 3732 (relating to limitations
24 on rates for noncompetitive products), order the un-
25 lawful rates to be adjusted to lawful levels and the

1 taking of such other action as it considers appro-
2 priate;

3 “(3) in a matter involving a violation of section
4 3743(a) (relating to costs-attributable requirement
5 for competitive products) or section 3763(b) (relat-
6 ing to conditions to be met by new competitive prod-
7 ucts), order the unlawful rates to be adjusted to law-
8 ful levels and the taking of such other action as it
9 considers appropriate (including, in the case of a
10 violation of section 3763(b)(1), withdrawal of the
11 product involved, except that no such withdrawal
12 may be ordered later than 90 days after the date on
13 which the product involved is first offered);

14 “(4) in a matter involving a violation of section
15 3641 (relating to negotiated service agreements),
16 order—

17 “(A) the adjustment of any unlawful rates
18 to lawful levels (including the payment of any
19 liquidated damages which may be required
20 under the terms of the agreement involved);
21 and

22 “(B) the taking of such other action as it
23 considers appropriate (including, if appropriate,
24 the cancellation of such agreement);

1 “(5) in a matter involving a violation of section
2 403(c) (prohibiting undue or unreasonable discrimi-
3 nation or preferences among or to users of the
4 mails), order the taking of such action as it consid-
5 ers appropriate;

6 “(6) in a matter involving a violation of any
7 provision of subchapter V of chapter 37 (relating to
8 market tests of experimental products), order the
9 cancellation of the testing involved or the taking of
10 such other action as it considers appropriate;

11 “(7) in a matter involving a violation of section
12 404a (relating to specific limitations)—

13 “(A) order the rescission of any regulation
14 involved or the taking of such action as it con-
15 siders appropriate, but only to the extent that
16 it does not involve a matter covered by subpara-
17 graph (B); and

18 “(B) in a matter involving the Postal Serv-
19 ice’s providing a nonpostal product that is not
20 permitted under subsection (c) of section 404a,
21 order that the Postal Service cease providing
22 such product;

23 “(8) in a matter involving a violation of section
24 2012(f) (relating to the relationship between the
25 Postal Service and any corporation established under

1 section 2012), order that the Postal Service increase
2 its prices to at least the minimum levels required or
3 take such other action as the Commission considers
4 appropriate; and

5 “(9) in a matter not otherwise covered by any
6 of the preceding provisions of this subsection, render
7 a public report thereon.

8 “(d) In addition, in cases of deliberate noncompliance
9 by the Postal Service with the requirements of this title,
10 the Postal Regulatory Commission may order, based on
11 the nature, circumstances, extent, and seriousness of the
12 noncompliance, a fine (in the amount specified by the
13 Commission in its order) for each incidence of noncompli-
14 ance. Fines resulting from the provision of competitive
15 products (within the meaning of subchapter IV of chapter
16 37) shall be paid out of the Competitive Products Fund
17 established in section 2011. All receipts from fines im-
18 posed under this subsection shall be deposited in the gen-
19 eral fund of the Treasury of the United States.”.

20 (h) LIMITATIONS.—Effective as of the date of enact-
21 ment of this Act, section 3684 of title 39, United States
22 Code, is amended—

23 (1) by inserting “and no provision of chapter
24 37” after “no provision of this chapter”; and

1 (2) by striking “any provision of section 3682
2 or 3683 or chapter 30, 32, or 34 of this title.” and
3 inserting “any provision of this title.”.

4 (i) **REDUCED RATES.**—Effective as of the date of en-
5 actment of this Act, subclause (VI) of section
6 3626(a)(3)(B)(ii) of title 39, United States Code, is
7 amended to read as follows:

8 “(VI) one-half (or less, as the Postal Service
9 may prescribe), for any fiscal year after fiscal year
10 1998.”.

11 (j) **REGULATIONS OF THE COMMISSION.**—Effective
12 as of the date of enactment of this Act, section 3603 of
13 title 39, United States Code, is amended by striking “this
14 chapter.” and inserting “this title.”.

15 (k) **REPEAL.**—Effective as of the date of enactment
16 of this Act, section 3663 of title 39, United States Code
17 (as added by section 648 of the Treasury and General
18 Government Appropriations Act, 1999, as contained in the
19 Omnibus Consolidated and Emergency Supplemental Ap-
20 propriations Act, 1999) is repealed.

21 (l) **EFFECTIVE DATE.**—Except as provided in sub-
22 section (h), (i), (j), or (k), this section and the amend-
23 ments made by this section shall become effective on the
24 date as of which the baseline rates are determined under

1 section 3721(e)(2) of title 39, United States Code (as
2 amended by section 201).

3 **SEC. 203. POSTAL SERVICE COMPETITIVE PRODUCTS**
4 **FUND.**

5 (a) PROVISIONS RELATING TO POSTAL SERVICE
6 COMPETITIVE PRODUCTS FUND AND RELATED MAT-
7 TERS.—

8 (1) IN GENERAL.—Chapter 20 of title 39,
9 United States Code, is amended by adding at the
10 end the following:

11 **“§ 2011. Provisions relating to competitive products**

12 “(a) There is established in the Treasury of the
13 United States a revolving fund, to be called the Postal
14 Service Competitive Products Fund, which shall be avail-
15 able to the Postal Service without fiscal-year limitation for
16 the payment of—

17 “(1) costs attributable to competitive products;
18 and

19 “(2) all other costs incurred by the Postal Serv-
20 ice, to the extent allocable to competitive products.

21 For purposes of this subsection, the term ‘costs attrib-
22 utable’ has the meaning given such term by section 3741.

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

1 “(1) revenues from competitive products;

2 “(2) amounts received from obligations issued
3 by the Postal Service under subsection (g);

4 “(3) interest and dividends earned on invest-
5 ments of the Competitive Products Fund; and

6 “(4) any other receipts of the Postal Service
7 (including from the sale of assets), to the extent al-
8 locable to competitive products.

9 “(c)(1) If the Postal Service determines that the
10 moneys of the Competitive Products Fund are in excess
11 of current needs, it may make such investments as it con-
12 siders advisable, subject to paragraph (2).

13 “(2)(A) Notwithstanding paragraph (1) or any other
14 provision of this title, moneys of the Competitive Products
15 Fund may not be used to invest in the obligations or secu-
16 rities of, or to otherwise invest in, any commercial entity
17 other than a corporation established under section 2012.

18 “(B) For purposes of this paragraph, the term ‘com-
19 mercial entity’ means any corporation, company, associa-
20 tion, partnership, joint stock company, firm, society, or
21 other similar entity, as further defined under regulations
22 prescribed by the Postal Regulatory Commission.

23 “(d) The Postal Service may, in its sole discretion,
24 provide that moneys of the Competitive Products Fund be

1 deposited in a Federal Reserve bank or a depository for
2 public funds.

3 “(e) A judgment against the Postal Service or the
4 Government of the United States (or settlement of a
5 claim) shall, to the extent that it arises out of activities
6 of the Postal Service in the provision of competitive prod-
7 ucts, be paid out of the Competitive Products Fund.

8 “(f) The receipts and disbursements of the Competi-
9 tive Products Fund shall be accorded the same budgetary
10 treatment as is accorded to receipts and disbursements of
11 the Postal Service Fund under section 2009a.

12 “(g)(1) Subject to the limitations specified in section
13 2005(a), the Postal Service is authorized to borrow money
14 and to issue and sell such obligations as it determines nec-
15 essary to provide for competitive products and deposit
16 such amounts in the Competitive Products Fund, except
17 that the Postal Service may pledge only assets related to
18 the provision of competitive products (as determined
19 under subsection (h)), and the revenues and receipts from
20 such products, for the payment of the principal of or inter-
21 est on such obligations, for the purchase or redemption
22 thereof, and for other purposes incidental thereto, includ-
23 ing creation of reserve, sinking, and other funds which
24 may be similarly pledged and used, to such extent and in
25 such manner as it deems necessary or desirable.

1 “(2) The Postal Service may enter into binding cov-
2 enants with the holders of such obligations, and with the
3 trustee, if any, under any agreement entered into in con-
4 nection with the issuance thereof with respect to—

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

7 “(B) application and use of revenues and re-
8 ceipts of the Competitive Products Fund;

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

13 “(D) such other matters as the Postal Service
14 considers necessary or desirable to enhance the mar-
15 ketability of such obligations.

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

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

20 “(B) shall not be exempt either as to principal
21 or interest from any taxation now or hereafter im-
22 posed by any State or local taxing authority;

23 “(C) shall not be obligations of, nor shall pay-
24 ment of the principal thereof or interest thereon be

1 guaranteed by, the Government of the United
2 States, and the obligations shall so plainly state; and

3 “(D) notwithstanding the provisions of the Fed-
4 eral Financing Bank Act of 1973 or any other provi-
5 sion of law (except as specifically provided by ref-
6 erence to this subparagraph in a law enacted after
7 this subparagraph takes effect), shall not be eligible
8 for purchase by, commitment to purchase by, or sale
9 or issuance to, the Federal Financing Bank.

10 “(h)(1)(A) The Postal Service, in consultation with
11 an independent, certified public accounting firm and such
12 other advisors as it considers appropriate, shall develop
13 recommendations regarding the accounting practices and
14 principles that, in its judgment, should be followed in the
15 identification and valuation of—

16 “(i) the assets of the Postal Service associated
17 with providing competitive products; and

18 “(ii) the liabilities of the Postal Service associ-
19 ated with providing competitive products.

20 “(B) Such recommendations—

21 “(i) shall have, as their primary objectives, the
22 identification of the capital costs incurred by the
23 Postal Service in providing competitive products,
24 and preventing the cross-subsidization of such prod-
25 ucts by noncompetitive products;

1 “(ii) shall address each matter which the Postal
2 Regulatory Commission is required to address under
3 paragraph (2)(B)(i); and

4 “(iii) shall be submitted to the Postal Regu-
5 latory Commission by such deadline as the Commis-
6 sion may establish (after consultation with the Post-
7 al Service), except that the deadline so established
8 may be no earlier than 180 days after the effective
9 date of this section.

10 “(C) In carrying out this paragraph, the Postal
11 Service—

12 “(i) shall consider a range of options suffi-
13 ciently broad so as to permit a meaningful compari-
14 son of the different methods available for accom-
15 plishing the objectives of this subsection; and

16 “(ii) shall include a schedule for implementation
17 of any recommendations submitted under this para-
18 graph.

19 “(2)(A)(i) Upon receiving the recommendations of
20 the Postal Service under paragraph (1), the Commission
21 shall give interested parties an opportunity to present
22 their views on those recommendations through submission
23 of written data, views, or arguments with or without op-
24 portunity for oral presentation, or in such other manner
25 as the Commission considers appropriate.

1 “(ii) For purposes of this paragraph, the term ‘inter-
2 ested parties’ includes the Postal Service, users of the
3 mails, and an officer of the Commission who shall be re-
4 quired to represent the interests of the general public.

5 “(B) After due consideration of the views and other
6 information received under subparagraph (A), the Com-
7 mission shall by rule—

8 “(i) provide for the establishment and applica-
9 tion of the accounting practices and principles which
10 shall be followed by the Postal Service in
11 determining—

12 “(I) which assets of the Postal Service are
13 (in whole or in part) associated with providing
14 competitive products and, to the extent so asso-
15 ciated, their value;

16 “(II) which liabilities of the Postal Service
17 are (in whole or in part) associated with provid-
18 ing competitive products and, to the extent so
19 associated, their value; and

20 “(III) with respect to the purchase or sale
21 of any assets of the Postal Service, the extent
22 to which any costs or revenues of the Postal
23 Service arising out of such purchase or sale are
24 allocable to the provision of competitive prod-
25 ucts;

1 “(ii) provide for the submission, by the Postal
2 Service to the Postal Regulatory Commission, of
3 periodic reports setting forth—

4 “(I) the most recent financial statements
5 and other information developed by the Postal
6 Service in conformance with the requirements
7 of clause (i);

8 “(II) the then current value of any invest-
9 ments made by the Postal Service in any cor-
10 poration established under section 2012; and

11 “(III) such other information as the Com-
12 mission may require to carry out the purposes
13 of this subparagraph.

14 “(C) Reports under subparagraph (B)(ii) shall be
15 submitted at such time and in such form, and shall include
16 such information, as the Commission by rule requires. The
17 Commission may, on its own motion or on request of an
18 interested party, initiate proceedings (to be conducted in
19 accordance with such rules as the Commission shall pre-
20 scribe) to improve the quality, accuracy, or completeness
21 of Postal Service data under such subparagraph whenever
22 it shall appear that—

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

1 “(ii) such revisions are, in the judgment of the
2 Commission, otherwise necessitated by the public in-
3 terest.

4 “(D) A copy of each report under subparagraph
5 (B)(ii) shall also be transmitted by the Postal Service to
6 the Secretary of the Treasury and the Inspector General
7 of the United States Postal Service.

8 “(i) The Postal Service shall render an annual report
9 to the Secretary of the Treasury concerning the operation
10 of the Competitive Products Fund, in which it shall ad-
11 dress such matters as risk limitations, reserve balances,
12 allocation or distribution of moneys, liquidity require-
13 ments, and measures to safeguard against losses. A copy
14 of its then most recent report under this subsection shall
15 be included with any other submission that it is required
16 to make to the Postal Regulatory Commission under sec-
17 tion 3772(g).

18 “(j) For purposes of this section, the term ‘competi-
19 tive product’ has the meaning given such term by chapter
20 37.”.

21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions for chapter 20 of title 39, United States Code,
23 is amended by adding after the item relating to sec-
24 tion 2010 the following:

“2011. Provisions relating to competitive products.”.

25 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

1 (1) DEFINITION.—Section 2001 of title 39,
2 United States Code, is amended by striking “and”
3 at the end of paragraph (1), by striking redesignat-
4 ing paragraph (2) as paragraph (3), and by insert-
5 ing after paragraph (1) the following:

6 “(2) ‘Competitive Products Fund’ means the
7 Postal Service Competitive Products Fund estab-
8 lished by section 2011; and”.

9 (2) CAPITAL OF THE POSTAL SERVICE.—Sec-
10 tion 2002(b) of title 39, United States Code, is
11 amended by striking “Fund,” and inserting “Fund
12 and the balance in the Competitive Products
13 Fund,”.

14 (3) POSTAL SERVICE FUND.—

15 (A) PURPOSES FOR WHICH AVAILABLE.—
16 Section 2003(a) of title 39, United States Code,
17 is amended by striking “title.” and inserting
18 “title (other than any of the purposes, func-
19 tions, or powers for which the Competitive
20 Products Fund is available).”.

21 (B) DEPOSITS.—Section 2003(b) of title
22 39, United States Code, is amended by striking
23 “There” and inserting “Except as otherwise
24 provided in section 2011, there”.

1 (4) INVESTMENTS.—Subsection (c) of section
2 2003 of title 39, United States Code, is amended—

3 (A) by striking “(c) If” and inserting
4 “(c)(1) Except as provided in paragraph (2),
5 if”; and

6 (B) by adding at the end the following:

7 “(2) Nothing in this subsection shall be considered
8 to authorize any investment in any obligations or securi-
9 ties of a commercial entity (as defined by section
10 2011(c)(2)(B)), including any corporation established
11 under section 2012.”.

12 (5) OBLIGATIONS.—

13 (A) PURPOSES FOR WHICH OBLIGATIONS
14 MAY BE ISSUED.—The first sentence of section
15 2005(a)(1) of title 39, United States Code, is
16 amended by striking “title.” and inserting
17 “title, other than any of the purposes for which
18 the corresponding authority is available to the
19 Postal Service under section 2011.”.

20 (B) LIMITATIONS ON OBLIGATIONS OUT-
21 STANDING.—

22 (i) IN GENERAL.—Subsection (a) of
23 section 2005 of title 39, United States
24 Code, is amended by adding at the end the
25 following:

1 “(3) For purposes of applying the respective limita-
2 tions under this subsection, the aggregate amount of obli-
3 gations issued by the Postal Service which are outstanding
4 as of any one time, and the net increase in the amount
5 of obligations outstanding issued by the Postal Service for
6 the purpose of capital improvements or for the purpose
7 of defraying operating expenses of the Postal Service in
8 any fiscal year, shall be determined by aggregating the
9 relevant obligations issued by the Postal Service under this
10 section with the relevant obligations issued by the Postal
11 Service under section 2011.”.

12 (ii) CONFORMING AMENDMENT.—The
13 second sentence of section 2005(a) of title
14 39, United States Code, is amended by
15 striking “any such obligations” and insert-
16 ing “obligations issued by the Postal Serv-
17 ice which may be”.

18 (C) AMOUNTS WHICH MAY BE PLEDGED,
19 ETC.—

20 (i) OBLIGATIONS TO WHICH PROVI-
21 SIONS APPLY.—The first sentence of sec-
22 tion 2005(b) of title 39, United States
23 Code, is amended by striking “such obliga-
24 tions,” and inserting “obligations issued by
25 the Postal Service under this section,”.

1 (ii) ASSETS, REVENUES, AND RE-
2 CEIPTS TO WHICH PROVISIONS APPLY.—
3 Subsection (b) of section 2005 of title 39,
4 United States Code, is amended by strik-
5 ing “(b)” and inserting “(b)(1)”, and by
6 adding at the end the following:

7 “(2) Notwithstanding any other provision of this
8 section—

9 “(A) the authority to pledge assets of the Post-
10 al Service under this subsection shall be available
11 only to the extent that such assets are not related
12 to the provision of competitive products (as deter-
13 mined under section 2011(h)); and

14 “(B) any authority under this subsection relat-
15 ing to the pledging or other use of revenues or re-
16 ceipts of the Postal Service shall be available only to
17 the extent that they are not revenues or receipts of
18 the Competitive Products Fund.”.

19 (6) RELATIONSHIP BETWEEN THE TREASURY
20 AND THE POSTAL SERVICE.—Section 2006 of title
21 39, United States Code, is amended—

22 (A) in subsection (b), by adding at the end
23 the following: “Nothing in this chapter shall be
24 considered to permit or require the Secretary of
25 the Treasury to purchase any obligations of the

1 Postal Service other than those issued under
2 section 2005.”; and

3 (B) in subsection (c), by inserting “under
4 section 2005” before “shall be obligations”.

5 **SEC. 204. USPS CORPORATION.**

6 (a) ESTABLISHMENT.—Chapter 20 of title 39,
7 United States Code, is amended by adding after section
8 2011 (as added by section 203) the following:

9 **“§ 2012. USPS Corporation**

10 “(a) The Board of Directors may establish a private
11 for-profit corporation under the laws of a State to be
12 known as the USPS Corporation or by such other cor-
13 porate name as may be duly adopted by the Corporation.
14 The Board of Directors may serve as incorporators of the
15 Corporation and take all steps necessary to establish the
16 Corporation, including the filing of articles of incorpora-
17 tion consistent with the provisions of this section.

18 “(b)(1) The Corporation shall not be an agency, in-
19 strumentality, or establishment of the United States, a
20 Government corporation, or a Government-controlled cor-
21 poration. Except as provided in this section, the Corpora-
22 tion shall not be considered part of the Postal Service. Fi-
23 nancial obligations of the Corporation shall not be obliga-
24 tions of, or guaranteed as to principal or interest by, the
25 Postal Service or the United States, and the obligations

1 shall so plainly state. No action shall be allowable against
2 the United States based on actions of the Corporation.

3 “(2) The receipts and disbursements of the Corpora-
4 tion shall be accorded the same budgetary treatment as
5 is accorded to receipts and disbursements of the Postal
6 Service Fund under section 2009a.

7 “(c) The Corporation is authorized to issue and have
8 outstanding, in such amounts as it shall determine, shares
9 of capital stock, without par value, which shall carry vot-
10 ing rights and be eligible for dividends. Such shares may
11 be purchased only by the Postal Service Competitive Prod-
12 ucts Fund, in such amounts as the Board of Directors
13 of the Postal Service may deem appropriate.

14 “(d)(1) Notwithstanding any provision of State law,
15 the articles of incorporation and bylaws of the Corporation
16 shall provide that its board of directors shall be named
17 by the Board of Directors of the Postal Service.

18 “(2)(A) The restrictions on postgovernment employ-
19 ment set out in section 207 of title 18 shall not apply
20 to the acts of an individual taken in carrying out official
21 duties as a director, officer, or employee of the Corpora-
22 tion if the individual was an officer or employee of the
23 Postal Service (including a Director) continuously for a
24 period of 12 months or longer during the 24 months prior
25 to employment with the Corporation.

1 “(B) Subparagraph (A) shall apply only in the case
2 of acts taken during the 3-year period beginning on the
3 date as of which the Corporation is established.

4 “(e)(1) The Corporation shall be subject to the laws
5 of the State in which it is incorporated to the same extent
6 and in the same manner as any other corporation incor-
7 porated in that State, and the directors, officers, and em-
8 ployees of the Corporation shall likewise be subject to such
9 laws to the same extent and in the same manner as the
10 directors, officers, and employees of any other corporation
11 so incorporated.

12 “(2) The Corporation shall have all of the powers
13 conferred upon it under the laws of the State in which
14 it is incorporated. Except as otherwise provided in this
15 section, the Corporation is specifically authorized—

16 “(A) to offer any postal or nonpostal product
17 (other than a product covered by the postal monop-
18 oly, as defined in section 3764(b)(2));

19 “(B) to acquire shares of individual private
20 companies;

21 “(C) to participate in joint ventures or other
22 similar arrangements with private companies; and

23 “(D) to borrow money on its own behalf, and
24 issue and sell such obligations in such amounts as

1 the directors of the Corporation consider appro-
2 priate.

3 “(f)(1) The Corporation may purchase goods and
4 services from the Postal Service, except that the Corpora-
5 tion shall pay the Postal Service the same amount for such
6 goods or services as would be paid by similarly situated
7 mailers or, if the goods or services are not offered to the
8 public by the Postal Service, amounts which represent fair
9 market value.

10 “(2) Except as otherwise provided in this title, the
11 Postal Service shall, in a manner consistent with para-
12 graph (1) and in all other respects, treat the Corporation
13 in the same manner as any other private corporation.

14 “(3) Nothing in this subsection shall, with respect to
15 any postal product which is subject to chapter 37, be con-
16 sidered to exempt the Corporation from the rate estab-
17 lished for such product under such chapter.

18 “(g)(1) Insofar as the Corporation offers postal prod-
19 ucts which depend in substantial part on the services of
20 the Postal Service, the Postal Service shall, to the extent
21 considered appropriate by the Postal Regulatory Commis-
22 sion (and subject to such requirements as the Commission
23 may specify as to form and content), include details of
24 the activities of the Corporation (including sufficient infor-
25 mation to demonstrate that the requirements of subsection

1 (f) are being complied with) in the annual reports to the
2 Commission required by section 3772.

3 “(2) In the event that, based on its review of the in-
4 formation submitted to it by the Postal Service under
5 paragraph (1), the Commission determines that the re-
6 quirements of subsection (f) are not being complied with,
7 the Commission may issue any order allowable under sub-
8 section (c)(8) or (d) of section 3662.

9 “(h)(1) Except as authorized by the Postal Regu-
10 latory Commission under this subsection, the Corporation
11 may not, directly or indirectly, engage in the provision of
12 services which involve the physical preparation, processing,
13 or packaging of mail for delivery by means of noncompeti-
14 tive products (within the meaning of chapter 37) offered
15 by the Postal Service.

16 “(2) A grant of authority under paragraph (1) shall
17 be granted if, and to the extent that, the Commission finds
18 that the services involved are consistent with the public
19 interest, taking into consideration the following factors:

20 “(A) The fair and equitable treatment of small
21 business concerns (as defined under paragraph (5))
22 which have invested in the development of such serv-
23 ices, if any.

24 “(B) The available alternatives for obtaining
25 such services.

1 “(C) The needs of users of noncompetitive
2 products, especially individual users.

3 “(D) The public interest in the efficient produc-
4 tion of such services.

5 “(E) Such other factors as the Commission
6 considers appropriate.

7 “(3) The Commission shall promptly consider a re-
8 quest by the Corporation made under this subsection, ex-
9 cept that the Commission shall not make a final decision
10 until the opportunity for a hearing on the record under
11 sections 556 and 557 of title 5 has been accorded to the
12 Corporation, users of the mails, an officer of the Commis-
13 sion who shall be required to represent the interests of
14 the general public, and other interested parties.

15 “(4) Any final decision by the Commission under this
16 subsection shall be subject to judicial review in accordance
17 with section 3628(b).

18 “(5) The criteria used in defining small business con-
19 cerns or otherwise categorizing business concerns as small
20 business concerns shall, for purposes of this subsection,
21 be established by the Commission in conformance with the
22 requirements of section 3 of the Small Business Act.

23 “(i) As used in this section, the term ‘State’ includes
24 the District of Columbia.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for chapter 20 of title 39, United States Code, is amended
3 by adding after the item relating to section 2011 (as
4 added by section 203) the following:

“2012. USPS Corporation.”.

5 (c) EFFECTIVE DATE.—No authority under section
6 2012 of title 39, United States Code (as amended by this
7 section) shall be available until the first day of the first
8 fiscal year beginning on or after the date as of which the
9 baseline rates are determined under section 3721(e)(2) of
10 title 39, United States Code (as amended by section 201).

11 **SEC. 205. POSTAL AND NONPOSTAL PRODUCTS.**

12 (a) IN GENERAL.—Section 102 of title 39, United
13 States Code, as amended by section 102(a) of this Act,
14 is amended by striking “and” at the end of paragraph (4),
15 by striking the period at the end of paragraph (5) and
16 inserting a semicolon, and by adding at the end the follow-
17 ing:

18 “(6) ‘postal product’ refers to any service that
19 provides for the physical delivery of letters, printed
20 matter, or packages weighing up to 70 pounds, in-
21 cluding physical acceptance, collection, sorting, or
22 transportation services ancillary thereto; and

23 “(7) ‘nonpostal product’ means any product or
24 service offered by the Postal Service (or that could
25 have been offered by the Postal Service under sec-

1 tion 404(a)(6), as last in effect before the date of
2 enactment of the Postal Modernization Act of 1999)
3 that is not a postal product.”.

4 (b) SPECIFIC POWERS.—

5 (1) IN GENERAL.—Subsection (a) of section
6 404 of title 39, United States Code, is amended—

7 (A) by striking paragraph (6); and

8 (B) by redesignating paragraphs (7)
9 through (9) as paragraphs (6) through (8), re-
10 spectively.

11 (2) CONFORMING AMENDMENT.—Section
12 1402(b)(1)(B)(ii) of the Victims of Crime Act of
13 1984 (98 Stat. 2170; 42 U.S.C. 10601(b)(1)(B)(ii))
14 is amended by striking “404(a)(8)” and inserting
15 “404(a)(7)”.

16 **Subtitle B—Related Provisions**

17 **SEC. 211. AUTHORITY FOR POSTAL REGULATORY COMMIS-** 18 **SION TO ISSUE SUBPOENAS.**

19 Section 3604 of title 39, United States Code, is
20 amended by adding at the end the following:

21 “(f)(1) Any Commissioner of the Postal Regulatory
22 Commission, any administrative law judge appointed by
23 the Commission under section 3105 of title 5, and any
24 employee of the Commission designated by the Commis-

1 sion may administer oaths, examine witnesses, take depo-
2 sitions, and receive evidence.

3 “(2) The Chairman of the Commission, any Commis-
4 sioner designated by the Chairman, and any administra-
5 tive law judge appointed by the Commission under section
6 3105 of title 5 may, with respect to any proceeding con-
7 ducted by the Commission under this title—

8 “(A) issue subpoenas requiring the attendance
9 and presentation of testimony of any individual, and
10 the production of documentary or other evidence,
11 from any place in the United States, any territory
12 or possession of the United States, the Common-
13 wealth of Puerto Rico, or the District of Columbia;
14 and

15 “(B) order the taking of depositions and re-
16 sponses to written interrogatories.

17 The written concurrence of a majority of the Commis-
18 sioners then holding office shall, with respect to each sub-
19 poena under subparagraph (A), be required in advance of
20 its issuance.

21 “(3) In the case of contumacy or failure to obey a
22 subpoena issued under this subsection, upon application
23 by the Commission, the district court of the United States
24 for the district in which the person to whom the subpoena
25 is addressed resides or is served may issue an order requir-

1 ing such person to appear at any designated place to tes-
2 tify or produce documentary or other evidence. Any failure
3 to obey the order of the court may be punished by the
4 court as a contempt thereof.

5 “(g)(1) If the Postal Service determines that any doc-
6 ument or other matter it provides to the Postal Regulatory
7 Commission pursuant to a subpoena issued under sub-
8 section (f), or otherwise at the request of the Commission
9 in connection with any proceeding or other purpose under
10 this title, contains information which is described in sec-
11 tion 410(c) of this title, or exempt from public disclosure
12 under section 552(b) of title 5, the Postal Service shall,
13 at the time of providing such matter to the Commission,
14 notify the Commission, in writing, of its determination
15 (and the reasons therefor).

16 “(2) No officer or employee of the Commission may,
17 with respect to any information as to which the Commis-
18 sion has been notified under paragraph (1)—

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

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

24 “(3) Paragraph (2) shall not prevent information
25 from being furnished under any process of discovery estab-

1 lished under this title in connection with a proceeding
2 under this title which is conducted in accordance with sec-
3 tions 556 and 557 of title 5. The Commission shall, by
4 regulations based on rule 26(c) of the Federal Rules of
5 Civil Procedure, establish procedures for ensuring appro-
6 priate confidentiality for any information furnished under
7 the preceding sentence.”.

8 **SEC. 212. QUALIFICATION REQUIREMENTS FOR COMMIS-**
9 **SIONERS AND DIRECTORS.**

10 (a) COMMISSIONERS.—Section 3601(a) of title 39,
11 United States Code, is amended by striking the third sen-
12 tence and inserting the following: “The Commissioners
13 shall be chosen solely on the basis of their technical quali-
14 fications, professional standing, and demonstrated exper-
15 tise in economics, accounting, law, or public administra-
16 tion, and may be removed by the President only for
17 cause.”.

18 (b) DIRECTORS.—

19 (1) IN GENERAL.—Section 202(a) of title 39,
20 United States Code, is amended by striking “(a)”
21 and inserting “(a)(1)” and by striking the fourth
22 sentence and inserting the following: “The Directors
23 shall represent the public interest generally, and
24 shall be chosen solely on the basis of their dem-
25 onstrated ability in managing organizations or cor-

1 porations (in either the public or private sector) of
2 substantial size; for purposes of this sentence, an or-
3 ganization or corporation shall be considered to be
4 of substantial size if it employs at least 100,000 em-
5 ployees. The Directors shall not be representatives of
6 specific interests using the Postal Service, and may
7 be removed only for cause.”.

8 (2) CONSULTATION REQUIREMENT.—Sub-
9 section (a) of section 202 of title 39, United States
10 Code, is amended by adding at the end the follow-
11 ing:

12 “(2) In selecting the individuals described in para-
13 graph (1) for nomination for appointment to the position
14 of Director, the President should consult with the Speaker
15 of the House of Representatives, the minority leader of
16 the House of Representatives, the majority leader of the
17 Senate, and the minority leader of the Senate.”.

18 (3) RESTRICTION.—Subsection (b) of section
19 202 of title 39, United States Code, is amended by
20 striking “(b)” and inserting “(b)(1)”, and by adding
21 at the end the following:

22 “(2)(A) Notwithstanding any other provision of this
23 section, in the case of the office of the Director the term
24 of which is the first one scheduled to expire at least 4
25 months after the date of enactment of this paragraph—

1 “(i) such office may not, in the case of any per-
2 son commencing service after that expiration date,
3 be filled by any person other than an individual cho-
4 sen from among persons nominated for such office
5 with the unanimous concurrence of all labor organi-
6 zations described in section 206(a)(1); and

7 “(ii) instead of the term that would otherwise
8 apply under the first sentence of paragraph (1), the
9 term of any person so appointed to such office shall
10 be 3 years.

11 “(B) Except as provided in subparagraph (A), an ap-
12 pointment under this paragraph shall be made in conform-
13 ance with all provisions of this section that would other-
14 wise apply.”.

15 (c) APPLICABILITY.—Nothing in this section shall af-
16 fect the tenure of any individual serving as a Commis-
17 sioner on the Postal Regulatory Commission or a Director
18 of the Board of Directors of the United States Postal
19 Service pursuant to an appointment made before the date
20 of enactment of this Act, or, except as provided in the
21 amendment made by subsection (b)(3), any nomination
22 made before such date of enactment.

1 **SEC. 213. APPROPRIATIONS FOR THE COMMISSION.**

2 (a) AUTHORIZATION OF APPROPRIATIONS.—Sub-
3 section (d) of section 3604 of title 39, United States Code,
4 is amended to read as follows:

5 “(d) There are authorized to be appropriated, out of
6 the Postal Service Fund, such sums as may be necessary
7 for the Postal Regulatory Commission. In requesting an
8 appropriation under this subsection for a fiscal year, the
9 Commission shall prepare and submit to the Congress
10 under section 2009 a budget of the Commission’s ex-
11 penses, including expenses for facilities, supplies, com-
12 pensation, and employee benefits.”.

13 (b) BUDGET PROGRAM.—

14 (1) IN GENERAL.—The next to last sentence of
15 section 2009 of title 39, United States Code, is
16 amended to read as follows: “The budget program
17 shall also include separate statements of the
18 amounts which (1) the Postal Service requests to be
19 appropriated under subsections (b) and (c) of section
20 2401, (2) the Office of Inspector General of the
21 United States Postal Service requests to be appro-
22 priated, out of the Postal Service Fund, under sec-
23 tion 8G(f) of the Inspector General Act of 1978, and
24 (3) the Postal Regulatory Commission requests to be
25 appropriated, out of the Postal Service Fund, under
26 section 3604(d) of this title.”.

1 (2) CONFORMING AMENDMENT.—Section
2 2003(e)(1) of title 39, United States Code, is
3 amended by striking the first sentence and inserting
4 the following: “The Fund shall be available for the
5 payment of (A) all expenses incurred by the Postal
6 Service in carrying out its functions as provided by
7 law, subject to the same limitation as set forth in
8 the parenthetical matter under subsection (a); (B)
9 all expenses of the Postal Regulatory Commission,
10 subject to the availability of amounts appropriated
11 pursuant to section 3604(d); and (C) all expenses of
12 the Office of Inspector General, subject to the avail-
13 ability of amounts appropriated pursuant to section
14 8G(f) of the Inspector General Act of 1978.”.

15 (c) EFFECTIVE DATE.—

16 (1) IN GENERAL.—The amendments made by
17 this section shall apply with respect to fiscal years
18 beginning on or after October 1, 2000.

19 (2) SAVINGS PROVISION.—The provisions of
20 title 39, United States Code, that are amended by
21 this section shall, for purposes of any fiscal year be-
22 fore the first fiscal year to which the amendments
23 made by this section apply, continue to apply in the
24 same way as if this section had never been enacted.

1 **SEC. 214. CHANGE-OF-ADDRESS ORDER INVOLVING A COM-**
2 **MERCIAL MAIL RECEIVING AGENCY.**

3 (a) IN GENERAL.—Subchapter V of chapter 36 of
4 title 39, United States Code, is amended by adding at the
5 end the following:

6 **“§ 3686. Change-of-address order involving a commer-**
7 **cial mail receiving agency**

8 “(a) For the purpose of this section, the term ‘com-
9 mercial mail receiving agency’ or ‘CMRA’ means a private
10 business that acts as the mail receiving agent for specific
11 clients.

12 “(b) Upon termination of an agency relationship be-
13 tween an addressee and a commercial mail receiving
14 agency—

15 “(1) the addressee or, if authorized to do so,
16 the CMRA may file a change-of-address order with
17 the Postal Service with respect to such addressee;

18 “(2) a change-of-address order so filed shall, to
19 the extent practicable, be given full force and effect;
20 and

21 “(3) any mail for the addressee that is delivered
22 to the CMRA after the filing of an appropriate order
23 under this subsection shall be subject to subsection
24 (c).

25 “(c) Mail described in subsection (b)(3) shall, if
26 marked for forwarding and remailed by the CMRA, be for-

1 warded by the Postal Service in the same manner as, and
2 subject to the same terms and conditions (including limita-
3 tions on the period of time for which a change-of-address
4 order shall be given effect) as apply to, mail forwarded
5 directly by the Postal Service to the addressee.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
7 for chapter 36 of title 39, United States Code, is amended
8 by adding after the item relating to section 3685 the fol-
9 lowing:

 “3686. Change-of-address order involving a commercial mail receiving agency.”.

10 **SEC. 215. RATES FOR MAIL UNDER FORMER SECTION 4358.**

11 Section 3626 of title 39, United States Code, is
12 amended by adding at the end the following:

13 “(n) In the administration of this section, matter that
14 satisfies the circulation standards for requester publica-
15 tions shall not be excluded from being mailed at the rates
16 for mail under former section 4358 solely because such
17 matter is designed primarily for free circulation or for cir-
18 culation at nominal rates, or fails to meet the require-
19 ments of former section 4354(a)(5).”.

20 **TITLE III—GENERAL AUTHORITY**

21 **SEC. 301. RULEMAKING AUTHORITY.**

22 Paragraph (2) of section 401 of title 39, United
23 States Code, is amended to read as follows:

24 “(2) to adopt, amend, and repeal such rules
25 and regulations, not inconsistent with this title, as

1 may be necessary in the execution of its functions
2 under this title and such other functions as may be
3 assigned to the Postal Service under any provisions
4 of law outside of this title;”.

5 **SEC. 302. GENERAL DUTIES.**

6 (a) IN GENERAL.—Section 403(c) of title 39, United
7 States Code, is amended—

8 (1) by inserting “domestic or international”
9 after “users of the”; and

10 (2) by striking “user.” and inserting “user, ex-
11 cept that this subsection shall not apply to competi-
12 tive products (as defined in chapter 37).”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply with respect to services, classifica-
15 tions, rates, and fees, to the extent provided or applicable
16 (as the case may be) on or after the first day of the first
17 fiscal year beginning on or after the date as of which base-
18 line rates are determined under section 3721(e)(2) of title
19 39, United States Code (as amended by section 201).

20 **SEC. 303. EMPLOYMENT OF POSTAL POLICE OFFICERS.**

21 Section 404 of title 39, United States Code, is
22 amended by adding at the end the following:

23 “(c)(1) The Postal Service may employ guards for all
24 buildings and areas owned or occupied by the Postal Serv-
25 ice or under the charge and control of the Postal Service,

1 and such guards shall have, with respect to such property,
2 the powers of special policemen provided by the first sec-
3 tion of the Act cited in paragraph (2), and, as to such
4 property, the Postmaster General (or his designee) may
5 take any action that the Administrator of General Services
6 (or his designee) may take under section 2 or 3 of such
7 Act, attaching thereto penalties under the authority and
8 within the limits provided in section 4 of such Act.

9 “(2) The Act cited in this paragraph is the Act of
10 June 1, 1948 (62 Stat. 281), commonly known as the Pro-
11 tection of Public Property Act.”

12 **SEC. 304. DATE OF POSTMARK TO BE TREATED AS DATE OF**
13 **APPEAL IN CONNECTION WITH THE CLOSING**
14 **OR CONSOLIDATION OF POST OFFICES.**

15 (a) IN GENERAL.—Section 404(b) of title 39, United
16 States Code, is amended by adding at the end the follow-
17 ing:

18 “(6) For purposes of paragraph (5), any appeal re-
19 ceived by the Commission shall—

20 “(A) if sent to the Commission through the
21 mails, be considered to have been received on the
22 date of the Postal Service postmark on the envelope
23 or other cover in which such appeal is mailed; or

24 “(B) if otherwise lawfully delivered to the Com-
25 mission, be considered to have been received on the

1 date determined based on any appropriate docu-
2 mentation or other indicia (as determined under reg-
3 ulations of the Commission).”.

4 (b) EFFECTIVE DATE.—This section and the amend-
5 ments made by this section shall apply with respect to any
6 determination to close or consolidate a post office which
7 is first made available, in accordance with paragraph (3)
8 of section 404(b) of title 39, United States Code, after
9 the end of the 3-month period beginning on the date of
10 enactment of this Act.

11 **SEC. 305. UNFAIR COMPETITION PROHIBITED.**

12 (a) SPECIFIC LIMITATIONS.—Chapter 4 of title 39,
13 United States Code, is amended by adding after section
14 404 the following:

15 **“§ 404a. Specific limitations**

16 “(a)(1) Except as specifically authorized by law, the
17 Postal Service may not—

18 “(A) establish any rule or regulation (including
19 any standard) the effect of which is to create any
20 competitive advantage for itself, any corporation es-
21 tablished under section 2012, or any entity funded
22 (in whole or in part) by the Postal Service;

23 “(B) regulate competition, or engage in any
24 regulatory or enforcement activity, with respect to

1 actions or practices that are subject to the antitrust
2 laws; or

3 “(C) compel the disclosure, transfer, or licens-
4 ing of intellectual property (such as patents, copy-
5 rights, trademarks, trade secrets, and proprietary in-
6 formation).

7 “(2)(A) For purposes of this section, the term ‘cov-
8 ered entity’ means the Postal Service, any corporation es-
9 tablished under section 2012, and any entity funded (in
10 whole or in part) by the Postal Service.

11 “(B) Except as specifically authorized by law, a cov-
12 ered entity may not—

13 “(i) provide any postal or nonpostal product
14 with respect to which the Postal Service precludes
15 competition or otherwise establishes the terms of
16 competition through regulation (including standard-
17 setting), licensing, or policy-setting;

18 “(ii) take any action prohibited under any of
19 the antitrust laws; or

20 “(iii) obtain information from a person that
21 provides (or seeks to provide) a postal or nonpostal
22 product, and then disclose such information, or offer
23 any product or service that uses or is based in whole
24 or in part on such information, without the consent
25 of the person providing that information, unless sub-

1 stantially the same information is obtained (or ob-
2 tainable) by such covered entity from an independ-
3 ent source or is otherwise obtained (or obtainable)
4 by such covered entity in a manner not inconsistent
5 with this clause.

6 “(C) Clause (ii) of subparagraph (B) shall, in connec-
7 tion with the Postal Service, apply only in the case of con-
8 duct with respect to any service which is not reserved to
9 the United States under section 1696 of title 18, subject
10 to the same exception as set forth in the last sentence of
11 section 409(d)(1).

12 “(b)(1) For purposes of this section, the term ‘anti-
13 trust laws’ has the meaning given such term in subsection
14 (a) of the first section of the Clayton Act, but includes
15 section 5 of the Federal Trade Commission Act to the ex-
16 tent that such section 5 applies to unfair methods of com-
17 petition.

18 “(2) Nothing in this section shall be construed as lim-
19 iting the scope or effect of intellectual property rights rec-
20 ognized under the laws of the United States.

21 “(c)(1) In the case of a nonpostal product provided
22 by the Postal Service on the date of enactment of the Post-
23 al Modernization Act of 1999, and which was first so pro-
24 vided before January 1, 1994, the Postal Service may con-

1 tinue to provide such product until such time as the Postal
2 Service may determine.

3 “(2) In the case of a nonpostal product provided by
4 the Postal Service on the date of enactment of the Postal
5 Modernization Act of 1999, but which is not described in
6 paragraph (1), the Postal Service may continue to provide
7 such product only until—

8 “(A) the completion of such product’s transfer,
9 in accordance with such schedule and procedures as
10 the Postal Regulatory Commission shall by regula-
11 tion prescribe, from the Postal Service to a corpora-
12 tion established under section 2012; or

13 “(B) if earlier, the first day of the first year of
14 the first ratemaking cycle (within the meaning of
15 section 3733(a)).

16 “(3) Effective on and after the date of enactment of
17 the Postal Modernization Act of 1999, the Postal Service
18 may not provide any nonpostal product that is described
19 in neither paragraph (1) nor paragraph (2).

20 “(d)(1) No administrative remedy shall be available
21 in connection with any violation of subsection (a)(2)(B)
22 by any corporation established under section 2012 or en-
23 tity funded (in whole or in part) by the Postal Service.

24 “(2) The United States district courts shall have
25 original but not exclusive jurisdiction over all actions aris-

1 ing under subsection (a)(2)(B) brought against any cov-
2 ered entity referred to in paragraph (1). Any such action
3 brought in a State court may be removed to the appro-
4 priate United States district court under the provisions
5 of chapter 89 of title 28.

6 “(e)(1) The Postal Regulatory Commission shall pre-
7 scribe regulations to carry out this section.

8 “(2) Any regulations necessary to carry out sub-
9 section (c) shall be prescribed in time to become effective
10 by the commencement of the first proceedings under sec-
11 tion 3733 (relating to adjustment factors).”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) GENERAL POWERS.—Section 401 of title
14 39, United States Code, is amended by striking
15 “The” and inserting “Subject to the provisions of
16 section 404a, the”.

17 (2) SPECIFIC POWERS.—Section 404(a) of title
18 39, United States Code, is amended by striking
19 “Without” and inserting “Subject to the provisions
20 of section 404a, but otherwise without”.

21 (c) CLERICAL AMENDMENT.—The table of sections
22 for chapter 4 of title 39, United States Code, is amended
23 by adding at the end the following:

“404a. Specific limitations.”.

1 **SEC. 306. INTERNATIONAL POSTAL ARRANGEMENTS.**

2 (a) IN GENERAL.—Section 407 of title 39, United
3 States Code, is amended to read as follows:

4 **“§ 407. International postal arrangements**

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

6 “(1) to promote and encourage communications
7 between peoples by efficient operation of inter-
8 national postal services and other international deliv-
9 ery services for cultural, social, and economic pur-
10 poses;

11 “(2) to promote and encourage unrestricted and
12 undistorted competition in the provision of inter-
13 national postal services and other international deliv-
14 ery services, except where provision of such services
15 by private companies may be prohibited by law of
16 the United States;

17 “(3) to promote and encourage a clear distinc-
18 tion between governmental and operational respon-
19 sibilities with respect to the provision of inter-
20 national postal services and other international deliv-
21 ery services by the Government of the United States
22 and by intergovernmental organizations of which the
23 United States is a member; and

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

1 “(b)(1) The Secretary of State shall be responsible
2 for formulation, coordination, and oversight of foreign pol-
3 icy related to international postal services and other inter-
4 national delivery services, except that the Secretary may
5 not negotiate or conclude any treaty, convention, or other
6 international agreement (including those regulating inter-
7 national postal services) if such treaty, convention, or
8 agreement would, with respect to any competitive product
9 (as that term is defined in chapter 37), grant an undue
10 or unreasonable preference to the Postal Service, a private
11 provider of international postal or delivery services, or any
12 other person.

13 “(2) In carrying out the responsibilities specified in
14 paragraph (1), the Secretary of State shall exercise pri-
15 mary authority for the conduct of foreign policy with re-
16 spect to international postal services and international de-
17 livery services, including the determination of United
18 States positions and the conduct of United States partici-
19 pation in negotiations with foreign governments and inter-
20 national bodies. In exercising this authority, the
21 Secretary—

22 “(A) shall coordinate with other agencies as ap-
23 propriate, and in particular, shall give full consider-
24 ation to the authority vested by law or Executive
25 order in the Postal Regulatory Commission, the De-

1 partment of Commerce, the Department of Trans-
2 portation, and the Office of the United States Trade
3 Representative in this area;

4 “(B) shall maintain continuing liaison with
5 other executive branch agencies concerned with post-
6 al and delivery services;

7 “(C) shall maintain continuing liaison with the
8 Committee on Government Reform of the House of
9 Representatives and the Committee on Govern-
10 mental Affairs of the Senate;

11 “(D) shall maintain appropriate liaison with
12 representatives of the Postal Service to keep in-
13 formed of its interests and problems, and to provide
14 such assistance as may be needed to ensure that
15 matters of concern to the Postal Service are prompt-
16 ly considered by the Department of State or (if ap-
17 plicable, and to the extent practicable) other execu-
18 tive branch agencies;

19 “(E) shall maintain appropriate liaison with
20 representatives of users and private providers of
21 international postal services and other international
22 delivery services to keep informed of their interests
23 and problems, and to provide such assistance as may
24 be needed to ensure that matters of concern are
25 promptly considered by the Department of State or

1 (if applicable, and to the extent practicable) other
2 executive branch agencies; and

3 “(F) shall assist in arranging meetings of such
4 public sector advisory groups as may be established
5 to advise the Department of State and other execu-
6 tive branch agencies in connection with international
7 postal services and international delivery services.

8 “(3) The Secretary of State shall establish an advi-
9 sory committee (within the meaning of the Federal Advi-
10 sory Committee Act) to perform such functions as the Sec-
11 retary considers appropriate in connection with carrying
12 out subparagraphs (A) through (E) of paragraph (2).

13 “(c) Nothing in this section shall be considered to
14 prevent the Postal Service from entering into such com-
15 mercial or operational contracts related to providing inter-
16 national postal services and other international delivery
17 services as it deems appropriate, except that—

18 “(1) any such contract made with an agency of
19 a foreign government (whether under authority of
20 this subsection or otherwise) shall be solely contrac-
21 tual in nature and may not purport to be inter-
22 national law; and

23 “(2) a copy of each such contract between the
24 Postal Service and an agency of a foreign govern-
25 ment shall be transmitted to the Secretary of State

1 and the Postal Regulatory Commission not later
2 than the effective date of such contract.

3 “(d)(1) With respect to shipments of international
4 mail within the meaning of section 3741 that are exported
5 or imported by the Postal Service—

6 “(A) the Postal Service shall not tender ex-
7 ported shipments to governmental authorities of any
8 other country for clearance and importation except
9 in accordance with procedures and laws which are
10 equally applicable to similar shipments transmitted
11 by private companies; and

12 “(B)(i) subject to clause (ii), the Customs Serv-
13 ice and other appropriate Federal agencies shall
14 apply the customs laws of the United States and all
15 other laws relating to the importation or exportation
16 of such shipments in the same manner to both ship-
17 ments by the Postal Service and similar shipments
18 by private companies; and

19 “(ii) the Customs Service and other appropriate
20 Federal agencies shall deny shipments imported by
21 the Postal Service from a foreign country access to
22 special customs procedures established in accordance
23 with international postal or customs agreements for
24 shipments by postal authorities of other countries,
25 unless that foreign country makes available such

1 special customs procedures both to shipments to
2 such country from the United States by the Postal
3 Service and similar shipments to such country from
4 the United States by private companies.

5 “(2)(A) The provisions of paragraph (1)(B)(i) shall
6 take effect 6 months after the date of enactment of this
7 subsection or such earlier date as the Customs Service
8 may determine in writing.

9 “(B) The provisions of subparagraphs (A) and (B)(ii)
10 of paragraph (1) shall take effect 5 years after the date
11 of enactment of this subsection.

12 “(C) The Secretary of State shall, to the maximum
13 extent practicable, take such measures as are within the
14 control of the Secretary—

15 “(i) to complete the renegotiation of any trea-
16 ties, conventions, or other international agreements
17 (including those regulating international postal serv-
18 ices), and

19 “(ii) to encourage the governments of other
20 countries to make any changes in their laws,

21 which may be necessary in order to satisfy the conditions
22 specified in subparagraphs (A) and (B)(ii) of paragraph
23 (1) in a manner consistent with the goal of making avail-
24 able to the Postal Service and private companies a range
25 of nondiscriminatory customs procedures that will fully

1 meet the needs of all types of American shippers. The Sec-
2 retary of State shall consult with the United States Trade
3 Representative and the Commissioner of Customs in car-
4 rying out this subparagraph.

5 “(3) For purposes of this subsection, the term ‘pri-
6 vate company’ means a private company substantially
7 owned or controlled by persons who are citizens of the
8 United States.”.

9 (b) EFFECTIVE DATE.—Notwithstanding any provi-
10 sion of the amendment made by subsection (a), the au-
11 thority of the United States Postal Service to establish
12 the rates of postage or other charges on mail matter con-
13 veyed between the United States and other countries shall
14 remain available to the Postal Service until the date as
15 of which the baseline rates are determined under section
16 3721(e)(2) of title 39, United States Code (as amended
17 by section 201).

18 **SEC. 307. SUITS BY AND AGAINST THE POSTAL SERVICE.**

19 (a) IN GENERAL.—Section 409 of title 39, United
20 States Code, is amended by striking subsections (c)
21 through (e) and inserting the following:

22 “(c)(1) For purposes of the provisions of law cited
23 in paragraphs (2)(A) and (2)(B), respectively, the Postal
24 Service—

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

3 “(B) shall not be immune under any other doc-
4 trine of sovereign immunity from suit in Federal
5 court by any person for any violation of any of those
6 provisions of law by any officer or employee of the
7 Postal Service.

8 “(2) This subsection applies with respect to—

9 “(A) the Act of July 5, 1946 (commonly re-
10 ferred to as the ‘Trademark Act of 1946’ (15 U.S.C.
11 1051 and following)); and

12 “(B) the provisions of section 5 of the Federal
13 Trade Commission Act to the extent that such sec-
14 tion 5 applies to unfair or deceptive acts or prac-
15 tices.

16 “(d)(1) To the extent that the Postal Service, or
17 other Federal agency acting on behalf of or in concert with
18 the Postal Service, engages in conduct with respect to any
19 service which is not reserved to the United States under
20 section 1696 of title 18, the Postal Service or other Fed-
21 eral agency (as the case may be)—

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

1 “(B) shall not be considered a ‘Federal agency’
2 for purposes of section 1346(b) and chapter 171 of
3 title 28, and shall be liable for actions in tort in the
4 same manner as a private company; and

5 “(C) shall be considered to be a person (as de-
6 fined in subsection (a) of the first section of the
7 Clayton Act for purposes of—

8 “(i) the antitrust laws (as defined in sub-
9 section (a) of the first section of the Clayton
10 Act); and

11 “(ii) section 5 of the Federal Trade Com-
12 mission Act to the extent that such section 5
13 applies to unfair methods of competition.

14 For purposes of the preceding sentence, any private car-
15 riage of mail allowable by virtue of section 601 shall not
16 be considered a service reserved to the United States
17 under section 1696 of title 18.

18 “(2) This subsection shall not apply with respect to
19 conduct occurring before the date of enactment of this
20 subsection.

21 “(3) For purposes of any determination (in connec-
22 tion with bringing an action against the Postal Service
23 under any provision of law referred to in paragraph
24 (1)(C)) as to whether or not there has been exhaustion

1 of administrative remedies, section 404a shall be treated
2 as if it had never been enacted.

3 “(e)(1) Motor vehicles owned or leased by the Postal
4 Service that are primarily and regularly used for the
5 transport or delivery of products in the competitive cat-
6 egory of mail shall be subject to Federal and State laws
7 and regulations associated with the parking and operation
8 of such motor vehicles, to the same extent and in the same
9 manner as if they were owned or leased by a private com-
10 pany.

11 “(2) Any motor vehicle owned or leased by the Postal
12 Service that is primarily and regularly used for the trans-
13 port or delivery of products in the competitive category
14 of mail shall be clearly identified as such by appropriate
15 symbol or other marking.

16 “(3) This subsection shall become effective on the
17 first day of the first ratemaking cycle.

18 “(4) For purposes of this subsection—

19 “(A) the terms ‘product in the competitive cat-
20 egory of mail’ and ‘ratemaking cycle’ have the mean-
21 ings given them by chapter 37; and

22 “(B) the term ‘State’ includes the District of
23 Columbia, the Commonwealth of Puerto Rico, and a
24 territory or possession of the United States.

25 “(f)(1) The Postal Service shall comply with—

1 “(A) any zoning, planning, and land use regula-
2 tions applicable to State or local public entities; and

3 “(B) any building codes applicable to State or
4 local public entities.

5 “(2) For purposes of this subsection, the term ‘State’
6 has the meaning given such term by subsection (e).

7 “(g)(1) Notwithstanding any other provision of law,
8 legal representation may not be furnished by the Depart-
9 ment of Justice to the Postal Service in any action, suit,
10 or proceeding arising, in whole or in part, under any of
11 the following:

12 “(A) Subsection (c), (d), or (e) of section 409
13 (relating to application of certain laws to the Postal
14 Service).

15 “(B) Subsection (f) or (g) of section 3604 (re-
16 lating to administrative subpoenas by the Postal
17 Regulatory Commission).

18 “(C) Subsection (a) or (b) of section 3628 (re-
19 lating to appeals from decisions of the Commission
20 and the Directors).

21 The Postal Service may, by contract or otherwise, employ
22 attorneys to obtain any legal representation that it is pre-
23 cluded from obtaining from the Department of Justice
24 under this paragraph.

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

10 “(3)(A) In any action, suit, or proceeding in a court
11 of the United States arising in whole or in part under any
12 of the provisions of law referred to in subparagraph (B)
13 or (C) of paragraph (1), and to which the Commission
14 is not otherwise a party, the Commission shall be per-
15 mitted to appear as a party on its own motion and as
16 of right.

17 “(B) The Department of Justice shall, under such
18 terms and conditions as the Commission and the Attorney
19 General shall consider appropriate, furnish the Commis-
20 sion such legal representation as it may require in connec-
21 tion with any such action, suit, or proceeding, except that,
22 with the prior consent of the Attorney General, the Com-
23 mission may employ attorneys by contract or otherwise for
24 that purpose.

1 “(h) A judgment against the Government of the
2 United States arising out of activities of the Postal Service
3 shall be paid by the Postal Service out of any funds avail-
4 able to the Postal Service, subject to the restriction speci-
5 fied in section 2011(e).”.

6 (b) TECHNICAL AMENDMENT.—Section 409(a) of
7 title 39, United States Code, is amended by striking “Ex-
8 cept as provided in section 3628 of this title,” and insert-
9 ing “Except as otherwise provided in this title,”.

10 **TITLE IV—MISCELLANEOUS**
11 **PROVISIONS RELATING TO**
12 **THE BUDGET AND APPRO-**
13 **PRIATIONS PROCESS**

14 **SEC. 401. PROVISIONS RELATING TO BENEFITS UNDER**
15 **CHAPTER 81 OF TITLE 5, UNITED STATES**
16 **CODE, FOR OFFICERS AND EMPLOYEES OF**
17 **THE FORMER POST OFFICE DEPARTMENT.**

18 (a) IN GENERAL.—Section 8 of the Postal Reorga-
19 nization Act (39 U.S.C. 1001 note) is amended by insert-
20 ing “(a)” after “8.” and by adding at the end the follow-
21 ing:

22 “(b) For purposes of chapter 81 of title 5, United
23 States Code, the Postal Service shall, with respect to any
24 individual receiving benefits under such chapter as an offi-
25 cer or employee of the former Post Office Department,

1 have the same authorities and responsibilities as it has
2 with respect to an officer or employee of the Postal Service
3 receiving such benefits.”.

4 (b) EFFECTIVE DATE.—This section and the amend-
5 ments made by this section shall take effect on October
6 1, 1999.

7 **SEC. 402. TECHNICAL AND CONFORMING AMENDMENTS.**

8 (a) APPROPRIATIONS.—Subsection (e) of section
9 2401 of title 39, United States Code, is amended—

10 (1) by striking “Committee on Post Office and
11 Civil Service” each place it appears and inserting
12 “Committee on Government Reform”; and

13 (2) by striking “Not later than March 15 of
14 each year,” and inserting “Each year,”.

15 (b) TECHNICAL CORRECTION.—Sections 2803(a) and
16 2804(a) of title 39, United States Code, are amended by
17 striking “2401(g)” and inserting “2401(e)”.

18 **TITLE V—PROVISIONS RELAT-**
19 **ING TO TRANSPORTATION,**
20 **CARRIAGE, OR DELIVERY OF**
21 **MAIL**

22 **SEC. 501. OBSOLETE PROVISIONS.**

23 (a) REPEAL.—

24 (1) IN GENERAL.—Chapter 52 of title 39,
25 United States Code, is repealed.

1 (2) CONFORMING AMENDMENTS.—(A) Section
2 5005(a) of title 39, United States Code, is
3 amended—

4 (i) by striking paragraph (1), and by re-
5 designating paragraphs (2) through (4) as
6 paragraphs (1) through (3), respectively; and

7 (ii) in paragraph (3) (as so designated by
8 clause (i)) by striking “(as defined in section
9 5201(6) of this title)”.

10 (B) Section 5005(b) of such title 39 is amended
11 by striking “(a)(4)” each place it appears and in-
12 serting “(a)(3)”.

13 (C) Section 5005(c) of such title 39 is amended
14 by striking “by carrier or person under subsection
15 (a)(1) of this section, by contract under subsection
16 (a)(4) of this section, or” and inserting “by contract
17 under subsection (a)(3) of this section or”.

18 (b) ELIMINATING RESTRICTION ON LENGTH OF CON-
19 TRACTS.—(1) Section 5005(b)(1) of title 39, United
20 States Code, is amended by striking “(or where the Postal
21 Service determines that special conditions or the use of
22 special equipment warrants, not in excess of 6 years)” and
23 inserting “(or such length of time as may be determined
24 by the Postal Service to be advisable or appropriate)”.

1 (2) Section 5402(e) of such title 39 is amended by
2 striking “for a period of not more than 4 years”.

3 (3) Section 5605 of such title 39 is amended by strik-
4 ing “for periods of not in excess of 4 years”.

5 (c) CLERICAL AMENDMENT.—The table of chapters
6 for part V of title 39, United States Code, is amended
7 by repealing the item relating to chapter 52.

8 **SEC. 502. EXPANDED CONTRACTING AUTHORITY.**

9 (a) AMENDMENT TO TITLE 39, UNITED STATES
10 CODE.—

11 (1) CONTRACTS WITH AIR CARRIERS.—Sub-
12 section (d) of section 5402 of title 39, United States
13 Code, is amended to read as follows:

14 “(d)(1) The Postal Service may contract with any air
15 carrier for the transportation of mail by aircraft in inter-
16 state air transportation, including the rates therefor, ei-
17 ther through negotiations or competitive bidding.

18 “(2) Notwithstanding subsections (a)–(c), the Postal
19 Service may contract with any air carrier or foreign air
20 carrier for the transportation of mail by aircraft in foreign
21 air transportation, including the rates therefor, either
22 through negotiations or competitive bidding, except that—

23 “(A) any such contract may be awarded only to
24 (i) an air carrier holding a certificate required by
25 section 41101 of title 49 or an exemption therefrom

1 issued by the Secretary of Transportation, (ii) a for-
2 eign air carrier holding a permit required by section
3 41301 of title 49 or an exemption therefrom issued
4 by the Secretary of Transportation, or (iii) a com-
5 bination of such air carriers or foreign air carriers
6 (or both);

7 “(B) mail transported under any such contract
8 shall not be subject to any duty-to-carry requirement
9 imposed by any provision of subtitle VII of title 49
10 or by any certificate, permit, or corresponding ex-
11 emption authority issued by the Secretary of Trans-
12 portation under that subtitle;

13 “(C) every contract that the Postal Service
14 awards to a foreign air carrier under this paragraph
15 shall be subject to the continuing requirement that
16 air carriers shall be afforded the same opportunity
17 to carry the mail of the country to and from which
18 the mail is transported and the flag country of the
19 foreign air carrier, if different, as the Postal Service
20 has afforded the foreign air carrier; and

21 “(D) the Postmaster General shall consult with
22 the Secretary of Defense concerning actions that af-
23 fect the carriage of military mail transported in for-
24 eign air transportation.

1 “(3) Paragraph (2) shall not be interpreted as sus-
2 pending or otherwise diminishing the authority of the Sec-
3 retary of Transportation under section 41310 of title 49.”.

4 (2) DEFINITIONS.—Subsection (e) of section
5 5402 of title 39, United States Code, is amended to
6 read as follows:

7 “(4) For purposes of this section, the terms ‘air car-
8 rier’, ‘air transportation’, ‘foreign air carrier’, ‘foreign air
9 transportation’, ‘interstate air transportation’, and ‘mail’
10 shall have the meanings given such terms in section 40102
11 of title 49.”.

12 (b) AMENDMENTS TO TITLE 49, UNITED STATES
13 CODE.—

14 (1) REPEAL.—Effective December 31, 1998,
15 section 4(k) of Public Law 103–272 (108 Stat.
16 1370), as amended by section 7(a)(3)(D) of Public
17 Law 103–429 (108 Stat. 4389), is repealed.

18 (2) AUTHORITY OF POSTAL SERVICE TO PRO-
19 VIDE FOR INTERSTATE AIR TRANSPORTATION OF
20 MAIL.—Section 41901(a) of title 49, United States
21 Code, is amended to read as follows:

22 “(a) TITLE 39.—The United States Postal Service
23 may provide for the transportation of mail by aircraft in
24 air transportation under this chapter and under chapter
25 54 of title 39.”.

1 (3) SCHEDULES FOR CERTAIN TRANSPOR-
2 TATION OF MAIL.—Section 41902(b) of title 49,
3 United States Code is—

4 (A) by striking paragraph (1);

5 (B) by redesignating paragraphs (2), (3),
6 and (4) as paragraphs (1), (2), and (3), respec-
7 tively; and

8 (C) in paragraph (2), as so redesignated,
9 by striking “clauses (1) and (2)” and inserting
10 “paragraph (1)”.

11 (4) PRICES FOR FOREIGN TRANSPORTATION OF
12 MAIL.—Section 41907 of title 49, United States
13 Code, is amended—

14 (A) by striking “(a) LIMITATIONS.—”; and

15 (B) by striking subsection (b).

16 (5) CONFORMING AMENDMENTS.—Sections
17 41107, 41901(b), 41902(a), 41903(a), and 41903(b)
18 of title 49, United States Code, are amended by
19 striking “in foreign air transportation or”.

20 **SEC. 503. PRIVATE CARRIAGE OF LETTERS.**

21 (a) REPEAL OF SUSPENSION AUTHORITY.—Sub-
22 section (b) of section 601 of title 39, United States Code,
23 is repealed.

1 (b) PRIVATE CARRIAGE.—Section 601 of title 39,
2 United States Code, is amended by striking subsection (a)
3 and inserting the following:

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

5 “(1) the amount paid for the private carriage of
6 the letter is at least the amount equal to 6 times the
7 rate then currently charged for the 1st ounce of a
8 single-piece first-class letter;

9 “(2) the letter weighs at least 12½ ounces;

10 “(3) such carriage is within the scope of serv-
11 ices described by regulations of the United States
12 Postal Service (as in effect on July 1, 1998) that
13 purport to permit private carriage by suspension of
14 the operation of this subsection (as then in effect);
15 or

16 “(4) the requirements of subsection (b) are
17 met.

18 “(b) A letter shall be considered to satisfy the re-
19 quirements of this subsection if—

20 “(1) it is enclosed in an envelope;

21 “(2) the amount of postage which would have
22 been charged on the letter if it had been sent by
23 mail is paid by stamps, or postage meter stamps, on
24 the envelope;

25 “(3) the envelope is properly addressed;

1 pendent study as to how employee-management relations
2 within the United States Postal Service may be improved.

3 (b) SPECIFIC REQUIREMENTS.—Under the contract,
4 the Academy shall be required—

5 (1) to involve the labor, supervisory, and mana-
6 gerial organizations of the Postal Service in develop-
7 ing the design and specific objectives of the study;

8 (2) to consult periodically with representatives
9 of the Postal Service, and of those labor, super-
10 visory, and managerial organizations, on the
11 progress of the study; and

12 (3) to provide opportunity for those labor, su-
13 pervisory, and managerial organizations to review
14 and submit written comments on the final report.

15 (c) FINAL REPORT.—

16 (1) IN GENERAL.—The Academy shall, not later
17 than 12 months after the date on which the contract
18 for the study under this section is entered into, sub-
19 mit its final report to the President, the Congress,
20 the Postal Service, and the labor, supervisory, and
21 managerial organizations of the Postal Service.

22 (2) CONTENTS.—The report shall contain the
23 findings, conclusions, and recommendations of the
24 Academy on all matters required to be addressed by
25 the study, and shall also include all written com-

1 “(3) The Postal Service shall solicit and include as
2 part of its report the written views and suggestions of any
3 persons who may be affected by or interested in any mat-
4 ter as to which the study pertains.

5 “(4) The conduct of the study and the drafting of
6 the report required under this section shall, consistent
7 with section 2805 (relating to inherently Governmental
8 functions), be performed only by employees of the Postal
9 Service.

10 “(b)(1) The recommendations submitted by the Post-
11 al Service under this section shall include recommenda-
12 tions concerning a universal service definition for each
13 class of delivery services the continuous provision of which
14 must, in the view of the Postal Service, be assured in order
15 to fulfill its obligations under sections 101 and 403 and
16 other provisions of this title.

17 “(2) In developing its recommendations under this
18 subsection with respect to any given class of delivery serv-
19 ices, the Postal Service shall take into consideration the
20 development of new technologies and the evolution of al-
21 ternative means of meeting the public interest objectives
22 set out in this title.

23 “(c) Each universal service definition recommended
24 by the Postal Service under this section shall include the

1 specification of minimum standards of service to be at-
2 tained, consistent with the following:

3 “(1) Standards of reliability, speed, frequency,
4 and quality of service shall be established so as to
5 meet the needs of users and consumers of universal
6 services generally.

7 “(2) Universal services should be available at
8 just, reasonable, and affordable rates sufficient to
9 enable universal services to be provided under best
10 practices of honest, efficient, and economical man-
11 agement.

12 “(3) Persons in all regions of the Nation, in-
13 cluding low-income persons and those located in
14 rural, insular, and high-cost areas, should have ac-
15 cess to universal postal services that are reasonably
16 comparable to those provided in urban areas and
17 that are available at appropriate rates. As provided
18 in section 101(b), no small post office of the Postal
19 Service shall be closed solely by reason of operating
20 at a deficit.

21 “(4) In providing universal services, the Postal
22 Service shall not, except as specifically authorized in
23 this title, make any undue or unreasonable discrimi-
24 nation among users, including other providers of
25 postal services.

1 “(5) Universal services shall be maintained
2 without interruption and without abrupt and sub-
3 stantial changes in rates or quality of service.

4 “(6) Standards for universal service should
5 avoid distortions in competition between postal oper-
6 ators and between commercial purchasers of postal
7 services to the extent consistent with fulfilling its ob-
8 ligations under sections 101 and 403 and other pro-
9 visions of this title.

10 “(7) Universal service definitions for the State
11 of Alaska shall take into account the special condi-
12 tions and needs of that State.

13 “(8) Universal services shall be provided con-
14 sistent with such other principles as the Postal Serv-
15 ice determines are necessary and appropriate for the
16 protection of the public interest, convenience, and
17 necessity, and the requirements of this title.

18 “(d) In addition to the principles set out in subsection
19 (c), the Postal Service shall take into account special re-
20 quirements for certain classes of postal services under this
21 title, including requirements for uniform, reduced, or free
22 rates.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 for chapter 28 of title 39, United States Code, is amended
25 by adding at the end the following:

 “2806. Universal postal services.”.

1 **SEC. 603. STUDY ON EQUAL APPLICATION OF LAWS TO**
2 **COMPETITIVE PRODUCTS.**

3 (a) **IN GENERAL.**—The Federal Trade Commission
4 shall prepare and submit to the President and Congress,
5 within 1 year after the date of enactment of this Act, a
6 comprehensive report identifying Federal and State laws
7 that apply differently to products of the United States
8 Postal Service in the competitive category of mail (as that
9 term is defined in chapter 37 of title 39, United States
10 Code, as amended by this Act) and similar products pro-
11 vided by private companies.

12 (b) **RECOMMENDATIONS.**—The Federal Trade Com-
13 mission shall include such recommendations as it consid-
14 ers appropriate for bringing such legal discrimination to
15 an end.

16 (c) **CONSULTATION.**—In preparing its report, the
17 Federal Trade Commission shall consult with the United
18 States Postal Service, the Postal Regulatory Commission,
19 other Federal agencies, mailers, private companies that
20 provide delivery services, and the general public, and shall
21 append to such report any written comments received
22 under this subsection.

1 **SEC. 604. GREATER DIVERSITY IN POSTAL SERVICE EXECU-**
2 **TIVE AND ADMINISTRATIVE SCHEDULE MAN-**
3 **AGEMENT POSITIONS.**

4 (a) STUDY.—The Board of Directors shall study and,
5 within 1 year after the date of enactment of this Act, sub-
6 mit to the President and Congress a report concerning the
7 extent to which women and minorities are represented in
8 supervisory and management positions within the United
9 States Postal Service. Any data included in the report
10 shall be presented in the aggregate and by pay level.

11 (b) PERFORMANCE EVALUATIONS.—The United
12 States Postal Service shall, as soon as practicable, take
13 such measures as may be necessary to ensure that, for
14 purposes of conducting performance appraisals of super-
15 visory or managerial employees, appropriate consideration
16 shall be given to meeting affirmative action goals, achiev-
17 ing equal employment opportunity requirements, and im-
18 plementation of plans designed to achieve greater diversity
19 in the workforce.

20 **SEC. 605. PLAN FOR ASSISTING DISPLACED WORKERS.**

21 (a) PLAN.—The United States Postal Service shall,
22 before the deadline specified in subsection (b), develop and
23 be prepared to implement, whenever necessary, a com-
24 prehensive plan under which reemployment assistance
25 shall be afforded to employees displaced as a result of the
26 automation or privatization of any of its functions.

1 (b) REPORT.—Not later than 1 year after the date
2 of enactment of this Act, the United States Postal Service
3 shall submit to its Board of Directors and Congress a
4 written report describing its plan under this section.

5 **SEC. 606. CONTRACTS WITH WOMEN, MINORITIES, AND**
6 **SMALL BUSINESSES.**

7 The Board of Directors shall study and, within 1 year
8 after the date of enactment of this Act, submit to the
9 President and the Congress a report concerning the num-
10 ber and value of contracts and subcontracts the Postal
11 Service has entered into with women, minorities, and small
12 businesses.

13 **SEC. 607. DEFINITION.**

14 For purposes of this title, the term “Board of Direc-
15 tors” has the meaning given such term by section 102 of
16 title 39, United States Code (as amended by section 101
17 of this Act).

18 **TITLE VII—INSPECTORS**
19 **GENERAL**

20 **SEC. 701. INSPECTOR GENERAL OF THE POSTAL REGU-**
21 **LATORY COMMISSION.**

22 (a) IN GENERAL.—Paragraph (2) of section 8G(a)
23 of the Inspector General Act of 1978 is amended by insert-
24 ing “the Postal Regulatory Commission,” after “the
25 United States International Trade Commission,”.

1 (b) ADMINISTRATION.—Section 3604 of title 39,
2 United States Code, is amended by adding after sub-
3 section (g) (as added by section 211) the following:

4 “(h)(1) Notwithstanding any other provision of this
5 title or of the Inspector General Act of 1978, the authority
6 to select, appoint, and employ officers and employees of
7 the Office of Inspector General of the Postal Regulatory
8 Commission, and to obtain any temporary or intermittent
9 services of experts or consultants (or an organization of
10 experts or consultants) for such Office, shall reside with
11 the Inspector General of the Postal Regulatory Commis-
12 sion.

13 “(2) Except as provided in paragraph (1), any exer-
14 cise of authority under this subsection shall, to the extent
15 practicable, be in conformance with the applicable laws
16 and regulations that govern selections, appointments and
17 employment, and the obtaining of any such temporary or
18 intermittent services, within the Postal Regulatory Com-
19 mission.”.

20 (c) DEADLINE.—No later than 180 days after the
21 date of enactment of this Act—

22 (1) the first Inspector General of the Postal
23 Regulatory Commission shall be appointed; and

24 (2) the Office of Inspector General of the Post-
25 al Regulatory Commission shall be established.

1 **SEC. 702. INSPECTOR GENERAL OF THE UNITED STATES**
2 **POSTAL SERVICE TO BE APPOINTED BY THE**
3 **PRESIDENT.**

4 (a) DEFINITIONAL AMENDMENTS TO THE INSPEC-
5 TOR GENERAL ACT OF 1978.—Section 11 of the Inspector
6 General Act of 1978 is amended—

7 (1) in paragraph (1)—

8 (A) by striking “and” before “the chief ex-
9 ecutive officer of the Resolution Trust Corpora-
10 tion”;

11 (B) by striking “and” before “the Chair-
12 person of the Federal Deposit Insurance Cor-
13 poration”;

14 (C) by striking “or” before “the Commis-
15 sioner of Social Security, Social Security Ad-
16 ministration”; and

17 (D) by inserting “or the Postmaster Gen-
18 eral and Chief Executive Officer of the United
19 States Postal Service;” after “Social Security
20 Administration;”; and

21 (2) in paragraph (2)—

22 (A) by striking “or” before “the Veterans’
23 Administration”;

24 (B) by striking “or” before “the Social Se-
25 curity Administration”; and

1 (C) by inserting “or the United States
2 Postal Service;” after “Social Security Adminis-
3 tration;”.

4 (b) SPECIAL PROVISIONS CONCERNING THE UNITED
5 STATES POSTAL SERVICE.—

6 (1) IN GENERAL.—The Inspector General Act
7 of 1978 is amended—

8 (A) by redesignating sections 8G (as
9 amended by section 701(a)) and 8H as sections
10 8H and 8I, respectively; and

11 (B) by inserting after section 8F the fol-
12 lowing:

13 “SPECIAL PROVISIONS CONCERNING THE UNITED STATES
14 POSTAL SERVICE

15 “SEC. 8G. (a) Notwithstanding the last two sentences
16 of section 3(a), the Inspector General of the United States
17 Postal Service shall report to and be under the general
18 supervision of the Postmaster General, but shall not re-
19 port to, or be subject to supervision by, any other officer
20 or employee of the United States Postal Service or its
21 Board of Directors. No such officer or employee (including
22 the Postmaster General) or member of such Board shall
23 prevent or prohibit the Inspector General from initiating,
24 carrying out, or completing any audit or investigation, or
25 from issuing any subpoena during the course of any audit
26 or investigation.

1 “(b) In carrying out the duties and responsibilities
2 specified in this Act, the Inspector General of the United
3 States Postal Service shall have oversight responsibility
4 for all activities of the Postal Inspection Service, including
5 any internal investigation performed by the Postal Inspec-
6 tion Service. The Chief Postal Inspector shall promptly re-
7 port the significant activities being carried out by the
8 Postal Inspection Service to such Inspector General.

9 “(c) Any report required to be transmitted by the
10 Postmaster General to the appropriate committees or sub-
11 committees of the Congress under section 5(d) shall also
12 be transmitted, within the 7-day period specified under
13 such section, to the Committee on Government Reform of
14 the House of Representatives and the Committee on Gov-
15 ernmental Affairs of the Senate.

16 “(d) Notwithstanding any provision of paragraph (7)
17 or (8) of section 6(a), the Inspector General of the United
18 States Postal Service may select, appoint, and employ
19 such officers and employees as may be necessary for carry-
20 ing out the functions, powers and duties of the Office of
21 Inspector General and to obtain the temporary or inter-
22 mittent services of experts or consultants or an organiza-
23 tion of experts or consultants, subject to the applicable
24 laws and regulations that govern such selections, appoint-

1 ments, and employment, and the obtaining of such serv-
2 ices, within the United States Postal Service.

3 “(e) Nothing in this Act shall restrict, eliminate, or
4 otherwise adversely affect any of the rights, privileges, or
5 benefits of employees of the United States Postal Service,
6 or labor organizations representing employees of the
7 United States Postal Service, under chapter 12 of title 39,
8 United States Code, the National Labor Relations Act,
9 any handbook or manual affecting employee labor rela-
10 tions with the United States Postal Service, or any collec-
11 tive bargaining agreement.

12 “(f) There are authorized to be appropriated, out of
13 the Postal Service Fund, such sums as may be necessary
14 for the Office of Inspector General of the United States
15 Postal Service.

16 “(g) As used in this section, ‘Postmaster General’,
17 ‘Board of Directors’, and ‘Board’ each has the meaning
18 given it by section 102 of title 39, United States Code.”.

19 (2) RELATED PROVISIONS.—

For certain related provisions, see section 213(b).

20 (c) AUDITS OF THE POSTAL SERVICE.—

21 (1) AUDITS.—Subsection (e) of section 2008 of
22 title 39, United States Code, is amended to read as
23 follows:

24 “(e)(1) At least once each year beginning with the
25 fiscal year commencing after the date of enactment of the

1 Postal Modernization Act of 1999, the financial state-
2 ments of the Postal Service (including those used in deter-
3 mining and establishing postal rates) shall be audited by
4 the Inspector General or by an independent external audi-
5 tor selected by the Inspector General.

6 “(2) Audits under this section shall be conducted in
7 accordance with applicable generally accepted government
8 auditing standards.

9 “(3) Upon completion of the audit required by this
10 subsection, the person who audits the statement shall sub-
11 mit a report on the audit to the Postmaster General.”.

12 (2) RESULTS OF INSPECTOR GENERAL’S AUDIT
13 TO BE INCLUDED IN ANNUAL REPORT.—Section
14 2402 of title 39, United States Code, is amended by
15 inserting after the first sentence the following:
16 “Each report under this section shall include, for the
17 most recent fiscal year for which a report under sec-
18 tion 2008(e) is available (unless previously transmit-
19 ted under the following sentence), a copy of such re-
20 port.”.

21 (3) COORDINATION PROVISIONS.—Subsection
22 (d) of section 2008 of title 39, United States Code,
23 is amended—

1 (A) by striking “(d) Nothing” and insert-
2 ing “(d)(1) Except as provided in paragraph
3 (2), nothing”; and

4 (B) by adding at the end the following:

5 “(2) An audit or report under paragraph (1) may not
6 be obtained without the prior written approval of the In-
7 spector General.”.

8 (4) SAVINGS PROVISION.—For purposes of any
9 fiscal year preceding the first fiscal year commenc-
10 ing after the date of enactment of this Act, the pro-
11 visions of title 39, United States Code, shall be ap-
12 plied as if the amendments made by this subsection
13 had never been enacted.

14 (d) REPORTS.—

15 (1) IN GENERAL.—Section 3013 of title 39,
16 United States Code, is amended—

17 (A) in the first sentence by striking “Post-
18 master General” and inserting “Chief Postal
19 Inspector”;

20 (B) by striking “Board” each place it ap-
21 pears and inserting “Inspector General”;

22 (C) in the third sentence by striking “Each
23 such report shall be submitted within sixty days
24 after the close of the reporting period involved”
25 and inserting “Each such report shall be sub-

1 mitted within 1 month (or such shorter length
2 of time as the Inspector General may specify)
3 after the close of the reporting period involved”;
4 and

5 (D) by striking the last sentence and in-
6 serting the following:

7 “The information in a report submitted under this section
8 to the Inspector General with respect to a reporting period
9 shall be included as part of the semiannual report pre-
10 pared by the Inspector General under section 5 of the In-
11 spector General Act of 1978 for the same reporting period.
12 Nothing in this section shall be considered to permit or
13 require that any report by the Chief Postal Inspector
14 under this section include any information relating to ac-
15 tivities of the Inspector General.”.

16 (2) EFFECTIVE DATE.—This subsection shall
17 take effect on the first day of the first semiannual
18 reporting period beginning on or after the date of
19 enactment of this Act and shall apply with respect
20 to semiannual reporting periods beginning on or
21 after the effective date of this subsection.

22 (3) SAVINGS PROVISION.—For purposes of any
23 semiannual reporting period preceding the first
24 semiannual reporting period referred to in para-
25 graph (2), the provisions of title 39, United States

1 Code, shall continue to apply as if the amendments
2 made by this subsection had not been enacted.

3 (e) TECHNICAL AND CONFORMING AMENDMENTS.—

4 (1) RELATING TO THE INSPECTOR GENERAL
5 ACT OF 1978.—(A) Subsection (a) of section 8H of
6 the Inspector General Act of 1978 (as amended by
7 section 701 and redesignated by subsection (b) of
8 this section) is further amended—

9 (i) in paragraph (2) by striking “the Post-
10 al Regulatory Commission, and the United
11 States Postal Service;” and inserting “and the
12 Postal Regulatory Commission;” and

13 (ii) in paragraph (4) by striking “except
14 that” and all that follows through “Code);” and
15 inserting “except that, with respect to the Na-
16 tional Science Foundation, such term means the
17 National Science Board;”.

18 (B)(i) Subsection (f) of section 8H of such Act
19 (as so redesignated) is repealed.

20 (ii) Subsection (c) of section 8H of such
21 Act (as so redesignated) is amended by striking
22 “Except as provided under subsection (f) of this
23 section, the” and inserting “The”.

1 (2) RELATING TO TITLE 39, UNITED STATES
2 CODE.—(A) Subsection (e) of section 202 of title 39,
3 United States Code, is repealed.

4 (B) Paragraph (4) of section 102 of such title
5 39, as amended by sections 102(a) and 205(a) of
6 this Act, is amended to read as follows:

7 “(4) ‘Inspector General’ means the Inspector
8 General of the United States Postal Service, ap-
9 pointed under section 3(a) of the Inspector General
10 Act of 1978;”.

11 (C) The first sentence of section 1003(a) of
12 such title 39 is amended by striking “chapters 2 and
13 12 of this title, section 8G of the Inspector General
14 Act of 1978, or other provision of law,” and insert-
15 ing “chapter 2 or 12 of this title, subsection (b) or
16 (c) of section 1003 of this title, or any other provi-
17 sion of law,”.

18 (D) Subsection (b) of section 1003 of such title
19 39 is amended by striking “respective” and inserting
20 “other”.

21 (E) Subsection (c) of section 1003 of such title
22 39 is amended by striking “included” and inserting
23 “includes”.

24 (f) EFFECTIVE DATE; ELIGIBILITY OF PRIOR IN-
25 SPECTOR GENERAL.—

1 (1) EFFECTIVE DATE.—

2 (A) IN GENERAL.—Except as provided in
3 subparagraph (B) or in subsection (c) or (d),
4 this section and the amendments made by this
5 section shall take effect on the date of enact-
6 ment of this Act.

7 (B) SPECIAL RULES.—

8 (i) IN GENERAL.—If the position of
9 Inspector General of the United States
10 Postal Service is occupied on the date of
11 enactment of this Act (other than by an in-
12 dividual serving due to a vacancy arising in
13 that position before the expiration of his or
14 her predecessor's term), then, for purposes
15 of the period beginning on such date of en-
16 actment and ending on January 5, 2004,
17 or, if earlier, the date on which such indi-
18 vidual ceases to serve in that position, title
19 39, United States Code, and the Inspector
20 General Act of 1978 shall be applied as if
21 the amendments made by this section had
22 not been enacted, except—

23 (I) for those made by subsections
24 (c) and (d); and

25 (II) as provided in clause (ii).

1 (ii) AUTHORIZATION OF APPROPRIA-
2 TIONS.—

3 (I) IN GENERAL.—Notwithstand-
4 ing any other provision of this para-
5 graph, subsection (f) of section 8G of
6 the Inspector General Act of 1978 (as
7 amended by this section) shall be ef-
8 fective for purposes of fiscal years be-
9 ginning on or after October 1, 2000.

10 (II) SAVINGS PROVISION.—For
11 purposes of the fiscal year ending on
12 September 30, 2000, funding for the
13 Office of Inspector General of the
14 United States Postal Service shall be
15 made available in the same manner as
16 if this Act had never been enacted.

17 (2) ELIGIBILITY OF PRIOR INSPECTOR GEN-
18 ERAL.—Nothing in this Act shall prevent any indi-
19 vidual who has served as Inspector General of the
20 United States Postal Service at any time before the
21 date of enactment of this Act from being appointed
22 to that position pursuant to the amendments made
23 by this section.

1 **TITLE VIII—LAW ENFORCEMENT**
2 **Subtitle A—Amendments to**
3 **Title 39, United States Code**

4 **SEC. 801. MAKE FEDERAL ASSAULT STATUTES APPLICABLE**
5 **TO POSTAL CONTRACT EMPLOYEES.**

6 Section 1008 of title 39, United States Code, is
7 amended—

8 (1) in subsection (a) by inserting “or entrusted
9 with mail under contract with the Postal Service”
10 after “mail”; and

11 (2) in subsection (b) by inserting “an employee
12 of the Postal Service for the purposes of sections
13 111 and 1114 of title 18, and” after “deemed”.

14 **SEC. 802. SEXUALLY ORIENTED ADVERTISING.**

15 (a) **CIVIL PENALTY.**—Section 3011 of title 39,
16 United States Code, is amended—

17 (1) by redesignating subsections (b) through (e)
18 as subsections (c) through (f), respectively; and

19 (2) by inserting after subsection (a) the follow-
20 ing:

21 “(b)(1) Upon a finding by the court that a sexually
22 oriented advertisement has been mailed in violation of sec-
23 tion 3010(b), the court may assess, on whoever made the
24 mailing or caused it to be made, a civil penalty of not
25 less than \$500 and not more than \$1,500 for each viola-

1 tion. Each piece of mail sent in violation of section
2 3010(b) shall constitute a separate violation.

3 “(2) For purposes of this subsection—

4 “(A) receipt of a sexually oriented advertise-
5 ment after the recipient’s name and address have
6 been listed (as described in section 3010(b)) for at
7 least 60 days shall create a rebuttable presumption
8 that such advertisement was mailed more than 30
9 days after that individual’s name and address be-
10 came so listed; and

11 “(B) receipt in the mail of a sexually oriented
12 advertisement addressed to ‘Occupant’ or ‘Resident’
13 (or any other term permitted by Postal Service
14 standards on simplified addressing) at the recipient’s
15 address, or which is specifically addressed to the re-
16 cipient, but with an inconsequential error or vari-
17 ation in the recipient’s name or address, shall, for
18 purposes of applying the mailing prohibition of sec-
19 tion 3010(b), create a rebuttable presumption that
20 such advertisement was mailed to such recipient.

21 “(3) Any penalty assessed under paragraph (1) shall
22 be paid to the Postal Service for deposit in the Postal
23 Service Fund established by section 2003.”.

24 (b) REPEAL.—

1 “(A) such person had actual knowledge of
2 the facts giving rise to the violation; or

3 “(B) a reasonable person acting in the
4 same circumstances and exercising due care
5 would have had such knowledge; and

6 “(4) the term ‘hazardous matter’ has the mean-
7 ing given such term by section 1716 of title 18.

8 “(b) Any person—

9 “(1) who knowingly mails or causes to be
10 mailed any parcel, the contents of which constitute
11 or include any hazardous matter which has been de-
12 clared by statute or Postal Service regulation to be
13 nonmailable under any circumstances;

14 “(2) who knowingly mails or causes to be
15 mailed a parcel in violation of any statute or Postal
16 Service regulation restricting the time, place, or
17 manner in which hazardous matter may be mailed;
18 or

19 “(3) who knowingly manufactures, distributes,
20 or sells any container, packaging kit, or similar de-
21 vice that—

22 “(A) is represented, marked, certified, or
23 sold by such person for use in the mailing of
24 any hazardous matter; and

1 “(B) fails to conform with any statute or
2 Postal Service regulation setting forth stand-
3 ards for containers, packaging kits, or similar
4 devices used for the mailing of hazardous mat-
5 ter;

6 shall be liable to the Postal Service for a civil penalty in
7 an amount not to exceed \$25,000 per violation.

8 “(c) The Postal Service may enforce this section by
9 commencing a civil action in accordance with section
10 409(d). The action may be brought in the district court
11 of the United States for the district in which the defend-
12 ant resides or any district in which the defendant conducts
13 business or in which a violation of this section was discov-
14 ered.

15 “(d) In determining the amount of any civil penalty
16 to be assessed under this section, the district court—

17 “(1) shall treat as a separate violation—

18 “(A) each parcel mailed or caused to be
19 mailed as described in paragraph (1) or (2) of
20 subsection (b); and

21 “(B) each container, packaging kit, or
22 similar device manufactured, distributed, or
23 sold as described in subsection (b)(3); and

24 “(2) shall take into account—

1 communicating a verbal or written threat) directed at
2 another person who is or was an officer or
3 employee—

4 “(A) in the executive, legislative, or judicial
5 branch of the Federal Government; or

6 “(B) in the United States Postal Service;
7 while such other person is engaged in official duties
8 or on account of such duties;

9 “(2) knows that such conduct is likely to place
10 that other person in reasonable fear of sexual bat-
11 tery, bodily injury, or death; and

12 “(3) thereby induces such fear in that other
13 person;

14 shall be punished as provided in subsection (b) of this sec-
15 tion.

16 “(b)(1) The punishment for an offense under sub-
17 section (a) is—

18 “(A) in the case of a first conviction under such
19 subsection—

20 “(i) if, during the commission of the of-
21 fense, the offender uses a deadly or dangerous
22 weapon, a fine under this title or imprisonment
23 for not more than 10 years, or both;

1 “(ii) if the offense violates a protective
2 order, a fine under this title or imprisonment
3 for not more than 5 years, or both; and

4 “(iii) in any other case, a fine under this
5 title or imprisonment for not more than 3
6 years, or both; and

7 “(B) in the case of a second or subsequent con-
8 viction under such subsection, a fine under this title
9 or imprisonment for not more than 15 years, or
10 both.

11 “(2) If a sentence of probation is imposed for an of-
12 fense under this section, the court shall require the de-
13 fendant to undergo appropriate psychiatric, psychological,
14 or social counselling.

15 “(c)(1) Whoever is aggrieved by a violation of this
16 section may, in a civil action, obtain appropriate relief
17 from the person engaging in that violation. Such relief
18 may include compensatory and punitive damages, and in-
19 junctive or declaratory relief, and shall include reasonable
20 attorney’s fees.

21 “(2) If—

22 “(A) the court issues an injunction under this
23 subsection;

24 “(B) the person against whom the injunction is
25 issued is an officer or employee in the executive

1 branch of the Federal Government or in the United
2 States Postal Service; and

3 “(C) there is a nexus between the enjoined con-
4 duct and such person’s office or employment;
5 the court may order that the person be suspended or sum-
6 marily discharged from such office or employment.

7 “(d) As used in this section, the term ‘protective
8 order’ means any court order that requires an individual—

9 “(1) to refrain from behavior prohibited by sub-
10 section (a); or

11 “(2) to refrain from contact with the person
12 who subsequently is a victim of the offense under
13 such subsection that is committed by that individ-
14 ual.”.

15 (b) CLERICAL AMENDMENT.—The table of sections
16 for chapter 41 of title 18, United States Code, is amended
17 by adding at the end the following:

“881. Stalking Federal and postal officers and employees.”.

18 **SEC. 812. NONMAILABILITY OF CONTROLLED SUBSTANCES.**

19 Section 1716 of title 18, United States Code, is
20 amended by adding at the end the following:

21 “Whoever knowingly deposits for mailing or delivery,
22 or knowingly causes to be delivered by mail, according to
23 the direction thereon, or at any place at which it is di-
24 rected to be delivered by the person to whom it is ad-
25 dressed, unless in accordance with the rules and regula-

1 tions authorized to be prescribed by the Postal Service,
2 any controlled substance, as that term is defined for the
3 purposes of the Controlled Substances Act, shall, if the
4 distribution of a like amount of such substance is a felony
5 under such Act, be fined under this title or imprisoned
6 not more than 5 years, or both.”.

7 **SEC. 813. ENHANCED PENALTIES.**

8 Pursuant to its authority under section 994 of title
9 28, United States Code, the United States Sentencing
10 Commission shall amend its sentencing guidelines to—

11 (1) appropriately enhance penalties in cases in
12 which a defendant is convicted of stealing or de-
13 stroying a quantity of undelivered United States
14 mail, in violation of sections 1702, 1703, 1708,
15 1709, 2114, or 2115 of title 18, United States Code;
16 and

17 (2) establish that the intended loss in a theft of
18 an access device as defined in section 1029(e)(1) of
19 title 18, United States Code, shall be based on the
20 credit line of the access device or the actual unau-
21 thorized charges, whichever amount is greater.

22 **SEC. 814. POSTAL BURGLARY PROVISIONS.**

23 (a) LARCENY INVOLVING POST OFFICE BOXES AND
24 POSTAL STAMP VENDING MACHINES.—Section 2115 of
25 title 18, United States Code, is amended—

1 (1) by striking “or” before “any building”;

2 (2) by inserting “or any post office box or post-
3 al products vending machine,” after “used in whole
4 or in part as a post office,”; and

5 (3) by inserting “or in such box or machine,”
6 after “so used”.

7 (b) RECEIPT, POSSESSION, CONCEALMENT, OR DIS-
8 POSITION OF PROPERTY.—Section 2115 of title 18,
9 United States Code, is amended—

10 (1) by inserting “(a)” before “Whoever”; and

11 (2) by adding at the end the following:

12 “(b) Whoever receives, possesses, conceals, or dis-
13 poses of any mail matter, money, or other property of the
14 United States, that has been obtained in violation of this
15 section, knowing the same to have been unlawfully ob-
16 tained, shall be fined under this title or imprisoned not
17 more than 5 years, or both.”.

18 **SEC. 815. MAIL, MONEY, OR OTHER PROPERTY OF THE**

19 **UNITED STATES.**

20 (a) ENHANCED PENALTY FOR ROBBERY.—Sub-
21 section (a) of section 2114 of title 18, United States Code,
22 is amended to read as follows:

23 “(a) ASSAULT.—Whoever assaults any person having
24 lawful charge, control, or custody of any mail matter or
25 of any money or other property of the United States, with

1 intent to rob, steal, or purloin such mail matter, money,
2 or other property of the United States, or robs or attempts
3 to rob any such person of mail matter, or of any money,
4 or other property of the United States, shall, for the first
5 offense, be imprisoned not more than 10 years or fined
6 under this title, or both. If, in effecting or attempting to
7 effect such robbery the defendant wounds the person hav-
8 ing custody of such mail, money, or other property of the
9 United States, or puts that person's life in jeopardy by
10 the use of a dangerous weapon, or the offense is a subse-
11 quent offense under this subsection, the defendant shall
12 be imprisoned not more than 25 years or fined under this
13 title, or both. If the death of any person results from the
14 offense under this subsection, the defendant shall be pun-
15 ished by death or life imprisonment.”.

16 (b) ATTEMPT OFFENSES.—

17 (1) The second paragraph of section 501 of title
18 18, United States Code, is amended by striking
19 “uses or sells,” and inserting “uses or sells or at-
20 tempts to use or sell,”.

21 (2) Section 1711 of title 18, United States
22 Code, is amended by inserting “attempts to loan,
23 use, pledge, hypothecate, or convert to this own
24 use,” after “converts to his own use,”.

*U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON THE POSTAL SERVICE*

JOHN M. McHUGH, CHAIRMAN

**OVERVIEW OF AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 22 THE POSTAL MODERNIZATION ACT OF 1999**

Summary

H.R. 22 is legislation that would fundamentally modernize the nation's postal laws for the first time since 1970 in order to give the Postal Service both the tools and the incentive to adapt itself to the demands of the 21st century. At the same time, H.R. 22 also establishes new rules to ensure fair competition and protect the public interest. The bill was originally introduced on June 25, 1996, after a year and a half of development through oversight hearings. After five more hearings and taking into account additional extensive public comments on this plan, the Subcommittee on the Postal Service approved the bill on a bipartisan basis in the fall of 1998. After its reintroduction in January 1999, the Subcommittee held two more days of hearings, in which it received testimony from more than thirty-six witnesses representing the varied postal interests in the public and private sectors.

After carefully evaluating all of the testimony received in this latest round of hearings, Chairman McHugh has proposed a comprehensive Amendment in the Nature of a Substitute. Keeping with H.R. 22's objective of enhancing and improving postal services to the nation, the Amendment incorporates and responds to many of the comments received.

Amendment in the Nature Of A Substitute

The following title-by-title summary provides an overview of how the proposed Amendment would modify H.R. 22. The entire Amendment and a more detailed section-by-section review of the proposed changes – as well the current version of H.R. 22 and explanatory material – are posted on the Subcommittee's website: (<http://www.house.gov/reform/postal/hearings/hr22.htm>). Copies are also available from the Subcommittee's office in room B-349C Rayburn Building, Washington, D.C.

Title-by-Title Summary of Proposed Changes in the Amendment

Title I, which redesignates the titles of the Postal Service Board, the Postmaster General, and the Postal Rate Commission (PRC), is not changed in the Amendment.

Title II establishes the new postal rate-setting process. The amendment clarifies the definition of product to underscore that it is a “postal” product and that it applies to the “rate cell” level. In recognition of the potential challenges of mandating minimum rate requirements at the rate cell level, however, the amendment permits the PRC to waive the requirements if its application to a particular rate cell, or cells, would be impracticable. Reducing the time permitted for the Service to file the baseline rate case from eighteen months to six months accelerates the implementation of the bill. No changes are proposed to the price “cap” regimen established for setting rates for noncompetitive products.

Products contained in the competitive mail category will still be priced by the Board according to market conditions, as long as 1) each of these products are priced to cover their costs, and 2) the competitive products *collectively* make a contribution to the overall overhead of the Postal Service in at least an equal percentage to the contribution made by all noncompetitive and competitive products combined. However, the Amendment explicitly mandates certain costs for the PRC’s consideration when assessing adjustments to the cost-coverage requirement, and mandates a PRC review of the cost-coverage requirements’ operation and continuing need. The criteria for discontinuing loss-making competitive products are made more explicit in the Amendment. Other provisions clarify the PRC’s ability to review new competitive products.

The Postal Service will still be required to track revenues and expenditures of competitive products by way of a separate new account, “the Postal Service Competitive Products Fund.” However, the Amendment recognizes the complexity of separating the assets and liabilities between competitive and noncompetitive products as well as the need to reassess the Service’s accounting for competitive products’ revenues and costs. In that regard, the Amendment requires the Postal Service to develop recommendations to identify and value the assets and liabilities, which would then be reviewed in a PRC proceeding before the PRC promulgates such rules.

For experimental products, the prohibition against “unreasonable market disruption” is more clearly specified as a prohibition that such tests cannot “create an unfair or otherwise inappropriate competitive advantage for the Postal Service, particularly in regard to small business concerns.”

As currently in the bill, the Postal Service will be annually audited, as well as reviewed upon complaint, by the PRC to ensure that prices are set in accordance with the law and that delivery and performance standards are being met. The Amendment incorporates

several clarifying changes to these provisions. In addition, the PRC must still report at least every 6 years on the operation of the ratemaking system with recommendations for any legislative or other measures necessary to improve it, but the Amendment specifically adds a review of the operations of (1) the cost-coverage requirement for competitive products, (2) the Competitive Products Fund, and (3) the private Corporation authorized by section 204. In this way, a formal and regular review process is established to consider any necessary modifications.

One of the most significant modifications to Title II involves the private Corporation, which is owned by the Postal Service and funded from the Competitive Products Fund. From a legal standpoint, the Corporation is still not “the Postal Service.” Funds available to the Corporation remain limited to funds invested from the Competitive Products Fund and loans obtained on the credit of the Corporation itself. As currently in H.R. 22, the Postal Service is required to include the activities of the Corporation in the annual reports to the PRC to ensure compliance with the firewalls established between the Service and the Corporation (such as the requirement that prices charged the Corporation by the Postal Service for goods and services reflect fair market value). In addition to these existing firewalls, the Amendment makes several changes to this section:

- (1) the Corporation is specifically prohibited – in a new subsection (h) – from providing any mail preparation, processing, or packaging services that are delivered by means of noncompetitive products offered by the Postal Service, unless the Corporation is authorized in a PRC hearing on the record in which it considers various factors, the first of which is “the fair and equitable treatment of small business concerns which have invested in the development of such services, if any”;
- (2) the restrictions on interaction between the Postal Service and the Corporation are further clarified (beyond the current requirements on purchase of goods and services from the Postal Service) to explicitly mandate that the Postal Service must treat the Corporation in the same manner as it would any other private corporation, and that the goods and services provision cannot be considered to exempt the Corporation from the rates established pursuant to the pricing rules for noncompetitive and competitive products;
- (3) the Corporation and its employees are explicitly subject to the laws of the State in which it is incorporated in the exact same way as any other corporation (and its employees) incorporated in that State;
- (4) rather than a blanket waiver of post-government employment restrictions for former Postal Service employees, the waiver is limited to only the first three years of the Corporation’s existence; and
- (5) the Corporation’s specific authorities are clarified to include borrowing money on its own behalf and interactions with other private companies.

Moreover, the Amendment responds to the testimony received from several witnesses as to their suggestion that the noncompetitive product customers more explicitly benefit from

the existence, if any, of a Corporation created under this title. Under a new provision, if the Corporation is created, any excess revenues that occur in a given year from Competitive Products collectively (which will include any earnings paid by the Corporation) must be shared equally with the Postal Service Fund (noncompetitive products) and the Competitive Products Fund. Without placing unfair burdens on the Corporation, this section ensures that (1) to the extent that benefits flowing to the Postal Service from the Corporation result in excess revenues, these monies will be shared with noncompetitive product customers, and (2) such customers share equally in the benefits of the success of competitive postal products before such revenues are available for investment in the Corporation. The six-year review mentioned above is modified to include an evaluation of whether this new section should remain in effect, and if so, how it might be improved.

Amendments to Title II also institute one-way transfers of products to the competitive category, as suggested by the Department of Justice, and in response to extensive testimony on the negotiated service agreement provisions for noncompetitive products, modify and clarify those provisions. Title II also narrows the qualification requirements for the Directors to recognize testimony that the current language may have been too broad.

Title III requires equal application and impartial administration of laws to the Postal Service, particularly in regard to unfair competition. Major changes in the Amendment primarily respond to suggestions from the Department of Justice and the Postal Service to tighten and clarify the prohibitions on unfair competition in section 305.

Title IV is not changed in the Amendment; this title makes technical, conforming amendments related to the budget and appropriations.

Title V changes are limited to clarifying the authority for the Postal Service to contract for carriage of mail in foreign air transportation in response to testimony of the Department of Transportation and the Air Transport Association.

Title VI mandates several studies; the Amendment incorporates Postal Service suggestions on the review of universal service, and adopts a Justice Department suggestion to transfer to the Federal Trade Commission the responsibility for evaluating the equal application of laws.

Title VII and Title VIII, provisions dealing with Inspectors General and law enforcement authorities, are not changed in the Amendment.

SECTION	SUMMARY OF MODIFICATION
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U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON THE POSTAL SERVICE

JOHN M. McHUGH, CHAIRMAN

H.R. 22

THE POSTAL MODERNIZATION ACT OF 1999

SECTION-BY-SECTION REVIEW

OF

CHAIRMAN'S AMENDMENT IN THE NATURE OF A SUBSTITUTE

NOTE: THIS DOCUMENT REVIEWS ALL SUBSTANTIVE CHANGES PROPOSED BY THE AMENDMENT, BUT DOES NOT REVIEW CHANGES THAT ARE SOLELY TECHNICAL AND CONFORMING IN NATURE.

SECTION	SUMMARY OF MODIFICATION
TITLE I – REDESIGNATION OF THE BOARD OF GOVERNORS, THE POSTMASTER GENERAL, AND THE POSTAL RATE COMMISSION	No changes proposed.
TITLE II – NEW SYSTEM RELATING TO POSTAL RATES, CLASSES, AND SERVICES	
• SECTION 201. ESTABLISHMENT	
Section 3701 <u>Definitions</u>	In response to testimony from many witnesses regarding confusion over the definition of “product”, the term is clarified in two ways: (1) to underscore that each rate cell is a product and (2) that this definition relates to “postal” products, given that section 205 limits the Postal Service to providing only such products.
Section 3702 <u>Free mailing privileges unaffected</u>	No changes proposed.
Section 3721 <u>Determination of baseline rates</u>	In response to the Postal Service’s desire to speed-up implementation of the bill, the amendment reduces the time permitted for the Postal Service to file the baseline rate case from eighteen months to six months.
Section 3722 <u>Provisions relating to reduced-rate categories of mail</u>	No changes proposed.
Section 3723 <u>Automatic termination of any rate case that may be pending</u>	No changes proposed.
Section 3731 <u>Applicability; definitions</u>	No changes proposed.
Section 3732 <u>Limitations on rates</u>	In recognition of the potential challenges of mandating minimum rate requirements at the rate cell level, the amendment permits the PRC to waive the requirement if its application to a particular rate cell, or cells, would be impracticable. The PRC would make its determination after reviewing the rates in question (on its own motion or on granting of a petition for such review) in proceedings conducted in accordance with regulations that it will prescribe.
Section 3733 <u>Adjustment factor</u>	No changes proposed.
Section 3734 <u>Action of the Board</u>	No changes proposed.
Section 3741 <u>Applicability; definition</u>	No changes proposed.
Section 3742 <u>Action of the Board</u>	As currently written in H.R. 22, the pricing authority for competitive products does not take effect until the first year beginning on or after the date when baseline rates are set, although an exception is made for international mail products in the competitive category; as written in Title III of H.R. 22, the Postal Service’s existing authority to set international mail rates is preserved until the baseline rates are placed in effect, at which time the Service will be permitted to use its new pricing authority for international mail in the competitive category. The amendment clarifies that not only do the minimum rate requirements apply to these international mail products during this short period before all competitive products obtain the

SECTION	SUMMARY OF MODIFICATION
	competitive freedoms, but that any losses from these particular international products during this time must be made up in successive years from competitive products as a whole.
Section 3743 <u>Provisions applicable to competitive products individually</u>	As noted with the change to 3732, the same waiver authority is available to the PRC to address any potential challenge of applying the requirement for minimum rates at the rate cell level. In response to testimony that the authority of the PRC to discontinue loss-making competitive products was vague, the amendment modifies the criteria to be a product that “persistently fails to substantially cover the costs attributable”, and requires the PRC to establish these criteria through regulation.
Section 3744 <u>Provisions applicable to competitive products collectively</u>	In response to several witnesses who stated that the cost-coverage requirement should be modified and sunset, the amendment (1) explicitly mandates certain costs for the PRC’s consideration, (2) removes the potential situation that the PRC would determine that a cost meets the “unique or disproportionate” test but still not make an adjustment, and (3) in section 3774, specifically mandates a review of how this section has operated, whether it should remain in effect and if so, how it might be improved.
Section 3745 <u>Sharing of profits with the Postal Service Fund</u>	This is a new section of the bill. This amendment responds to the testimony received from several witnesses who suggested that the noncompetitive product customers more explicitly benefit if a Corporation is created under section 204. Under section 3745, if the Corporation is created, any excess revenues in a given year from Competitive Products collectively (which will include any earnings paid by the Corporation) must be shared equally with the Postal Service Fund (noncompetitive products) and the Competitive Products Fund. Without placing unfair burdens on the Corporation, this section ensures that (1) to the extent that benefits flowing to the Postal Service from the Corporation result in excess revenues, these monies will be shared with noncompetitive product customers, and (2) such customers share equally in the benefits of the success of Competitive Postal Products before such revenues are available for investment in the Corporation. Section 3774 is amended below to mandate a review of whether this new section should remain in effect, and if so, how it might be improved.
Section 3751 <u>Market tests of experimental products</u>	In response to testimony that the prohibition against “unreasonable market disruption” was vague, the amendment more clearly specifies a prohibition that a market test cannot “create an unfair or otherwise inappropriate competitive advantage for the Postal Service, particularly in regard to small business concerns.”
Section 3752 <u>Market tests of experimental competitive products</u>	Same amendments as in section 3751.
Section 3753 <u>Large-scale market tests</u>	No changes proposed.
Section 3754 <u>Adjustment for inflation</u>	No changes proposed.
Section 3755 <u>Conversion to permanence</u>	No changes proposed.
Section 3756 <u>Definition of a small business concern</u>	This is a new section used to clarify the criteria for defining small businesses for purposes of the market disruption test in sections 3751 and 3752; such PRC definition must conform with the Small Business Act.
Section 3757 <u>Effective date</u>	No changes proposed.

SECTION	SUMMARY OF MODIFICATION
Section 3761 <u>Criteria for the identification of noncompetitive and competitive products</u>	As proposed by the Postal Service, the amendment modifies the definition of a noncompetitive product to be consistent with how the antitrust agencies view market power.
Section 3762 <u>New noncompetitive products</u>	No changes proposed.
Section 3763 <u>New competitive products</u>	In response to testimony that suggested clarification of the PRC's ability to review new competitive products beyond the advance review period, the amendment adds a subsection specifically authorizing complaints to be presented to the PRC for review (and any remedy) before or after the new competitive product is introduced (the complaint provisions in section 202 are similarly modified). Although the Postal Service proposed a reduction to only 10 days notice, the amendment requires at least 20 days.
Section 3764 <u>Transfers of products from the noncompetitive category of mail</u>	In response to witness testimony, particularly suggestions from the Postal Service and Department of Justice, the amendment returns to the original approach of one-way transfers of products (from noncompetitive to competitive). As outlined by the Antitrust Division, competitive products will be forced to stand or fall on their own given the strong pricing and legal mandates, and if certain products succeed, the Service should not then face the threat of being subject to greater regulatory controls by being transferred back to the noncompetitive category; to do so would be the wrong signal to an entity whose efficiency HR 22 is trying to encourage.
Section 3765 <u>Transition provisions for new noncompetitive products</u>	No changes proposed.
Section 3771 <u>Annual reports by the Commission</u>	As outlined in Postal Service proposals, the amendment clarifies that the required PRC reports shall not be considered to authorize the PRC to dictate to the Postal Service the level of universal service it must provide. In addition, as highlighted by the Postal Service, the amendment recognizes the mandate in Title VI for the Service to recommend universal service definitions, and thus requires the PRC to also assess the cost impact of the Service's ultimate recommendations.
Section 3772 <u>Annual reports to the Commission</u>	As suggested by some witnesses, including the PRC, the amendment requires annual reporting on the extent of cost savings reflected in worksharing discounts, which would then be available for public comment under section 3773 (b).
Section 3773 <u>Annual determination of compliance</u>	In response to a proposal by the Postal Service, the amendment states that a PRC determination of compliance in a given year creates a <i>rebuttable</i> presumption of compliance for any relevant complaint proceeding on the specific matters reviewed in that annual audit. The amendment also clarifies that the effective date of the annual audits occurs after baseline rates are determined.
Section 3774 <u>Other reports</u>	Recognizing the testimony regarding the long-term operation of (A) the cost coverage requirements for competitive products, (B) the Competitive Products Fund, and (C) the Corporation provisions of section 204, the amendment requires specific assessments of these three provisions. The Secretary of Treasury is to be consulted on the review of the operation of the Competitive Products Fund, and the Attorney General and Secretary of Commerce are to be involved in the review of the Corporation.
• SECTION 202. AMENDMENTS TO	In response to extensive testimony and suggestions, the amendment modifies the provisions regarding

SECTION	SUMMARY OF MODIFICATION
CHAPTER 36	<p>negotiated service agreements for noncompetitive products in several ways: (1) clarifies the meaning of “similarly situated mailers” who are eligible for the same agreement to be “determined without regard to size,” thereby ensuring that a smaller mailer who is equally efficient in meeting the NSA requirements can qualify; (2) specifically mandates that the agreements may not prohibit resale, thereby encouraging the use of these agreements by mail consolidators who can pass the benefits along to mail users of all sizes; and (3) eschews the pre-approval process in favor of a detailed advance notice requirement that is subject to immediate complaint and remedy by the PRC. The provisions concerning the rate and service complaints were slightly modified to clarify and conform various remedies to the changes made elsewhere in the amendment. Given that HR 22 provides the PRC strong authority to review and remedy international rates in the baseline case (and then on complaint or the annual audit), the amendment repeals the newly enacted section 3663, which provides for more limited PRC review of international rates.</p>
<ul style="list-style-type: none"> SECTION 203. POSTAL SERVICE COMPETITIVE PRODUCTS FUND 	<p>In response to the Postal Service’s proposal, the amendment modifies the provisions relating to the Competitive Products Fund. The changes recognize the complexity of separating the assets and liabilities between competitive and noncompetitive products, which is new ground for the Postal Service and PRC, as well as the need to reassess the Service’s accounting for competitive products’ revenues and costs. In addition to a variety of related changes, the amendment adds a new subsection (h) which requires the Postal Service to develop recommendations to identify and value the assets and liabilities, among other financial matters, which would then be reviewed in a PRC proceeding before the Commission promulgates such rules. The Postal Service would then be required to periodically report on the allocation of assets and liabilities, and the amendment provides a mechanism for the PRC to update the rules.</p>
<ul style="list-style-type: none"> SECTION 204. USPS CORPORATION 	<p>In response to extensive witness testimony on this section, several changes are made in the amendment: (1) the Corporation is specifically prohibited – in a new subsection (h) – from providing any mail preparation, processing, or packaging services that are delivered by means of noncompetitive products offered by the Postal Service, unless the Corporation is authorized in a PRC hearing on the record in which it considers various factors, the first of which is “the fair and equitable treatment of small business concerns which have invested in the development of such services, if any.”; (2) the restrictions on interaction between the Postal Service and the Corporation are further clarified (beyond the current requirements on purchase of goods and services from the Postal Service) to explicitly mandate that the Postal Service must treat the Corporation in the same manner as it would any other private corporation, and that the goods and services provision cannot be considered to exempt the Corporation from the rates established pursuant to chapter 37; (3) the Corporation and its employees are explicitly subject to the laws of the State in which it is incorporated in the exact same way as any other corporation (and its employees) incorporated in that State; (4) rather than a blanket waiver of post-government employment restrictions for former Postal Service employees, the waiver is limited to only the first three years of the Corporation’s existence; and (5) the Corporation’s specific authorities are clarified to include borrowing money on its own behalf and interactions with other private companies.</p>

SECTION	SUMMARY OF MODIFICATION
<ul style="list-style-type: none"> SECTION 205. POSTAL AND NONPOSTAL PRODUCTS 	<p>The prohibition against the Postal Service’s provision of nonpostal products (as well as the transition provisions for those currently offered) is moved in the amendment from this section to section 305, Unfair Competition Prohibited as it is a more effective location: Section 305 is specifically designed to limit authority granted the Postal Service, and the PRC is authorized to establish rules to give effect to these limitations.</p>
<ul style="list-style-type: none"> SECTION 211. AUTHORITY FOR POSTAL REGULATORY COMMISSION TO ISSUE SUBPOENAS 	<p>No changes proposed.</p>
<ul style="list-style-type: none"> SECTION 212. QUALIFICATION REQUIREMENTS FOR COMMISSIONERS AND DIRECTORS 	<p>In response to the Postal Service concern, among others, that the qualification requirements for the Directors may have been too narrow, the amendment changes the criterion to “demonstrated ability in managing organizations or corporations (in either the public or private sector) of a substantial size.” Substantial size is defined in the amendment as an organization or corporation that employs at least 100,000 employees.</p>
<ul style="list-style-type: none"> SECTION 213. APPROPRIATIONS FOR THE COMMISSION 	<p>No changes proposed.</p>
<ul style="list-style-type: none"> SECTION 214. CHANGE-OF-ADDRESS ORDER INVOLVING A COMMERCIAL MAIL RECEIVING AGENCY 	<p>No changes proposed.</p>
TITLE III – GENERAL AUTHORITY	
<ul style="list-style-type: none"> SECTION 301. RULEMAKING AUTHORITY 	<p>In response to concerns from the Postal Service, the amendment recognizes that the rulemaking authority of the Postal Service is impacted by its obligations under title 5 and certain other limited provisions of law.</p>
<ul style="list-style-type: none"> SECTION 302. GENERAL DUTIES 	<p>The amendment adds an effective date in order to ensure that the exemption for competitive products does not occur until after baseline rates are determined.</p>
<ul style="list-style-type: none"> SECTION 303. EMPLOYMENT OF POSTAL POLICE OFFICERS 	<p>No changes proposed.</p>
<ul style="list-style-type: none"> SECTION 304. DATE OF POSTMARK TO BE TREATED AS DATE OF APPEAL IN CONNECTION WITH THE CLOSING OR CONSOLIDATION OF POST OFFICES 	<p>No changes proposed.</p>
<ul style="list-style-type: none"> SECTION 305. UNFAIR COMPETITION PROHIBITED 	<p>In response to suggestions from the Postal Service and the Department of Justice, the amendment tightens and clarifies the prohibitions on unfair competition in several ways: (1) the differences between limitations on (1) the Postal Service’s governmental powers and (2) the “non-governmental” actions of the Postal Service AND any corporation it owns, is made distinct by separating the prohibitions into two subsections and by refining the language throughout; (2) actions that violate the antitrust laws are redefined to be wholly consistent with existing antitrust law (as well as how it is applied to the Postal Service in section</p>

SECTION	SUMMARY OF MODIFICATION
	307), thus avoiding a situation where the PRC could somehow develop its own brand of antitrust law; (3) the prohibitions on the Postal Service's offering of nonpostal products is moved to this section as noted in the explanation to section 205 above; and (4) the amendment clearly states that the district courts have jurisdiction over violations of law by the private Corporation.
<ul style="list-style-type: none"> SECTION 306. INTERNATIONAL POSTAL ARRANGEMENTS 	In light of the experience with the recent change to section 407 of title 39, the amendment clarifies that the Secretary of State shall establish an advisory committee to help perform the necessary coordination and liaison with entities in the public and private sectors as it develops U.S. foreign policy related to international postal services and other international delivery services. In addition, the amendment clarifies the policy goals for the Secretary in working with other nations 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 Customs Service is also provided time after enactment to effect the required changes under its control.
<ul style="list-style-type: none"> SECTION 307. SUITS BY AND AGAINST THE POSTAL SERVICE 	As suggested by a PRC Commissioner, the amendment applies to the Postal Service the federal laws and regulations concerning deceptive advertising. In addition, several other changes are made to this section: (1) revisions are made to the language to better clarify the mandated instances of Postal Service self-representation; (2) authority for PRC self-representation is added; and (3) in light of section 305's prohibitions on antitrust violations, language is added to ensure that the courts do not preclude judicial review under the doctrine of exhaustion of the administrative remedies.
TITLE IV – MISCELLANEOUS PROVISIONS RELATING TO THE BUDGET AND APPROPRIATIONS PROCESS	No changes proposed.
TITLE V – PROVISIONS RELATING TO TRANSPORTATION, CARRIAGE, OR DELIVERY OF MAIL	
<ul style="list-style-type: none"> SECTION 501. OBSOLETE PROVISIONS 	No changes proposed.
<ul style="list-style-type: none"> SECTION 502. EXPANDED CONTRACTING AUTHORITY 	In response to testimony of the Department of Transportation and the Air Transport Association, the amendment clarifies the authority of the Postal Service to contract for carriage of mail in foreign air transportation by (1) ensuring that all such air carriers, whether U.S. or foreign, have the appropriate certifications from the Secretary of Transportation; (2) repealing any duty-to-carry requirements as the Postal Service would have more authority to negotiate; (3) providing for the exclusion of certain foreign governments' carriers based on the well-recognized principle of reciprocity; (4) acknowledging the role of the Secretary of Defense in moving military mail; and (5) revising the parallel authorities for the Department of Transportation in this area.
<ul style="list-style-type: none"> SECTION 503. PRIVATE CARRIAGE OF LETTERS 	No changes proposed.

SECTION	SUMMARY OF MODIFICATION
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• SECTION 504. REPEAL OF SECTION 5403	No changes proposed.
TITLE VI – STUDIES	
• SECTION 601. EMPLOYEE-MANAGEMENT RELATIONS	No changes proposed.
• SECTION 602. RECOMMENDATIONS ON UNIVERSAL POSTAL SERVICES	As suggested by the Postal Service, the amendment modifies the language to recognize that the Service’s universal service obligations are contained throughout title 39.
• SECTION 603. STUDY ON EQUAL APPLICATION OF LAWS TO COMPETITIVE PRODUCTS	As recommended by the Department of Justice, the amendment drops the requirement that Justice prepare the study, and instead mandates that the Federal Trade Commission undertakes the review.
• SECTION 604. GREATER DIVERSITY IN POSTAL SERVICE EXECUTIVE AND ADMINISTRATIVE SCHEDULE MANAGEMENT POSITIONS	No changes proposed.
• SECTION 605. PLAN FOR ASSISTING DISPLACED WORKERS	No changes proposed.
• SECTION 606. CONTRACTS WITH WOMEN, MINORITIES, AND SMALL BUSINESSES	No changes proposed.
TITLE VII – INSPECTORS GENERAL	No changes proposed.
TITLE VIII – LAW ENFORCEMENT	No changes proposed.