

**POSTAL LAWS**  
of the  
**UNITED STATES**

**Showing Amendments Proposed by**

**H.R. 22**

**“The Postal Modernization  
Act of 1999”**

**as reported by the  
House Postal Service Subcommittee  
April 29, 1999**

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**James I. Campbell Jr.**

## Preface

This document shows changes in the postal laws of the United States proposed by H.R. 22, 106th Congress, 1st Session, "The Postal Modernization Act of 1999," as reported by the Subcommittee on Postal Service of the House Committee on Government Reform on April 29, 1999. *This document does not include technical or clerical corrections made by the Subcommittee after April 29.*

Laws relating to postal service are found in several titles of the United States Code, a compilation of U.S. laws prepared by the House of Representatives. About half of these titles have been enacted into positive law. In legislation, amendments to such titles are expressed as amendments to sections of the U.S. Code. Other titles of the U.S. Code are legally unauthoritative compilations of individual statutes. Amendments to these titles are expressed as amendments to the original statutes even though, for convenience, the legislation may also specify U.S. Code citations. Some statutory provisions—usually of a transitory nature—are not included in the U.S. Code.

The most important source of law relating to postal services is Title 39 of the U.S. Code, which is devoted to the Postal Service. The second most important repository of postal law is Title 18, dealing with crimes and criminal procedure. Provisions in Title 18 prohibit violence against Postal Service property and personnel, certain types of competition with the Postal Service, and use of the mails for various activities. Titles 39 and 18 are positive law. H.R. 22 proposes an extensive revision of Title 39, minor changes in Title 18, and amendments to several other statutes.

Part I of this document reprints Title 39 in its entirety, showing all changes proposed by H.R. 22. Part II reproduces sections of H.R. 22 which do not amend provisions of the U.S. Code. Parts III through V provide provisions from other titles of the U.S. Code and show amendments proposed by H.R. 22. Part VI reprints sections of H.R. 22 which amend other U.S. Code provisions, but does not provide the current text of these provisions since the changes proposed are minor. In Parts I and III through V, proposed additions to current law are shown in italicized type; proposed deletions are shown in struck-through type. The base legal text is current through Public Law 105-277, approved October 21, 1998.

This compilation would have been impossible without the skill and diligence of my assistant, Jennifer Hoffman. Responsibility for errors, however, is mine. Please email notice of corrections to [jcampbell@jcampbell.com](mailto:jcampbell@jcampbell.com). Corrected versions of this document, if any, will be posted on the "Rowland" web site at [www.jcampbell.com/rowland/pousarfm.htm](http://www.jcampbell.com/rowland/pousarfm.htm).

James I. Campbell Jr.

Washington, D.C., May 3, 1999

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# I. TITLE 39

## POSTAL SERVICE

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### CHAPTER 1--POSTAL POLICY AND DEFINITIONS

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#### § 101. Postal policy

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

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

that effective postal services be insured to residents of both urban and rural communities.

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

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

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

(f) In selecting modes of transportation, the Postal Service shall give highest consideration to the prompt and economical delivery of all mail and shall make a fair and equitable distribution of mail business to carriers providing similar modes of transportation services to the Postal Service. Modern methods of transporting mail by containerization and programs designed to achieve overnight transportation to the destination of important letter mail to all parts of the Nation shall be a primary goal of postal operations.

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

## § 102. Definitions

As used in this title--

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

(2) "Board of ~~Governors~~ *Directors*", and "Board", unless the context otherwise requires, mean the ~~Board of Governor~~ *Board of Directors* established under section 202 of this title;

(3) "~~Governors~~ *Directors*" means the 9 members of the ~~Board of Governor~~ *Board of Directors* appointed by the President, by and with the advice and consent of the Senate, under section 202(a) of this title; ~~and~~

~~(4) "Inspector General" means the Inspector General appointed under section 202(e) of this title.; and~~

(4) "*Inspector General*" means the *Inspector General of the United States Postal Service, appointed under section 3(a) of the Inspector General Act of 1978; [1]*

(5) "*Postmaster General*" means the *Postmaster General and Chief Executive Officer of the United States Postal Service appointed*

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<sup>1</sup> Paragraph (4) amended by section 702(e)(2)(B) of H.R. 22. For effective date, see note to section 11 of the Inspector General Act.

*under section 202(a) of this title;*

(6) “postal product” refers to any service that provides for the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, or transportation services ancillary thereto; and

(7) “nonpostal product” means any product or service offered by the Postal Service (or that could have been offered by the Postal Service under section 404(a)(6), as last in effect before the date of enactment of the Postal Modernization Act of 1999) that is not a postal product. [2]

## CHAPTER 2--ORGANIZATION

Sec.

201. United States Postal Service.

202. ~~Board of Governor~~ *Board of Directors*.

203. Postmaster General; Deputy Postmaster General.

204. Assistant Postmasters General; General Counsel; Judicial Officer.

205. Procedures of the ~~Board of Governor~~ *Board of Directors*.

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### § 201. United States Postal Service

There is established, as an independent establishment of the executive branch of the Government of the United States, the United States Postal Service.

### § 202. ~~Board of Governor~~ *Board of Directors* [3]

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

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<sup>2</sup> Definitions of “postal product” and “non-postal product” added by section 205(a) of H.R. 22.

<sup>3</sup> This section, except repeal of subsection (e), amended by section 212(b) of H.R. 22. Subsection 212(c) provides: “(c) APPLICABILITY.—Nothing in this section shall affect the tenure of any individual serving as a Commissioner on the Postal Regulatory Commission or a Director of the Board of Directors of the United States Postal Service pursuant to an appointment made before the date of enactment of this Act, or, except as provided in the amendment made by subsection (b)(3), any nomination made before such date of enactment.”

~~interests using the Postal Service, and may be removed only for cause. The Directors shall represent the public interest generally, and shall be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or the private sector) of substantial size; for purposes of this sentence, an organization or corporation shall be considered to be of substantial size if it employs at least 100,000 employees. The Directors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.~~ Each ~~Governor~~ Director shall receive a salary of \$30,000 a year plus \$300 a day for not more than 42 days of meetings each year and shall be reimbursed for travel and reasonable expenses incurred in attending meetings of the Board. Nothing in the preceding sentence shall be construed to limit the number of days of meetings each year to 42 days.

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

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

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

*(i) such office may not, in the case of any person commencing service after that expiration date, be filled by any person other than an individual chosen from among persons nominated for such office with the unanimous concurrence of all labor organizations described in section 206(a)(1); and*

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

*(B) Except as provided in subparagraph (A), an appointment under this paragraph shall be made in conformance with all provisions of this section that would otherwise apply.*

*(c) The ~~Governors~~ Directors shall appoint and shall have the power to remove the Postmaster General, who shall be a voting member of the Board. His pay and term of service shall be fixed by the ~~Governors~~ Directors.*

*(d) The ~~Governors~~ Directors and the Postmaster General shall appoint*

and shall have the power to remove the Deputy Postmaster General, who shall be a voting member of the Board. His term of service shall be fixed by the ~~Governors~~ *Directors* and the Postmaster General and his pay by the ~~Governors~~ *Directors*.

~~(e)(1) The ~~Governors~~ *Directors* shall appoint and shall have the power to remove the Inspector General.~~

~~(2) The Inspector General shall be appointed--~~

~~(A) for a term of 7 years;~~

~~(B) without regard to political affiliation; and~~

~~(C) solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.~~

~~(3) The Inspector General may at any time be removed upon the written concurrence of at least 7 ~~Governors~~ *Directors*, but only for cause. Nothing in this subsection shall be considered to exempt the ~~Governors~~ *Directors* from the requirements of section 8G(e) of the Inspector General Act of 1978. [4]~~

### **§ 203. Postmaster General; Deputy Postmaster General**

The chief executive officer of the Postal Service is the Postmaster General appointed under section 202(c) of this title. The alternate chief executive officer of the Postal Service is the Deputy Postmaster General appointed under section 202(d) of this title.

### **§ 204. Assistant Postmasters General; General Counsel; Judicial Officer**

There shall be within the Postal Service a General Counsel, such number of Assistant Postmasters General as the Board shall consider appropriate, a Judicial Officer, and a Chief Postal Inspector. The General Counsel, the Assistant Postmasters General, the Judicial Officer, and the Chief Postal Inspector shall be appointed by, and serve at the pleasure of, the Postmaster General. The Judicial Officer shall perform such quasi-judicial duties, not inconsistent with chapter 36 of this title, as the Postmaster General may designate. The Judicial Officer shall be the agency for the purposes of the requirements of chapter 5 of title 5, to the extent that functions are delegated to him by the Postmaster General. The Chief Postal Inspector shall report to, and be under the general supervision of, the Postmaster General. The Postmaster General shall promptly notify the ~~Governors~~ *Directors* and both Houses of Congress in writing if he or she removes the Chief Postal Inspector or transfers the Chief Postal Inspector to another position or location within the Postal Service, and shall include in any such notification the reasons for the removal or transfer.

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<sup>4</sup> Subsection (e) repealed by section 702(e)(2)(A) of H.R. 22. For effective date, see note to section 11 of the Inspector General Act.

**§ 205. Procedures of the ~~Board of Governor~~ Board of Directors**

(a) The Board shall direct and control the expenditures and review the practices and policies of the Postal Service, and perform other functions and duties prescribed by this title.

(b) Vacancies in the Board, as long as there are sufficient members to form a quorum, shall not impair the powers of the Board under this title.

(c) The Board shall act upon majority vote of those members who are present, and any 6 members present shall constitute a quorum for the transaction of business by the Board, except—

(1) that in the appointment or removal of the Postmaster General, and in setting the compensation of the Postmaster General and Deputy Postmaster General, a favorable vote of an absolute majority of the ~~Governors~~ Directors in office shall be required;

(2) that in the appointment or removal of the Deputy Postmaster General, a favorable vote of an absolute majority of the ~~Governors~~ Directors in office and the member serving as Postmaster General shall be required; and

(3) as otherwise provided in this title.

(d) No officer or employee of the United States may serve concurrently as a ~~Governor~~ Director. A ~~Governor~~ Director may hold any other office or employment not inconsistent or in conflict with his duties, responsibilities, and powers as an officer of the Government of the United States in the Postal Service.

**§ 206. Advisory Council**

(a) There shall be a Postal Service Advisory Council of which the Postmaster General shall be the Chairman and the Deputy Postmaster General shall be the Vice Chairman. The Advisory Council shall have 11 additional members appointed by the President. He shall appoint as such members (1) 4 persons from among persons nominated by those labor organizations recognized as collective-bargaining representatives for employees of the Postal Service in one or more collective-bargaining units, (2) 4 persons as representatives of major mail users, and (3) 3 persons as representatives of the public at large. All members shall be appointed for terms of 2 years except that, of those first appointed, 2 of the members representative of labor organizations, 2 of the members representative of major postal users, and 1 member representing the public at large shall be appointed for 1 year. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall serve for the remainder of such term.

(b) The Postal Service shall consult with and receive the advice of the Advisory Council regarding all aspects of postal operations.

(c) The members of the Council representative of the public at large shall receive for each meeting of the Council an amount equal to the daily rate applicable to level V of the Executive Schedule under section 5316 of title 5. All members of the Council shall be reimbursed for necessary travel and reasonable expenses incurred in attending meetings of the Council.

**§ 207. Seal**

The seal of the Postal Service shall be filed by the Board in the Office of the Secretary of State, judicially noticed, affixed to all commissions of officers of the Postal Service, and used to authenticate records of the Postal Service.

**§ 208. Reservation of powers**

Congress reserves the power to alter, amend, or repeal any or all of the sections of this title, but no such alteration, amendment, or repeal shall impair the obligation of any contract made by the Postal Service under any power conferred by this title.

**CHAPTER 4--GENERAL AUTHORITY**

Sec.

- 401. General powers of the Postal Service.
- 402. Delegation of authority.
- 403. General duties.
- 404. Specific powers.
- 404a. Specific limitations*
- 405. Printing of illustrations of United States postage stamps.
- 406. Postal services at Armed Forces installations.
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**§ 401. General powers of the Postal Service**

~~The~~ *Subject to the provisions of section 404a, the [5] Postal Service shall have the following general powers:*

- (1) to sue and be sued in its official name;
- (2) to adopt, amend, and repeal such rules and regulations, ~~as it deems necessary to accomplish the objectives of this title~~ *not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title; [6]*
- (3) to enter into and perform contracts, execute instruments, and

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<sup>5</sup> Amended by section 305(b)(1) of H.R. 22.

<sup>6</sup> Amended by section 301 of H.R. 22.

determine the character of, and necessity for, its expenditures;

(4) to determine and keep its own system of accounts and the forms and contents of its contracts and other business documents, except as otherwise provided in this title;

(5) to acquire, in any lawful manner, such personal or real property, or any interest therein, as it deems necessary or convenient in the transaction of its business; to hold, maintain, sell, lease, or otherwise dispose of such property or any interest therein; and to provide services in connection therewith and charges therefor;

(6) to construct, operate, lease, and maintain buildings, facilities, equipment, and other improvements on any property owned or controlled by it, including, without limitation, any property or interest therein transferred to it under section 2002 of this title;

(7) to accept gifts or donations of services or property, real or personal, as it deems, necessary or convenient in the transaction of its business;

(8) to settle and compromise claims by or against it;

(9) to exercise, in the name of the United States, the right of eminent domain for the furtherance of its official purposes; and to have the priority of the United States with respect to the payment of debts out of bankrupt, insolvent, and decedents' estates; and

(10) to have all other powers incidental, necessary, or appropriate to the carrying on of its functions or the exercise of its specific powers.

#### **§ 402. Delegation of authority**

Except for those powers, duties, or obligations specifically vested in the ~~Governors~~ *Directors*, as distinguished from the ~~Board of Governor~~ *Board of Directors*, the Board may delegate the authority vested in it to the Postmaster General under such terms, conditions, and limitations, including the power of redelegation, as it deems desirable. The Board may establish such committees of the Board, and delegate such powers to any committee, as the Board determines appropriate to carry out its functions and duties. Delegations to the Postmaster General or committees shall be consistent with other provisions of this title, shall not relieve the Board of full responsibility for the carrying out of its duties and functions, and shall be revocable by the ~~Governors~~ *Directors* in their exclusive judgment.

#### **§ 403. General duties**

(a) The Postal Service shall plan, develop, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees. The Postal Service shall receive, transmit, and deliver throughout the United States, its territories and possessions, and, pursuant to arrangements entered into under sections 406 and 411 of this title, throughout the world, written and printed matter, parcels, and like materials and provide such other services incidental thereto as it finds appropriate to its functions and in the public interest. The Postal Service shall serve as nearly as practicable the entire population of the United States.

(b) It shall be the responsibility of the Postal Service--

(1) to maintain an efficient system of collection, sorting, and delivery of the mail nationwide;

(2) to provide types of mail service to meet the needs of different categories of mail and mail users; and

(3) to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.

(c) In providing services and in establishing classifications, rates, and fees under this title, the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the *domestic or international* mails, nor shall it grant any undue or unreasonable preferences to any such ~~user~~ *user, except that this subsection shall not apply to competitive products (as defined in chapter 37)*. [7]

#### § 404. Specific powers

(a) ~~Without~~ *Subject to the provisions of section 404a, but otherwise without* [8] limitation of the generality of its powers, the Postal Service shall have the following specific powers, among others:

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

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

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

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

(5) to provide philatelic services;

~~(6) to provide, establish, change, or abolish special nonpostal or similar services;~~ [9]

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

~~(8)~~ (7) to offer and pay rewards for information and services in connection with violation of the postal laws, and, unless a different disposal is expressly prescribed, to pay one-half of all penalties and forfeitures imposed for violations of law affecting the Postal Service,

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<sup>7</sup> Amended by section 302(a) of H.R. 22. Subsection 302(b) provides: "(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services, classifications, rates, and fees, to the extent provided or applicable (as the case may be) on or after the first day of the first fiscal year beginning on or after the date as of which base-line rates are determined under section 3721(e)(2) of title 39, United States Code (as amended by section 201)."

<sup>8</sup> Amended by section 305(b)(2) of H.R. 22.

<sup>9</sup> Deleted by section 203(b) of H.R. 202.

its revenues, or property, to the person informing for the same, and to pay the other one-half into the Postal Service Fund; and

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

(b)(1) The Postal Service, prior to making a determination under subsection (a)(3) of this section as to the necessity for the closing or consolidation of any post office, shall provide adequate notice of its intention to close or consolidate such post office at least 60 days prior to the proposed date of such closing or consolidation to persons served by such post office to ensure that such persons will have an opportunity to present their views.

(2) The Postal Service, in making a determination whether or not to close or consolidate a post office—

(A) shall consider—

(i) the effect of such closing or consolidation on the community served by such post office;

(ii) the effect of such closing or consolidation on employees of the Postal Service employed at such office;

(iii) whether such closing or consolidation is consistent with the policy of the Government, as stated in section 101(b) of this title, that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;

(iv) the economic savings to the Postal Service resulting from such closing or consolidation; and

(v) such other factors as the Postal Service determines are necessary; and

(B) may not consider compliance with any provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(3) Any determination of the Postal Service to close or consolidate a post office shall be in writing and shall include the findings of the Postal Service with respect to the considerations required to be made under paragraph (2) of this subsection. Such determination and findings shall be made available to persons served by such post office.

(4) The Postal Service shall take no action to close or consolidate a post office until 60 days after its written determination is made available to persons served by such post office.

(5) A determination of the Postal Service to close or consolidate any post office may be appealed by any person served by such office to the ~~Postal Rate Commission~~ *Postal Regulatory Commission* within 30 days after such determination is made available to such person under paragraph (3). The Commission shall review such determination on the basis of the record before the Postal Service in the making of such determination. The Commission shall make a determination based upon such review no later than 120 days after receiving any appeal under this paragraph. The Commission shall set aside any determination, findings, and conclusions found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise

not in accordance with the law;

(B) without observance of procedure required by law; or

(C) unsupported by substantial evidence on the record.

The Commission may affirm the determination of the Postal Service or order that the entire matter be returned for further consideration, but the Commission may not modify the determination of the Postal Service. The Commission may suspend the effectiveness of the determination of the Postal Service until the final disposition of the appeal. The provisions of section 556, section 557, and chapter 7 of title 5 shall not apply to any review carried out by the Commission under this paragraph.

(6) *For purposes of paragraph (5), any appeal received by the Commission shall—*

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

(B) *if otherwise lawfully delivered to the Commission, be considered to have been received on the date determined based on any appropriate documentation or other indicia (as determined under regulations of the Commission). [10]*

(c)(1) *The Postal Service may employ guards for all buildings and areas owned or occupied by the Postal Service or under the charge and control of the Postal Service, and such guards shall have, with respect to such property, the powers of special policemen provided by the first section of the Act cited in paragraph (2), and, as to such property, the Postmaster General (or his designee) may take any action that the Administrator of General Services (or his designee) may take under section 2 or 3 of such Act, attaching thereto penalties under the authority and within the limits provided in section 4 of such Act.*

(2) *The Act cited in this paragraph is the Act of June 1, 1948 (62 Stat. 281), commonly known as the Protection of Public Property Act. [11]*

#### **§ 404a. Specific limitations [12]**

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

(A) *establish any rule or regulation (including any standard) the effect of which is to create any competitive advantage for itself, any corporation established under section 2012, or any entity funded (in whole or in part) by the Postal Service;*

(B) *regulate competition, or engage in any regulatory or*

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<sup>10</sup> Paragraph (6) added by section 304(a) of H.R. 22. Section 304(b) provides: "(b) EFFECTIVE DATE.—This section and the amendments made by this section shall apply with respect to any determination to close or consolidate a post office which is first made available, in accordance with paragraph (3) of section 404(b) of title 39, United States Code, after the end of the 3-month period beginning on the date of enactment of this Act."

<sup>11</sup> Subsection (c) added by section 303 of H.R. 22.

<sup>12</sup> Section 404a added by section 305(a) of H.R. 22.

*enforcement activity, with respect to actions or practices that are subject to the antitrust laws; or*

*(C) compel the disclosure, transfer, or licensing of intellectual property (such as patents, copyrights, trademarks, trade secrets, and proprietary information).*

*(2)(A) For purposes of this section, the term ‘covered entity’ means the Postal Service, any corporation established under section 2012, and any entity funded (in whole or in part) by the Postal Service.*

*(B) Except as specifically authorized by law, a covered entity may not—*

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

*(ii) take any action prohibited under any of the antitrust laws; or*

*(iii) obtain information from a person that provides (or seeks to provide) a postal or nonpostal product, and then disclose such information, or offer any product or service that uses or is based in whole or in part on such information, without the consent of the person providing that information, unless substantially the same information is obtained (or obtainable) by such covered entity from an independent source or is otherwise obtained (or obtainable) by such covered entity in a manner not inconsistent with this clause.*

*(C) Clause (ii) of subparagraph (B) shall, in connection with the Postal Service, apply only in the case of conduct with respect to any service which is not reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(d)(1).*

*(b)(1) For purposes of this section, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, but includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.*

*(2) Nothing in this section shall be construed as limiting the scope or effect of intellectual property rights recognized under the laws of the United States.*

*(c)(1) In the case of a nonpostal product provided by the Postal Service on the date of enactment of the Postal Modernization Act of 1999, and which was first so provided before January 1, 1994, the Postal Service may continue to provide such product until such time as the Postal Service may determine.*

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

*(A) the completion of such product’s transfer, in accordance with such schedule and procedures as the Postal Regulatory Commission shall by regulation prescribe, from the Postal Service to a corporation established under section 2012; or*

*(B) if earlier, the first day of the first year of the first ratemaking cycle (within the meaning of section 3733(a)).*

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

*(d)(1) No administrative remedy shall be available in connection with any violation of subsection (a)(2)(B) by any corporation established under section 2012 or entity funded (in whole or in part) by the Postal Service.*

*(2) The United States district courts shall have original but not exclusive jurisdiction over all actions arising under subsection (a)(2)(B) brought against any covered entity referred to in paragraph (1). Any such action brought in a State court may be removed to the appropriate United States district court under the provisions of chapter 89 of title 28.*

*(e)(1) The Postal Regulatory Commission shall prescribe regulations to carry out this section.*

*(2) Any regulations necessary to carry out subsection (c) shall be prescribed in time to become effective by the commencement of the first proceedings under section 3733 (relating to adjustment factors).*

#### **§ 405. Printing of illustrations of United States postage stamps**

(a) When requested by the Postal Service, the Public Printer shall print, as a public document for sale by the Superintendent of Documents, illustrations in black and white or in color of postage stamps of the United States, together with such descriptive, historical, and philatelic information with regard to the stamps as the Postal Service deems suitable.

(b) Notwithstanding the provisions of section 505 of title 44, stereotype or electrotype plates, or duplicates thereof, used in the publications authorized to be printed by this section may not be sold or otherwise disposed of.

#### **§ 406. Postal services at Armed Forces installations**

(a) The Postal Service may establish branch post offices at camps, posts, bases, or stations of the Armed Forces and at defense or other strategic installations.

(b) The Secretaries of Defense and Transportation shall make arrangements with the Postal Service to perform postal services through personnel designated by them at or through branch post offices established under subsection (a) of this section.

#### **§ 407. International postal arrangements [13]**

~~—(a)(1) The Secretary of State shall have primary responsibility for~~

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<sup>13</sup> Amended by section 306(a) of H.R. 22. Section 306(b) provides: "(b) EFFECTIVE DATE.—Notwithstanding any provision of the amendment made by subsection (a), the authority of the United States Postal Service to establish the rates of postage or other charges on mail matter conveyed between the United States and other countries shall remain available to the Postal Service until the date as of which the baseline rates are determined under section 3721(e)(2) of title 39, United States Code (as amended by section 201)."

~~formulation, coordination and oversight of policy with respect to United States participation in the Universal Postal Union, including the Universal Postal Convention and other Acts of the Universal Postal Union, amendments thereto, and all postal treaties and conventions concluded within the framework of the Convention and such Acts.~~

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

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

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

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

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

~~—(d) In carrying out their responsibilities under this section, the Secretary and the Postal Service shall consult with such federal agencies as the Secretary or the Postal Service considers appropriate, private providers of international postal services, users of international postal services, the general public, and such other persons as the Secretary or the Postal Service considers appropriate. [14]~~

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

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

*(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;*

*(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services by the Government of the United States and by intergovernmental organizations of which the United States is a member; and*

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

*(b)(1) The Secretary of State shall be responsible for formulation,*

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<sup>14</sup> Public Law 105-277, §101(h), section 633(b), provided: "Sense of Congress.--It is the sense of Congress that any treaty, convention or amendment entered into under the authority of section 407 of title 39 of the United States Code, as amended by this section, should not grant any undue or unreasonable preference to the Postal Service, a private provider of postal services, or any other person."

*coordination, and oversight of foreign policy related to international postal services and other international delivery services, except that the Secretary may not negotiate or conclude any treaty, convention, or other international agreement (including those regulating international postal services) if such treaty, convention, or agreement would, with respect to any competitive product (as that term is defined in chapter 37), grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.*

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

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

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

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

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

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

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

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

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

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

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

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

*(A) the Postal Service shall not tender exported shipments to governmental authorities of any other country for clearance and importation except in accordance with procedures and laws which are equally applicable to similar shipments transmitted by private companies; and*

*(B)(i) subject to clause (ii), the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies; and*

*(ii) the Customs Service and other appropriate Federal agencies shall deny shipments imported by the Postal Service from a foreign country access to special customs procedures established in accordance with international postal or customs agreements for shipments by postal authorities of other countries, unless that foreign country makes available such special customs procedures both to shipments to such country from the United States by the Postal Service and similar shipments to such country from the United States by private companies.*

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

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

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

*(i) to complete the renegotiation of any treaties, conventions, or other international agreements (including those regulating international postal services), and*

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

*which may be necessary in order to satisfy the conditions specified in subparagraphs (A) and (B)(ii) of paragraph (1) in a manner consistent with the goal of making available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade*

*Representative and the Commissioner of Customs in carrying out this subparagraph.*

*(3) For purposes of this subsection, the term 'private company' means a private company substantially owned or controlled by persons who are citizens of the United States.*

#### **§ 408. International money-order exchanges**

The Postal Service may make arrangements with other governments, with which postal conventions are or may be concluded, for the exchange of sums of money by means of postal orders. It shall fix limitations on the amount which may be so exchanged and the rates of exchange.

#### **§ 409. Suits by and against the Postal Service [15]**

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

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

~~(c) The provisions of chapter 171 and all other provisions of title 28 relating to tort claims shall apply to tort claims arising out of activities of the Postal Service.~~

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

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

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

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

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

*(2) This subsection applies with respect to—*

*(A) the Act of July 5, 1946 (commonly referred to as the*

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<sup>15</sup> Section 409 amended by section 307 of H.R. 22.

*'Trademark Act of 1946' (15 U.S.C. 1051 and following)); and*  
 (B) *the provisions of section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair or deceptive acts or practices.*

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

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

(B) *shall not be considered a 'Federal agency' for purposes of section 1346(b) and chapter 171 of title 28, and shall be liable for actions in tort in the same manner as a private company; and*

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

(i) *the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act); and*

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

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

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

(3) *For purposes of any determination (in connection with bringing an action against the Postal Service under any provision of law referred to in paragraph (1)(C)) as to whether or not there has been exhaustion of administrative remedies, section 404a shall be treated as if it had never been enacted.*

(e)(1) *Motor vehicles owned or leased by the Postal Service that are primarily and regularly used for the transport or delivery of products in the competitive category of mail shall be subject to Federal and State laws and regulations associated with the parking and operation of such motor vehicles, to the same extent and in the same manner as if they were owned or leased by a private company.*

(2) *Any motor vehicle owned or leased by the Postal Service that is primarily and regularly used for the transport or delivery of products in the competitive category of mail shall be clearly identified as such by appropriate symbol or other marking.*

(3) *This subsection shall become effective on the first day of the first ratemaking cycle.*

(4) *For purposes of this subsection—*

(A) *the terms 'product in the competitive category of mail' and 'ratemaking cycle' have the meanings given them by chapter 37; and*

(B) *the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.*

(f)(1) *The Postal Service shall comply with—*

(A) any zoning, planning, and land use regulations applicable to State or local public entities; and

(B) any building codes applicable to State or local public entities.

(2) For purposes of this subsection, the term 'State' has the meaning given such term by subsection (e).

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

(A) Subsection (c), (d), or (e) of section 409 (relating to application of certain laws to the Postal Service).

(B) Subsection (f) or (g) of section 3604 (relating to administrative subpoenas by the Postal Regulatory Commission).

(C) Subsection (a) or (b) of section 3628 (relating to appeals from decisions of the Commission and the Directors).

The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph.

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

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

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

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

#### **§ 410. Application of other laws**

(a) Except as provided by subsection (b) of this section, and except as otherwise provided in this title or insofar as such laws remain in force as rules or regulations of the Postal Service, no Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Postal Service.

(b) The following provisions shall apply to the Postal Service:

(1) section 552 (public information), section 552a (records about individuals), section 552b (open meetings), section 3102 (employment of personal assistants for blind, deaf, or otherwise handicapped employees), section 3110 (restrictions on employment of relatives), section 3333 and chapters 72 (antidiscrimination; right to petition Congress) and 73 (suitability, security, and conduct of employees), and section 5520 (withholding city income or employment taxes), and section 5532 (dual pay) of title 5, except that no regulation issued under such chapters or sections shall apply to the Postal Service unless expressly made applicable;

(2) all provisions of title 18 dealing with the Postal Service, the mails, and officers or employees of the Government of the United States;

(3) section 107 of title 20 (known as the Randolph-Sheppard Act, relating to vending machines operated by the blind);

(4) the following provisions of title 40:

(A) sections 258a-258e (relating to condemnation proceedings);

(B) sections 270a-270e (known as the Miller Act, relating to performance bonds);

(C) sections 276a-276a-7 (known as the Davis-Bacon Act, relating to prevailing wages);

(D) section 276c (relating to wage payments of certain contractors);

(E) chapter 5 (the Contract Work Hours Standards Act); and

(F) chapter 15 (the Government Losses in Shipment Act);

(5) the following provisions of title 41:

(A) sections 35-45 (known as the Walsh-Healey Act, relating to wages and hours); and

(B) chapter 6 (the Service Contract Act of 1965);

(6) sections 2000d, 2000d-1--2000d-4 of title 42 (title VI, the Civil Rights Act of 1964);

(7) section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668);

(8) the provisions of the Act of August 12, 1968 (42 U.S.C. 4151-4156);

(9) chapter 39 of title 31;

(10) the Inspector General Act of 1978; and

(11) section 5520a of title 5.

(c) Subsection (b)(1) of this section shall not require the disclosure of--

(1) the name or address, past or present, of any postal patron;

(2) information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed;

(3) information prepared for use in connection with the negotiation of collective-bargaining agreements under chapter 12 of this title or minutes of, or notes kept during, negotiating sessions conducted under such chapter;

(4) information prepared for use in connection with proceedings under chapter 36 of this title;

(5) the reports and memoranda of consultants or independent contractors except to the extent that they would be required to be disclosed if prepared within the Postal Service; and

(6) investigatory files, whether or not considered closed, compiled for

law enforcement purposes except to the extent available by law to a party other than the Postal Service.

(d)(1) A lease agreement by the Postal Service for rent of net interior space in excess of 6,500 square feet in any building or facility, or part of a building or facility, to be occupied for purposes of the Postal Service shall include a provision that all laborers and mechanics employed in the construction, modification, alteration, repair, painting, decoration, or other improvement of the building or space covered by the agreement, or improvement at the site of such building or facility, shall be paid wages at not less than those prevailing for similar work in the locality as determined by the Secretary of Labor under section 276a of title 40.

(2) The authority and functions of the Secretary of Labor with respect to labor standards enforcement under Reorganization Plan Numbered 14 of 1950 (title 5, appendix), and regulations for contractors and subcontractors under section 276c of title 40, shall apply to the work under paragraph (1) of this subsection.

(3) Paragraph (2) of this subsection shall not be construed to give the Secretary of Labor authority to direct the cancellation of the lease agreement referred to in paragraph (1) of this subsection.

#### **§ 411. Cooperation with other Government agencies**

Executive agencies within the meaning of section 105 of title 5 and the Government Printing Office are authorized to furnish property, both real and personal, and personal and nonpersonal services to the Postal Service, and the Postal Service is authorized to furnish property and services to them. The furnishing of property and services under this section shall be under such terms and conditions, including reimbursability, as the Postal Service and the head of the agency concerned shall deem appropriate.

#### **§ 412. Nondisclosure of lists of names and addresses**

(a) Except as specifically provided by subsection (b) or other law, no officer or employee of the Postal Service shall make available to the public by any means or for any purpose any mailing or other list of names or addresses (past or present) of postal patrons or other persons.

(b) The Postal Service shall provide to the Secretary of Commerce for use by the Bureau of the Census such address information, address-related information, and point of postal delivery information, including postal delivery codes, as may be determined by the Secretary to be appropriate for any census or survey being conducted by the Bureau of the Census. The provision of such information under this subsection shall be in accordance with such mutually agreeable terms and conditions, including reimbursability, as the Postal Service and the Secretary of Commerce shall deem appropriate.

#### **§ 413. Postal services at diplomatic posts**

(a) The Postal Service and the Department of State may enter into 1 or more agreements for field testing to ascertain the feasibility of providing postal services through personnel provided by the Department of State at branch post offices established by the Postal Service in United States diplomatic missions

at locations abroad for which branch post offices are not established under section 406.

(b) To the extent that the Postal Service and the Department of State conclude it to be feasible and in the public interest, the Postal Service may establish branch post offices at United States diplomatic missions in locations abroad for which branch post offices are not established under section 406, and the Department of State may enter into an agreement with the Postal Service to perform postal services at such branch post offices through personnel designated by the Department of State.

(c) The Department of State shall reimburse the Postal Service for any amounts, determined by the Postal Service, equal to the additional costs incurred by the Postal Service, including transportation costs, incurred by the Postal Service in the performance of its obligations under any agreement entered into under this section.

(d) Each agreement entered into under this section shall include--

(1) provisions under which the Department of State shall make any reimbursements required under subsection (c);

(2) provisions authorizing the Postal Service to terminate the agreement, and the services provided thereunder, in the event that the Department of State does not comply with the provisions under paragraph (1); and

(3) any other provisions which may be necessary, including provisions relating to the closing of a post office under this section if necessary because a post office under section 406 is established in the same location.

#### **§ 414. Special postage stamps**

(a) In order to afford the public a convenient way to contribute to funding for breast cancer research, the Postal Service shall establish a special rate of postage for first-class mail under this section.

(b) The rate of postage established under this section--

(1) shall be equal to the regular first-class rate of postage, plus a differential of not to exceed 25 percent;

(2) shall be set by the ~~Governors~~ *Directors* in accordance with such procedures as the ~~Governors~~ *Directors* shall by regulation prescribe (in lieu of the procedures under chapter 36); and

(3) shall be offered as an alternative to the regular first-class rate of postage.

The use of the special rate of postage established under this section shall be voluntary on the part of postal patrons.

(c)(1) Of the amounts becoming available for breast cancer research pursuant to this section, the Postal Service shall pay--

(A) 70 percent to the National Institutes of Health; and

(B) the remainder to the Department of Defense.

Payments under this paragraph to an agency shall be made under such arrangements as the Postal Service shall by mutual agreement with such agency establish in order to carry out the purposes of this section, except that, under those arrangements, payments to such agency shall be made at least twice a year.

(2) For purposes of this section, the term "amounts becoming available for breast cancer research pursuant to this section" means--

(A) the total amounts received by the Postal Service that it would not have received but for the enactment of this section, reduced by

(B) an amount sufficient to cover reasonable costs incurred by the Postal Service in carrying out this section, including those attributable to the printing, sale, and distribution of stamps under this section, as determined by the Postal Service under regulations that it shall prescribe.

(d) It is the sense of the Congress that nothing in this section should--

(1) directly or indirectly cause a net decrease in total funds received by the National Institutes of Health, the Department of Defense, or any other agency of the Government (or any component or program thereof) below the level that would otherwise have been received but for the enactment of this section; or

(2) affect regular first-class rates of postage or any other regular rates of postage.

(e) Special postage stamps under this section shall be made available to the public beginning on such date as the Postal Service shall by regulation prescribe, but in no event later than 12 months after the date of the enactment of this section.

(f) The Postmaster General shall include in each report rendered under section 2402 with respect to any period during any portion of which this section is in effect information concerning the operation of this section, except that, at a minimum, each shall include--

(1) the total amount described in subsection (c)(2)(A) which was received by the Postal Service during the period covered by such report; and

(2) of the amount under paragraph (1), how much (in the aggregate and by category) was required for the purposes described in subsection (c)(2)(B).

(g) This section shall cease to be effective at the end of the 2-year period beginning on the date on which special postage stamps under this section are first made available to the public.

#### **§ 415. Prohibition on restriction or elimination of services**

The Postal Service may not restrict, eliminate, or adversely affect any service provided by the Postal Service as a result of the payment of any penalty imposed under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

### **CHAPTER 6--PRIVATE CARRIAGE OF LETTERS**

Sec.

601. Letters carried out of the mail.

602. Foreign letters out of the mails.

603. Searches authorized.

604. Seizing and detaining letters.

605. Searching vessels for letters.

606. Disposition of seized mail.

**§ 601. Letters carried out of the mail [16]**

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

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

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

- (1) the amount paid for the private carriage of the letter is at least the amount equal to 6 times the rate then currently charged for the 1st ounce of a single-piece first-class letter;*
- (2) the letter weighs at least 12 ½ ounces;*
- (3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 1998) that purport to permit private carriage by suspension of the operation of this subsection (as then in effect); or*
- (4) the requirements of subsection (b) are met.*

*(b) A letter shall be considered to satisfy the requirements of this subsection if—*

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

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

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<sup>16</sup> Amended by section 503 of H.R. 22. Subsection 503(c) provides: "(c) EFFECTIVE DATE.—This section shall take effect as of the first day of the first fiscal year beginning on or after the date as of which the baseline rates are determined under section 3721(e)(2) of title 39, United States Code (as amended by section 201)."

**§ 602. Foreign letters out of the mails**

(a) Except as provided in section 601 of this title, the master of a vessel departing from the United States for foreign ports may not receive on board or transport any letter which originated in the United States that--

(1) has not been regularly received from a United States post office; or

(2) does not relate to the cargo of the vessel.

(b) The officer of the port empowered to grant clearances shall require from the master of such a vessel, as a condition of clearance, an oath that he does not have under his care or control, and will not receive or transport, any letter contrary to the provisions of this section.

(c) Except as provided in section 1699 of title 18, the master of a vessel arriving at a port of the United States carrying letters not regularly in the mails shall deposit them in the post office at the port of arrival.

**§ 603. Searches authorized**

The Postal Service may authorize any officer or employee of the Postal Service to make searches for mail matter transported in violation of law. When the authorized officer has reason to believe that mailable matter transported contrary to law may be found therein, he may open and search any--

(1) vehicle passing, or having lately passed, from a place at which there is a post office of the United States;

(2) article being, or having lately been, in the vehicle; or

(3) store or office, other than a dwelling house, used or occupied by a common carrier or transportation company, in which an article may be contained.

**§ 604. Seizing and detaining letters**

An officer or employee of the Postal Service performing duties related to the inspection of postal matters, a customs officer, or United States marshal or his deputy, may seize at any time, letters and bags, packets, or parcels containing letters which are being carried contrary to law on board any vessel or on any post road. The officer or employee who makes the seizure shall convey the articles seized to the nearest post office, or, by direction of the Postal Service or the Secretary of the Treasury, he may detain them until 2 months after the final determination of all suits and proceedings which may be brought within 6 months after the seizure against any person for sending or carrying the letters.

**§ 605. Searching vessels for letters**

An officer or employee of the Postal Service performing duties related to the inspection of postal matters, when instructed by the Postal Service to make examinations and seizures, and any customs officer without special instructions shall search vessels for letters which may be on board, or which may have been conveyed contrary to law.

### § 606. Disposition of seized mail

Every package or parcel seized by an officer or employee of the Postal Service performing duties related to the inspection of postal matters, a customs officer, or United States marshal or his deputies, in which a letter is unlawfully concealed, shall be forfeited to the United States. The same proceedings may be used to enforce forfeitures as are authorized in respect of goods, wares, and merchandise forfeited for violation of the revenue laws. Laws for the benefit and protection of customs officers making seizures for violating revenue laws apply to officers and employees making seizures for violating the postal laws.

## PART II--PERSONNEL

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### CHAPTER 10--EMPLOYMENT WITHIN THE POSTAL SERVICE

Sec.
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### § 1001. Appointment and status

(a) Except as otherwise provided in this title, the Postal Service shall appoint all officers and employees of the Postal Service.

(b) Officers and employees of the Postal Service (other than those individuals appointed under sections 202, 204, and 1001(c) of this title) shall be in the postal career service, which shall be a part of the civil service. Such appointments and promotions shall be in accordance with the procedures established by the Postal Service. The Postal Service shall establish procedures, in accordance with this title, to assure its officers and employees meaningful opportunities for promotion and career development and to assure its officers and employees full protection of their employment rights by guaranteeing them an opportunity for a fair hearing on adverse actions, with representatives of their own choosing.

(c) The Postal Service may hire individuals as executives under employment contracts for periods not in excess of 5 years. Notwithstanding

any such contract, the Postal Service may at its discretion and at any time remove any such individual without prejudice to his contract rights.

(d) Notwithstanding section 5533, 5535, or 5536 of title 5, or any other provision of law, any officer or employee of the Government of the United States is eligible to serve and receive pay concurrently as an officer or employee of the Postal Service (other than as a member of the Board or of the ~~Postal Rate Commission~~ *Postal Regulatory Commission*) and as an officer or employee of any other department, agency, or establishment of the Government of the United States.

(e) The Postal Service shall have the right, consistent with section 1003 and chapter 12 of this title and applicable laws, regulations, and collective-bargaining agreements--

(1) to direct officers and employees of the Postal Service in the performance of official duties;

(2) to hire, promote, transfer, assign, and retain officers and employees in positions within the Postal Service, and to suspend, demote, discharge, or take other disciplinary action against such officers and employees;

(3) to relieve officers and employees from duties because of lack of work or for other legitimate reasons;

(4) to maintain the efficiency of the operations entrusted to it;

(5) to determine the methods, means, and personnel by which such operations are to be conducted;

(6) to prescribe a uniform dress to be worn by letter carriers and other designated employees; and

(7) to take whatever actions may be necessary to carry out its mission in emergency situations.

#### **§ 1002. Political recommendations**

(a) Except as provided in subsection (e) of this section, each appointment, promotion, assignment, transfer, or designation, interim or otherwise, of an officer or employee in the Postal Service (except a ~~Governor~~ *Director* or member of the ~~Postal Rate Commission~~ *Postal Regulatory Commission*) shall be made without regard to any recommendation or statement, oral or written, with respect to any person who requests or is under consideration for such appointment, promotion, assignment, transfer, or designation, made by--

(1) any Member of the Senate or House of Representatives (including the Resident Commissioner from Puerto Rico);

(2) any elected official of the government of any State (including the Commonwealth of Puerto Rico) or of any county, city, or other political subdivision of such State or Commonwealth;

(3) any official of a national political party or of a political party of any State (including the Commonwealth of Puerto Rico), county, city, or other subdivision of such State or Commonwealth; or

(4) any other individual or organization.

(b) Except as provided in subsection (e) of this section, a person or organization referred to in clause (1), (2), (3), or (4) of subsection (a) of this section is prohibited from making or transmitting to the Postal Service,

or to any other officer or employee of the Government of the United States, any recommendation or statement, oral or written, with respect to any person who requests or is under consideration for any such appointment, promotion, assignment, transfer, or designation. The Postal Service and any officer or employee of the Government of the United States, subject to subsection (e) of this section--

(1) shall not solicit, request, consider, or accept any such recommendation or statement; and

(2) shall return any such written recommendation or statement received by him, appropriately marked as in violation of this section, to the person or organization making or transmitting the same.

(c) A person who requests or is under consideration for any such appointment, promotion, assignment, transfer, or designation is prohibited from requesting or soliciting any such recommendation or statement from any person or organization except a statement of the type referred to in subsection (e)(2) of this section.

(d) Each employment form of the Postal Service used in connection with any such appointment, promotion, assignment, transfer, or designation shall contain appropriate language in boldface type informing all persons concerned of the provisions of this section. During the time any such appointment, promotion, assignment, transfer, or designation is under consideration, appropriate notice of the provisions of this section printed in boldface type shall be posted in the post office concerned.

(e) The Postal Service or any authorized officer or employee of the Government of the United States may solicit, accept, and consider, and any other individual or organization may furnish or transmit to the Postal Service or such authorized officer or employee, any statement with respect to a person who requests or is under consideration for such appointment, promotion, assignment, transfer, or designation, if--

(1) the statement is furnished pursuant to a request or requirement of the Postal Service and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such person;

(2) the statement relates solely to the character and residence of such person;

(3) the statement is furnished pursuant to a request made by an authorized representative of the Government of the United States solely in order to determine whether such person meets the loyalty, suitability, and character requirements for employment with the Government of the United States; or

(4) the statement is furnished by a former employer of such person pursuant to a request of the Postal Service, and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such person during his employment with such former employer.

(f) The Postal Service shall take any action it determines necessary and proper, including but not limited to suspension, removal from office, or disqualification from the Postal Service, to enforce the provisions of this section.

(g) The provisions of this section shall not affect the right of an officer

or employee of the Postal Service to petition Congress as authorized by section 7211 of title 5.

**§ 1003. Employment policy [17]**

(a) Except as provided under ~~chapters 2 and 12 of this title, section 8G of the Inspector General Act of 1978, or other provision of law, chapter 2 or 12 of this title, subsection (b) or (c) of section 1003 of this title, or any other provision of law,~~ the Postal Service shall classify and fix the compensation and benefits of all officers and employees in the Postal Service. It shall be the policy of the Postal Service to maintain compensation and benefits for all officers and employees on a standard of comparability to the compensation and benefits paid for comparable levels of work in the private sector of the economy. No officer or employee shall be paid compensation at a rate in excess of the rate for level I of the Executive Schedule under section 5312 of title 5.

(b) Compensation and benefits for all officers and employees serving in or under the Office of Inspector General of the United States Postal Service shall be maintained on a standard of comparability to the compensation and benefits paid for comparable levels of work in the ~~respective~~ *other* Offices of Inspector General of the various establishments named in section 11(2) of the Inspector General Act of 1978.

(c) Compensation and benefits for all Postal Inspectors shall be maintained on a standard of comparability to the compensation and benefits paid for comparable levels of work in the executive branch of the Government outside of the Postal Service. As used in this subsection, the term "Postal Inspector" ~~included~~ *includes* any agent to whom any investigative powers are granted under section 3061 of title 18.

(d) The Postal Service shall follow an employment policy designed, without compromising the policy of section 101(a) of this title, to extend opportunity to the disadvantaged and the handicapped.

**§ 1004. Supervisory and other managerial organizations**

(a) It shall be the policy of the Postal Service to provide compensation, working conditions, and career opportunities that will assure the attraction and retention of qualified and capable supervisory and other managerial personnel; to provide adequate and reasonable differentials in rates of pay between employees in the clerk and carrier grades in the line work force and supervisory and other managerial personnel; to establish and maintain continuously a program for all such personnel that reflects the essential importance of a well-trained and well-motivated force to improve the effectiveness of postal operations; and to promote the leadership status of such personnel with respect to rank-and-file employees, recognizing that the role of such personnel in primary level management is particularly vital to the process of converting general postal policies into successful postal operations.

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<sup>17</sup> Amended by section 702(e)(2)(C) of H.R. 22. For effective date, see note to section 11 of the Inspector General Act.

(b) The Postal Service shall provide a program for consultation with recognized organizations of supervisory and other managerial personnel who are not subject to collective-bargaining agreements under chapter 12 of this title. Upon presentation of evidence satisfactory to the Postal Service that a supervisory organization represents a majority of supervisors, or that a managerial organization (other than an organization representing supervisors) represents a substantial percentage of managerial employees, such organization or organizations shall be entitled to participate directly in the planning and development of pay policies and schedules, fringe benefit programs, and other programs relating to supervisory and other managerial employees.

(c)(1) The Postal Service and the supervisors' organization shall, unless otherwise mutually agreed to, meet at least once each month to implement the consultation and direct participation procedures of subsection (b) of this section.

(2)(A) At least 7 days before each meeting, each party shall--

(i) provide notice of agenda items, and

(ii) describe in detail the proposals such party will make with respect to each such item.

(B) Grievances of individual employees shall not be matters which may be included as agenda items under this paragraph.

(d)(1) In order to facilitate consultation and direct participation by the supervisors' organization in the planning and development of programs under subsection (b) of this section which affect members of the supervisors' organization, the Postal Service shall--

(A) provide in writing a description of any proposed program and the reasons for it;

(B) give the organization at least 60 days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the program; and

(C) give any recommendation from the organization full and fair consideration in deciding whether or how to proceed with the program.

(2) If the Postal Service decides to implement a program described in paragraph (1) of this subsection, the Postal Service shall before such implementation--

(A) give the supervisors' organization details of its decision to implement the program, together with the information upon which the decision is based;

(B) give the organization an opportunity to make recommendations with respect to the program; and

(C) give such recommendations full and fair consideration, including the providing of reasons to the organization if any of such recommendations are rejected.

(3) If a program described in paragraph (1) of this subsection is implemented, the Postal Service shall--

(A) develop a method for the supervisors' organization to participate in further planning and development of the program, and

(B) give the organization adequate access to information to

make that participation productive.

(4) The Postal Service and the supervisors' organization may, by agreement, adopt procedures different from those provided by this subsection.

(e)(1) The Postal Service shall, within 45 days of each date on which an agreement is reached on a collective bargaining agreement between the Postal Service and the bargaining representative recognized under section 1203 of this title which represents the largest number of employees, make a proposal for any changes in pay policies and schedules and fringe benefit programs for members of the supervisors' organization which are to be in effect during the same period as covered by such agreement.

(2) The Postal Service and the supervisors' organization shall strive to resolve any differences concerning the proposal described in paragraph (1) of this subsection under the procedures provided for, or adopted under, subsection (d) of this section.

(3) The Postal Service shall provide its decision concerning changes proposed under paragraph (1) of this subsection to the supervisors' organization within 90 days following the submission of the proposal.

(f)(1) If, notwithstanding the mutual efforts required by subsection (e) of this section, the supervisors' organization believes that the decision of the Postal Service is not in accordance with the provisions of this title, the organization may, within 10 days following its receipt of such decision, request the Federal Mediation and Conciliation Service to convene a factfinding panel (hereinafter referred to as the "panel") concerning such matter.

(2) Within 15 days after receiving a request under paragraph (1) of this subsection, the Federal Mediation and Conciliation Service shall provide a list of 7 individuals recognized as experts in supervisory and managerial pay policies. Each party shall designate one individual from the list to serve on the panel. If, within 10 days after the list is provided, either of the parties has not designated an individual from the list, the Director of the Federal Mediation and Conciliation Service shall make the designation. The first two individuals designated from the list shall meet within 5 days and shall designate a third individual from the list. The third individual shall chair the panel. If the two individuals designated from the list are unable to designate a third individual within 5 days after their first meeting, the ~~Governor~~ *Director* shall designate the third individual.

(3)(A) The panel shall recommend standards for pay policies and schedules and fringe benefit programs affecting the members of the supervisors' organization for the period covered by the collective bargaining agreement specified in subsection (e)(1) of this section. The standards shall be consistent with the policies of this title, including sections 1003(a) and 1004(a) of this title.

(B) The panel shall, consistent with such standards, make appropriate recommendations concerning the differences between the parties on such policies, schedules, and programs.

(4) The panel shall make its recommendation no more than 30 days after its appointment, unless the Postal Service and the supervisors'

organization agree to a longer period. The panel shall hear from the Postal Service and the supervisors' organization in such a manner as it shall direct. The cost of the panel shall be borne equally by the Postal Service and the supervisors' organization.

(5) Not more than 15 days after the panel has made its recommendation, the Postal Service shall provide the supervisors' organization its final decision on the matters covered by factfinding under this subsection. The Postal Service shall give full and fair consideration to the panel's recommendation and shall explain in writing any differences between its final decision and the panel's recommendation.

(g) Not earlier than 3 years after the date of the enactment of this subsection, and from time to time thereafter, the Postal Service or the supervisors' organization may request, by written notice to the Federal Mediation and Conciliation Service and to the other party, the creation of a panel to review the effectiveness of the procedures and the other provisions of this section and the provisions of section 1003 of this title. The panel shall be designated in accordance with the procedure established in subsection (f)(2) of this section. The panel shall make recommendations to the Congress for changes in this title as it finds appropriate.

(h) For purposes of this section--

(1) "supervisors' organization" means the organization recognized by the Postal Service under subsection (b) of this section as representing a majority of supervisors; and

(2) "members of the supervisors' organization" means employees of the Postal Service who are recognized under an agreement between the Postal Service and the supervisors' organization as represented by such organization.

### **§ 1005. Applicability of laws relating to Federal employees**

(a)(1) Except as otherwise provided in this subsection, the provisions of chapter 75 of title 5 shall apply to officers and employees of the Postal Service except to the extent of any inconsistency with--

(A) the provisions of any collective-bargaining agreement negotiated on behalf of and applicable to them; or

(B) procedures established by the Postal Service and approved by the Civil Service Commission.

(2) The provisions of title 5 relating to a preference eligible (as that term is defined under section 2108(3) of such title) shall apply to an applicant for appointment and any officer or employee of the Postal Service in the same manner and under the same conditions as if the applicant, officer, or employee were subject to the competitive service under such title. The provisions of this paragraph shall not be modified by any program developed under section 1004 of this title or any collective-bargaining agreement entered into under chapter 12 of this title.

(3) The provisions of this subsection shall not apply to those individuals appointed under sections 202, 204, and 1001(c) of this title.

(4)(A) Subchapter II of chapter 75 of title 5 shall apply--

(i) to any preference eligible in the Postal Service who is an employee within the meaning of section 7511(a)(1)(B) of such title; and

(ii) to any other individual who--

(I) is in the position of a supervisor or a management employee in the Postal Service, or is an employee of the Postal Service engaged in personnel work in other than a purely nonconfidential clerical capacity; and

(II) has completed 1 year of current continuous service in the same or similar positions.

(B)(i) The second sentence of paragraph (2) of this subsection applies with respect to the provisions of subparagraph (A) of this paragraph, to the extent that such provisions relate to preference eligibles.

(ii) The provisions of subparagraph (A) of this paragraph shall not, to the extent that such provisions relate to an individual under clause (ii) of such subparagraph, be modified by any program developed under section 1004 of this title.

(b) Section 5941 of title 5 shall apply to the Postal Service. For purposes of such section, the pay of officers and employees of the Postal Service shall be considered to be fixed by statute, and the basic pay of an employee shall be the pay (but not any allowance or benefit) of that officer or employee established in accordance with the provisions of this title.

(c) Officers and employees of the Postal Service shall be covered by subchapter I of chapter 81 of title 5, relating to compensation for work injuries.

(d)(1) Officers and employees of the Postal Service (other than the ~~Governors~~ *Directors*) shall be covered by chapters 83 and 84 of title 5. The Postal Service shall withhold from pay and shall pay into the Civil Service Retirement and Disability Fund the amounts specified in or determined under such chapter 83 and subchapter II of such chapter 84, respectively. The Postal Service shall pay into the Federal Retirement Thrift Savings Fund the amounts specified in or determined under subchapters III and VII of such chapter 84.

(2) The provisions of subsection (g) of section 5532, subsections (i) and (l)(2) of section 8344, and subsections (f) and (i)(2) of section 8468 of title 5 shall apply with respect to the Postal Service. For purposes of so applying such provisions--

(A) any reference in such provisions to the head of an Executive agency shall be considered a reference to the Postmaster General; and

(B) any reference in such provisions to an employee shall be considered a reference to an officer or employee of the Postal Service.

(e) Sick and annual leave, and compensatory time of officers and employees of the Postal Service, whether accrued prior to or after commencement of operations of the Postal Service, shall be obligations of the Postal Service under the provisions of this chapter.

(f) Compensation, benefits, and other terms and conditions of employment in effect immediately prior to the effective date of this section,

whether provided by statute or by rules and regulations of the former Post Office Department or the executive branch of the Government of the United States, shall continue to apply to officers and employees of the Postal Service, until changed by the Postal Service in accordance with this chapter and chapter 12 of this title. Subject to the provisions of this chapter and chapter 12 of this title, the provisions of subchapter I of chapter 85 and chapters 87 and 89 of title 5 shall apply to officers and employees of the Postal Service, unless varied, added to, or substituted for, under this subsection. No variation, addition, or substitution with respect to fringe benefits shall result in a program of fringe benefits which on the whole is less favorable to the officers and employees than fringe benefits in effect on the effective date of this section, and as to officers and employees for whom there is a collective-bargaining representative, no such variation, addition, or substitution shall be made except by agreement between the collective-bargaining representative and the Postal Service.

#### **§ 1006. Right of transfer**

Officers and employees in the postal career service of the Postal Service shall be eligible for promotion or transfer to any other position in the Postal Service or the executive branch of the Government of the United States for which they are qualified. The authority given by this section shall be used to provide a maximum degree of career promotion opportunities for officers and employees and to insure continued improvement of postal services.

#### **§ 1007. Seniority for employees in rural service**

Subject to agreements made under chapter 12 of this title, the seniority of an employee of the Postal Service occupying a position whose regular duty involves the collection and delivery of mail on a rural route shall be preserved. Seniority for such employee shall commence on the first day of his service in such a position, or, in the event such an employee transfers to another such position, on the day he enters duty in the other position. Upon initial assignment, such an employee shall be assigned to the least desirable route and shall attain assignment to more desirable routes by seniority. Promotions and assignments for such an employee in such position shall be based on seniority and ability. If ability be sufficient, seniority shall govern.

#### **§ 1008. Temporary employees or carriers [18]**

(a) A person temporarily employed to deliver mail *or entrusted with mail under contract with the Postal Service* is deemed an employee of the Postal Service and is subject to the provisions of chapter 83 of title 18 to the same extent as other employees of the Postal Service.

(b) Any person, when engaged in carrying mail under contract with the Postal Service, or employed by the Postal Service, is deemed *an employee*

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<sup>18</sup> Amended by section 801 of H.R. 22.

*of the Postal Service for the purposes of sections 111 and 1114 of title 18, and a carrier or person entrusted with the mail and having custody thereof, within the meaning of sections 1701, 1708, and 2114 of title 18.*

**§ 1009. Personnel not to receive fees**

An officer or employee of the Postal Service may not receive any fee or perquisite from a patron of the Postal Service on account of the duties performed by virtue of his appointment, except as authorized by law.

**§ 1010. Administration of oaths related to postal inspection matters**

Officers and employees of the Postal Service performing duties related to the inspection of postal matters may administer oaths required or authorized by law or regulation with respect to any matter coming before them in the performance of their official duties.

**§ 1011. Oath of office**

Before entering upon their duties and before receiving any salary, all officers and employees of the Postal Service shall take and subscribe the following oath or affirmation:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter."

A person authorized to administer oaths by the laws of the United States, including section 2903 of title 5, or of a State or territory, or an officer, civil or military, holding a commission under the United States, or any officer or employee of the Postal Service designated by the Board may administer and certify the oath or affirmation.

**CHAPTER 12--EMPLOYEE-MANAGEMENT  
AGREEMENTS**

Sec.

- 1201. Definition.
- 1202. Bargaining units.
- 1203. Recognition of labor organizations.
- 1204. Elections.
- 1205. Deductions of dues.
- 1206. Collective-bargaining agreements.
- 1207. Labor disputes.
- 1208. Suits.
- 1209. Applicability of Federal labor laws.

**§ 1201. Definition**

As used in this chapter, "guards" means--

- (1) maintenance guards who, on the effective date of this chapter, are in key position KP-5 under the provisions of former section 3514 of title 39; and
- (2) security guards, who may be employed in the Postal Service and whose primary duties shall include the exercise of authority to enforce rules to protect the safety of property, mail, or persons on the premises.

**§ 1202. Bargaining units**

The National Labor Relations Board shall decide in each case the unit appropriate for collective bargaining in the Postal Service. The National Labor Relations Board shall not include in any bargaining unit--

- (1) any management official or supervisor;
- (2) any employee engaged in personnel work in other than a purely nonconfidential clerical capacity;
- (3) both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or
- (4) together with other employees, any individual employed as a security guard to enforce against employees and other persons, rules to protect property of the Postal Service or to protect the safety of property, mail, or persons on the premises of the Postal Service; but no labor organization shall be certified as the representative of employees in a bargaining unit of security guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

**§ 1203. Recognition of labor organizations**

(a) The Postal Service shall accord exclusive recognition to a labor organization when the organization has been selected by a majority of the employees in an appropriate unit as their representative.

(b) Agreements and supplements in effect on the date of enactment of this section covering employees in the former Post Office Department shall continue to be recognized by the Postal Service until altered or amended pursuant to law.

(c) When a petition has been filed, in accordance with such regulations as may be prescribed by the National Labor Relations Board--

- (1) by an employee, a group of employees, or any labor organization acting in their behalf, alleging that (A) a substantial number of employees wish to be represented for collective bargaining by a labor organization and that the Postal Service declines to recognize such labor organization as the representative; or (B) the labor organization which has been certified or is being currently recognized by the Postal Service as the bargaining representative is no longer a representative; or

(2) by the Postal Service, alleging that one or more labor organizations has presented to it a claim to be recognized as the representative;

the National Labor Relations Board shall investigate such petition and, if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the National Labor Relations Board, who shall not make any recommendations with respect thereto. If the National Labor Relations Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(d) A petition filed under subsection (c)(1) of this section shall be accompanied by a statement signed by at least 30 percent of the employees in the appropriate unit stating that they desire that an election be conducted for either of the purposes set forth in such subsection.

(e) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the National Labor Relations Board.

#### **§ 1204. Elections**

(a) All elections authorized under this chapter shall be conducted under the supervision of the National Labor Relations Board, or persons designated by it, and shall be by secret ballot. Each employee eligible to vote shall be provided the opportunity to choose the labor organization he wishes to represent him, from among those on the ballot, or "no union".

(b) In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted, the ballot providing for a selection between the 2 choices receiving the largest and second largest number of valid votes cast in the election. In the event of a tie vote, additional runoff elections shall be conducted until one of the choices has received a majority of the votes.

(c) No election shall be held in any bargaining unit within which, in the preceding 12-month period, a valid election has been held.

#### **§ 1205. Deductions of dues**

(a) When a labor organization holds exclusive recognition, or when an organization of personnel not subject to collective-bargaining agreements has consultation rights under section 1004 of this title, the Postal Service shall deduct the regular and periodic dues of the organization from the pay of all members of the organization in the unit of recognition if the Post Office Department or the Postal Service has received from each employee, on whose account such deductions are made, a written assignment which shall be irrevocable for a period of not more than one year.

(b) Any agreement in effect immediately prior to the date of enactment of the Postal Reorganization Act between the Post Office Department and any organization of postal employees which provides for deduction by the Department of the regular and periodic dues of the organization from the

pay of its members, shall continue in full force and effect and the obligation for such deductions shall be assumed by the Postal Service. No such deduction shall be made from the pay of any employee except on his written assignment, which shall be irrevocable for a period of not more than one year.

#### **§ 1206. Collective-bargaining agreements**

(a) Collective-bargaining agreements between the Postal Service and bargaining representatives recognized under section 1203 of this title shall be effective for not less than 2 years.

(b) Collective-bargaining agreements between the Postal Service and bargaining representatives recognized under section 1203 may include any procedures for resolution by the parties of grievances and adverse actions arising under the agreement, including procedures culminating in binding third-party arbitration, or the parties may adopt any such procedures by mutual agreement in the event of a dispute.

(c) The Postal Service and bargaining representatives recognized under section 1203 may by mutual agreement adopt procedures for the resolution of disputes or impasses arising in the negotiation of a collective-bargaining agreement.

#### **§ 1207. Labor disputes**

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

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

(c)(1) If no agreement is reached within 90 days after the expiration or termination of the agreement or the date on which the agreement became subject to modification under subsection (a) of this section, or if the parties

decide upon arbitration but do not agree upon the procedures therefor, an arbitration board shall be established consisting of 3 members, not members of the factfinding panel, 1 of whom shall be selected by the Postal Service, 1 by the bargaining representative of the employees, and the third by the 2 thus selected. If either of the parties fails to select a member, or if the members chosen by the parties fail to agree on the third person within 5 days after their first meeting, the selection shall be made by the ~~Governor~~ *Director*. If the parties do not agree on the framing of the issues to be submitted, the factfinding panel shall frame the issues and submit them to the arbitration board.

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

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

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

### **§ 1208. Suits**

(a) The courts of the United States shall have jurisdiction with respect to actions brought by the National Labor Relations Board under this chapter to the same extent that they have jurisdiction with respect to actions under title 29.

(b) Suits for violation of contracts between the Postal Service and a labor organization representing Postal Service employees, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy.

(c) A labor organization and the Postal Service shall be bound by the authorized acts of their agents. Any labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(d) For the purposes of actions and proceedings by or against labor

organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal offices, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(e) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

### **§ 1209. Applicability of Federal labor laws**

(a) Employee-management relations shall, to the extent not inconsistent with provisions of this title, be subject to the provisions of subchapter II of chapter 7 of title 29.

(b) The provisions of chapter 11 of title 29 shall be applicable to labor organizations that have or are seeking to attain recognition under section 1203 of this title, and to such organizations, officers, agents, shop stewards, other representatives, and members to the extent to which such provisions would be applicable if the Postal Service were an employer under section 402 of title 29. In addition to the authority conferred on him under section 438 of title 29, the Secretary of Labor shall have authority, by regulation issued with the written concurrence of the Postal Service, to prescribe simplified reports for any such labor organization. The Secretary of Labor may revoke such provision for simplified forms of any such labor organization if he determines, after such investigation as he deems proper and after due notice and opportunity for a hearing, that the purposes of this chapter and of chapter 11 of title 29 would be served thereby.

(c) Each employee of the Postal Service shall have the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right.

## **PART III--MODERNIZATION AND FISCAL ADMINISTRATION**

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### **CHAPTER 20--FINANCE**

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### § 2001. Definitions

As used in this chapter--

(1) "Fund" means the Postal Service Fund established by section 2003 of this chapter; ~~and~~

(2) "*Competitive Products Fund*" means the *Postal Service Competitive Products Fund* established by section 2011; and [19]

(~~2~~) (3)"obligations", when referring to debt instruments issued by the Postal Service, means notes, bonds, debentures, mortgages, and any other evidence of indebtedness.

### § 2002. Capital of the Postal Service

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

(1) Assets shall be valued on the basis of original cost less depreciation, to the extent that such value can be determined. The value recorded on the former Post Office Department's books of account shall be prima facie evidence of asset value.

(2) All liabilities attributable to operations of the former Post Office Department shall remain liabilities of the Government of the United States, except that upon commencement of operations of the Postal Service, the unexpended balances of appropriations made to, held or used by, or available to the former Post Office Department and all liabilities chargeable thereto shall become assets and liabilities, respectively, of the Postal Service.

(b) The capital of the Postal Service at any time shall consist of its assets, including the balance in the ~~Fund~~ *Fund and the balance in the Competitive Products Fund*, less its liabilities. [20]

(c) The Postal Service, and the Administrator of General Services where properties under the jurisdiction of the Administrator are involved, with the approval of the Director of the Office of Management and Budget,

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<sup>19</sup> Added by section 203(b)(1) of H.R. 22.

<sup>20</sup> Amended by section 203(b)(2) of H.R. 22.

shall determine which Federal properties shall be transferred to the Postal Service and which shall remain under the jurisdiction of any other department, agency, or establishment of the Government of the United States upon the commencement of operations of the Postal Service. The transfer shall be accomplished at the time of or as near as possible to the commencement of operations of the Postal Service and the valuation of the assets and capital of the Postal Service shall be adjusted accordingly. The following properties shall be included in the transfer:

(1) the mail equipment shops located in Washington, District of Columbia;

(2) all machinery, equipment, and appurtenances of the former Post Office Department;

(3) all real property whose ownership was acquired by the Postmaster General under former section 2103 of this title, as in effect immediately prior to the effective date of this section, or which immediately prior to such effective date, is under the administration of the former Post Office Department for the purpose of constructing a postal building from funds appropriated or transferred to the former Post Office Department, together with all funds appropriated or allocated therefor;

(4) all real property 55 percent or more of which is occupied by or under control of the former Post Office Department immediately prior to the effective date of this section;

(5) all contracts, records, and documents relating to the operation of the departmental service and the postal field service of the former Post Office Department; and

(6) all other property and assets of the former Post Office Department.

(d) After the commencement of operations of the Postal Service, the President is authorized to transfer to the Postal Service, and the Postal Service is authorized to transfer to other departments, agencies, or independent establishments of the Government of the United States, with or without reimbursement, any property of that department, agency, or independent establishment and the Postal Service, respectively, when the public interest would be served by such transfer.

### § 2003. The Postal Service Fund

(a) There is established in the Treasury of the United States a revolving fund to be called the Postal Service Fund which shall be available to the Postal Service without fiscal-year limitation to carry out the purposes, functions, and powers authorized by this ~~title~~ *title (other than any of the purposes, functions, or powers for which the Postal Service Competitive Products Fund is available)*. **[21]**

(b) ~~There~~ *Except as otherwise provided in section 2011, there* shall be deposited in the Fund, **[22]** subject to withdrawal by check by the Postal

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<sup>21</sup> Amended by section 203(b)(3)(A) of H.R. 22.

<sup>22</sup> Amended by section 203(b)(3)(B) of H.R. 22.

## Service--

(1) revenues from postal and nonpostal services rendered by the Postal Service;

(2) amounts received from obligations issued by the Postal Service;

(3) amounts appropriated for the use of the Postal Service;

(4) interest which may be earned on investments of the Fund;

(5) any other receipts of the Postal Service;

(6) the balance in the Post Office Department Fund established under former section 2202 of title 39 as of the commencement of operations of the Postal Service;

(7) amounts (including proceeds from the sale of forfeited items) from any civil forfeiture conducted by the Postal Service *and from any forfeiture resulting from an investigation in which the Postal Service has primary responsibility, except that nothing in this paragraph shall preclude the Postal Service, on such terms as it may determine, from sharing such amounts with any Federal, State, or local law enforcement agency which participated in any of the acts which led to the seizure or forfeiture of the property;* and [23]

(8) any transfers from the Secretary of the Treasury from the Department of the Treasury Forfeiture Fund which shall be available to the Postmaster General only for Federal law enforcement related purposes.

~~(e)~~ *If (c)(1) Except as provided in paragraph (2), if the Postal Service determines that the moneys of the Fund are in excess of current needs, it may request the investment of such amounts as it deems advisable by the Secretary of the Treasury in obligations of, or obligations guaranteed by, the Government of the United States, and, with the approval of the Secretary, in such other obligations or securities as it deems appropriate.*

*(2) Nothing in this subsection shall be considered to authorize any investment in any obligations or securities of a commercial entity (as defined by section 2011(c)(2)(B)), including any corporation established under section 2012. [24]*

(d) With the approval of the Secretary of the Treasury, the Postal Service may deposit moneys of the Fund in any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Postal Service and the Secretary may mutually agree.

~~(e)(1) The Fund shall be available for the payment of all expenses incurred by the Postal Service in carrying out its functions as provided by law and, subject to the provisions of section 3604 of this title, all expenses of the Postal Rate Commission Postal Regulatory Commission. The Fund shall be available for the payment of (A) all expenses incurred by the Postal Service in carrying out its functions as provided by law, subject to the same limitation as set forth in the parenthetical matter under subsection (a); (B) all expenses of the Postal Regulatory Commission, subject to the availability of amounts appropriated pursuant to section 3604(d); and (C)~~

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<sup>23</sup> Amended by section 803 of H.R. 22.

<sup>24</sup> This subsection amended by section 203(b)(4) of H.R. 22.

*all expenses of the Office of Inspector General, subject to the availability of amounts appropriated pursuant to section 8G(f) of the Inspector General Act of 1978. [25]* The Postmaster General shall transfer from the Fund to the Secretary of the Treasury for deposit in the Department of the Treasury Forfeiture Fund amounts appropriate to reflect the degree of participation of Department of the Treasury law enforcement organizations (described in section 9703(p) of title 31) in the law enforcement effort resulting in the forfeiture pursuant to laws enforced or administered by the Postal Service. Neither the Fund nor any of the funds credited to it shall be subject to apportionment under the provisions of subchapter II of chapter 15 of title 31.

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

(f) Notwithstanding any other provision of this section, any amounts appropriated to the Postal Service under subsection (d) of section 2401 of this title and deposited into the Fund shall be expended by the Postal Service only for the purposes provided in such subsection.

(g) Notwithstanding any provision of section 8147 of title 5, whenever the Secretary of Labor furnishes a statement to the Postal Service indicating an amount due from the Postal Service under subsection (b) of that section, the Postal Service shall make the deposit required pursuant to that statement (and any additional payment under subsection (c) of that section, to the extent that it relates to the period covered by such statement) not later than 30 days after the date on which such statement is so furnished. Any deposit (and any additional payment) which is subject to the preceding sentence shall, once made, remain available without fiscal year limitation.

(h) Liabilities of the former Post Office Department to the Employees' Compensation Fund (appropriations for which were authorized by former section 2004, as in effect before the effective date of this subsection) shall be liabilities of the Postal Service payable out of the Fund.

#### **§ 2004. Transitional appropriations**

Such sums as are necessary to insure a sound financial transition for the Postal Service and a rate policy consistent with chapter 36 of this title are hereby authorized to be appropriated to the Fund without regard to fiscal-year limitation.

#### **§ 2005. Obligations**

(a)(1) The Postal Service is authorized to borrow money and to issue and sell such obligations as it determines necessary to carry out the purposes of this ~~title~~ *title, other than any of the purposes for which the*

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<sup>25</sup> Amended by section 213(b)(2) of H.R. 22. For effective date, see note to 39 USC 3604(d).

*corresponding authority is available to the Postal Service under section 2011. [26] The aggregate amount of ~~any such obligations~~ obligations issued by the Postal Service which may be [27] outstanding at any one time shall not exceed the maximum amount then allowable under paragraph (2) of this subsection. In any one fiscal year the net increase in the amount of obligations outstanding issued for the purpose of capital improvements shall not exceed \$2,000,000,000, and the net increase in the amount of obligations outstanding issued for the purpose of defraying operating expenses of the Postal Service shall not exceed \$1,000,000,000.*

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

(A) \$10,000,000,000 for fiscal year 1990;

(B) \$12,500,000,000 for fiscal year 1991; and

(C) \$15,000,000,000 for fiscal year 1992 and each fiscal year thereafter.

(3) *For purposes of applying the respective limitations under this subsection, the aggregate amount of obligations issued by the Postal Service which are outstanding as of nay one time, and the net increase in the amount of obligations outstanding issued by the Postal Service for the purpose of capital improvements or for the purpose of defraying operating expenses of the Postal Service in any fiscal year, shall be determined by aggregating the relevant obligations issued by the Postal Service under this section with the relevant obligations issued by the Postal Service under section 2011. [28]*

~~(b)~~ (b)(1) The Postal Service may pledge the assets of the Postal Service and pledge and use its revenues and receipts for the payment of the principal of or interest on ~~such obligations~~ obligations issued by the Postal Service under this section, [29] for the purchase or redemption thereof, and for other purposes incidental thereto, including creation of reserve, sinking, and other funds which may be similarly pledged and used, to such extent and in such manner as it deems necessary or desirable. The Postal Service is authorized to enter into binding covenants with the holders of such obligations, and with the trustee, if any, under any agreement entered into in connection with the issuance thereof with respect to the establishment of reserve, sinking, and other funds, application and use of revenues and receipts of the Postal Service, stipulations concerning the subsequent issuance of obligations or the execution of leases or lease purchases relating to properties of the Postal Service and such other matters as the Postal Service deems necessary or desirable to enhance the marketability of such obligations.

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

(A) *the authority to pledge assets of the Postal Service under this subsection shall be available only to the extent that such assets are not related to the provision of competitive products (as determined under section 2011(h)); and*

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<sup>26</sup> Amended by section 203(b)(5)(A) of H.R. 22.

<sup>27</sup> Amended by section 203(b)(5)(B)(ii) of H.R. 22.

<sup>28</sup> Added by section 203(b)(5)(B)(i) of H.R. 22.

<sup>29</sup> Amended by section 203(b)(5)(C)(i) of H.R. 22.

*(B) any authority under this subsection relating to the pledging or other use of revenues or receipts of the Postal Service shall be available only to the extent that they are not revenues or receipts of the Competitive Products Fund. [30]*

- (c) Obligations issued by the Postal Service under this section--
- (1) shall be in such forms and denominations;
  - (2) shall be sold at such times and in such amounts;
  - (3) shall mature at such time or times;
  - (4) shall be sold at such prices;
  - (5) shall bear such rates of interest;
  - (6) may be redeemable before maturity in such manner, at such times, and at such redemption premiums;
  - (7) may be entitled to such relative priorities of claim on the assets of the Postal Service with respect to principal and interest payments; and
  - (8) shall be subject to such other terms and conditions; as the Postal Service determines.
- (d) Obligations issued by the Postal Service under this section shall--
- (1) be negotiable or nonnegotiable and bearer or registered instruments, as specified therein and in any indenture or covenant relating thereto;
  - (2) contain a recital that they are issued under this section, and such recital shall be conclusive evidence of the regularity of the issuance and sale of such obligations and of their validity;
  - (3) be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the Government of the United States, and the Secretary of the Treasury or any other officer or agency having authority over or control of any such fiduciary, trust, or public funds, may at any time sell any of the obligations of the Postal Service acquired under this section;
  - (4) be exempt both as to principal and interest from all taxation now or hereafter imposed by any State or local taxing authority except estate, inheritance, and gift taxes; and
  - (5) not be obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the Government of the United States, except as provided in section 2006(c) of this title.

## **§ 2006. Relationship between the Treasury and the Postal Service**

(a) At least 15 days before selling any issue of obligations under section 2005 of this title, the Postal Service shall advise the Secretary of the Treasury of the amount, proposed date of sale, maturities, terms and conditions, and expected maximum rates of interest of the proposed issue in appropriate detail and shall consult with him or his designee thereon. The Secretary may elect to purchase such obligations under such terms, including rates of interest, as he and the Postal Service may agree, but at a rate of yield no less than the prevailing yield on outstanding marketable

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<sup>30</sup> Paragraph (2) added by section 203(b)(5)(C)(ii) of H.R. 22.

Treasury securities of comparable maturity, as determined by the Secretary. If the Secretary does not purchase such obligations, the Postal Service may proceed to issue and sell them to a party or parties other than the Secretary upon notice to the Secretary and upon consultation as to the date of issuance, maximum rates of interest, and other terms and conditions.

(b) Subject to the conditions of subsection (a) of this section, the Postal Service may require the Secretary of the Treasury to purchase obligations of the Postal Service in such amounts as will not cause the holding by the Secretary of the Treasury resulting from such required purchases to exceed \$2,000,000,000 at any one time. This subsection shall not be construed as limiting the authority of the Secretary to purchase obligations of the Postal Service in excess of such amount. *Nothing in this chapter shall be considered to permit or require the Secretary of the Treasury to purchase any obligations of the Postal Service other than those issued under section 2005. [31]*

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

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

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

#### **§ 2007. Public debt character of the obligations of the Postal Service**

For the purpose of any purchase of the obligations of the Postal Service, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, as now or hereafter in force, and the purposes for which securities may be issued under chapter 31 of title 31, as now or hereafter in force, are extended to include any purchases of the obligations of the Postal Service under this chapter. The Secretary of the Treasury may, at any time, sell any of the obligations of the Postal Service acquired by him under this chapter. All redemptions, purchases, and sales by the Secretary of the obligations of the Postal Service shall be treated as public debt transactions of the United States.

#### **§ 2008. Audit and expenditures [32]**

(a) The accounts and operations of the Postal Service shall be audited by the Comptroller General and reports thereon made to the Congress to the

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<sup>31</sup> Amended by section 203(b)(6) of H.R. 22.

<sup>32</sup> Amended by section 702(c) of H.R. 22. Paragraph 702(c)(4) provides: "(4) SAVINGS PROVISION.—For purposes of any fiscal year preceding the first fiscal year commencing after the date of enactment of this Act, the provisions of title 39, United States Code, shall be applied as if the amendments made by this subsection had never been enacted."

extent and at such times as he may determine.

(b) The Postal Service shall maintain an adequate internal audit of the financial transactions of the Postal Service.

(c) Subject only to the provisions of this chapter, the Postal Service is authorized to make such expenditures and to enter into such contracts, agreements, and arrangements, upon such terms and conditions and in such manner as it deems necessary, including the final settlement of all claims and litigation by or against the Postal Service.

~~(d) Nothing~~ *(d)(1) Except as provided in paragraph (2), nothing* in this section shall be construed as denying to the Postal Service the power to obtain audits of the accounts of the Postal Service and reports concerning its financial condition and operations by certified public accounting firms. Such audits and reports shall be in addition to those required by this section.

*(2) An audit or report under paragraph (1) may not be obtained without the prior written approval of the Inspector General.*

~~(e) At least once each year beginning with the fiscal year commencing after June 30, 1971, the Postal Service shall obtain a certification from an independent, certified public accounting firm of the accuracy of any financial statements of the Postal Service used in determining and establishing postal rates.~~

*(e)(1) At least once each year beginning with the fiscal year commencing after the date of enactment of the Postal Modernization Act of 1999, the financial statements of the Postal Service (including those used in determining and establishing postal rates) shall be audited by the Inspector General or by an independent external auditor selected by the Inspector General.*

*(2) Audits under this section shall be conducted in accordance with applicable generally accepted government auditing standards.*

*(3) Upon completion of the audit required by this subsection, the person who audits the statement shall submit a report on the audit to the Postmaster General.*

### § 2009. Annual budget [33]

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

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<sup>33</sup> Amended by section 213(b)(1) of H.R. 22. For effective date and savings provision for amendments to this section, see note to 39 USC 3604(d).

year. Such budget program shall include a statement of financial condition, a statement of income and expense, an analysis of surplus or deficit, a statement of sources and application of funds, and such other supplementary statements and information as are necessary or desirable to make known the financial condition and operations of the Postal Service. Such statements shall include estimates of operations by major types of activities, together with estimates of administrative expenses and estimates of borrowings. The budget program shall also include separate statements of the amounts which (1) the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401, (2) *the Office of Inspector General of the United States Postal Service requests to be appropriated, out of the Postal Service Fund, under section 8G(f) of the Inspector General Act of 1978, and (3) the Postal Regulatory Commission requests to be appropriated, out of the Postal Service Fund, under section 3604(d)* of this title. The President shall include these amounts, with his recommendations but without revision, in the budget transmitted to Congress under section 1105 of title 31.

#### **§ 2009a. Budgetary treatment of the Postal Service Fund**

Notwithstanding any other provision of law, the receipts and disbursements of the Postal Service Fund, including disbursements for administrative expenses incurred in connection with the Fund--

- (1) shall not be included in the totals of--
  - (A) the budget of the United States Government as submitted by the President, or
  - (B) the congressional budget (including allocations of budget authority and outlays provided therein);
- (2) shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government; and
- (3) shall be exempt from any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985, and shall not be counted for purposes of calculating the deficit under section 3(6) of the Congressional Budget and Impoundment Control Act of 1974 for purposes of comparison with the maximum deficit amount under the Balanced Budget and Emergency Deficit Control Act of 1985 nor counted in calculating the excess deficit for purposes of sections 251 and 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, for any fiscal year.

#### **§ 2010. Restrictions on agreements**

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

**§ 2011. Provisions relating to competitive products [34]**

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

(1) *costs attributable to competitive products; and*

(2) *all other costs incurred by the Postal Service, to the extent allocable to competitive products.*

*For purposes of this subsection, the term ‘costs attributable’ has the meaning given such term by section 3741.*

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

(1) *revenues from competitive products;*

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

(3) *interest and dividends earned on investments of the Competitive Products Fund; and*

(4) *any other receipts of the Postal Service (including from the sale of assets), to the extent allocable to competitive products.*

(c)(1) *If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, it may make such investments as it considers advisable, subject to paragraph (2).*

(2)(A) *Notwithstanding paragraph (1) or any other provision of this title, moneys of the Competitive Products Fund may not be used to invest in the obligations or securities of, or to otherwise invest in, any commercial entity other than a corporation established under section 2012.*

(B) *For purposes of this paragraph, the term ‘commercial entity’ means any corporation, company, association, partnership, joint stock company, firm, society, or other similar entity, as further defined under regulations prescribed by the Postal Regulatory Commission.*

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

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

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

(g)(1) *Subject to the limitations specified in section 2005(a), the Postal Service is authorized to borrow money and to issue and sell such obligations as it determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund, except that the Postal Service may pledge only assets related to the provision of*

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<sup>34</sup> Added by section 203 of H.R. 22.

*competitive products (as determined under subsection (h)), and the revenues and receipts from such products, for the payment of the principal of or interest on such obligations, for the purchase or redemption thereof, and for other purposes incidental thereto, including creation of reserve, sinking, and other funds which may be similarly pledged and used, to such extent and in such manner as it deems necessary or desirable.*

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

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

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

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

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

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

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

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

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

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

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

*(i) the assets of the Postal Service associated with providing competitive products; and*

*(ii) the liabilities of the Postal Service associated with providing competitive products.*

*(B) Such recommendations—*

*(i) shall have, as their primary objectives, the identification of the capital costs incurred by the Postal Service in providing competitive products, and preventing the cross-subsidization of such products by noncompetitive products;*

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

(iii) shall be submitted to the Postal Regulatory Commission by such deadline as the Commission may establish (after consultation with the Postal Service), except that the deadline so established may be no earlier than 180 days after the effective date of this section.

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

(i) shall consider a range of options sufficiently broad so as to permit a meaningful comparison of the different methods available for accomplishing the objectives of this subsection; and

(ii) shall include a schedule for implementation of any recommendations submitted under this paragraph.

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

(ii) For purposes of this paragraph, the term ‘interested parties’ includes the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public.

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

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

(I) which assets of the Postal Service are (in whole or in part) associated with providing competitive products and, to the extent so associated, their value;

(II) which liabilities of the Postal Service are (in whole or in part) associated with providing competitive products and, to the extent so associated, their value; and

(III) with respect to the purchase or sale of any assets of the Postal Service, the extent to which any costs or revenues of the Postal Service arising out of such purchase or sale are allocable to the provision of competitive products;

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

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

(II) the then current value of any investments made by the Postal Service in any corporation established under section 2012; and

*(III) such other information as the Commission may require to carry out the purposes of this subparagraph.*

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

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

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

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

*(i) The Postal Service shall render an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund, in which it shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses. A copy of its then most recent report under this subsection shall be included with any other submission that it is required to make to the Postal Regulatory Commission under section 3772(g).*

*(j) For purposes of this section, the term ‘competitive product’ has the meaning given such term by chapter 37.*

#### **§ 2012. USPS Corporation [35]**

*(a) The Board of Directors may establish a private for-profit corporation under the laws of a State to be known as the USPS Corporation or by such other corporate name as may be duly adopted by the Corporation. The Board of Directors may serve as incorporators of the Corporation and take all steps necessary to establish the Corporation, including the filing of articles of incorporation consistent with the provisions of this section.*

*(b)(1) The Corporation shall not be an agency, instrumentality, or establishment of the United States, a Government corporation, or a Government-controlled corporation. Except as provided in this section, the Corporation shall not be considered part of the Postal Service. Financial obligations of the Corporation shall not be obligations of, or guaranteed*

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<sup>35</sup> Added by section 204 of H.R. 22. Subsection 204(c) provides: "(c) EFFECTIVE DATE.—No authority under section 2012 of title 39, United States Code (as amended by this section) shall be available until the first day of the first fiscal year beginning on or after the date as of which the baseline rates are determined under section 3721(e)(2) of title 39, United States Code (as amended by section 201)."

*as to principal or interest by, the Postal Service or the United States, and the obligations shall so plainly state. No action shall be allowable against the United States based on actions of the Corporation.*

*(2) The receipts and disbursements of the Corporation shall be accorded the same budgetary treatment as is accorded to receipts and disbursements of the Postal Service Fund under section 2009a.*

*(c) The Corporation is authorized to issue and have outstanding, in such amounts as it shall determine, shares of capital stock, without par value, which shall carry voting rights and be eligible for dividends. Such shares may be purchased only by the Postal Service Competitive Products Fund, in such amounts as the Board of Directors of the Postal Service may deem appropriate.*

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

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

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

*(e)(1) The Corporation shall be subject to the laws of the State in which it is incorporated to the same extent and in the same manner as any other corporation incorporated in that State, and the directors, officers, and employees of the Corporation shall likewise be subject to such laws to the same extent and in the same manner as the directors, officers, and employees of any other corporation so incorporated.*

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

*(A) to offer any postal or nonpostal product (other than a product covered by the postal monopoly, as defined in section 3764(b)(2));*

*(B) to acquire shares of individual private companies;*

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

*(D) to borrow money on its own behalf, and issue and sell such obligations in such amounts as the directors of the Corporation consider appropriate.*

*(f)(1) The Corporation may purchase goods and services from the Postal Service, except that the Corporation shall pay the Postal Service the same amount for such goods or services as would be paid by similarly situated mailers or, if the goods or services are not offered to the public by the Postal Service, amounts which represent fair market value.*

*(2) Except as otherwise provided in this title, the Postal Service*

*shall, in a manner consistent with paragraph (1) and in all other respects, treat the Corporation in the same manner as any other private corporation.*

*(3) Nothing in this subsection shall, with respect to any postal product which is subject to chapter 37, be considered to exempt the Corporation from the rate established for such product under such chapter.*

*(g)(1) Insofar as the Corporation offers postal products which depend in substantial part on the services of the Postal Service, the Postal Service shall, to the extent considered appropriate by the Postal Regulatory Commission (and subject to such requirements as the Commission may specify as to form and content), include details of the activities of the Corporation (including sufficient information to demonstrate that the requirements of subsection (f) are being complied with) in the annual reports to the Commission required by section 3772.*

*(2) In the event that, based on its review of the information submitted to it by the Postal Service under paragraph (1), the Commission determines that the requirements of subsection (f) are not being complied with, the Commission may issue any order allowable under subsection (c)(8) or (d) of section 3662.*

*(h)(1) Except as authorized by the Postal Regulatory Commission under this subsection, the Corporation may not, directly or indirectly, engage in the provision of services which involve the physical preparation, processing, or packaging of mail for delivery by means of noncompetitive products (within the meaning of chapter 37) offered by the Postal Service.*

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

*(A) The fair and equitable treatment of small business concerns (as defined under paragraph (5)) which have invested in the development of such services, if any.*

*(B) The available alternatives for obtaining such services.*

*(C) The needs of users of noncompetitive products, especially individual users.*

*(D) The public interest in the efficient production of such services.*

*(E) Such other factors as the Commission considers appropriate.*

*(3) The Commission shall promptly consider a request by the Corporation made under this subsection, except that the Commission shall not make a final decision until the opportunity for a hearing on the record under sections 556 and 557 of title 5 has been accorded to the Corporation, users of the mails, an officer of the Commission who shall be required to represent the interests of the general public, and other interested parties.*

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

*(5) The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns*

*shall, for purposes of this subsection, be established by the Commission in conformance with the requirements of section 3 of the Small Business Act.*

*(i) As used in this section, the term 'State' includes the District of Columbia.*

## CHAPTER 22--CONVICT LABOR

Sec.

2201. No postal equipment or supplies manufactured by convict labor.

### **§ 2201. No postal equipment or supplies manufactured by convict labor**

Except as provided in chapter 307 of title 18, the Postal Service may not make a contract for the purchase of equipment or supplies to be manufactured by convict labor.

## CHAPTER 24--APPROPRIATIONS AND ANNUAL REPORT

Sec.

2401. Appropriations.

2402. Annual report.

### **§ 2401. Appropriations [36]**

(a) There are appropriated to the Postal Service all revenues received by the Postal Service.

(b)(1) As reimbursement to the Postal Service for public service costs incurred by it in providing a maximum degree of effective and regular postal service nationwide, in communities where post offices may not be deemed self-sustaining, as elsewhere, there are authorized to be appropriated to the Postal Service the following amounts:

(A) for each of the fiscal years 1972 through 1979, an amount equal to 10 percent of the sum appropriated to the former Post Office Department by Act of Congress for its use in fiscal year 1971;

(B) for fiscal year 1980, an amount equal to 9 percent of such sum for fiscal year 1971;

(C) for fiscal year 1981, \$486,000,000;

(D) for fiscal year 1982, \$250,000,000;

(E) for fiscal year 1983, \$100,000,000;

(F) for fiscal year 1984, no funds are authorized to be appropriated; and

(G) except as provided in paragraph (2) of this subsection, for

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<sup>36</sup> Section amended by section 402(a) of H.R. 22.

each fiscal year thereafter an amount equal to 5 percent of such sum for fiscal year 1971.

(2) After fiscal year 1984, the Postal Service may reduce the percentage figure in paragraph (1)(G) of this subsection, including a reduction to 0, if the Postal Service finds that the amounts determined under such paragraph are no longer required to operate the Postal Service in accordance with the policies of this title.

(c) There are authorized to be appropriated to the Postal Service each year a sum determined by the Postal Service to be equal to the difference between the revenues the Postal Service would have received if sections 3217 and 3403 through 3406 had not been enacted and the estimated revenues to be received on mail carried under such sections. In requesting an appropriation under this subsection for a fiscal year, the Postal Service shall include an amount to reconcile sums authorized to be appropriated for prior fiscal years on the basis of estimated mail volume with sums which would have been authorized to be appropriated if based on the final audited mail volume.

(d) As reimbursement to the Postal Service for losses which it incurred as a result of insufficient amounts appropriated under section 2401(c) for fiscal years 1991 through 1993, and to compensate for the additional revenues it is estimated the Postal Service would have received under the provisions of section 3626(a), for the period beginning on October 1, 1993, and ending on September 30, 1998, if the fraction specified in subclause (VI) of section 3626(a)(3)(B)(ii) were applied with respect to such period (instead of the respective fractions specified in subclauses (I) through (V) thereof), there are authorized to be appropriated to the Postal Service \$29,000,000 for each of fiscal years 1994 through 2035.

(e) The Postal Service shall present to the Committee on Governmental Affairs of the Senate and the ~~Committee on Post Office and Civil Service~~ *Committee on Government Reform* of the House of Representatives and the Committees on Appropriations of the Senate and the House of Representatives, at the same time it submits its annual budget under section 2009 of this title, sufficient copies of the budget of the Postal Service for the fiscal year for which funds are requested to be appropriated, and a comprehensive statement relating to the following matters:

(1) the plans, policies, and procedures of the Postal Service designed to comply with all of the provisions of section 101 of this title;

(2) postal operations generally, including data on the speed and reliability of service provided for the various classes of mail and types of mail service, mail volume, productivity, trends in postal operations, and analyses of the impact of internal and external factors upon the Postal Service;

(3) a listing of the total expenditures and obligations incurred by the Postal Service for the most recent fiscal year for which information is available, an estimate of the total expenditures and obligations to be incurred by the Postal Service during the fiscal year for which funds are requested to be appropriated, and the means by which these estimated expenses will be financed; and

(4) such other matters as the committees may determine necessary

to ensure that the Congress is fully and currently consulted and informed on postal operations, plans, and policies.

~~Not later than March 15 of each year~~ *Each year*, the Postal Service shall appear before the Committee on Governmental Affairs of the Senate and the ~~Committee on Post Office and Civil Service~~ *Committee on Government Reform* of the House of Representatives to submit information which any such committee considers necessary to determine the amount of funds to be appropriated for the operation of the Postal Service, and to present testimony and respond to questions with respect to such budget and statement. Each such committee shall take such action as it considers appropriate and shall advise the Postal Service of such action.

(f) The failure of the President to request the appropriation of any part of the funds authorized by this section may not be deemed a failure of appropriations.

(g) The rates established under chapter 36 of this title for zone-rated parcels formerly entered under former chapter 67 of this title shall not be more than 10 percent less than the rates for such mail would be if the funds authorized under subsection (b) were not appropriated.

#### **§ 2402. Annual report**

The Postmaster General shall render an annual report to the Board concerning the operations of the Postal Service under this title. *Each report under this section shall include, for the most recent fiscal year for which a report under section 2008(e) is available (unless previously transmitted under the following sentence), a copy of such report.* Upon approval thereof, or after making such changes as it considers appropriate, the Board shall transmit such reports to the President and the Congress. [37]

### CHAPTER 26--DEBTS AND COLLECTION

Sec.

2601. Collection and adjustment of debts.

2602. Transportation of international mail by air carriers of the United States.

2603. Settlement of claims for damages caused by the Postal Service.

2604. Delivery of stolen money to owner.

2605. Suits to recover wrongful or fraudulent payments.

#### **§ 2601. Collection and adjustment of debts**

(a) The Postal Service--

(1) shall collect debts due the Postal Service;

(2) shall collect and remit fines, penalties, and forfeitures arising out of matters affecting the Postal Service;

(3) may adjust, pay, or credit the account of a postmaster or of an enlisted person of an Armed Force performing postal duties, for any

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<sup>37</sup> Amended by subsection 702(c) of H.R. 22. For savings provision, see note to 39 USC 2008.

loss of Postal Service funds, papers, postage, or other stamped stock or accountable paper; and

(4) may prescribe penalties for failure to render accounts.

The Postal Service may refer any matter, which is uncollectable through administrative action, to the General Accounting Office for collection. This subsection does not affect the authority of the Attorney General in cases in which judicial proceedings are instituted.

(b) In all cases of disability or alleged liability for any sum of money by way of damages or otherwise, under any provision of law in relation to the officers, employees, operations, or business of the Postal Service, the Postal Service shall determine whether the interests of the Postal Service probably require the exercise of its powers over the same. Upon the determination, the Postal Service on such terms as it deems just and expedient, may--

(1) remove the disability; or

(2) compromise, release, or discharge the claim for such sum of money and damages.

**§ 2602. Transportation of international mail by air carriers of the United States**

(a) The Postal Service may offset against any balances due another country resulting from the transaction of international money order business, or otherwise, amounts due from that country to the United States, or to the United States for the account of air carriers of the United States transporting mail of that country, when--

(1) the Postal Service puts into effect rates of compensation to be charged another country for transportation; and

(2) the United States is required to collect from another country the amounts owed for transportation for the account of the air carriers.

(b) When the Postal Service has proceeded under authority of subsection (a) of this section, it shall--

(1) give appropriate credit to the country involved;

(2) pay to the air carrier the portion of the amount so credited which is owed to the air carrier for its services in transporting the mail of the other country; and

(3) deposit in the Postal Service Fund that portion of the amount so credited which is due the United States on its own account.

(c) The Postal Service may advance to an air carrier, out of funds available for payment of balances due other countries, the amounts determined by the Postal Service to be due from another country to an air carrier for the transportation of its mails when--

(1) collections are to be made by the United States for the account of air carriers; and

(2) the Postal Service determines that the balance of funds available is such that the advances may be made therefrom.

Collection from another country of the amount so advanced shall be made by offset, or otherwise, and the appropriation from which the advance is made shall be reimbursed by the collections made by the United States.

(d) If the United States is unable to collect from the debtor country an

amount paid or advanced to an air carrier within 12 months after payment or advance has been made, the United States may deduct the uncollected amount from any sums owed by it to the air carrier.

(e) The Postal Service shall adopt such accounting procedures as may be necessary to conform to and carry out the purposes of this section.

### **§ 2603. Settlement of claims for damages caused by the Postal Service**

When the Postal Service finds a claim for damage to persons or property resulting from the operation of the Postal Service to be a proper charge against the United States, and it is not cognizable under section 2672 of title 28, it may adjust and settle the claim.

### **§ 2604. Delivery of stolen money to owner**

When the Postal Service is satisfied that money or property in the possession of the Postal Service represents money or property stolen from the mails, or the proceeds thereof, it may deliver it to the person it finds to be the rightful owner.

### **§ 2605. Suits to recover wrongful or fraudulent payments**

The Postal Service shall request the Attorney General to bring a suit to recover with interest any payment made from moneys of, or credit granted by, the Postal Service as a result of--

- (1) mistake;
- (2) fraudulent representations;
- (3) collusion; or
- (4) misconduct of an officer or employee of the Postal Service.

## **CHAPTER 28--STRATEGIC PLANNING AND PERFORMANCE MANAGEMENT**

Sec.

2801. Definitions.

2802. Strategic plans.

2803. Performance plans.

2804. Program performance reports.

2805. Inherently Governmental functions.

2806. *Universal postal services.*

### **§ 2801. Definitions**

For purposes of this chapter the term--

- (1) "outcome measure" refers to an assessment of the results of a program activity compared to its intended purpose;
- (2) "output measure" refers to the tabulation, calculation, or recording of activity or effort and can be expressed in a quantitative or qualitative manner;

(3) "performance goal" means a target level of performance expressed as a tangible, measurable objective, against which actual achievement shall be compared, including a goal expressed as a quantitative standard, value, or rate;

(4) "performance indicator" refers to a particular value or characteristic used to measure output or outcome;

(5) "program activity" means a specific activity related to the mission of the Postal Service; and

(6) "program evaluation" means an assessment, through objective measurement and systematic analysis, of the manner and extent to which Postal Service programs achieve intended objectives.

### **§ 2802. Strategic plans**

(a) No later than September 30, 1997, the Postal Service shall submit to the President and the Congress a strategic plan for its program activities. Such plan shall contain--

(1) a comprehensive mission statement covering the major functions and operations of the Postal Service;

(2) general goals and objectives, including outcome-related goals and objectives, for the major functions and operations of the Postal Service;

(3) a description of how the goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to meet those goals and objectives;

(4) a description of how the performance goals included in the plan required under section 2803 shall be related to the general goals and objectives in the strategic plan;

(5) an identification of those key factors external to the Postal Service and beyond its control that could significantly affect the achievement of the general goals and objectives; and

(6) a description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations.

(b) The strategic plan shall cover a period of not less than five years forward from the fiscal year in which it is submitted, and shall be updated and revised at least every three years.

(c) The performance plan required under section 2803 shall be consistent with the Postal Service's strategic plan. A performance plan may not be submitted for a fiscal year not covered by a current strategic plan under this section.

(d) When developing a strategic plan, the Postal Service shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan, and shall advise the Congress of the contents of the plan.

### § 2803. Performance plans

(a) The Postal Service shall prepare an annual performance plan covering each program activity set forth in the Postal Service budget, which shall be included in the comprehensive statement presented under section ~~2401(g)~~ 2401(e) [38] of this title. Such plan shall--

- (1) establish performance goals to define the level of performance to be achieved by a program activity;
- (2) express such goals in an objective, quantifiable, and measurable form unless an alternative form is used under subsection (b);
- (3) briefly describe the operational processes, skills and technology, and the human, capital, information, or other resources required to meet the performance goals;
- (4) establish performance indicators to be used in measuring or assessing the relevant outputs, service levels, and outcomes of each program activity;
- (5) provide a basis for comparing actual program results with the established performance goals; and
- (6) describe the means to be used to verify and validate measured values.

(b) If the Postal Service determines that it is not feasible to express the performance goals for a particular program activity in an objective, quantifiable, and measurable form, the Postal Service may use an alternative form. Such alternative form shall--

- (1) include separate descriptive statements of--
  - (A) a minimally effective program, and
  - (B) a successful program,

with sufficient precision and in such terms that would allow for an accurate, independent determination of whether the program activity's performance meets the criteria of either description; or

- (2) state why it is infeasible or impractical to express a performance goal in any form for the program activity.

(c) In preparing a comprehensive and informative plan under this section, the Postal Service may aggregate, disaggregate, or consolidate program activities, except that any aggregation or consolidation may not omit or minimize the significance of any program activity constituting a major function or operation.

(d) The Postal Service may prepare a non-public annex to its plan covering program activities or parts of program activities relating to--

- (1) the avoidance of interference with criminal prosecution; or
- (2) matters otherwise exempt from public disclosure under section 410(c) of this title.

### § 2804. Program performance reports

(a) The Postal Service shall prepare a report on program performance for each fiscal year, which shall be included in the annual comprehensive

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<sup>38</sup> Amended by section 402(b) of H.R. 22.

statement presented under section ~~2401(g)~~ 2401(e) [39] of this title.

(b)(1) The program performance report shall set forth the performance indicators established in the Postal Service performance plan, along with the actual program performance achieved compared with the performance goals expressed in the plan for that fiscal year.

(2) If performance goals are specified by descriptive statements of a minimally effective program activity and a successful program activity, the results of such program shall be described in relationship to those categories, including whether the performance failed to meet the criteria of either category.

(c) The report for fiscal year 2000 shall include actual results for the preceding fiscal year, the report for fiscal year 2001 shall include actual results for the two preceding fiscal years, and the report for fiscal year 2002 and all subsequent reports shall include actual results for the three preceding fiscal years.

(d) Each report shall--

(1) review the success of achieving the performance goals of the fiscal year;

(2) evaluate the performance plan for the current fiscal year relative to the performance achieved towards the performance goals in the fiscal year covered by the report;

(3) explain and describe, where a performance goal has not been met (including when a program activity's performance is determined not to have met the criteria of a successful program activity under section 2803(b)(2))--

(A) why the goal was not met;

(B) those plans and schedules for achieving the established performance goal; and

(C) if the performance goal is impractical or infeasible, why that is the case and what action is recommended; and

(4) include the summary findings of those program evaluations completed during the fiscal year covered by the report.

### **§ 2805. Inherently Governmental functions**

The functions and activities of this chapter shall be considered to be inherently Governmental functions. The drafting of strategic plans, performance plans, and program performance reports under this section shall be performed only by employees of the Postal Service.

### **§ 2806. Universal postal services [40]**

*(a)(1) Within 1 month after the date of enactment of this section, the Postal Service shall begin conducting a study the purpose of which shall be to develop recommendations as to the appropriate scope and standards for universal postal services to be assured by the Government of the United*

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<sup>39</sup> Amended by section 402(b) of H.R. 22.

<sup>40</sup> Section added by section 602 of H.R. 22.

*States consistent with its obligations under sections 101 and 403 and other provisions of this title.*

*(2) The Postal Service shall, within 18 months thereafter, complete its study and submit a written report to the President, the Congress, and the Postal Regulatory Commission setting forth its recommendations under this section and the reasons therefor.*

*(3) The Postal Service shall solicit and include as part of its report the written views and suggestions of any persons who may be affected by or interested in any matter as to which the study pertains.*

*(4) The conduct of the study and the drafting of the report required under this section shall, consistent with section 2805 (relating to inherently Governmental functions), be performed only by employees of the Postal Service.*

*(b)(1) The recommendations submitted by the Postal Service under this section shall include recommendations concerning a universal service definition for each class of delivery services the continuous provision of which must, in the view of the Postal Service, be assured in order to fulfill its obligations under sections 101 and 403 and other provisions of this title.*

*(2) In developing its recommendations under this subsection with respect to any given class of delivery services, the Postal Service shall take into consideration the development of new technologies and the evolution of alternative means of meeting the public interest objectives set out in this title.*

*(c) Each universal service definition recommended by the Postal Service under this section shall include the specification of minimum standards of service to be attained, consistent with the following:*

*(1) Standards of reliability, speed, frequency, and quality of service shall be established so as to meet the needs of users and consumers of universal services generally.*

*(2) Universal services should be available at just, reasonable, and affordable rates sufficient to enable universal services to be provided under best practices of honest, efficient, and economical management.*

*(3) Persons in all regions of the Nation, including low-income persons and those located in rural, insular, and high-cost areas, should have access to universal postal services that are reasonably comparable to those provided in urban areas and that are available at appropriate rates. As provided in section 101(b), no small post office of the Postal Service shall be closed solely by reason of operating at a deficit.*

*(4) In providing universal services, the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users, including other providers of postal services.*

*(5) Universal services shall be maintained without interruption and without abrupt and substantial changes in rates or quality of service.*

*(6) Standards for universal service should avoid distortions in competition between postal operators and between commercial purchasers of postal services to the extent consistent with fulfilling its obligations under sections 101 and 403 and other provisions of this title.*

(7) *Universal service definitions for the State of Alaska shall take into account the special conditions and needs of that State.*

(8) *Universal services shall be provided consistent with such other principles as the Postal Service determines are necessary and appropriate for the protection of the public interest, convenience, and necessity, and the requirements of this title.*

(d) *In addition to the principles set out in subsection (c), the Postal Service shall take into account special requirements for certain classes of postal services under this title, including requirements for uniform, reduced, or free rates.*

## PART IV--MAIL MATTER

Chap.	Sec.
30. Nonmailable Matter	3001
32. Penalty and Franked Mail	3201
34. Armed Forces and Free Postage	3401
36. Postal Rates, Classes, and Services	3601
37. <i>New System for Establishing Postal Rates, Classes, and Services</i>	3701

## CHAPTER 30--NONMAILABLE MATTER

- Sec.
- 3001. Nonmailable matter.
  - 3002. Nonmailable motor vehicle master keys.
  - 3002a. Nonmailability of locksmithing devices.
  - 3003. Mail bearing a fictitious name or address.
  - 3004. Delivery of mail to persons not residents of the place of address.
  - 3005. False representations; lotteries.
  - 3006. Unlawful matter.
  - 3007. Detention of mail for temporary periods.
  - ~~3008. Prohibition of pandering advertisements.~~
  - 3009. Mailing of unordered merchandise.
  - 3010. Mailing of sexually oriented advertisements.
  - 3011. Judicial enforcement.
  - 3012. Civil penalties.
  - 3013. Semiannual reports on investigative activities of the Postal Service.
  - 3014. Nonmailable plants.
  - 3015. Nonmailable plant pests and injurious animals.
  - 3016. *Civil penalty for prohibited mailing and deficient packaging of hazardous matter.*

### § 3001. Nonmailable matter

(a) Matter the deposit of which in the mails is punishable under section 1302, 1341, 1342, 1461, 1463, 1714, 1715, 1716, 1717, 1718, or 1738 of title 18, or section 26 of the Animal Welfare Act is nonmailable.

(b) Except as provided in subsection (c) of this section, nonmailable matter which reaches the office of delivery, or which may be seized or detained for violation of law, shall be disposed of as the Postal Service

shall direct.

(c)(1) Matter which--

(A) exceeds the size and weight limits prescribed for the particular class of mail; or

(B) is of a character perishable within the period required for transportation and delivery;

is nonmailable.

(2) Matter made nonmailable by this subsection which reaches the office of destination may be delivered in accordance with its address, if the party addressed furnishes the name and address of the sender.

(d) Matter otherwise legally acceptable in the mails which--

(1) is in the form of, and reasonably could be interpreted or construed as, a bill, invoice, or statement of account due; but

(2) constitutes, in fact, a solicitation for the order by the addressee of goods or services, or both;

is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the Postal Service shall prescribe--

(A) the following notice: "This is a solicitation for the order of goods or services, or both, and not a bill, invoice, or statement of account due. You are under no obligation to make any payments on account of this offer unless you accept this offer."; or

(B) in lieu thereof, a notice to the same effect in words which the Postal Service may prescribe.

(e)(1) Any matter which is unsolicited by the addressee and which is designed, adapted, or intended for preventing conception (except unsolicited samples thereof mailed to a manufacturer thereof, a dealer therein, a licensed physician or surgeon, or a nurse, pharmacist, druggist, hospital, or clinic) is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs.

(2) Any unsolicited advertisement of matter which is designed, adapted, or intended for preventing conception is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs unless the advertisement--

(A) is mailed to a manufacturer of such matter, a dealer therein, a licensed physician or surgeon, or a nurse, pharmacist, druggist, hospital, or clinic; or

(B) accompanies in the same parcel any unsolicited sample excepted by paragraph (1) of this subsection.

An advertisement shall not be deemed to be unsolicited for the purposes of this paragraph if it is contained in a publication for which the addressee has paid or promised to pay a consideration or which he has otherwise indicated he desires to receive.

(f) Any matter which is unsolicited by the addressee, which contains a "household substance" (as defined by section 2 of the Poison Prevention Packaging Act of 1970), and which does not comply with the requirements for special child-resistant packaging established for that substance by the Consumer Product Safety Commission, is nonmailable matter, shall not be

carried or delivered by mail, and shall be disposed of as the Postal Service directs.

(g)(1) Matter otherwise legally acceptable in the mails which contains or includes a fragrance advertising sample is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless the sample is sealed, wrapped, treated, or otherwise prepared in a manner reasonably designed to prevent individuals from being unknowingly or involuntarily exposed to the sample.

(2) The Postal Service shall by regulation establish the standards or requirements which a fragrance advertising sample must satisfy in order for the mail matter involved not to be considered nonmailable under this subsection.

(h) Matter otherwise legally acceptable in the mails which constitutes a solicitation by a nongovernmental entity for the purchase of or payment for a product or service; and contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval or endorsement is nonmailable matter and shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless--

(1) such nongovernmental entity has such expressed connection, approval or endorsement;

(2)(A) such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the Postal Service shall prescribe, the following notice: "**THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY THE FEDERAL GOVERNMENT, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE FEDERAL GOVERNMENT.**", or a notice to the same effect in words which the Postal Service may prescribe; and

(B) the envelope or outside cover or wrapper in which such matter is mailed bears on its face in capital letters and in conspicuous and legible type, in accordance with regulations which the Postal Service shall prescribe, the following notice: "**THIS IS NOT A GOVERNMENT DOCUMENT.**", or a notice to the same effect in words which the Postal Service may prescribe; or

(3) such matter is contained in a publication for which the addressee has paid or promised to pay a consideration or which he has otherwise indicated he desires to receive, except that this paragraph shall not apply if the solicitation is on behalf of the publisher of the publication.

(i) Matter otherwise legally acceptable in the mails which constitutes a solicitation by a nongovernmental entity for information or the contribution of funds or membership fees and contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval or endorsement is nonmailable matter and shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless--

(1) such nongovernmental entity has such expressed connection,

approval or endorsement;

(2)(A) such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the Postal Service shall prescribe, the following notice: "**THIS ORGANIZATION HAS NOT BEEN APPROVED OR ENDORSED BY THE FEDERAL GOVERNMENT, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE FEDERAL GOVERNMENT.**", or a notice to the same effect in words which the Postal Service may prescribe; and

(B) the envelope or outside cover or wrapper in which such matter is mailed bears on its face in capital letters and in conspicuous and legible type, in accordance with regulations which the Postal Service shall prescribe, the following notice: "**THIS IS NOT A GOVERNMENT DOCUMENT.**", or a notice to the same effect in words which the Postal Service may prescribe; or

(3) such matter is contained in a publication for which the addressee has paid or promised to pay a consideration or which he has otherwise indicated he desires to receive, except that this paragraph shall not apply if the solicitation is on behalf of the publisher of the publication.

(j) Except as otherwise provided by law, proceedings concerning the mailability of matter under this chapter and chapters 71 and 83 of title 18 shall be conducted in accordance with chapters 5 and 7 of title 5.

(k) The district courts, together with the District Court of the Virgin Islands and the District Court of Guam, shall have jurisdiction, upon cause shown, to enjoin violations of section 1716 of title 18.

### **§ 3002. Nonmailable motor vehicle master keys**

(a) Except as provided in subsection (b) of this section, any motor vehicle master key, any pattern, impression, or mold from which a motor vehicle master key may be made, or any advertisement for the sale of any such key, pattern, impression, or mold, is nonmailable matter and shall not be carried or delivered by mail.

(b) The Postal Service is authorized to make such exemptions from the provisions of subsection (a) of this section as it deems necessary.

(c) For the purposes of this section, "motor vehicle master key" means any key (other than the key furnished by the manufacturer with the motor vehicle, or the key furnished with a replacement lock, or any exact duplicate of such keys) designed to operate 2 or more motor vehicle ignition, door, or trunk locks of different combinations.

### **§ 3002a. Nonmailability of locksmithing devices**

(a) Any locksmithing device is nonmailable mail, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless such device is mailed to--

- (1) a lock manufacturer or distributor;
- (2) a bona fide locksmith;

- (3) a bona fide reposessor; or
  - (4) a motor vehicle manufacturer or dealer.
- (b) For the purpose of this section, "locksmithing device" means--
- (1) a device or tool (other than a key) designed to manipulate the tumblers in a lock into the unlocked position through the keyway of such lock;
  - (2) a device or tool (other than a key or a device or tool under paragraph (1)) designed for the unauthorized opening or bypassing of a lock or similar security device; and
  - (3) a device or tool designed for making an impression of a key or similar security device to duplicate such key or device.

**§ 3003. Mail bearing a fictitious name or address**

(a) Upon evidence satisfactory to the Postal Service that any person is using a fictitious, false, or assumed name, title, or address in conducting, promoting, or carrying on or assisting therein, by means of the postal services of the United States, an activity in violation of sections 1302, 1341, and 1342 of title 18, it may--

- (1) withhold mail so addressed from delivery; and
- (2) require the party claiming the mail to furnish proof to it of the claimant's identity and right to receive the mail.

(b) The Postal Service may issue an order directing that mail, covered by subsection (a) of this section, be forwarded to a dead letter office as fictitious matter, or be returned to the sender when--

- (1) the party claiming the mail fails to furnish proof of his identity and right to receive the mail; or
- (2) the Postal Service determines that the mail is addressed to a fictitious, false, or assumed name, title, or address.

**§ 3004. Delivery of mail to persons not residents of the place of address**

Whenever the Postal Service determines that letters or parcels sent in the mail are addressed to places not the residence or regular business address of the person for whom they are intended, to enable the person to escape identification, the Postal Service may deliver the mail only upon identification of the person so addressed.

**§ 3005. False representations; lotteries**

(a) Upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations, including the mailing of matter which is nonmailable under section 3001(d), (h), or (i) of this title, or is engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind, the Postal Service may issue an order which--

- (1) directs the postmaster of the post office at which mail arrives, addressed to such a person or to his representative, to return such mail

to the sender appropriately marked as in violation of this section, if the person, or his representative, is first notified and given reasonable opportunity to be present at the receiving post office to survey the mail before the postmaster returns the mail to the sender;

(2) forbids the payment by a postmaster to the person or his representative of any money order or postal note drawn to the order of either and provides for the return to the remitter of the sum named in the money order or postal note; and

(3) requires the person or his representative to cease and desist from engaging in any such scheme, device, lottery, or gift enterprise.

For purposes of the preceding sentence, the mailing of matter which is nonmailable under such section 3001(d), (h), or (i) by any person shall constitute prima facie evidence that such person is engaged in conducting a scheme or device for obtaining money or property through the mail by false representations.

(b) The public advertisement by a person engaged in activities covered by subsection (a) of this section, that remittances may be made by mail to a person named in the advertisement, is prima facie evidence that the latter is the agent or representative of the advertiser for the receipt of remittances on behalf of the advertiser. The Postal Service may ascertain the existence of the agency in any other legal way satisfactory to it.

(c) As used in this section and section 3006 of this title, the term "representative" includes an agent or representative acting as an individual or as a firm, bank, corporation, or association of any kind.

(d) Nothing in this section shall prohibit the mailing of (1) publication containing advertisements, lists of prizes, or information concerning a lottery, which are exempt, pursuant to section 1307 of title 18 of the United States Code, from the provisions of sections 1301, 1302, 1303, and 1304 of title 18 of the United States Code, (2) tickets or other materials concerning such a lottery within that State to addresses within that State, or (3) an advertisement promoting the sale of a book or other publication, or a solicitation to purchase, or a purchase order for any such publication, if (A) such advertisement, solicitation, or purchase order is not materially false or misleading in its description of the publication; (B) such advertisement, solicitation, or purchase order contains no material misrepresentation of fact: Provided, however, That no statement quoted or derived from the publication shall constitute a misrepresentation of fact as long as such statement complies with the requirements of subparagraphs (A) and (C); and (C) the advertisement, solicitation, or purchase order accurately discloses the source of any statements quoted or derived from the publication. Paragraph (3) shall not be applicable to any publication, advertisement, solicitation, or purchase order which is used to sell some other product in which the publisher or author has a financial interest as part of a commercial scheme. For the purposes of this subsection, "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(e)(1) In conducting an investigation to determine if a person is engaged in any of the activities covered by subsection (a) of this section, the Postmaster General (or any duly authorized agent of the Postmaster

General) may tender, at any reasonable time and by any reasonable means, the price advertised or otherwise requested for any article or service that such person has offered to provide through the mails.

(2) A failure to provide the article or service offered after the Postmaster General or his agent has tendered the price advertised or otherwise requested in the manner described in paragraph (1) of this subsection, and any reasons for such failure, may be considered in a proceeding held under section 3007 of this title to determine if there is probable cause to believe that a violation of this section has occurred.

(3) The Postmaster General shall prescribe regulations under which any individual seeking to make a purchase on behalf of the Postal Service under this subsection from any person shall--

(A) identify himself as an employee or authorized agent of the Postal Service, as the case may be;

(B) state the nature of the conduct under investigation; and

(C) inform such person that the failure to complete the transaction may be considered in a proceeding under section 3007 of this title to determine probable cause, in accordance with paragraph (2) of this subsection.

#### **§ 3006. Unlawful matter**

Upon evidence satisfactory to the Postal Service that a person is obtaining or attempting to obtain remittances of money or property of any kind through the mail for an obscene, lewd, lascivious, indecent, filthy, or vile thing or is depositing or causing to be deposited in the United States mail information as to where, how, or from whom such a thing may be obtained, the Postal Service may--

(1) direct any postmaster at an office at which mail arrives, addressed to such a person or to his representative, to return the mail to the sender marked "Unlawful"; and

(2) forbid the payment by a postmaster to such a person or his representative of any money order or postal note drawn to the order of either and provide for the return to the remitter of the sum named in the money order.

#### **§ 3007. Detention of mail for temporary periods**

(a) In preparation for or during the pendency of proceedings under sections 3005 and 3006 of this title, the United States district court in the district in which the defendant receives his mail shall, upon application therefor by the Postal Service and upon a showing of probable cause to believe either section is being violated, enter a temporary restraining order and preliminary injunction pursuant to rule 65 of the Federal Rules of Civil Procedure directing the detention of the defendant's incoming mail by the postmaster pending the conclusion of the statutory proceedings and any appeal therefrom. The district court may provide in the order that the detained mail be open to examination by the defendant and such mail be delivered as is clearly not connected with the alleged unlawful activity. An action taken by a court hereunder does not affect or determine any fact at

issue in the statutory proceedings.

(b) This section does not apply to mail addressed to publishers of newspapers and other periodical publications entitled to a periodical publication rate or to mail addressed to the agents of those publishers.

**§ 3008. Prohibition of pandering advertisements [41]**

~~(a) Whoever for himself, or by his agents or assigns, mails or causes to be mailed any pandering advertisement which offers for sale matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative shall be subject to an order of the Postal Service to refrain from further mailings of such materials to designated addresses thereof.~~

~~—(b) Upon receipt of notice from an addressee that he has received such mail matter, determined by the addressee in his sole discretion to be of the character described in subsection (a) of this section, the Postal Service shall issue an order, if requested by the addressee, to the sender thereof, directing the sender and his agents or assigns to refrain from further mailings to the named addressees.~~

~~—(c) The order of the Postal Service shall expressly prohibit the sender and his agents or assigns from making any further mailings to the designated addresses, effective on the thirtieth calendar day after receipt of the order. The order shall also direct the sender and his agents or assigns to delete immediately the names of the designated addressees from all mailing lists owned or controlled by the sender or his agents or assigns and, further, shall prohibit the sender and his agents or assigns from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the designated addressees.~~

~~—(d) Whenever the Postal Service believes that the sender or anyone acting on his behalf has violated or is violating the order given under this section, it shall serve upon the sender, by registered or certified mail, a complaint stating the reasons for its belief and request that any response thereto be filed in writing with the Postal Service within 15 days after the date of such service. If the Postal Service, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, it is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a district court of the United States for an order directing compliance with such notice.~~

~~—(e) Any district court of the United States within the jurisdiction of which any mail matter shall have been sent or received in violation of the order provided for by this section shall have jurisdiction, upon application by the Attorney General, to issue an order commanding compliance with such notice. Failure to observe such order may be punishable by the court as contempt thereof.~~

~~—(f) Receipt of mail matter 30 days or more after the effective date of the order provided for by this section shall create a rebuttable presumption that~~

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<sup>41</sup> Repealed by paragraph 802(b)(1) of H.R. 22. For effective date, see note to 39 USC 3011.

~~such mail was sent after such effective date.~~

~~— (g) Upon request of any addressee, the order of the Postal Service shall include the names of any of his minor children who have not attained their nineteenth birthday, and who reside with the addressee.~~

~~— (h) The provisions of subchapter II of chapter 5, relating to administrative procedure, and chapter 7, relating to judicial review, of title 5, shall not apply to any provisions of this section.~~

~~— (i) For purposes of this section—~~

~~— (1) mail matter, directed to a specific address covered in the order of the Postal Service, without designation of a specific addressee thereon, shall be considered as addressed to the person named in the Postal Service's order; and~~

~~— (2) the term "children" includes natural children, stepchildren, adopted children, and children who are wards of or in custody of the addressee or who are living with such addressee in a regular parent-child relationship.~~

### **§ 3009. Mailing of unordered merchandise**

(a) Except for (1) free samples clearly and conspicuously marked as such, and (2) merchandise mailed by a charitable organization soliciting contributions, the mailing of unordered merchandise or of communications prohibited by subsection (c) of this section constitutes an unfair method of competition and an unfair trade practice in violation of section 45(a)(1) of title 15.

(b) Any merchandise mailed in violation of subsection (a) of this section, or within the exceptions contained therein, may be treated as a gift by the recipient, who shall have the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender. All such merchandise shall have attached to it a clear and conspicuous statement informing the recipient that he may treat the merchandise as a gift to him and has the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender.

(c) No mailer of any merchandise mailed in violation of subsection (a) of this section, or within the exceptions contained therein, shall mail to any recipient of such merchandise a bill for such merchandise or any dunning communications.

(d) For the purposes of this section, "unordered merchandise" means merchandise mailed without the prior expressed request or consent of the recipient.

### **§ 3010. Mailing of sexually oriented advertisements**

(a) Any person who mails or causes to be mailed any sexually oriented advertisement shall place on the envelope or cover thereof his name and address as the sender thereof and such mark or notice as the Postal Service may prescribe.

(b) Any person, on his own behalf or on the behalf of any of his children who has not attained the age of 19 years and who resides with him

or is under his care, custody, or supervision, may file with the Postal Service a statement, in such form and manner as the Postal Service may prescribe, that he desires to receive no sexually oriented advertisements through the mails. The Postal Service shall maintain and keep current, insofar as practicable, a list of the names and addresses of such persons and shall make the list (including portions thereof or changes therein) available to any person, upon such reasonable terms and conditions as it may prescribe, including the payment of such service charge as it determines to be necessary to defray the cost of compiling and maintaining the list and making it available as provided in this sentence. No person shall mail or cause to be mailed any sexually oriented advertisement to any individual whose name and address has been on the list for more than 30 days.

(c) No person shall sell, lease, lend, exchange, or license the use of, or, except for the purpose expressly authorized by this section, use any mailing list compiled in whole or in part from the list maintained by the Postal Service pursuant to this section.

(d) "Sexually oriented advertisement" means any advertisement that depicts, in actual or simulated form, or explicitly describes, in a predominantly sexual context, human genitalia, any act of natural or unnatural sexual intercourse, any act of sadism or masochism, or any other erotic subject directly related to the foregoing. Material otherwise within the definition of this subsection shall be deemed not to constitute a sexually oriented advertisement if it constitutes only a small and insignificant part of the whole of a single catalog, book, periodical, or other work the remainder of which is not primarily devoted to sexual matters.

### **§ 3011. Judicial enforcement [42]**

(a) Whenever the Postal Service believes that any person is mailing or causing to be mailed any sexually oriented advertisement in violation of section 3010 of this title, it may request the Attorney General to commence a civil action against such person in a district court of the United States. Upon a finding by the court of a violation of that section, the court may issue an order including one or more of the following provisions as the court deems just under the circumstances:

(1) a direction to the defendant to refrain from mailing any sexually oriented advertisement to a specific addressee, to any group of addressees, or to all persons;

(2) a direction to any postmaster to whom sexually oriented advertisements originating with such defendant are tendered for transmission through the mails to refuse to accept such advertisements for mailing; or

(3) a direction to any postmaster at the office at which registered or certified letters or other letters or mail arrive, addressed to the

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<sup>42</sup> Amended by section 802 of H.R. 22. Subsection 802(c) provides: "(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 90 days after the date of the enactment of this Act. The amendments made by this section shall be treated as if they had never been enacted for purposes of any mailing made or caused to be made before this section takes effect."

defendant or his representative, to return the registered or certified letters or other letters or mail to the sender appropriately marked as being in response to mail in violation of section 3010 of this title, after the defendant, or his representative, has been notified and given reasonable opportunity to examine such letters or mail and to obtain delivery of mail which is clearly not connected with activity alleged to be in violation of section 3010 of this title.

*(b)(1) Upon a finding by the court that a sexually oriented advertisement has been mailed in violation of section 3010(b), the court may assess, on whoever made the mailing or caused it to be made, a civil penalty of not less than \$500 and not more than \$1,500 for each violation. Each piece of mail sent in violation of section 3010(b) shall constitute a separate violation.*

*(2) For purposes of this subsection—*

*(A) receipt of a sexually oriented advertisement after the recipient's name and address have been listed (as described in section 3010(b)) for at least 60 days shall create a rebuttable presumption that such advertisement was mailed more than 30 days after that individual's name and address became so listed; and*

*(B) receipt in the mail of a sexually oriented advertisement addressed to 'Occupant' or 'Resident' (or any other term permitted by Postal Service standards on simplified addressing) at the recipient's address, or which is specifically addressed to the recipient, but with an inconsequential error or variation in the recipient's name or address, shall, for purposes of applying the mailing prohibition of section 3010(b), create a rebuttable presumption that such advertisement was mailed to such recipient.*

*(3) Any penalty assessed under paragraph (1) shall be paid to the Postal Service for deposit in the Postal Service Fund established by section 2003.*

~~(b)~~ *(c) The statement that remittances may be made to a person named in a sexually oriented advertisement is prima facie evidence that such named person is the principal, agent, or representative of the mailer for the receipt of remittances on his behalf. The court is not precluded from ascertaining the existence of the agency on the basis of any other evidence.*

~~(c)~~ *(d) In preparation for, or during the pendency of, a civil action under subsection (a) of this section, a district court of the United States, upon application therefor by the Attorney General and upon a showing of probable cause to believe the statute is being violated, may enter a temporary restraining order or preliminary injunction containing such terms as the court deems just, including, but not limited to, provisions enjoining the defendant from mailing any sexually oriented advertisement to any person or class of persons, directing any postmaster to refuse to accept such defendant's sexually oriented advertisements for mailing, and directing the detention of the defendant's incoming mail by any postmaster pending the conclusion of the judicial proceedings. Any action taken by a court under this subsection does not affect or determine any fact at issue in any other proceeding under this section.*

~~(d)~~ *(e) A civil action under this section may be brought in the judicial*

district in which the defendant resides, or has his principal place of business, or in any judicial district in which any sexually oriented advertisement mailed in violation of section 3010 has been delivered by mail according to the direction thereon.

(e) (f) Nothing in this section or in section 3010 shall be construed as amending, preempting, limiting, modifying, or otherwise in any way affecting section 1461 or 1463 of title 18 or ~~section 3006, 3007, or 3008~~ *section 3006 or 3007* of this title.

### § 3012. Civil penalties

(a) Any person--

(1) who, through the use of the mail, evades or attempts to evade the effect of an order issued under section 3005(a)(1) or 3005(a)(2) of this title;

(2) who fails to comply with an order issued under section 3005(a)(3) of this title; or

(3) who (other than a publisher described by section 3007(b) of this title) has actual knowledge of any such order, is in privity with any person described by paragraph (1) or (2) of this subsection, and engages in conduct to assist any such person to evade, attempt to evade, or fail to comply with any such order, as the case may be, through the use of the mail;

shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each day that such person engages in conduct described by paragraph (1), (2), or (3) of this subsection. A separate penalty may be assessed under this subsection with respect to the conduct described in each such paragraph.

(b)(1) Whenever, on the basis of any information available to it, the Postal Service finds that any person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), the Postal Service may, under the provisions of section 409(d) of this title, commence a civil action to enforce the civil penalties established by such subsection. Any such action shall be brought in the district court of the United States for the district in which the defendant resides or receives mail.

(2) If the district court determines that a person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), the court shall determine the civil penalty, if any under this section, taking into account the nature, circumstances, extent, and gravity of the violation or violations of such subsection, and, with respect to the violator, the ability to pay the penalty, the effect of the penalty on the ability of the violator to conduct lawful business, any history of prior violations of such subsection, the degree of culpability, and such other matters as justice may require.

(c) All penalties collected under authority of this section shall be paid into the Treasury of the United States.

(d) In any proceeding at any time under this section, the defendant shall be entitled as a defense or counterclaim to seek judicial review, if not already had, pursuant to chapter 7 of title 5, of the order issued under

section 3005 of this title. However, nothing in this section shall be construed to preclude independent judicial review otherwise available pursuant to chapter 7 of title 5 of an order issued under section 3005 of this title.

**§ 3013. Semiannual reports on investigative activities of the Postal Service [43]**

The ~~Postmaster General~~ *Chief Postal Inspector* shall submit semiannual reports to the ~~Board~~ *Inspector General* summarizing the investigative activities of the Postal Service. One semiannual report shall be submitted for the reporting period beginning on October 1 and ending on March 31, and the other semiannual report shall be submitted for the reporting period beginning on April 1 and ending on September 30. ~~Each such report shall be submitted within sixty days after the close of the reporting period involved~~ *Each such report shall be submitted within one month (or such shorter length of time as the Inspector General may specify) after the close of the reporting period involved* and shall include with respect to such reporting period--

(1) a summary of any proceedings instituted under section 3005 of this title, and the results of those and of any other such proceedings decided, settled, or otherwise concluded during such period;

(2) the number of cases in which the authority described in section 3005(e) of this title was used;

(3) the number of applications for temporary restraining orders or preliminary injunctions submitted under section 3007 of this title and, of those applications, the number granted;

(4) the total amount of expenditures and obligations incurred in carrying out the investigative activities of the Postal Service; and

(5) such other information relating to the investigative activities of the Postal Service as the ~~Board~~ *Inspector General* may require.

~~Upon approval of a report submitted under the first sentence of this section, the information in such report shall be included in the next semiannual report required under section 5 of the Inspector General Act of 1978 (5 U.S.C.App.).~~ *The information in a report submitted under this section to the Inspector General with respect to a reporting period shall be included as part of the semiannual report prepared by the Inspector General under section 5 of the Inspector General Act of 1978 for the same reporting period. Nothing in this section shall be considered to permit or require that any report by the Chief Postal Inspector under this section include any information relating to activities of the Inspector General.*

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<sup>43</sup> Amended by subsection 702(d) of H.R. 22. Paragraphs 702(d)(2) and (3) provide:

(2) EFFECTIVE DATE.—This subsection shall take effect on the first day of the first semiannual reporting period beginning on or after the date of enactment of this Act and shall apply with respect to semiannual reporting periods beginning on or after the effective date of this subsection.

(3) SAVINGS PROVISION.—For purposes of any semiannual reporting period preceding the first semiannual reporting period referred to in paragraph (2), the provisions of title 39, United States Code, shall continue to apply as if the amendments made by this subsection had not been enacted.

**§ 3014. Nonmailable plants**

(a)(1) Whenever the Secretary of Agriculture establishes a quarantine under section 8 of the Plant Quarantine Act, prohibiting the transportation by common carrier of any plant from any State or other geographic area, the Secretary shall give notice of the establishment of such quarantine to the Postal Service in writing.

(2) Upon receiving any such notice under paragraph (1), the Postal Service shall ensure that copies of such notice are prominently displayed at post offices located within each State or area covered by the quarantine, and shall take any other measures which the Postal Service considers necessary in order to inform the public both of the establishment of such quarantine and of relevant provisions of this section and sections 1716B and 1716C of title 18 in connection therewith.

(b) Any plant, the transportation of which by common carrier from any State or other area is prohibited or restricted under any quarantine referred to in subsection (a), is nonmailable matter, and may not be accepted by the Postal Service or conveyed in the mails, if the matter involved is tendered for transmission through the mails from such State or area or if such matter first enters the mails within such State or area.

(c) The Postal Service shall, after consultation with the Secretary of Agriculture, prescribe rules and regulations permitting the mailing of a plant, and otherwise making subsection (b) of this section inapplicable with respect to such plant, if the method or manner of mailing such plant would be consistent with the procedures set forth in the rules and regulations prescribed under the fourth sentence of section 8 of the Plant Quarantine Act (relating to the inspection, disinfection, and certification of, and other conditions for, the delivery and shipment of plants otherwise subject to quarantine).

(d) For the purposes of this section--

(1) "Plant Quarantine Act" means the Act entitled "An Act to regulate the importation of nursery stock and other plants and plant products; to enable the Secretary of Agriculture to establish and maintain quarantine districts for plant diseases and insect pests; to permit and regulate the movement of fruits, plants, and vegetables therefrom, and for other purposes", enacted August 20, 1912 (37 Stat. 315 et seq.); and

(2) "plant" means any class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, any class of nursery stock (as defined by section 6 of the Plant Quarantine Act), and any other article or matter which is capable of carrying any dangerous plant disease or pest.

**§ 3015. Nonmailable plant pests and injurious animals**

(a) INJURIOUS ANIMALS.--Any injurious animal, the importation or interstate shipment of which is prohibited pursuant to section 42 of title 18, constitutes nonmailable matter.

(b) PLANT PESTS.--Any plant pest, the movement of which is prohibited

pursuant to section 103 or 104 of the Federal Plant Pest Act (7 U.S.C. 150bb or 150cc), constitutes nonmailable matter.

(c) PLANTS.--Any plant, article, or matter, the importation or interstate shipment of which is prohibited pursuant to the Act of August 20, 1912 (37 Stat. 315, chapter 308; 7 U.S.C. 151 et seq.) (commonly known as the "Plant Quarantine Act"), constitutes nonmailable matter.

(d) ILLEGALLY TAKEN FISH, WILDLIFE, OR PLANTS.--Any fish, wildlife, or plant, the conveyance of which is prohibited pursuant to section 3 of the Lacey Act Amendments of 1981 (16 U.S.C. 3372), constitutes nonmailable matter.

**§ 3016. Civil penalty for prohibited mailing and deficient packaging of hazardous matter [44]**

(a) For the purposes of this section—

(1) the term ‘parcel’ includes any kind of package, envelope, container, or other piece of mail;

(2) the term ‘manner’ includes the preparation and packaging of a piece of mail;

(3) a person shall be considered to have acted knowingly if—

(A) such person had actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the same circumstances and exercising due care would have had such knowledge; and

(4) the term ‘hazardous matter’ has the meaning given such term by section 1716 of title 18.

(b) Any person—

(1) who knowingly mails or causes to be mailed any parcel, the contents of which constitute or include any hazardous matter which has been declared by statute or Postal Service regulation to be nonmailable under any circumstances;

(2) who knowingly mails or causes to be mailed a parcel in violation of any statute or Postal Service regulation restricting the time, place, or manner in which hazardous matter may be mailed; or

(3) who knowingly manufactures, distributes, or sells any container, packaging kit, or similar device that—

(A) is represented, marked, certified, or sold by such person for use in the mailing of any hazardous matter; and

(B) fails to conform with any statute or Postal Service regulation setting forth standards for containers, packaging kits, or similar devices used for the mailing of hazardous matter;

shall be liable to the Postal Service for a civil penalty in an amount not to exceed \$25,000 per violation.

(c) The Postal Service may enforce this section by commencing a civil action in accordance with section 409(d). The action may be brought in the district court of the United States for the district in which the defendant resides or any district in which the defendant conducts business or in which a violation of this section was discovered.

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<sup>44</sup> Added by section 804 of H.R. 22.

*(d) In determining the amount of any civil penalty to be assessed under this section, the district court—*

*(1) shall treat as a separate violation—*

*(A) each parcel mailed or caused to be mailed as described in paragraph (1) or (2) of subsection (b); and*

*(B) each container, packaging kit, or similar device manufactured, distributed, or sold as described in subsection (b)(3); and*

*(2) shall take into account—*

*(A) the nature, circumstances, extent, and gravity of each violation committed; and*

*(B) with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.*

*(e) All penalties collected under authority of this section shall be paid into the Postal Service Fund established by section 2003.*

## CHAPTER 32--PENALTY AND FRANKED MAIL

Sec.

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### § 3201. Definitions

As used in this chapter--

(1) "penalty mail" means official mail, other than franked mail,

which is authorized by law to be transmitted in the mail without prepayment of postage;

(2) "penalty cover" means envelopes, wrappers, labels, or cards used to transmit penalty mail;

(3) "frank" means the autographic or facsimile signature of persons authorized by sections 3210-3216 and 3218 of this title to transmit matter through the mail without prepayment of postage or other indicia contemplated by sections 733 and 907 of title 44;

(4) "franked mail" means mail which is transmitted in the mail under a frank;

(5) "Members of Congress" includes Senators, Representatives, Delegates, and Resident Commissioners; and

(6) "missing child" has the meaning provided by section 403(1) of the Juvenile Justice and Delinquency Prevention Act of 1974.

### **§ 3202. Penalty mail**

(a) Subject to the limitations imposed by sections 3204 and 3207 of this title, there may be transmitted as penalty mail--

(1) official mail of--

(A) officers of the Government of the United States other than Members of Congress;

(B) the Smithsonian Institution;

(C) the Pan American Union;

(D) the Pan American Sanitary Bureau;

(E) the United States Employment Service and the system of employment offices operated by it in conformity with the provisions of sections 49-49c, 49d, 49e-49k of title 29, and all State employment systems which receive funds appropriated under authority of those sections; and

(F) any college officer or other person connected with the extension department of the college as the Secretary of Agriculture may designate to the Postal Service to the extent that the official mail consists of correspondence, bulletins, and reports for the furtherance of the purpose of sections 341-343 and 344-348 of title 7;

(2) mail relating to naturalization to be sent to the Immigration and Naturalization Service by clerks of courts addressed to the Department of Justice or the Immigration and Naturalization Service, or any official thereof;

(3) mail relating to a collection of statistics, survey, or census authorized by title 13 and addressed to the Department of Commerce or a bureau or agency thereof; and

(4) mail of State agriculture experiment stations pursuant to sections 325 and 361f of title 7.

(b) A department or officer authorized to use penalty covers may enclose them with return address to any person from or through whom official information is desired. The penalty cover may be used only to transmit the official information and endorsements relating thereto.

(c) This section does not apply to officers who receive a fixed

allowance as compensation for their services including expenses of postage.

**§ 3203. Endorsements on penalty covers**

(a) Except as otherwise provided in this section, penalty covers shall bear, over the words "Official Business" an endorsement showing the name of the department, bureau, or office from which, or officer from whom, it is transmitted. The penalty for the unlawful use of all penalty covers shall be printed thereon.

(b) The Postal Service shall prescribe the endorsement to be placed on covers mailed under clauses (1)(E), (2), and (3) of section 3202(a) of this title.

**§ 3204. Restrictions on use of penalty mail**

(a) Except as otherwise provided in this section or section 3220(a) of this title, an officer, executive department, or independent establishment of the Government of the United States may not mail, as penalty mail, any article or document unless--

- (1) a request therefor has been previously received by the department or establishment; or
- (2) its mailings is required by law.

(b) Subsection (a) of this section does not prohibit the mailing, as penalty mail, by an officer, executive department, or independent agency of--

- (1) enclosures reasonably related to the subject matter of official correspondence;
- (2) informational releases relating to the census of the United States and authorized by title 13;
- (3) matter concerning the sale of Government securities;
- (4) forms, blanks, and copies of statutes, rules, regulations, instructions, administrative orders, and interpretations necessary in the administration of the department or establishment;
- (5) agricultural bulletins;
- (6) lists of public documents offered for sale by the Superintendent of Documents;
- (7) announcements of the publication of maps, atlases, and statistical and other reports offered for sale by the Federal Power Commission as authorized by section 825k of title 16; or
- (8) articles or documents to educational institutions or public libraries, or to Federal, State, or other public authorities.

**§ 3205. Accounting for penalty covers**

Executive departments and agencies, independent establishments of the Government of the United States, and organizations and persons authorized by law to use penalty mail, shall account for all penalty covers through the Postal Service.

**§ 3206. Reimbursement for penalty mail service**

(a) Except as provided in subsection (b) of this section, executive departments and agencies, independent establishments of the Government of the United States, and Government corporations concerned, shall transfer to the Postal Service as postal revenue out of any appropriations or funds available to them, as a necessary expense of the appropriations or funds and of the activities concerned, the equivalent amount of postage due, as determined by the Postal Service, for matter sent in the mails by or to them as penalty mail under authority of section 3202 of this title.

(b) The Department of Agriculture shall transfer to the Postal Service as postal revenues out of any appropriations made to it for that purpose the equivalent amount of postage, as determined by the Postal Service, for penalty mailings under clauses (1)(F) and (4) of section 3202(a) of this title.

(c) The Department of State shall transfer to the Postal Service as postal revenues out of any appropriations made to it for that purpose the equivalent amount of postage, as determined by the Postal Service, for penalty mailings under clause (1)(C) and (D) of section 3202(a) of this title.

**§ 3207. Limit of weight of penalty mail; postage on overweight matter**

(a) Penalty mail is restricted to articles not in excess of the weight and size prescribed for that class of mail receiving high priority in handling and delivery, except--

(1) stamped paper and supplies sold or used by the Postal Service; and

(2) books and documents published or circulated by order of Congress when mailed by the Superintendent of Documents.

(b) A penalty mail article which is--

(1) over 4 pounds in weight;

(2) not in excess of the weight and size prescribed for mail matter;

and

(3) otherwise mailable;

is mailable at rates for that class of mail entitled to the lowest priority in handling and delivery, even though it may include written matter and may be sealed.

**§ 3208. Shipment by most economical means**

Shipments of official matter other than franked mail shall be sent by the most economical means of transportation practicable. The Postal Service may refuse to accept official matter for shipment by mail when in its judgment it may be shipped by other means at less expense, or it may provide for its transportation by freight or express whenever a saving to the Government of the United States will result therefrom without detriment to the public service.

**§ 3209. Executive departments to supply information**

Persons and governmental organizations authorized to use penalty mail shall supply all information requested by the Postal Service necessary to carry out the provisions of this chapter as soon as practicable after request therefor.

**§ 3210. Franked mail transmitted by the Vice President, Members of Congress, and congressional officials**

(a)(1) It is the policy of the Congress that the privilege of sending mail as franked mail shall be established under this section in order to assist and expedite the conduct of the official business, activities, and duties of the Congress of the United States.

(2) It is the intent of the Congress that such official business, activities, and duties cover all matters which directly or indirectly pertain to the legislative process or to any congressional representative functions generally, or to the functioning, working, or operating of the Congress and the performance of official duties in connection therewith, and shall include, but not be limited to, the conveying of information to the public, and the requesting of the views of the public, or the views and information of other authority of government, as a guide or a means of assistance in the performance of those functions.

(3) It is the intent of the Congress that mail matter which is frankable specifically includes, but is not limited to--

(A) mail matter to any person and to all agencies and officials of Federal, State, and local governments regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress;

(B) the usual and customary congressional newsletter or press release which may deal with such matters as the impact of laws and decisions on State and local governments and individual citizens; reports on public and official actions taken by Members of Congress; and discussions of proposed or pending legislation or governmental actions and the positions of the Members of Congress on, and arguments for or against, such matters;

(C) the usual and customary congressional questionnaire seeking public opinion on any law, pending or proposed legislation, public issue, or subject;

(D) mail matter dispatched by a Member of Congress between his Washington office and any congressional district offices, or between his district offices;

(E) mail matter directed by one Member of Congress to another Member of Congress or to representatives of the legislative bodies of State and local governments;

(F) mail matter expressing congratulations to a person who has achieved some public distinction;

(G) mail matter, including general mass mailings, which consists of Federal laws, Federal regulations, other Federal

publications, publications purchased with Federal funds, or publications containing items of general information;

(H) mail matter which consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner;

(I) mail matter which constitutes or includes a biography or autobiography of any Member of, or Member-elect to, Congress or any biographical or autobiographical material concerning such Member or Member-elect or the spouse or other members of the family of such Member or Member-elect, and which is so mailed as a part of a Federal publication or in response to a specific request therefor and is not included for publicity purposes in a newsletter or other general mass mailing of the Member or Member-elect under the franking privilege; or

(J) mail matter which contains a picture, sketch, or other likeness of any Member or Member-elect and which is so mailed as a part of a Federal publication or in response to a specific request therefor and, when contained in a newsletter or other general mass mailing of any Member or Member-elect, is not of such size, or does not occur with such frequency in the mail matter concerned, as to lead to the conclusion that the purpose of such picture, sketch, or likeness is to advertise the Member or Member-elect rather than to illustrate accompanying text.

(4) It is the intent of the Congress that the franking privilege under this section shall not permit, and may not be used for, the transmission through the mails as franked mail, of matter which in its nature is purely personal to the sender or to any other person and is unrelated to the official business, activities, and duties of the public officials covered by subsection (b)(1) of this section.

(5) It is the intent of the Congress that a Member of or Member-elect to Congress may not mail as franked mail--

(A) mail matter which constitutes or includes any article, account, sketch, narration, or other text laudatory and complimentary of any Member of, or Member-elect to, Congress on a purely personal or political basis rather than on the basis of performance of official duties as a Member or on the basis of activities as a Member-elect;

(B) mail matter which constitutes or includes--

(i) greetings from the spouse or other members of the family of such Member or Member-elect unless it is a brief reference in otherwise frankable mail;

(ii) reports of how or when such Member or Member-elect, or the spouse or any other member of the family of such Member or Member-elect, spends time other than in the performance of, or in connection with, the legislative, representative, and other official functions of such Member or the activities of such Member-elect as a Member-elect; or

(iii) any card expressing holiday greetings from such Member or Member-elect; or

(C) mail matter which specifically solicits political support for

the sender or any other person or any political party, or a vote or financial assistance for any candidate for any public office.

[(D) Repealed. Pub.L. 97-69, s 2(a), Oct. 26, 1981, 95 Stat. 1041]

The House Commission on Congressional Mailing Standards and the Select Committee on Standards and Conduct of the Senate shall prescribe for their respective Houses such rules and regulations and shall take such other action, as the Commission or Committee considers necessary and proper for the Members and Members-elect to conform to the provisions of this clause and applicable rules and regulations. Such rules and regulations shall include, but not be limited to, provisions prescribing the time within which such mailings shall be mailed at or delivered to any postal facility to attain compliance with this clause and the time when such mailings shall be deemed to have been so mailed or delivered and such compliance attained.

(6)(A) It is the intent of Congress that a Member of, or Member-elect to, Congress may not mail any mass mailing as franked mail--

(i) if the mass mailing is postmarked fewer than 60 days (or, in the case of a Member of the House, fewer than 90 days) immediately before the date of any primary election or general election (whether regular, special, or runoff) in which the Member is a candidate for reelection; or

(ii) in the case of a Member of, or Member-elect to, the House who is a candidate for any other public office, if the mass mailing--

(I) is prepared for delivery within any portion of the jurisdiction of or the area covered by the public office which is outside the area constituting the congressional district from which the Member or Member-elect was elected; or

(II) is postmarked fewer than 90 days immediately before the date of any primary election or general election (whether regular, special, or runoff) in which the Member or Member-elect is a candidate for any other public office.

(B) Any mass mailing which is mailed by the chairman of any organization referred to in the last sentence of section 3215 of this title which relates to the normal and regular business of the organization may be mailed without regard to the provisions of this paragraph.

(C) No Member of the Senate may mail any mass mailing as franked mail if such mass mailing is postmarked fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) for any national, State or local office in which such Member is a candidate for election.

(D) The Select Committee on Ethics of the Senate and the House Commission on Congressional Mailing Standards shall prescribe for their respective Houses rules and regulations, and shall take other action as the Committee or the Commission considers necessary and proper for Members and Members-elect to comply with the provisions of this paragraph and applicable

rules and regulations. The rules and regulations shall include provisions prescribing the time within which mailings shall be mailed at or delivered to any postal facility and the time when the mailings shall be deemed to have been mailed or delivered to comply with the provisions of this paragraph.

(E) As used in this section, the term "mass mailing" means, with respect to a session of Congress, any mailing of newsletters or other pieces of mail with substantially identical content (whether such mail is deposited singly or in bulk, or at the same time or different times), totaling more than 500 pieces in that session, except that such term does not include any mailing--

(i) of matter in direct response to a communication from a person to whom the matter is mailed;

(ii) from a Member of Congress to other Members of Congress, or to Federal, State, or local government officials; or

(iii) of a news release to the communications media.

(F) For purposes of subparagraphs (A) and (C) if mail matter is of a type which is not customarily postmarked, the date on which such matter would have been postmarked if it were of a type customarily postmarked shall apply.

(7) A Member of the House of Representatives may not send any mass mailing outside the congressional district from which the Member was elected.

(b)(1) The Vice President, each Member of or Member-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), the Legislative Counsels of the House of Representatives, and the Senate, the Law Revision Counsel of the House of Representatives, and the Senate Legal Counsel, may send, as franked mail, matter relating to their official business, activities, and duties, as intended by Congress to be mailable as franked mail under subsection (a)(2) and (3) of this section.

(2) If a vacancy occurs in the Office of the Secretary of the Senate, the Sergeant at Arms of the Senate, an elected officer of the House of Representatives (other than a Member of the House), the Legislative Counsel of the House of Representatives or the Senate, the Law Revision Counsel of the House of Representatives, or the Senate Legal Counsel, any authorized person may exercise the franking privilege in the officer's name during the period of the vacancy.

(3) The Vice President, each Member of Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, and each of the elected officers of the House (other than a Member of the House), during the 90-day period immediately following the date on which they leave office, may send, as franked mail, matter on official business relating to the closing of their respective offices. The House Commission on Congressional Mailing Standards and the Select Committee on Standards and Conduct of the Senate shall prescribe for their respective Houses such rules and regulations, and shall take such other action as the Commission or Committee considers necessary and

proper, to carry out the provisions of this paragraph.

(c) Franked mail may be in any form appropriate for mail matter, including, but not limited to, correspondence, newsletters, questionnaires, recordings, facsimiles, reprints, and reproductions. Franked mail shall not include matter which is intended by Congress to be nonmailable as franked mail under subsection (a)(4) and (5) of this section.

(d)(1) A Member of Congress may mail franked mail with a simplified form of address for delivery within that area constituting the congressional district or State from which the Member was elected.

(2) A Member-elect to the Congress may mail franked mail with a simplified form of address for delivery within that area constituting the congressional district or the State from which he was elected.

(3) A Delegate, Delegate-elect, Resident Commissioner, or Resident Commissioner-elect to the House of Representatives may mail franked mail with a simplified form of address for delivery within the area from which he was elected.

(4) Any franked mail which is mailed under this subsection shall be mailed at the equivalent rate of postage which assures that the mail will be sent by the most economical means practicable.

(5) The Senate Committee on Rules and Administration and the House Commission on Congressional Mailing Standards shall prescribe for their respective Houses rules and regulations governing any franked mail which is mailed under this subsection and shall by regulation limit the number of such mailings allowed under this subsection.

(6)(A) Any Member of, or Member-elect to, the House of Representatives entitled to make any mailing as franked mail under this subsection shall, before making any mailing, submit a sample or description of the mail matter involved to the House Commission on Congressional Mailing Standards for an advisory opinion as to whether the proposed mailing is in compliance with the provisions of this subsection.

(B) The Senate Select Committee on Ethics may require any Member of, or Member-elect to, the Senate entitled to make any mailings as franked mail under this subsection to submit a sample or description of the mail matter to the Committee for an advisory opinion as to whether the proposed mailing is in compliance with the provisions of this subsection.

(7) Franked mail mailed with a simplified form of address under this subsection--

(A) shall be prepared as directed by the Postal Service; and

(B) may be delivered to--

(i) each box holder or family on a rural or star route;

(ii) each post office box holder; and

(iii) each stop or box on a city carrier route.

(8) For the purposes of this subsection, a congressional district includes, in the case of a Representative at Large or Representative at Large-elect, the State from which he was elected.

(e) The frankability of mail matter shall be determined under the provisions of this section by the type and content of the mail sent, or to be sent.

(f) Any mass mailing which otherwise would be permitted to be mailed as franked mail under this section shall not be so mailed unless the cost of preparing and printing the mail matter is paid exclusively from funds appropriated by Congress, except that an otherwise frankable mass mailing may contain, as an enclosure or supplement, any public service material which is purely instructional or informational in nature, and which in content is frankable under this section.

(g) Notwithstanding any other provision of Federal, State, or local law, or any regulation thereunder, the equivalent amount of postage determined under section 3216 of this title on franked mail mailed under the frank of the Vice President or a Member of Congress, and the cost of preparing or printing such frankable matter for such mailing under the frank, shall not be considered as a contribution to, or an expenditure by, the Vice President or a Member of Congress for the purpose of determining any limitation on expenditures or contributions with respect to any such official, imposed by any Federal, State, or local law or regulation, in connection with any campaign of such official for election to any Federal office.

#### **§ 3211. Public documents**

The Vice President, Members of Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House) during the 90-day period immediately following the expiration of their respective terms of office, may send and receive as franked mail all public documents printed by order of Congress.

#### **§ 3212. Congressional Record under frank of Members of Congress**

(a) Members of Congress may send the Congressional Record as franked mail.

(b) Members of Congress may send, as franked mail, any part of, or a reprint of any part of, the Congressional Record, including speeches or reports contained therein, if such matter is mailable as franked mail under section 3210 of this title.

#### **§ 3213. Seeds and reports from Department of Agriculture**

Seeds and agricultural reports emanating from the Department of Agriculture may be mailed--

- (1) as penalty mail by the Secretary of Agriculture; and
- (2) during the 90-day period immediately following the expiration of their terms of office, as franked mail by Members of Congress.

#### **§ 3214. Mailing privilege of former President; surviving spouse of former President**

A former President and the surviving spouse of a former President may send nonpolitical mail within the United States and its territories and possessions as franked mail. Such mail of a former President and of the

surviving spouse of a former President marked "Postage and Fees Paid" in the manner prescribed by the Postal Service shall be accepted by the Postal Service for transmission in the international mails.

**§ 3215. Lending or permitting use of frank unlawful**

A person entitled to use a frank may not lend it or permit its use by any committee, organization, or association, or permit its use by any person for the benefit or use of any committee, organization, or association. This section does not apply to any standing, select, special, or joint committee, or subcommittee thereof, or commission, of the Senate, House of Representatives, or Congress, composed of Members of Congress, or to the Democratic caucus or the Republican conference of the House of Representatives or of the Senate.

**§ 3216. Reimbursement for franked mailings**

(a) The equivalent of--

(1) postage on, and fees and charges in connection with, mail matter sent through the mails--

(A) under the franking privilege (other than under section 3219 of this title), by the Vice President, Members of and Members-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), the Legislative Counsels of the House of Representatives and the Senate, the Law Revision Counsel of the House of Representatives, and the Senate Legal Counsel; and

(B) by the survivors of a Member of Congress under section 3218 of this title; and

(2) those portions of fees and charges to be paid for handling and delivery by the Postal Service of Mailgrams considered as franked mail under section 3219 of this title;

shall be paid by appropriations for the official mail costs of the Senate and the House of Representatives for that purpose and then paid to the Postal Service as postal revenue. Except as to Mailgrams and except as provided by sections 733 and 907 of title 44, envelopes, wrappers, cards, or labels used to transmit franked mail shall bear, in the upper right-hand corner, the sender's signature, or a facsimile thereof.

(b) Postage on, and fees and charges in connection with, mail matter sent through the mails under section 3214 of this title shall be paid each fiscal year, out of any appropriation made for that purpose, to the Postal Service as postal revenue in an amount equivalent to the postage, fees, and charges which would otherwise be payable on, or in connection with, such mail matter.

(c) Payment under subsection (a) or (b) of this section shall be deemed payment for all matter mailed under the frank and for all fees and charges due the Postal Service in connection therewith.

(d) Money collected for matter improperly mailed under the franking privilege shall be deposited as miscellaneous receipts in the general fund

of the Treasury.

(e)(1) Not later than two weeks after the last day of each quarter of the fiscal year, or as soon as practicable thereafter, the Postmaster General shall send to the Clerk of the House, the House Commission on Congressional Mailing Standards, the Secretary of the Senate, and the Senate Committee on Rules and Administration a report which shall contain a tabulation of the estimated number of pieces and costs of franked mail, as defined in section 3201 of this title, in each mail classification sent through the mail for that quarter and for the preceding quarters in the fiscal year, together with separate tabulations of the number of pieces and costs of such mail sent by the House and by the Senate.

(2) Two weeks after the close of the second quarter of the fiscal year, or as soon as practicable thereafter, the Postmaster General shall send to the Clerk of the House, the House Commission on Congressional Mailing Standards, the Committee on House Administration, the Secretary of the Senate, and the Senate Committee on Rules and Administration, a statement of the costs of postage on, and fees and charges in connection with, mail matter sent through the mails as described in paragraph (1) of this subsection for the preceding two quarters together with an estimate of such costs for the balance of the fiscal year. As soon as practicable after receipt of this statement, the House Commission on Congressional Mailing Standards, the Committee on House Administration, and the Senate Committee on Rules and Administration shall consider promulgating such regulations for their respective Houses as may be necessary to ensure that total postage costs, as described in paragraph (1) of this subsection, will not exceed the amounts available for the fiscal year.

**§ 3217. Correspondence of members of diplomatic corps and consuls of countries of Postal Union of Americas and Spain**

Correspondence of the members of the diplomatic corps of the countries of the Postal Union of the Americas and Spain stationed in the United States may be reciprocally transmitted in the domestic mails free of postage, and be entitled to free registration without right to indemnity in case of loss. The same privilege is accorded consuls and vice consuls when they are discharging the function of consuls of countries stationed in the United States, for official correspondence among themselves, and with the Government of the United States.

**§ 3218. Franked mail for survivors of Members of Congress**

Upon the death of a Member of Congress during his term of office, the surviving spouse of such Member (or, if there is no surviving spouse, a member of the immediate family of the Member designated by the Secretary of the Senate or the Clerk of the House of Representatives, as appropriate, in accordance with rules and procedures established by the Secretary or the Clerk) may send, for a period not to exceed 180 days after his death, as franked mail, nonpolitical correspondence relating to the death of the Member.

**§ 3219. Mailgrams**

Any Mailgram sent by the Vice President, a Member of or Member-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, an elected officer of the House of Representatives (other than a Member of the House), the Legislative Counsel of the House of Representatives or the Senate, the Law Revision Counsel of the House of Representatives, or the Senate Legal Counsel, and then delivered by the Postal Service, shall be considered as franked mail, subject to section 3216(a)(2) of this title, if such Mailgram contains matter of the kind authorized to be sent by that official as franked mail under section 3210 of this title.

**§ 3220. Use of official mail in the location and recovery of missing children**

(a)(1) The Office of Juvenile Justice and Delinquency Prevention, after consultation with appropriate public and private agencies, shall prescribe general guidelines under which penalty mail may be used to assist in the location and recovery of missing children. The guidelines shall provide information relating to--

(A) the form and manner in which materials and information relating to missing children (such as biographical data and pictures, sketches, or other likenesses) may be included in penalty mail;

(B) appropriate sources from which such materials and information may be obtained;

(C) the procedures by which such materials and information may be obtained; and

(D) any other matter which the Office considers appropriate.

(2) Each executive department and independent establishment of the Government of the United States shall prescribe regulations under which penalty mail sent by such department or establishment may be used in conformance with the guidelines prescribed under paragraph (1).

(b) The Senate Committee on Rules and Administration and the House Commission on Congressional Mailing Standards shall prescribe for their respective Houses rules and regulations, and shall take such other action as the Committee or Commission considers necessary and proper, in order that purposes similar to those of subsection (a) may, in the discretion of the congressional official or office concerned, be carried out by the use of franked mail sent by such official or office.

(c) As used in this section, "Office of Juvenile Justice and Delinquency Prevention" and "Office" each means the Office of Juvenile Justice and Delinquency Prevention within the Department of Justice, as established by section 201 of the Juvenile Justice and Delinquency Prevention Act of 1974.

## CHAPTER 34--ARMED FORCES AND FREE POSTAGE

Sec.

3401. Mailing privileges of members of Armed Forces of the United States and of friendly foreign nations.

[3402. Repealed.]

3403. Matter for blind and other handicapped persons.

3404. Unsealed letters sent by blind or physically handicapped persons.

3405. Markings.

3406. Balloting materials under the Uniformed and Overseas Citizens Absentee Voting Act.

### **§ 3401. Mailing privileges of members of Armed Forces of the United States and of friendly foreign nations**

(a) Letter mail or sound- or video-recorded communications having the character of personal correspondence shall be carried, at no cost to the sender, in the manner provided by this section, when mailed by--

(1) an individual who is a member of the Armed Forces of the United States on active duty, as defined in section 101 of title 10, or a civilian, otherwise authorized to use postal services at Armed Forces installations, who holds a position or performs one or more functions in support of military operations, as designated by the military theater commander, and addressed to a place within the delivery limits of a United States post office, if--

(A) such letter mail or sound- or video-recorded communication is mailed by such individual at an Armed Forces post office established in an overseas area, as designated by the President, where the Armed Forces of the United States are engaged in action against an enemy of the United States, engaged in military operations involving armed conflict with a hostile foreign force, engaged in temporary military operations under arduous circumstances, or serving with a friendly foreign force in an armed conflict in which the United States is not a belligerent, or temporarily deployed overseas for an operational contingency in arduous circumstances, as determined by the Secretary of Defense; or

(B) such individual is hospitalized in a facility under the jurisdiction of the Armed Forces of the United States as a result of disease or injury incurred as a result of service in an overseas area designated by the President under clause (A) of this paragraph; or

(2) a member of an armed force of a friendly foreign nation at an Armed Forces post office and addressed to a place within the delivery limits of a United States post office, or a post office of the nation in whose armed forces the sender is a member, if--

(A) the member is accorded free mailing privileges by his own government;

(B) the foreign nation extends similar free mailing privileges to a member of the Armed Forces of the United States serving with, or in, a unit under the control of a command of that foreign

nation;

(C) the member is serving with, or in, a unit under the operational control of a command of the Armed Forces of the United States;

(D) such letter mail or sound- or video-recorded communication is mailed by the member--

(i) at an Armed Forces post office established in an overseas area, as designated by the President, where the Armed Forces of the United States are engaged in action against an enemy of the United States, engaged in military operations involving armed conflict with a hostile foreign force, or serving with a friendly foreign force in an armed conflict in which the United States is not a belligerent; or

(ii) while hospitalized in a facility under the jurisdiction of the Armed Forces of the United States as a result of disease or injury incurred as a result of services in an overseas area designated by the President under clause (D)(i) of this paragraph; and

(E) the nation in whose armed forces the sender is a member has agreed to assume all international postal transportation charges incurred.

(b) There shall be transported by air, between Armed Forces post offices which are located outside the 48 contiguous States of the United States or between any such Armed Forces post office and the point of embarkation or debarkation within the United States, the territories and possessions of the United States in the Pacific area, the Commonwealth of Puerto Rico, or the Virgin Islands, on a space available basis, on scheduled United States air carriers at rates fixed and determined by the Secretary of Transportation in accordance with section 41901 of title 49, the following categories of mail matter:

(1)(A) letter mail or sound- or video-recorded communications having the character of personal correspondence;

(B) parcels not exceeding 15 pounds in weight and 60 inches in length and girth combined; and

(C) publications entitled to a periodical publication rate published once each week or more frequently and featuring principally current news of interest to members of the Armed Forces and the general public,

which are mailed at or addressed to any such Armed Forces post office;

(2) parcels not exceeding 70 pounds in weight and 100 inches in length and girth combined, which are mailed at any such Armed Forces post office; and

(3) parcels exceeding 15 pounds but not exceeding 70 pounds in weight and not exceeding 100 inches in length and girth combined, including surface-type official mail, which are mailed at or addressed to any such Armed Forces post office where adequate surface transportation is not available.

Whenever adequate service by scheduled United States air carriers is not available to provide transportation of mail matter by air in accordance with this subsection, the transportation of such mail may be authorized by other

than scheduled United States air carriers.

(c) Any parcel, other than a parcel mailed at a rate of postage requiring priority of handling and delivery, not exceeding 30 pounds in weight and 60 inches in length and girth combined, which is mailed at or addressed to any Armed Forces post office established under section 406(a) of this title, shall be transported by air on a space available basis on scheduled United States air carriers at rates fixed and determined by the Secretary of Transportation in accordance with section 41901 of title 49, upon payment of a fee for such air transportation in addition to the rate of postage otherwise applicable to such a parcel not transported by air. If adequate service by scheduled United States air carriers is not available, any such parcel may be transported by air carriers other than scheduled United States air carriers.

(d) The Department of Defense shall transfer to the Postal Service as postal revenues, out of any appropriations or funds available to the Department of Defense, as a necessary expense of the appropriations or funds and of the activities concerned, the equivalent amount of postage due, as determined by the Postal Service, for matter sent in the mails under authority of subsection (a) of this section.

(e) The Department of Defense shall transfer to the Postal Service as postal revenues, out of any appropriations or funds available to the Department of Defense, as a necessary expense of the appropriations or funds and of the activities concerned, sums equal to the expenses incurred by the Postal Service, as determined by the Postal Service, in providing air transportation for mail mailed at or addressed to Armed Forces post offices established under section 406 of this title, but reimbursement under this subsection shall not include the expense of air transportation (1) for which the Postal Service collects a special charge to the extent the special charge covers the additional expense of air transportation or (2) that is provided by the Postal Service at the same postage rate or charge for mail which is neither mailed at nor addressed to an Armed Forces post office.

(f) This section shall be administered under such conditions, and under such regulations, as the Postal Service and the Secretary of Defense jointly may prescribe.

**[§ 3402. Repealed. Pub. L. 96-70, title I, § 1331(e)(3)(A), Sept. 27, 1979, 93 Stat. 482]**

**§ 3403. Matter for blind and other handicapped persons**

(a) The matter described in subsection (b) of this section (other than matter mailed under section 3404 of this title) may be mailed free of postage, if--

(1) the matter is for the use of the blind or other persons who cannot use or read conventionally printed material because of a physical impairment and who are certified by competent authority as unable to read normal reading material in accordance with the provisions of sections 135a and 135b of title 2;

(2) no charge, or rental, subscription, or other fee, is required for such matter or a charge, or rental, subscription, or other fee is required

for such matter not in excess of the cost thereof;

(3) the matter may be opened by the Postal Service for inspection; and

(4) the matter contains no advertising.

(b) The free mailing privilege provided by subsection (a) of this section is extended to--

(1) reading matter and musical scores;

(2) sound reproductions;

(3) paper, records, tapes, and other material for the production of reading matter, musical scores, or sound reproductions;

(4) reproducers or parts thereof, for sound reproductions; and

(5) braille writers, typewriters, educational or other materials or devices, or parts thereof, used for writing by, or specifically designed or adapted for use of, a blind person or a person having a physical impairment as described in subsection (a)(1) of this section.

#### **§ 3404. Unsealed letters sent by blind or physically handicapped persons**

Unsealed letters sent by a blind person or a person having a physical impairment, as described in section 3403(a)(1) of this title, in raised characters or sightsaving type, or in the form of sound recordings, may be mailed free of postage.

#### **§ 3405. Markings**

All matter relating to blind or other handicapped persons mailed under section 3403 or 3404 of this title, shall bear the words "Free Matter for the Blind or Handicapped", or words to that effect specified by the Postal Service, in the upper right-hand corner of the address area.

#### **§ 3406. Balloting materials under the Uniformed and Overseas Citizens Absentee Voting Act**

(a) Balloting materials under the Uniformed and Overseas Citizens Absentee Voting Act (individually or in bulk)--

(1) shall be carried expeditiously and free of postage; and

(2) may be mailed at a post office established outside the United States under section 406 of this title, unless such mailing is prohibited by treaty or other international agreement of the United States.

(b) As used in this section, the term "balloting materials" has the meaning given that term in section 107 of the Uniformed and Overseas Citizens Absentee Voting Act.

CHAPTER 36--POSTAL RATES, CLASSES, AND SERVICES

*SUBCHAPTER I--Postal Rate Commission Postal Regulatory Commission*

Sec.

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***SUBCHAPTER I--~~Postal Rate Commission~~ Postal Regulatory  
Commission***

**§ 3601. Establishment [45]**

(a) The ~~Postal Rate Commission~~ *Postal Regulatory Commission* is an independent establishment of the executive branch of the Government of the United States. The Commission is composed of 5 Commissioners, appointed by the President, by and with the advice and consent of the Senate. ~~The Commissioners shall be chosen on the basis of their professional qualifications and may be removed by the President only for cause. The Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration, and may be removed by the President only for cause.~~ Not more than 3 of the Commissioners may be adherents of the same political party.

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

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

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

**§ 3602. Terms of office**

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

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

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

**§ 3603. Rules; regulations; procedures [46]**

The ~~Postal Rate Commission~~ *Postal Regulatory Commission* shall promulgate rules and regulations and establish procedures, subject to chapters 5 and 7 of title 5, and take any other action they deem necessary and proper to carry out their functions and obligations to the Government of the United States and the people as prescribed under ~~this chapter~~ *this title*. Such rules, regulations, procedures, and actions shall not be subject

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<sup>45</sup> Amended by section 212(a) of H.R. 22. For applicability, see note to section 202.

<sup>46</sup> Amended by section 202(j) of H.R. 22. Effective as of the date of enactment of this Act.

to any change or supervision by the Postal Service.

### § 3604. Administration

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

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

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

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

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

~~————— (B) as adjusted if the Governors *Directors* holding office, by unanimous written decision, adjust the total amount of money requested in the budget.~~

~~Subparagraph (B) shall not be construed to authorize the Governors *Directors* to adjust any item included within the budget.~~

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

*(d) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Postal Regulatory Commission. In requesting an appropriation under this subsection for a fiscal year, the Commission shall prepare and submit to the Congress under section 2009 a budget of the Commission's expenses, including expenses for facilities, supplies, compensation, and employee benefits. [47]*

(e) The provisions of section 410 and chapter 10 of this title shall apply

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<sup>47</sup> Subsection (d) amended by section 213(a) of H.R. 22. Subsection 213(c) provides that:

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

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

to the Commission, as appropriate.

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

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

*(A) issue subpoenas requiring the attendance and presentation of testimony of any individual, and the production of documentary or other evidence, from any place in the United States, any territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; and*

*(B) order the taking of depositions and responses to written interrogatories.*

*The written concurrence of a majority of the Commissioners then holding office shall, with respect to each subpoena under subparagraph (A), be required in advance of its issuance.*

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

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

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

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

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

*(3) Paragraph (2) shall not prevent information from being furnished under any process of discovery established under this title in connection with a proceeding under this title which is conducted in accordance with sections 556 and 557 of title 5. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate*

*confidentiality for any information furnished under the preceding sentence. [48]*

*(h)(1) Notwithstanding any other provision of this title or of the Inspector General Act of 1978, the authority to select, appoint, and employ officers and employees of the Office of Inspector General of the Postal Regulatory Commission, and to obtain any temporary or intermittent services of experts or consultants (or an organization of experts or consultants) for such office, shall reside with the Inspector General of the Postal Regulatory Commission.*

*(2) Except as provided in paragraph (1), any exercise of authority under this subsection shall, to the extent practicable, be in conformance with the applicable laws and regulations that govern selections, appointments and employment, and the obtaining of any such temporary or intermittent services, within the Postal Regulatory Commission. [49]*

## **SUBCHAPTER II--PERMANENT RATES AND CLASSES OF MAIL**

### **§ 3621. Authority to fix rates and classes [50]**

Except as otherwise provided, the ~~Governors~~ *Directors* are authorized to establish reasonable and equitable classes of mail and reasonable and equitable rates of postage and fees for postal services in accordance with the provisions of ~~this chapter~~ *this chapter and chapter 37*. Postal rates and fees shall be reasonable and equitable and sufficient to enable the Postal Service under honest, efficient, and economical management to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States. ~~Postal rates and fees shall provide sufficient revenues so that the total estimated income and appropriations to the Postal Service will equal as nearly as practicable total estimated costs of the Postal Service. For purposes of this section, "total estimated costs" shall include (without limitation) operating expenses, depreciation on capital facilities and equipment, debt service (including interest, amortization of debt discount and expense, and provision for sinking funds or other retirements of obligations to the extent that such provision exceeds applicable depreciation charges), and a reasonable provision for contingencies.~~

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<sup>48</sup> Subsections (f) and (g) added by section 211 of H.R. 22.

<sup>49</sup> Subsection (h) added by section 701(b) of HR 22. For deadline, see note to paragraph 8H(a)(2) of the Inspector General Act of 1978 (as redesignated by H.R. 22).

<sup>50</sup> Amended by section 202(a) of H.R. 22. Subsection 202(l) provides: "EFFECTIVE DATE.—Except as provided in subsection (h), (i), (j), or (k), this section and the amendments made by this section shall become effective on the date as of which the baseline rates are determined under section 3721(e)(2) of title 39, United States Code (as amended by section 201)."

**§ 3622. Rates and fees [51]**

~~(a)~~ (a)(1) ~~From time to time~~ Whenever necessary in order to provide for the establishment of any baseline rate needed for purposes of section 3762(a) (relating to certain new noncompetitive products), the Postal Service shall request the Postal Regulatory Commission to submit a recommended decision on changes in a rate or rates of postage or in a fee or fees for postal services in accordance with the policies of this title and applicable provisions of Chapter 37. The Postal Service may submit such suggestions for rate adjustments as it deems suitable.

(2) A request under this subsection may not be submitted except in the circumstance described in paragraph (1).

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

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

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

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

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

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

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

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

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

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

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

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<sup>51</sup> Amended by section 202(b) of H.R. 22. For effective date, see note to 39 USC 3621.

**§ 3623. Mail classification [52]**

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

~~(b) (a) Following the establishment of the mail classification schedule requested under subsection (a) of this section, the The Postal Service may from time to time request that the Commission Postal Regulatory Commission submit, or the Commission may submit to the Governors Directors on its own initiative, a recommended decision on changes in the mail classification schedule for noncompetitive products (within the meaning of subchapter III of chapter 37).~~

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

- ~~(1) the establishment and maintenance of a fair and equitable classification system for all mail;~~
- ~~(2) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;~~
- ~~(3) the importance of providing classifications with extremely high degrees of reliability and speed of delivery;~~
- ~~(4) the importance of providing classifications which do not require an extremely high degree of reliability and speed of delivery;~~
- ~~(5) the desirability of special classifications from the point of view of both the user and of the Postal Service; and~~
- ~~(6) such other factors as the Commission may deem appropriate.~~

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

**§ 3624. Recommended decisions of Commission [53]**

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

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<sup>52</sup> Amended by section 202(c) of H.R. 22. For effective date, see note to 39 USC 3621.

<sup>53</sup> Amended by section 202(d) of H.R. 22. For effective date, see note to 39 USC 3621.

general public.

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

- (1) the advance submission of written direct testimony;
- (2) the conduct of prehearing conferences to define issues, and for other purposes to insure orderly and expeditious proceedings;
- (3) discovery both from the Postal Service and the parties to the proceedings;
- (4) limitation of testimony; and
- (5) the conduct of the entire proceedings off the record with the consent of the parties.

(c)(1) Except as provided by paragraph (2) of this subsection, in any case in which the Postal Service makes ~~a request under section 3622 of this title for a recommended decision by the Commission on changes in a rate or rates of postage or in a fee or fees for postal services~~ *a request under section 3623 for a recommended decision by the Commission on changes in the mail classification schedule or a request under section 3762 for a recommended decision by the Commission on the baseline rate and classification for a new noncompetitive product*, the Commission shall transmit its recommended decision to the ~~Governors~~ *Directors* under subsection (d) of this section no later than 10 months after receiving any such request from the Postal Service.

(2) In any case in which the Commission determines that the Postal Service has unreasonably delayed consideration of a request made by the Postal Service under section ~~3622~~ *3623 or 3762 (as applicable)* by failing to respond within a reasonable time to any lawful order of the Commission, the Commission may extend the 10-month period described in paragraph (1) of this subsection by one day for each day of such delay.

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

### **§ 3625. Action of the ~~Governors~~ *Directors***

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

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

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

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

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

(f) The Board shall determine the date on which the new rates, fees, the mail classification schedule, and changes in such schedule under this subchapter shall become effective.

### § 3626. Reduced rates

(a)(1) Except as otherwise provided in this section, rates of postage for a class of mail or kind of mailer under former section 4358, 4452(b), 4452(c), 4454(b), or 4454(c) of this title shall be established in accordance with the applicable provisions of this chapter.

(2) For the purpose of this subsection--

(A) the term "costs attributable", as used with respect to a class of mail or kind of mailer, means the direct and indirect postal costs attributable to such class of mail or kind of mailer (excluding any other costs of the Postal Service);

(B) "regular-rate category" means any class of mail or kind of mailer, other than a class or kind referred to in paragraph (3)(A) or section 2401(c); and

(C) the term "institutional-costs contribution", as used with respect to a class of mail or kind of mailer, means that portion of the estimated revenues to the Postal Service from such class of mail or kind of mailer which remains after subtracting an amount equal to the estimated costs attributable to such class of mail or kind of mailer.

(3)(A) Except as provided in paragraph (4) or (5), rates of postage for a class of mail or kind of mailer under former section 4358, 4452(b), 4452(c), 4554(b), or 4554(c) of this title shall be established in a manner such that the estimated revenues to be received by the

Postal Service from such class of mail or kind of mailer shall be equal to the sum of--

(i) the estimated costs attributable to such class of mail or kind of mailer; and

(ii) the product derived by multiplying the estimated costs referred to in clause (i) by the applicable percentage under subparagraph (B).

(B) The applicable percentage for any class of mail or kind of mailer referred to in subparagraph (A) shall be the product derived by multiplying--

(i) the percentage which, for the most closely corresponding regular-rate category, the institutional-costs contribution for such category represents relative to the estimated costs attributable to such category of mail, times

(ii)(I) one-twelfth, for fiscal year 1994;

(II) one-sixth, for fiscal year 1995;

(III) one-fourth, for fiscal year 1996;

(IV) one-third, for fiscal year 1997;

(V) five-twelfths, for fiscal year 1998; and

(VI) one-half (*or less, as the Postal Service may prescribe*), for any fiscal year after fiscal year 1998. **[54]**

(C) Temporary special authority to permit the timely implementation of the preceding provisions of this paragraph is provided under section 3642.

(D) For purposes of establishing rates of postage under this subchapter for any of the classes of mail or kinds of mailers referred to in subparagraph (A), subclauses (I) through (V) of subparagraph (B)(ii) shall be deemed amended by striking the fraction specified in each such subclause and inserting "one-half".

(4) The rates for the advertising portion of any mail matter under former section 4358(d) or 4358(e) of this title shall be equal to the rates for the advertising portion of the most closely corresponding regular-rate category of mail, except that if the advertising portion does not exceed 10 percent of the issue of the publication involved, the advertising portion shall be subject to the same rates as apply to the nonadvertising portion.

(5) The rates for any advertising under former section 4358(f) of this title shall be equal to 75 percent of the rates for advertising contained in the most closely corresponding regular-rate category of mail.

(b)(1) For the purposes of this title, the term "periodical publications", as used in former section 4351 of this title, includes (A) any catalog or other course listing, including mail announcements of legal texts which are part of post-bar admission education issued by any institution of higher education or by a nonprofit organization engaged in continuing legal education; and (B) any looseleaf page or report (including any index, instruction for filing, table, or sectional identifier which is an integral part of such report) which is designed as part of a looseleaf reporting service

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<sup>54</sup> Amended by section 202(i) of H.R. 22. Effective as of the date of enactment of this Act.

concerning developments in the law or public policy.

(2) Any material described in paragraph (1) of this subsection shall qualify to be entered and mailed as second class mail in accordance with the applicable provisions of former section 4352 through former section 4357 of this title.

(3) For purposes of this subsection, the term "institution of higher education" has the meaning given it by section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a) ), and includes a nonprofit organization that coordinates a network of college-level courses that is sponsored primarily by nonprofit educational institutions for an older adult constituency.

(c) In the administration of this section, one conservation publication published by an agency of a State which is responsible for management and conservation of the fish or wildlife resources of such State shall be considered a publication of a qualified nonprofit organization which qualifies for rates of postage under former section 4358(d) of this title.

(d)(1) For purposes of this title, the term "agricultural", as used in former sections 4358(j)(2), 4452(d), and 4554(b)(1)(B) of this title, includes the art or science of cultivating land, harvesting crops or marine resources, or raising of livestock.

(2) In the administration of this section, and for purposes of former sections 4358(j)(2), 4452(d), and 4554(b)(1)(B) of this title, agricultural organizations or associations shall include any organization or association which collects and disseminates information or materials relating to agricultural pursuits.

(e)(1) In the administration of this section, the rates for third-class mail matter mailed by a qualified political committee shall be the rates currently in effect under former section 4452 of this title for third-class mail matter mailed by a qualified nonprofit organization.

(2) For purposes of this subsection--

(A) the term "qualified political committee" means a national or State committee of a political party, the Republican and Democratic Senatorial Campaign Committees, the Democratic National Congressional Committee, and the National Republican Congressional Committee;

(B) the term "national committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level; and

(C) the term "State committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level.

(f) In the administration of this chapter, the rates for mail under former section 4358(g) of this title shall be established without regard to either the provisions of such former section 4358(g) or the provisions of this section.

(g)(1) In the administration of this section, the rates for mail under subsections (a), (b), and (c) of former section 4358 of this title shall not apply to an issue of a publication if the number of copies of such issue distributed within the county of publication is less than the number equal to the sum of 50 percent of the total paid circulation of such issue plus one.

(2) Paragraph (1) of this subsection shall not apply to an issue of a publication if the total paid circulation of such issue is less than 10,000 copies.

(h) In the administration of this section, the number of copies of a subscription publication mailed to nonsubscribers during a calendar year at rates under subsections (a), (b), and (c) of former section 4358 of this title may not exceed 10 percent of the number of copies of such publication mailed at such rates to subscribers.

(i) Repealed. Pub.L. 103-123, Title VII, s 704(a)(3)(A), Oct. 28, 1993, 107 Stat. 1269

(j)(1) In the administration of this section, the rates for mail under former section 4452(b) or 4452(c) of this title shall not apply to mail which advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of--

(A) any credit, debit, or charge card, or similar financial instrument or account, provided by or through an arrangement with any person or organization not authorized to mail at the rates for mail under former section 4452(b) or 4452(c) of this title;

(B) any insurance policy, unless the organization which promotes the purchase of such policy is authorized to mail at the rates for mail under former section 4452(b) or 4452(c) of this title, the policy is designed for and primarily promoted to the members, donors, supporters, or beneficiaries of the organization, and the coverage provided by the policy is not generally otherwise commercially available;

(C) any travel arrangement, unless the organization which promotes the arrangement is authorized to mail at the rates for mail under former section 4452(b) or 4452(c) of this title, the travel contributes substantially (aside from the cultivation of members, donors, or supporters, or the acquisition of income or funds) to one or more of the purposes which constitutes the basis for the organization's authorization to mail at such rates, and the arrangement is designed for and primarily promoted to the members, donors, supporters, or beneficiaries of the organization; or

(D) any product or service (other than any to which subparagraph (A), (B), or (C) relates), if--

(i) the sale of such product or the providing of such service is not substantially related (aside from the need, on the part of the organization promoting such product or service, for income or funds or the use it makes of the profits derived) to the exercise or performance by the organization of one or more of the purposes constituting the basis for the organization's authorization to mail at such rates; or

(ii) the mail matter involved is part of a cooperative mailing (as defined under regulations of the Postal Service) with any person or organization not authorized to mail at the rates for mail under former section 4452(b) or 4452(c) of this title;

except that--

(I) any determination under clause (i) that a product or service is not substantially related to a particular purpose shall be made under regulations which shall be prescribed by the Postal Service and which shall be consistent with standards established by the Internal Revenue Service and the courts with respect to subsections (a) and (c) of section 513 of the Internal Revenue Code of 1986; and

(II) clause (i) shall not apply if the product involved is a periodical publication described in subsection (m)(2) (including a subscription to receive any such publication); and

(III) clause (i) shall not apply to space advertising in mail matter that otherwise qualifies for rates under former section 4452(b) or 4452(c) of this title, and satisfies the content requirements established by the Postal Service for periodical publications: Provided, That such changes in law shall take effect immediately and shall stay in effect hereafter unless the Congress enacts legislation on this matter prior to October 1, 1995.

(2) Matter shall not be excluded from being mail at the rates for mail under former section 4452(b) or 4452(c) of this title, by an organization authorized to mail at those rates solely because--

(A) such matter contains, but is not primarily devoted to, acknowledgements of organizations or individuals who have made donations to the authorized organization; or

(B) such matter contains, but is not primarily devoted to, references to and a response card or other instructions for making inquiries concerning services or benefits available as a result of membership in the authorized organization: Provided, That advertising, promotional, or application materials specifically concerning such services or benefits are not included.

(3)(A) Upon request, an organization authorized to mail at the rates for mail under former section 4452(b) or 4452(c) of this title shall furnish evidence to the Postal Service concerning the eligibility of any of its mail matter or mailings to be sent at those rates.

(B) The Postal Service shall establish procedures to carry out this paragraph, including procedures for mailer certification of compliance with the conditions specified in paragraph (1)(D) or subsection (m), as applicable, and verification of such compliance.

(k)(1) No person or organization shall mail, or cause to be mailed by contractual agreement or otherwise, at the rates for mail under former section 4452(b) or 4452(c) of this title, any matter to which those rates do not apply.

(2) The Postal Service may assess a postage deficiency in the amount of the unpaid postage against any person or organization which violates paragraph (1) of this subsection. This assessment shall be deemed the final decision of the Postal Service, unless the party against whom the deficiency is assessed appeals it in writing within thirty days to the postmaster of the office where the mailing was entered. Such an appeal shall be considered by an official designated by the Postal

Service, other than the postmaster of the office where the mailing was entered, who shall issue a decision as soon as practicable. This decision shall be deemed final unless the party against whom the deficiency was assessed appeals it in writing within thirty days to a further reviewing official designated by the Postal Service, who shall issue the final decision on the matter.

(3) The Postal Service shall maintain procedures for the prompt collection of postage deficiencies arising from the violation of paragraph (1) of this subsection, and may in its discretion, follow the issuance of a final decision regarding a deficiency under paragraph (2) of this subsection deduct the amount of that deficiency incurred during the previous 12 months from any postage accounts or other monies of the violator in its possession.

(l) In the administration of this section, the term "advertising", as used in former section 4358(j)(2) of this title, does not include the publisher's own advertising in a publication published by the official highway or development agency of a State.

(m)(1) In the administration of this section, the rates for mail under former section 4452(b) or 4452(c) of this title shall not apply to mail consisting of products, unless such products--

(A) were received by the organization as gifts or contributions;

or

(B) are low cost articles (as defined by section 513(h)(2) of the Internal Revenue Code of 1986).

(2) Paragraph (1) shall not apply with respect to a periodical publication of a qualified nonprofit organization.

*(n) In the administration of this section, matter that satisfies the circulation standards for requester publications shall not be excluded from being mailed at the rates for mail under former section 4358 solely because such matter is designed primarily for free circulation or for circulation at nominal rates, or fails to meet the requirements of former section 4354(a)(5). [55]*

### **§ 3627. Adjusting free and reduced rates [56]**

If Congress fails to appropriate an amount authorized under section 2401(c) of this title for any class of mail sent free of postage under section 3217 or 3403-3406 the rate for that class may be adjusted in accordance with the provisions of this subchapter so that the increased revenues received from the users of such class will equal the amount for that class that the Congress was to appropriate.

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<sup>55</sup> Added by section 215 of H.R. 22.

<sup>56</sup> Subclause (II) of section 704(a)(3)(B)(i) of P.L. 103-123 (107 Stat. 1270) amended the heading of this section by striking "**and reduced**". The amendment could not be executed due to the incorrect type size.

**§ 3628. Appellate review [57]**

~~A decision~~ (a) *A decision* of the ~~Governors Directors~~ to approve, allow under protest, or modify the recommended decision of the ~~Postal Rate Commission~~ *Postal Regulatory Commission* on a request made under section 3623 or 3762, and any final decision by the Commission under section 3733 or 3764 may be appealed to any court of appeals of the United States, within 15 days after its publication by the Public Printer, by an aggrieved party who appeared in the proceedings under section ~~3624(a)~~ of this title 3624(a), 3733(b), 3762(b), or 3764(d) (as the case may be). The court shall review the decision, in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, except as otherwise provided in this section, on the basis of the record before the Commission and the ~~Governors Directors~~. The court may affirm the decision or order that the entire matter be returned for further consideration, but the court may not modify the decision. The court may not suspend the effectiveness of the changes, or otherwise prevent them from taking effect until final disposition of the suit by the court. No court shall have jurisdiction to review a decision made by the Commission or ~~Governors Directors~~ under this chapter except as provided in this section.

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

**§ 3629. Reduced rates for voter registration purposes**

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

***SUBCHAPTER III--TEMPORARY RATES AND CLASSES*****§ 3641. ~~Temporary changes in rates and classes~~ *Negotiated service agreements* [58]**

(a) ~~In any case in which the Postal Rate Commission~~ *Postal Regulatory Commission* fails to transmit a recommended decision on a change in rates of postage or in fees for postal services to the ~~Governors Directors~~ in accordance with section 3624(c) of this title, the Postal Service may establish temporary changes in rates of postage and in fees for postal services in accordance with the proposed changes under consideration by the Commission. Such temporary changes may take effect upon such date as the Postal Service may determine, except that such temporary changes

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<sup>57</sup> Amended by section 202(e) of H.R. 22. For effective date, see note to 39 USC 3621.

<sup>58</sup> Amended by section 202(f) of H.R. 22. For effective date, see note to 39 USC 3621.

may take effect only after 10 days' notice in the Federal Register.

—(b) Any temporary rate or fee established by the Postal Service under subsection (a) of this section shall be in accordance with the policies of this title and shall not exceed such amount as may be necessary for sufficient revenues to assure that the total estimated income, including appropriations, of the Postal Service shall, to the extent practicable, be equal to the total estimated costs of the Postal Service.

—(c) Notwithstanding the provisions of subsection (b) of this section, the Postal Service may not establish any temporary rate for a class of mail or any temporary fee for a postal service which is more than the permanent rate or fee requested for such class or postal service by the Postal Service under section 3622 of this title.

—(d) Any temporary change in rates of postage or in fees for postal services made by the Postal Service under this section shall remain in effect no longer than 150 days after the date on which the Commission transmits its recommended decision to the Governors *Directors* under section 3624(d) of this title, unless such temporary change is terminated by the Governors *Directors* before the expiration of such period.

—(e) If the Postal Rate Commission *Postal Regulatory Commission* does not transmit to the Governors *Directors* within 90 days after the Postal Service has submitted, or within 30 days after the Postal Service has resubmitted, to the Commission a request for a recommended decision on a change in the mail classification schedule (after such schedule is established under section 3623 of this title), the Postal Service, upon 10 days' notice in the Federal Register, may place into effect temporary changes in the mail classification schedule in accordance with proposed changes under consideration by the Commission. Any temporary change shall be effective for a period ending not later than 30 days after the Commission has transmitted its recommended decision to the Governors *Directors*.

—(f) If, under section 3628 of this title, a court orders a matter returned to the Commission for further consideration, the Postal Service, with the consent of the Commission, may place into effect temporary changes in rates of postage, and fees for postal services, or in the mail classification schedule.

(a) *The Postal Service may enter into negotiated service agreements with users of postal services in accordance with this section. A negotiated service agreement under this section shall—*

(1) *pertain exclusively to products in the noncompetitive category of mail (within the meaning of subchapter III of chapter 37);*

(2) *require that the contracting mail user perform mail preparation, processing, transportation, administration, or other functions that are in addition to or greater than those required of mailers under provisions of the mail classification schedule established pursuant to section 3623(b);*

(3) *provide for the payment by the contracting mail user of liquidated damages to the Postal Service for nonperformance or breach of any of the material terms of the agreement, including any minimum volume commitments; the amount of such liquidated damages shall not be less than the difference between postage and fees paid by*

*such mail user pursuant to the agreement and the amounts such user would have paid under the otherwise applicable schedule of rates and fees;*

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

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

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

*(b) A negotiated service agreement may not be entered into (or amended) unless each of the following conditions is met:*

*(1) The agreement (as proposed or as proposed to be amended, as applicable)—*

*(A) meets the conditions and requirements of subsection (a);*

*(B) does not preclude or materially hinder similarly situated mail users (determined without regard to size) from entering into agreements with the Postal Service on the same, or substantially the same, terms and conditions; and*

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

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

*(3) Rates and fees payable during the term of the negotiated service agreement (as proposed or as proposed to be amended, as applicable) are reasonably calculated to yield to the Postal Service total revenues that equal or exceed the sum of—*

*(A) the direct and indirect postal costs attributable to services performed by the Postal Service under the agreement; and*

*(B) a portion of all other costs of the Postal Service that are equal, on an average unit basis, to the portion of such costs reasonably assignable to the classification or classifications of mail service most similar to the services performed under the agreement.*

*(c) At least 20 days before a negotiated service agreement (or an amendment to such an agreement) is to take effect, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register the following information with respect to such agreement (as proposed or as proposed to be amended, as applicable):*

*(1) With respect to each condition under subsection (b), information in sufficient detail to demonstrate the bases for the Postal Service's view that such condition would be met.*

*(2) A description of the type of mail the agreement involves.*

*(3) The mail preparation, processing, transportation, administration, or other additional functions the mail user is to perform under the agreement.*

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

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

*(d) If the Postal Regulatory Commission receives a complaint from an interested party (including an officer of the Commission representing the interests of the general public) alleging that a negotiated service agreement is not (or, in the case of a proposed agreement or a proposed amendment to a negotiated service agreement, would not be) in conformance with the requirements of this section, the Commission shall act on such complaint in accordance with section 3662.*

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

### **§ 3642. Special authority relating to reduced-rate categories of mail**

(a) In order to permit the timely implementation of section 3626(a)(3), the Postal Service may establish temporary rates of postage for any class of mail or kind of mailer referred to in section 3626(a)(3)(A).

(b) Any exercise of authority under this section shall be in conformance with the requirements of section 3626(a), subject to the following:

(1) All attributable costs and institutional-costs contributions assumed shall be the same as those which were assumed for purposes of the then most recent proceedings under subchapter II pursuant to which rates of postage for the class of mail or kind of mailer involved were last adjusted.

(2) Any temporary rate established under this section shall take effect upon such date as the Postal Service may determine, except that--

(A) such a rate may take effect only after 10 days' notice in the Federal Register; and

(B) no such rate may take effect after September 30, 1998.

(3) A temporary rate under this section may remain in effect no longer than the last day of the fiscal year in which it first takes effect.

(4) Authority under this section may not be exercised in a manner that would result in more than 1 change taking effect under this section, during the same fiscal year, in the rates of postage for a particular class of mail or kind of mailer, except as provided in paragraph (5).

(5) Nothing in paragraph (4) shall prevent an adjustment under this section in rates for a class of mail or kind of mailer with respect to which any rates took effect under this section earlier in the same fiscal year if--

(A) the rates established for such class of mail or kind of mailer by the earlier adjustment are superseded by new rates established under subchapter II; and

(B) authority under this paragraph has not previously been exercised with respect to such class of mail or kind of mailer based on the new rates referred to in subparagraph (A).

(c) The Postal Service may prescribe any regulations which may be necessary to carry out this section, including provisions governing the coordination of adjustments under this section with any other adjustments under this title.

(d) Notwithstanding any provision of section 3626(a)(3)(B) or subsection (a) of this section, any temporary rates established under this section for non-letter-shaped mail under former section 4452(b) or 4452(c)

of this title shall not be lower than the rates in effect for such mail on September 30, 1993.

#### ***SUBCHAPTER IV--POSTAL SERVICES AND COMPLAINTS***

##### **§ 3661. Postal services**

(a) The Postal Service shall develop and promote adequate and efficient postal services.

(b) When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the ~~Postal Rate Commission~~ *Postal Regulatory Commission* requesting an advisory opinion on the change.

(c) The Commission shall not issue its opinion on any proposal until an opportunity for hearing on the record under sections 556 and 557 of title 5 has been accorded to the Postal Service, users of the mail, and an officer of the Commission who shall be required to represent the interests of the general public. The opinion shall be in writing and shall include a certification by each Commissioner agreeing with the opinion that in his judgment the opinion conforms to the policies established under this title.

##### **§ 3662. Rate and service complaints [59]**

~~Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in this title or who believe that they are not receiving postal service in accordance with the policies of this title, may lodge a complaint with the Postal Rate Commission *Postal Regulatory Commission* in such form and in such manner as it may prescribe. The Commission may in its discretion hold hearings on such complaint. If the Commission, in a matter covered by subchapter II of this chapter, determines the complaint to be justified, it shall, after proceedings in conformity with section 3624 of this title, issue a recommended decision which shall be acted upon in accordance with the provisions of section 3625 of this title and subject to review in accordance with the provisions of section 3628 of this title. If a matter not covered by subchapter II of this chapter is involved, and the Commission after hearing finds the complaint to be justified, it shall render a public report thereon to the Postal Service which shall take such action as it deems appropriate.~~

*(a) Interested parties (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believe the Postal Service is charging rates which do not conform to the policies set out in this title, who believe that the Postal Service is not providing postal service in accordance with the policies of this title, or who believe that the Postal Service is otherwise not acting in conformance with the policies of this title, may lodge a complaint with the Postal Regulatory Commission in such form and in such manner as it may prescribe.*

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<sup>59</sup> Amended by section 202(g) of H.R. 22. For effective date, see note to 39 USC 3621.

*(b)(1) The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a), either—*

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

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

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

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

*(1) in a classification matter covered by section 3623 or 3762, after proceedings in conformity with section 3624, issue a recommended decision which shall be acted upon in accordance with the provisions of section 3625;*

*(2) in a matter involving a violation of any limitation under section 3732 (relating to limitations on rates for noncompetitive products), order the unlawful rates to be adjusted to lawful levels and the taking of such other action as it considers appropriate;*

*(3) in a matter involving a violation of section 3743(a) (relating to costs-attributable requirement for competitive products) or section 3763(b) (relating to conditions to be met by new competitive products), order the unlawful rates to be adjusted to lawful levels and the taking of such other action as it considers appropriate (including, in the case of a violation of section 3763(b)(1), withdrawal of the product involved, except that no such withdrawal may be ordered later than 90 days after the date on which the product involved is first offered);*

*(4) in a matter involving a violation of section 3641 (relating to negotiated service agreements), order—*

*(A) the adjustment of any unlawful rates to lawful levels (including the payment of any liquidated damages which may be required under the terms of the agreement involved); and*

*(B) the taking of such other action as it considers appropriate (including, if appropriate, the cancellation of such agreement);*

*(5) in a matter involving a violation of section 403(c) (prohibiting undue or unreasonable discrimination or preferences among or to users of the mails), order the taking of such action as it considers appropriate;*

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

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

*(A) order the rescission of any regulation involved or the taking of such action as it considers appropriate, but only to the extent that it does not involve a matter covered by subparagraph*

(B); and

(B) in a matter involving the Postal Service's providing a nonpostal product that is not permitted under subsection (c) of section 404a, order that the Postal Service cease providing such product;

(8) in a matter involving a violation of section 2012(f) (relating to the relationship between the Postal Service and any corporation established under section 2012), order that the Postal Service increase its prices to at least the minimum levels required or take such other action as the Commission considers appropriate; and

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

(d) In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products (within the meaning of subchapter IV of chapter 37) shall be paid out of the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

### **§3663. Annual report on international services [60]**

~~(a) Not later than July 1 of each year, the Postal Rate Commission shall transmit to each House of Congress a comprehensive report of the costs, revenues, and volumes accrued by the Postal Service in connection with mail matter conveyed between the United States and other countries for the previous fiscal year.~~

~~—(b) Not later than March 15 of each year, the Postal Service shall provide to the Postal Rate Commission such data as the Commission may require to prepare the report required under subsection (a) of this section. Data shall be provided in sufficient detail to enable the Commission to analyze the costs, revenues, and volumes for each international mail product or service, under the methods determined appropriate by the Commission for the analysis of rates for domestic mail.~~

## ***SUBCHAPTER V--GENERAL***

### **§ 3681. Reimbursement**

No mailer may be reimbursed for any amount paid under any rate or fee which, after such payment, is determined to have been unlawful after proceedings in accordance with the provisions of section ~~3628~~ 3628(a) of this title, or is superseded by a lower rate or fee established under subchapter II of this chapter.

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<sup>60</sup> Repealed by paragraph 202(k) of H.R. 22. Effective as of the date of enactment of this Act.

### § 3682. Size and weight limits

The Postal Service may establish size and weight limitations for mail matter in the same manner as prescribed for changes in mail classification under subchapter II of this chapter.

### § 3683. Uniform rates for books; films; other materials

(a) Notwithstanding any other provision of this title, the rates of postage established for mail matter enumerated in former section 4554 of this title shall be uniform for such mail of the same weight, and shall not vary with the distance transported.

(b) The rates of postage under former section 4554(b)(1) of this title shall not be effective except with respect to mailings which--

(1) constitute materials specified in former section 4554(b)(2) of this title; and

(2) are sent between--

(A) an institution, organization, or association listed in subparagraph (A) or (B) of such former section 4554(b)(1) and any other such institution, organization, or association;

(B) an institution, organization, or association referred to in subparagraph (A) and any individual (other than an individual having a financial interest in the sale, promotion, or distribution of the materials involved);

(C) an institution, organization, or association referred to in subparagraph (A) and a qualified nonprofit organization (as defined in former section 4452(d) of this title) that is not such an institution, organization, or association; or

(D) an institution, organization, or association referred to in subparagraph (A) and a publisher, if such institution, organization, or association has placed an order to purchase such materials for delivery to such institution, organization, or association.

### § 3684. Limitations [61]

Except as provided in section 3627 of this title, no provision of this chapter *and no provision of chapter 37* shall be construed to give authority to the ~~Governors~~ *Directors* to make any change in ~~any provision of section 3682 or 3683 or chapter 30, 32, or 34 of this title~~ *any provision of this title*.

### § 3685. Filing of information relating to periodical publications

(a) Each owner of a publication having periodical publication mail privileges shall furnish to the Postal Service at least once a year, and shall publish in such publication once a year, information in such form and detail and at such time as the Postal Service may require with respect to--

(1) the identity of the editor, managing editor, publishers, and owners;

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<sup>61</sup> Amended by section 202(h) of H.R. 22. Effective as of the date of enactment of this Act.

(2) the identity of the corporation and stockholders thereof, if the publication is owned by a corporation;

(3) the identity of known bondholders, mortgagees, and other security holders;

(4) the extent and nature of the circulation of the publication, including, but not limited to, the number of copies distributed, the methods of distribution, and the extent to which such circulation is paid in whole or in part; and

(5) such other information as the Postal Service may deem necessary to determine whether the publication meets the standards for periodical publication mail privileges.

The Postal Service shall not require the names of persons owning less than 1 percent of the total amount of stocks, bonds, mortgages, or other securities.

(b) Each publication having such mail privileges shall furnish to the Postal Service information in such form and detail, and at such times, as the Postal Service requires to determine whether the publication continues to qualify for such privileges.

(c) The Postal Service shall make appropriate rules and regulations to carry out the purposes of this section, including provision for suspension or revocation of periodical publication mail privileges for failure to furnish the required information.

**§ 3686. Change-of-address order involving a commercial mail receiving agency [62]**

*(a) For the purpose of this section, the term 'commercial mail receiving agency' or 'CMRA' means a private business that acts as the mail receiving agent for specific clients.*

*(b) Upon termination of an agency relationship between an addressee and a commercial mail receiving agency—*

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

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

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

*(c) Mail described in subsection (b)(3) shall, if marked for forwarding and remailed by the CMRA, be forwarded by the Postal Service in the same manner as, and subject to the same terms and conditions (including limitations on the period of time for which a change-of-address order shall be given effect) as apply to, mail forwarded directly by the Postal Service to the addressee.*

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<sup>62</sup> Added by section 214 of H.R. 22.

**CHAPTER 37—NEW SYSTEM FOR ESTABLISHING  
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<sup>63</sup> Chapter added by section 201(a) of H.R. 22.

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**SUBCHAPTER I—DEFINITIONS**

**§ 3701. Definitions**

*For purposes of this chapter:*

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

(A) *a class of mail or type of postal service;*

(B) *a subclass and all other first-level subordinate units of a product described in subparagraph (A);*

(C) *a rate category and all other second level subordinate units of a product described in subparagraph (A); and*

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

(2) *RATE.*—The term ‘rate’, as used with respect to products, includes fees for postal services.

(3) *PRODUCT IN THE NONCOMPETITIVE CATEGORY OF MAIL.*—The term ‘product in the noncompetitive category of mail’ or ‘noncompetitive product’ means a product subject to subchapter III.

(4) *PRODUCT IN THE COMPETITIVE CATEGORY OF MAIL.*—The term ‘product in the competitive category of mail’ or ‘competitive product’ means a product subject to subchapter IV.

(5) *CONSUMER PRICE INDEX.*—The term ‘Consumer Price Index’ means the Consumer Price Index for All Urban Consumers published monthly by the Bureau of Labor Statistics of the Department of Labor.

(6) *YEAR.*—The term ‘year’ means a fiscal year.

**§ 3702. Free mailing privileges unaffected**

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

**SUBCHAPTER II—BASELINE RATES**

**§ 3721. Determination of baseline rates**

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

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

(1) *in applying section 3621, any determination of total estimated costs of the Postal Service shall be made without including any provision for contingencies; and*

(2) *to the extent that any class of mail or kind of mailer under section 3626(a) is involved, such request shall be made in conformance with the requirements of section 3722.*

(c) *PROCEDURES FOR CONSIDERATION.—*

(1) *IN GENERAL.—Except as otherwise provided in paragraph (2), subsection (b), or any other provision of this subchapter, the request made under subsection (a) shall be considered and acted on in the same way as any other request made under section 3622.*

(2) *ADDITIONAL AUTHORITY.—For purposes of the request made under subsection (a), section 3622(b) shall be applied as if it had been amended by inserting after ‘the policies of this title’ the following: ‘(including the second sentence of section 3621)’.*

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

(e) *DEFINITION OF BASELINE RATES.—*

(1) *IN GENERAL.—Subject to section 3722(c), for purposes of this title, the baseline rate for each product shall be the rate in effect for such product as of the applicable date under paragraph (2), irrespective of whether—*

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

(B) *ratemaking proceedings are in fact completed by such date; or*

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

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

(A) the date as of which any baseline rates, established pursuant to the request made under subsection (a), are to take effect in accordance with subsection (d); or

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

**§ 3722. Provisions relating to reduced-rate categories of mail**

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

(b) *REQUIREMENT.*—

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

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

(B) in the case of a noncompetitive product, the lesser of—

(i) the rate described in paragraph (2); or

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

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

(A) the estimated costs attributable (expressed on a per-unit basis) used in establishing such rate, not exceed

(B) the estimated costs attributable (similarly expressed) used in establishing the rate that is to be concurrently in effect for the same product within the most closely corresponding regular-rate category.

(3) *NONCOMPETITIVE PRODUCT MINIMUM.*— Nothing in this subsection shall be considered to waive the limitation set forth in section 3732(b) (relating to the minimum rate required for a noncompetitive product).

(c) *SELF-EXECUTING CORRECTION MECHANISM.*— If the baseline rate for a product would not otherwise be in compliance with subsection (b), such rate shall be modified by the minimum amount necessary in order to achieve compliance.

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

To the extent that any proceedings relating to a request made under section 3622 before the date of enactment of this chapter remain pending

*as of such date of enactment, any further action taken in connection with such request shall be null and void.*

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

**§ 3731. Applicability; definitions**

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

(b) *DEFINITIONS.*—*For purposes of this subchapter:*

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

(A) *single-piece first-class letters (both domestic and international);*

(B) *single-piece first-class cards (both domestic and international);*

(C) *single-piece parcels (both domestic and international); and*

(D) *special services.*

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

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

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

(c) *RULE OF CONSTRUCTION.*—

(1) *IN GENERAL.*—*Except as provided in paragraph (2), mail matter referred to in paragraphs (1) through (4) of subsection (b) shall, for purposes of such paragraphs, be considered to have the respective meanings given them under the mail classification schedule (as defined by section 3623) as of the effective date of this chapter.*

(2) *UPDATES.*—*The Postal Regulatory Commission shall, whenever any relevant change occurs (whether pursuant to a product transfer under section 3764, the reclassification of a product under section 3623, or the introduction of a new noncompetitive product under section 3762), prescribe new lists of products within the respective baskets described in subsection (b). The revised lists shall indicate how and when any previous lists (including under subsection (b)) are superseded, and shall be published in the Federal Register.*

**§ 3732. Limitations on rates**

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

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

(2) *be greater than the maximum rate allowable for such product in such year, as determined under subsection (c); or*

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

*Nothing in paragraph (3) shall be considered to authorize the establishment of any rate less than the minimum rate required under paragraph (1) or greater than the maximum rate allowable under paragraph (2).*

(b) *MINIMUM RATE REQUIRED.—*

(1) *IN GENERAL.—For purposes of this section, the minimum rate required for a product in a year is the minimum rate which, if kept in effect for such product throughout the year (or, if implemented after the start of the year, throughout the remainder of the year, but taking into account all revenues from such product that are attributable to earlier periods in the same year) will be sufficient to ensure that such product will bear the direct and indirect postal costs attributable to such product for such year.*

(2) *WAIVER AUTHORITY.—*

(A) *INGENERAL.—Paragraph (1) shall not apply to the rates for a product below the first level of subordinate units thereof (as described in section 3701(1)(B)), if or to the extent that the Postal Regulatory Commission determines, in a proceeding conducted under subparagraph (B), that the application of such paragraph would be impracticable.*

(B) *PROCEDURES FOR REVIEW.—In order to carry out this paragraph, the Commission shall, in proceedings to be conducted in accordance with regulations which the Commission shall prescribe, review rates for products—*

*(i) on its own motion; or*

*(ii) on the granting by the Commission, in its sole discretion, of a petition for such review filed by an interested person.*

(c) *MAXIMUM RATE ALLOWABLE.—*

(1) *IN GENERAL.—For purposes of this section, the maximum rate allowable for a product in a year shall be equal to the rate determined by increasing or decreasing (as appropriate, depending on whether the percentage under subparagraph (B) is positive or negative)—*

*(A) the maximum rate allowable for such product under this subsection in the year preceding the year for which the maximum rate allowable is being determined (disregarding any rounding rules), by*

*(B) the percentage adjustment applicable for the year for which the maximum rate allowable is being determined, as determined under paragraph (2).*

(2) *PERCENTAGE ADJUSTMENT APPLICABLE.—For purposes of this section, the percentage adjustment applicable shall, for any year, be equal to—*

*(A) the change in the Consumer Price Index for such year, adjusted by*

*(B) the adjustment factor for such year.*

(3) *DEFINITIONS.—For purposes of this section:*

(A) *CHANGE IN THE CONSUMER PRICE INDEX.*—The change in the Consumer Price Index for a year shall be equal to the percentage (expressed as a positive value, a negative value, or zero, as the case may be) by which the Consumer Price Index for the preceding year differs from the Consumer Price Index for the second preceding year.

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

(C) *ADJUSTMENT FACTOR.*—The adjustment factor for any year shall be determined in accordance with section 3733.

(4) *SPECIAL RULE.*—For purposes of determining the maximum rate allowable for any particular product during the first year of the first ratemaking cycle, paragraph (1)(A) shall be applied by substituting ‘the baseline rate for such product’ for ‘the maximum rate allowable for such product under this subsection in the year preceding the year for which the maximum rate allowable is being determined (disregarding any rounding rules)’.

(5) *ROUNDING RULE.*—The maximum rate allowable for a product within the first basket of products shall be equal to the rate determined for such product under this subsection (disregarding this paragraph), rounded to the nearest cent (rounding 1/2 of a cent to the next higher cent).

(d) *RANGE ALLOWABLE.*—For purposes of this section, the range allowable for a product in any year is the range delimited by—

(1) a maximum rate equal to the rate determined by increasing or decreasing (as appropriate, depending on whether the percentage under subparagraph (B) is positive or negative)—

(A) the rate last in effect for such product before the start of such year, by

(B) the percentage equal to the percentage adjustment applicable with respect to such product for such year, plus 2 percent; and

(2) a minimum rate equal to the rate determined by increasing or decreasing (as appropriate, depending on whether the percentage under subparagraph (B) is positive or negative)—

(A) the rate last in effect for such product before the start of such year, by

(B) the percentage equal to the percentage adjustment applicable with respect to such product for such year, minus 2 percent.

For purposes of applying paragraphs (1)(B) and (2)(B) in any year, the Board of Directors may, in a manner consistent with the policies of this title and the requirements of this subchapter, establish a single percentage which shall be lower than, and which shall be substituted for, the percentage adjustment applicable that would otherwise be applied under both of those paragraphs in such year. Such single percentage shall be the same for every product in the noncompetitive category.

**§ 3733. Adjustment factor***(a) DEFINITION OF RATEMAKING CYCLE.—*

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

*(A) the 5-year period beginning on the first day of the second year beginning after the date as of which the baseline rates are determined under section 3721(e)(2); and*

*(B) each 5-year period beginning on the day after the last day of the immediately preceding 5-year period under this subsection.*

*(2) EARLIER COMMENCEMENT DATE.—The Postal Regulatory Commission may advance the commencement date of the first ratemaking cycle to the date which occurs 1 year earlier than the date that would otherwise apply under subparagraph (1)(A), but only if that earlier date does not precede the date as of which all requirements of this section have been completed with respect to such cycle.*

*(b) PROCEDURES FOR DETERMINING ADJUSTMENT FACTOR.—**(1) COMMENCEMENT OF PROCEEDINGS.—*

*(A) IN GENERAL.—Except as provided in subparagraph (B), the Postal Regulatory Commission shall, beginning in September of the second year before the start of each ratemaking cycle, provide the opportunity for a hearing on the record under sections 556 and 557 of title 5 to the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public, with respect to the adjustment factor to be established for the upcoming ratemaking cycle.*

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

*(2) RULES OF PROCEEDINGS.—In order to conduct its proceedings with utmost expedition consistent with procedural fairness to the parties, the Commission may (without limitation) adopt rules which provide for—*

*(A) the advance submission of written direct testimony;*

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

*(C) discovery both from the Postal Service and the parties to the proceedings;*

*(D) limitation of testimony; and*

*(E) the conduct of the entire proceedings off the record with the consent of the parties.*

*(3) PRINTING AND NOTICE REQUIREMENTS.— The Commission’s decision and the record of the Commission’s hearings shall be made generally available at the time the decision is issued and shall be printed and made available for sale by the Public Printer within 10 days following the day the decision is issued.*

*(4) TIMING.—*

*(A) IN GENERAL.—Except as provided in subparagraph (B), all actions required of the Commission under this section, including*

*those required under paragraph (3), shall be completed by the end of the year preceding the commencement of the ratemaking cycle to which the decision relates.*

*(B) EXCEPTION.—In any case in which the Commission determines that the Postal Service has unreasonably delayed any proceedings under this section by failing to respond within a reasonable time to any lawful order of the Commission, the Commission may extend the deadline described in subparagraph (A) by one day for each day of such delay.*

*(C) EFFECT OF DELAY ON RATEMAKING AUTHORITY.—No rate change for any noncompetitive product may take effect during any period of delay. For purposes of the preceding sentence, the term ‘period of delay’ means, in the circumstance described in subparagraph (B), the period beginning on the day following the original deadline (as described in subparagraph (A)) and ending on the date of the new deadline (as determined under subparagraph (B)).*

*(c) REQUIREMENTS RELATING TO THE ESTABLISHMENT OF ADJUSTMENT FACTOR.—*

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

*(A) the policies of this title; and*

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

*(2) REQUIREMENT THAT ADJUSTMENT FACTOR BE A NEGATIVE VALUE OR ZERO.—*

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

*(B) EXCEPTIONS.—A positive adjustment factor may be established only upon a written determination by the Postal Regulatory Commission that an exception to subparagraph (A) is necessary—*

*(i) because of any new and significant statutorily imposed funding obligations not fully funded through appropriations; or*

*(ii) because postal revenues during the upcoming ratemaking cycle would otherwise be insufficient to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.*

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

*(d) SAME ADJUSTMENT FACTOR TO BE UNIFORMLY APPLIED TO ALL PRODUCTS.—For purposes of each year in a ratemaking cycle, the same adjustment factor shall apply—*

*(1) to all baskets under section 3731; and*

*(2) to all products within each such basket.*

*(e) HOW AN ADJUSTMENT FACTOR IS TO BE EXPRESSED AND APPLIED.—*

*(1) HOW AN ADJUSTMENT FACTOR IS TO BE EXPRESSED.—An adjustment factor established under this section shall be expressed as a percentage.*

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

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

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

*(f) EXIGENT CIRCUMSTANCES.—*

*(1) IN GENERAL.—Notwithstanding the requirement under subsection (d) that the same adjustment factor be applied throughout the same ratemaking cycle, upon a majority vote of the members of the Board of Directors then holding office, the Postal Service may request the Postal Regulatory Commission to render a decision on changing the adjustment factor to be applied during the then current ratemaking cycle.*

*(2) CONDITIONS.—A request made under paragraph (1) may be granted only upon a written determination by the Commission that the change requested is justified by one or more of the same reasons as would justify the establishment of a positive adjustment factor (as set forth in subsection (c)(2)(B)).*

*(3) EFFECT; DURATION.—A change granted under this subsection—*

*(A) shall supersede the adjustment factor that would otherwise apply under this section (with appropriate changes to the respective limitations under paragraphs (2) and (3) of section 3732(a)); and*

*(B) shall remain in effect for the rest of the ratemaking cycle involved, subject to paragraph (5).*

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

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

*(g) POSTAL REGULATORY COMMISSION NOT TO INTERFERE WITH COLLECTIVE BARGAINING.—It is the sense of the Congress that nothing in this section should restrict, expand, or otherwise affect any of the rights, privileges, or benefits of either employees of the United States Postal Service, or labor organizations representing employees of the United States Postal Service, under chapter 12 of this title, the National Labor Relations Act, any handbook or manual affecting employee labor relations within the United States Postal Service, or any collective bargaining agreement.*

**§ 3734. Action of the Board**

(a) *AUTHORITY TO ESTABLISH RATES.*—*The Board of Directors, with the written concurrence of a majority of all of the members of the Board then holding office, shall establish rates for products in the noncompetitive category of mail in accordance with the requirements of this subchapter and the policies of this title.*

(b) *PROCEDURES.*—

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

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

(c) *LIMITATIONS ON AUTHORITY.*—

(1) *IN GENERAL.*—*Except as provided in paragraph (2)—*

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

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

(2) *EXCEPTION FOR CHANGE DUE TO EXIGENT CIRCUMSTANCES.*—

(A) *IN GENERAL.*—*If the maximum rate allowable for a product in a year changes pursuant to a request granted under section 3733(f), then, in the event that ratemaking authority under this section was previously exercised with respect to such product for such year, such rate may be modified, not more than once more in such year, based on the change in the maximum rate allowable (and the corresponding change in the range allowable).*

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

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

**§ 3741. Applicability; definition**

(a) *APPLICABILITY.*—*This subchapter applies with respect to—*

- (1) *priority mail;*
- (2) *expedited mail;*
- (3) *mailgrams;*
- (4) *international mail; and*
- (5) *parcel post;*

*except that this subchapter does not apply with respect to any product then currently in the noncompetitive category of mail.*

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

(c) *RULE OF CONSTRUCTION.*—

(1) *INGENERAL.*—Except as provided in paragraph (2), mail matter referred to in paragraphs (1) through (5) of subsection (a) shall, for purposes of such paragraphs, be considered to have the respective meanings given them under the mail classification schedule (as defined by section 3623) as of the effective date of this chapter.

(2) *UPDATES.*—The Postal Regulatory Commission shall, whenever any relevant change occurs (whether pursuant to a product transfer under section 3764 or an action taken under section 3763), prescribe new lists of the products to which this subchapter applies. The revised lists shall indicate how and when any previous lists (including under subsection (a)) are superseded, and shall be published in the Federal Register.

**§ 3742. Action of the Board**

(a) *AUTHORITY TO ESTABLISH RATES.*—The Board of Directors, with the written concurrence of a majority of all of the members of the Board then holding office, shall establish rates for products in the competitive category of mail in accordance with the requirements of this subchapter and the policies of this title.

(b) *PROCEDURES.*—Section 3734(b) shall apply with respect to rates and decisions under this section, except that for purposes of this section, section 3734(b) shall be applied by substituting ‘by such date before the effective date of any new rates as the Board considers appropriate’ for ‘at least 45 days before the rate or rates to which they pertain are to take effect’.

(c) *EFFECTIVE DATE.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2), the ratemaking provisions of this subchapter shall be effective beginning with the rates to be established for the first year beginning on or after the date as of which the baseline rates are determined under section 3721(e)(2).

(2) *EXCEPTION.*—

(A) *RATEMAKING AUTHORITY IMMEDIATELY AVAILABLE.*—The ratemaking provisions of this subchapter shall, with respect to all international mail as to which this subchapter applies, be effective beginning on the date as of which the baseline rates are determined under section 3721(e)(2), subject (until the entirety of this subchapter becomes effective in accordance with paragraph (1)) only to the requirement under section 3743(a).

(B) *SPECIAL RULE TO ACCOUNT FOR ANY SHORTFALL.*—If a rate is established for any international mail pursuant to subparagraph (A) in the year before the first year referred to in paragraph (1), and the requirement under section 3743(a) is not met by the international postal product involved during that portion of the year (before such first year) during which such rate under subparagraph (A) is in effect, then, the shortfall shall be made up in accordance with section 3744(c)(1), treating such shortfall as if it had occurred in the first year referred to in paragraph (1).

**§ 3743. Provisions applicable to competitive products individually**

(a) *IN GENERAL.*—Rates for products in the competitive category of mail shall be established in a manner such that each such product shall, in each year, bear the costs attributable to such product for such year. The same waiver authority described in section 3732(b)(2) shall be available for purposes of the requirement under the preceding sentence.

(b) *TREATMENT OF SHORTFALLS.*—If revenues derived from a competitive product in any year are not sufficient to meet the costs attributable to such product for such year, the shortfall shall be made up in accordance with section 3744(c)(1).

(c) *MANDATORY DISCONTINUANCE OF LOSS-MAKING PRODUCTS.*—

(1) *IN GENERAL.*—If a competitive product persistently fails to substantially cover the costs attributable to such product, the Postal Regulatory Commission may, in accordance with procedures which the Commission shall prescribe and after considering all relevant circumstances, order the Postal Service to discontinue such product permanently.

(2) *PROCEDURES.*—The procedures prescribed to carry out this subsection—

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

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

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

(3) *PERSISTENTLY AND SUBSTANTIALY.*— The Commission shall by regulation establish the criteria to be used in making any determination under this subsection as to whether a product persistently fails to substantially cover the costs attributable to such product.

**§ 3744. Provisions applicable to competitive products collectively**

(a) *COST-COVERAGE REQUIREMENT.*—

(1) *IN GENERAL.*—Rates for competitive products shall be established in a manner such that the cost-coverage ratio for all competitive products (collectively) shall, for each year to which this subchapter applies (as referred to in section 3742(c)), be at least equal to the cost-coverage ratio for such year for all competitive and noncompetitive products (collectively).

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

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

(B) total costs attributable to those products in such year.

(b) *ADJUSTMENT FOR SPECIAL CIRCUMSTANCES.*—

(1) *IN GENERAL.*—The Postal Regulatory Commission shall, by rule,

*and in order to ensure that ratios under this section appropriately compensate for any significant and objective differences in the nature and composition of costs attributable to competitive and noncompetitive products, respectively, provide for the exclusion of such costs attributable as the Commission considers to be uniquely or disproportionately associated with any particular product or products or with either category of products.*

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

*(c) SPECIAL RULES TO MAKE UP FOR CERTAIN SHORTFALLS.—*

*(1) SUBTRACTION TO MAKE UP FOR ANY SHORTFALL DESCRIBED IN SECTION 3743(B).—In any year in which a shortfall described in section 3743(b) occurs in the case of any competitive product, an amount equal to the amount of such shortfall shall, for purposes of determining whether the requirement under subsection (a) has been satisfied in such year, be subtracted from total revenues derived from all competitive products (collectively) in such year. Nothing in the preceding sentence shall be considered to permit or require that the same amount be concurrently subtracted from total revenues derived from competitive and noncompetitive products (collectively).*

*(2) SUBTRACTION TO MAKE UP FOR ANY SHORTFALL IN CONTRIBUTIONS TOWARD INSTITUTIONAL COSTS IN A PREVIOUS YEAR.—If, in any year, the requirement under subsection (a) is not met (determined applying the provisions of subsection (b), paragraph (1), and this paragraph based on any failure to satisfy subsection (a) in the previous year), the difference between the total revenues considered to have been derived from competitive products in the year involved (determined applying such provisions), and the minimum amount of total revenues from competitive products which would have been required in order to satisfy subsection (a) (determined applying such provisions), shall, for purposes of determining whether the requirement under subsection (a) is met in the following year, be subtracted from total revenues derived from competitive products (collectively) in such following year. Nothing in the preceding sentence shall be considered to permit or require that the same amount be concurrently subtracted from total revenues derived from competitive and noncompetitive products (collectively).*

*(d) PHASE IN AUTHORITY.—If necessary in order to afford the Postal Service an opportunity to increase efficiency to competitive market levels, the Postal Regulatory Commission may, by written determination made as part of its first adjustment factor case under section 3733, provide for the phase in of subsection (a) over the course of the first ratemaking cycle. If the Commission grants relief under this subsection, it shall annually review the continuing need for such relief and, based on its review, may provide for the appropriate modification thereof for the succeeding year in such cycle.*

**§ 3745. Sharing of profits with the Postal Service Fund**

(a) *IN GENERAL.*—If the Postal Service realizes a profit under this subchapter in any year described in subsection (c), the Postal Service shall transfer from the Postal Service Competitive Products Fund to the Postal Service Fund an amount equal to 50 percent of the total profit under this subchapter realized in such year.

(b) *PROFIT UNDER THIS SUBCHAPTER DEFINED.*—For purposes of this section, the amount of profit under this subchapter realized by the Postal Service in a year shall be equal to the amount by which—

(1) the amount equal to total revenues derived by the Postal Service from competitive products in such year (determined applying subsection (c) of section 3744, but disregarding subsections (b) and (d) of such section), exceeds (if at all)

(2) the minimum amount of total revenues from competitive products which would have been required in order to satisfy section 3744(a) in such year (determined in the same manner as under section 3744(c)(2), taking into account section 3744(d)).

(c) *YEARS TO WHICH THIS SECTION APPLIES.*— This section applies with respect to each year throughout which a corporation under section 2012 is in existence.

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

**SUBCHAPTER V—MARKET TESTS OF EXPERIMENTAL PRODUCTS**

**§ 3751. Market tests of experimental noncompetitive products**

(a) *AUTHORITY.*—

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

(2) *PROVISIONS WAIVED.*—A product shall not, while it is being tested under this section, be subject to the requirements of section 3623 (relating to mail classification), section 3732 (relating to limitations on rates), or section 3762 (relating to new noncompetitive products).

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

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

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

(3) *MARKET DISRUPTION.*—The introduction or continued offering of the product will not create an unfair or otherwise inappropriate

*competitive advantage for the Postal Service, particularly in regard to small business concerns (as defined under section 3756).*

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

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

*(d) DURATION.—*

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

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

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

### **§ 3752. Market tests of experimental competitive products**

*(a) AUTHORITY.—*

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

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

*(A) Section 3662(c)(3) (relating to ordering the adjustment of rates to lawful levels pursuant to a rate complaint).*

*(B) Section 3743(c) (relating to mandatory discontinuance of loss-making products).*

*(C) Section 3773(e) (relating to use of profits).*

*A product shall not, while it is being tested under this section, be subject to the requirements of section 3763 (relating to new competitive products).*

*(3) PROVISIONS NOT WAIVED.—Nothing in this section shall be considered to permit or require the exclusion of any costs or revenues that are attributable to a product that is being tested under this section from any determination under section 3744 (relating to provisions*

*applicable to competitive products collectively).*

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

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

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

*(3) MARKET DISRUPTION.—The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service, particularly in regard to small business concerns (as defined under section 3756).*

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

*(c) NOTICE.—*

*(1) IN GENERAL.—At least 30 days before initiating a market test under this section, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for the Postal Service's determination that the market test is covered by this section and describing the nature and scope of the market test.*

*(2) SAFEGUARDS.—The provisions of section 3604(g) shall be available with respect to any information required to be filed under paragraph (1) to the same extent and in the same manner as in the case of any matter described in section 3604(g)(1). Nothing in paragraph (1) shall be considered to permit or require the publication of any information as to which confidential treatment is accorded under the preceding sentence (subject to the same exception as set forth in section 3604(g)(3)).*

*(d) DURATION.—*

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

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

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

**§ 3753. Large-scale market tests**

(a) *AUTHORITY.*—*The Postal Service may, in accordance with this section, conduct—*

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

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

(b) *CONDITION.*—*Notwithstanding any other provision of this section, a product may not be tested under this section unless the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed \$100,000,000 in any year, subject to section 3754.*

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

(d) *REGULATIONS.*—*The Postal Regulatory Commission shall by regulation establish rules for the conduct of market tests under this section, including rules for the termination of any such test. In adopting rules under this subsection, the Commission shall consider such matters as—*

(1) *the Postal Service's interest in the development and testing of new products with a minimum of regulatory impediments; and*

(2) *the public interest in preventing unfair or otherwise inappropriate competition.*

(e) *DURATION.*—

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

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

**§ 3754. Adjustment for inflation**

*In the case of a year following the first year in which any testing under this subchapter is permitted, the dollar amount contained in sections 3751(b)(2), 3752(b)(2), and 3753(b), respectively, shall be adjusted at the same time and by the same percentage adjustment as the maximum rates allowable for noncompetitive products are adjusted pursuant to 3732(c) (but deeming the adjustment factor under paragraph (2)(B) thereof to be zero for purposes of this section).*

**§ 3755. Conversion to permanence**

*A request to have an experimental product under this chapter converted to a permanent one—*

- (1) shall be made and acted on in conformance with applicable provisions of subchapter VI; and*
- (2) shall be made by the Postal Service.*

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

*The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns shall, for purposes of sections 3751 and 3752, be established by the Postal Regulatory Commission in conformance with the requirements of section 3 of the Small Business Act.*

**§ 3757. Effective date**

*Market tests under this subchapter may be conducted in any year beginning with the first year beginning on or after the date as of which the baseline rates are determined under section 3721(e)(2).*

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

**§ 3761. Criteria for the identification of noncompetitive and competitive products**

*(a) IN GENERAL.—Except as provided in subchapter V, no product may be offered until such product has been assigned to the noncompetitive or competitive category of mail, whichever is appropriate (and, if a noncompetitive product, its proper basket).*

*(b) CRITERIA.—*

*(1) IN GENERAL.—Determinations as to the category of mail to which any particular product should be assigned (whether in connection with a new product under section 3762 or 3763, the proposed transfer of a product under section 3764, or the proposed reclassification of an existing product under subchapter II of chapter 36) shall be made in conformance with paragraph (2).*

*(2) CHARACTERISTICS BY CATEGORY.—The noncompetitive category of products shall embrace all products in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing business to other firms offering similar products. The competitive category of products shall embrace all other products.*

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

**§ 3762. New noncompetitive products**

(a) *REQUEST.—The Postal Service—*

(1) *may from time to time request that the Postal Regulatory Commission submit a recommended decision on the classification for a new noncompetitive product; and*

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

(b) *HEARINGS.—In response to any request made by the Postal Service under this section, the Postal Regulatory Commission shall promptly initiate a proceeding in accordance with the procedures set out in section 3624.*

(c) *FACTORS AND RECOMMENDED DECISION.—The Postal Regulatory Commission shall make a recommended decision on (1) the baseline rate for the new product based on the factors set out in section 3622(b), and (2) the classification for the new product based on the factors and requirements under section 3623(b). Such recommended decision shall be submitted to the Directors for action in accordance with section 3625, and subject to review in accordance with section 3628(a).*

**§ 3763. New competitive products**

(a) *AUTHORITY.—The Postal Service may, in accordance with this section, offer a new competitive product and, with respect to competitive products only, otherwise make changes in the mail classification schedule.*

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

(1) *CRITERIA.—To the extent that the classification of a product is involved, the action would be consistent with the criteria under section 3761(b)(2).*

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

(c) *NOTICE.—*

(1) *IN GENERAL.—At least 20 days before it offers a new competitive product or otherwise makes any change in the mail classification schedule under this section, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for the Postal Service's determination that the product satisfies each of the conditions under subsection (b).*

(2) *SAFEGUARDS.—The provisions of section 3604(g) shall be available with respect to any information required to be filed under paragraph (1) to the same extent and in the same manner as in the case of any matter described in section 3604(g)(1). Nothing in paragraph (1) shall be considered to permit or require the publication of any information as to which confidential treatment is accorded under the preceding sentence (subject to the same exception as set forth in section 3604(g)(3)).*

(d) *CANCELLATION.*—If the Postal Regulatory Commission determines that an action proposed to be taken under this section fails to meet either of the conditions set forth in subsection (b), the Commission shall, before the proposed action is scheduled to be taken or to commence (as applicable), order that the proposed action be canceled. A determination under this subsection shall be made in accordance with such procedures as the Commission shall by regulation prescribe.

(e) *COMPLAINTS.*—If the Postal Regulatory Commission receives a complaint from an interested party (including an officer of the Commission representing the interests of the general public) alleging that the condition under paragraph (1) or (2) of subsection (b) has not been met, the Commission shall act on such complaint in accordance with section 3662.

**§ 3764. Transfers of products from the noncompetitive category of mail**

(a) *IN GENERAL.*—Upon request of the Postal Service or users of the mails, or upon its own initiative, the Postal Regulatory Commission may, after proceedings conducted in conformity with subsection (d), transfer 1 or more products from the noncompetitive category of mail to the competitive category of mail.

(b) *CRITERIA.*—

(1) *IN GENERAL.*—A decision under this section shall be made in accordance with the policies of this title and the criteria set forth in section 3761(b)(2).

(2) *EXCLUSION OF PRODUCTS COVERED BY POSTAL MONOPOLY.*—A product covered by the postal monopoly shall not be subject to transfer under this section from the noncompetitive category of mail. For purposes of the preceding sentence, the term ‘product covered by the postal monopoly’ means any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(d)(1).

(3) *ADDITIONAL CONSIDERATIONS.*—In making any decision under this section, due regard shall be given to—

(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved; and

(B) the views of those who use the product involved on the appropriateness of the proposed action.

(c) *TRANSFERS OF SUBCLASSES AND OTHER SUBORDINATE OR FURTHER SUBORDINATE UNITS ALLOWABLE.*—Nothing in this title shall be considered to prevent transfers under this section from being made by reason of the fact that they would involve only some (but not all) of the subclasses or other subordinate or further subordinate units of the class of mail or type of postal service involved.

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

(1) shall provide the opportunity for a hearing on the record under sections 556 and 557 of title 5 to the Postal Service, users of the mail, and an officer of the Postal Regulatory Commission who shall be

*required to represent the interests of the general public;*

*(2) may include rules of proceedings that provide for any procedure or other matter listed under section 3733(b)(2); and*

*(3) shall require that any final decision be accompanied by a statement setting forth the reasons therefor.*

*Paragraph (3) of section 3733(b) (relating to printing and notice requirements) shall apply with respect to each Commission decision and related record of Commission hearings under this section.*

**§ 3765. Transition provisions for new noncompetitive products**

*(a) IN GENERAL.—Rates for products which are classified under section 3762 as new noncompetitive products shall be established in accordance with otherwise applicable provisions of this chapter, subject to succeeding provisions of this section.*

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

*(1) for purposes of the first year (or that portion of the first year) during which such product is offered, be equal (before rounding) to the baseline rate established for such product under section 3762;*

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

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

*(c) RANGE ALLOWABLE.—For purposes of establishing a rate for a product described in subsection (a), the provisions of section 3732(a)(3) (and all other provisions of this chapter relating to the range allowable)—*

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

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

*(d) MINIMUM RATE REQUIREMENTS.—Nothing in this section shall be considered to exempt any product from any of the requirements under subchapter III relating to minimum rates.*

**SUBCHAPTER VII—REPORTING REQUIREMENTS AND RELATED PROVISIONS**

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

*(a) IN GENERAL.—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title.*

*(b) ADDITIONAL INFORMATION.—In addition to the information required under subsection (a), each report under this section shall also include, with*

respect to the period covered by such report, an estimate of the costs incurred by the Postal Service in providing—

(1) postal services to areas of the Nation where, in the judgment of the Postal Regulatory Commission, the Postal Service either would not provide services at all or would not provide such services in accordance with the requirements of this title if the Postal Service were not required to provide prompt, reliable, and efficient services to patrons in all areas and all communities, including as required under the first sentence of section 101(b);

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

(3) other public services or activities which, in the judgment of the Postal Regulatory Commission, would not otherwise have been provided by the Postal Service but for the requirements of law.

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

(c) *INFORMATION FROM POSTAL SERVICE.*—The Postal Service shall provide the Postal Regulatory Commission with such information as may, in the judgment of the Commission, be necessary in order for the Commission to prepare its reports under this section.

(d) *RULE OF CONSTRUCTION.*—Nothing in this section shall be considered to permit or require that the Postal Regulatory Commission reassess (or otherwise supplant the judgment of the Postal Service as to) the level of services the Postal Service is required to provide in order to fulfill its obligations under this title (including sections 101 and 403) relating to providing universal postal services.

(e) *REQUIRED COMPARISON.*—The Postal Regulatory Commission shall include, in the first report which it submits under this section at least 12 months after receiving the Postal Service's recommendations under section 2806, a comparison showing how the cost information included in the Commission's report pursuant to subsection (b) would differ depending on whether or not the Postal Service's recommendations under section 2806 were adopted.

### **§ 3772. Annual reports to the Commission**

(a) *COSTS, REVENUES, AND RATES.*—

(1) *IN GENERAL.*—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex thereto as the Commission may require under subsection (e)) analyzing costs, revenues, and rates in sufficient detail to demonstrate that the rates in effect for all products during such year (including, for purposes of section 3744, rates for all competitive products collectively) complied with all applicable requirements of this title.

(2) *INFORMATION RELATING TO WORKSHARE DISCOUNTS.*—

(A) *IN GENERAL.*—The Postal Service shall include, in each report under paragraph (1), the following information with respect

to each noncompetitive product for which a workshare discount was in effect during the period covered by such report:

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

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

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

(B) WORKSHARE DISCOUNT DEFINED.—For purposes of this paragraph, the term ‘workshare discount’ refers to presorting, barcoding, dropshipping, and other similar discounts, as further defined under regulations which the Postal Regulatory Commission shall prescribe.

(3) AUDITING REQUIREMENT.—Before submitting a report under paragraph (1) (including any annex thereto and the information required under paragraph (2)), the Postal Service shall have the information contained in such report (and annex) audited by the Inspector General. The results of any such audit shall be submitted along with the report to which it pertains.

(b) QUALITY OF SERVICES.—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex thereto as the Commission may require under subsection (e)) which shall, for each noncompetitive product provided in such year, provide—

(1) market information, including mail volumes; and

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

(A) the service standard applicable to such product;

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

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

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

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

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

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

(e) CONTENT AND FORM OF REPORTS.—

(1) IN GENERAL.—The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating thereto) to be

*provided by the Postal Service under this section. In carrying out this subsection, the Commission shall give due consideration to—*

*(A) providing the public with adequate information to assess the lawfulness of rates charged;*

*(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and*

*(C) protecting the confidentiality of commercially sensitive information.*

*(2) REVISED REQUIREMENTS.—The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of postal service data required by the Commission under this subsection whenever it shall appear that—*

*(A) the attribution of costs or revenues to postal products has become significantly inaccurate or can be significantly improved;*

*(B) the quality of service data has become significantly inaccurate or can be significantly improved; or*

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

*(f) CONFIDENTIAL INFORMATION.—*

*(1) IN GENERAL.—If the Postal Service determines that any document or portion of a document, or other matter, which it provides to the Postal Regulatory Commission in a nonpublic annex under this section or pursuant to subsection (d) contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefor.*

*(2) TREATMENT.—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 3604(g) in the same way as if the Commission had received notification with respect to such matter under section 3604(g)(1).*

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

*(1) comprehensive statement under section 2401(e);*

*(2) performance plan under section 2803; and*

*(3) program performance reports under section 2804.*

### **§ 3773. Annual determination of compliance**

*(a) PROFITS DEFINED.—For purposes of this section, the term ‘profits’, with respect to a year, means the amount by which—*

*(1) total revenues of the Postal Service attributable to such year, exceeds*

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

(b) *OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3772 for any year, the Postal Regulatory Commission shall promptly provide an opportunity for comment on such reports by users of the mails, affected parties, and an officer of the Commission who shall be required to represent the interests of the general public.*

(c) *DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3772 with respect to a year, the Postal Regulatory Commission shall make a written determination as to—*

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

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

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

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

(d) *IF NO NONCOMPLIANCE IS FOUND.—*

(1) *USE OF PROFITS.—If, with respect to a year, a timely written determination under subsection (c) is made to the effect that no instance of noncompliance is found to have occurred in such year (or if no written determination under subsection (c) is timely made with respect to the year), then, up to 100 percent of the profits attributable to that year (if any) may be used by the Postal Service for the purposes described in subsection (f).*

(2) *REBUTTABLE PRESUMPTION.—A timely written determination described in the last sentence of subsection (c) shall, for purposes of any proceeding under section 3662, create a rebuttable presumption of compliance by the Postal Service (with regard to the matters described in paragraphs (1)– (3) of subsection (c)) during the year to which such determination relates.*

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

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

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

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

*(f) BONUSES.—*

*(1) IN GENERAL.—The Postal Service shall establish a program under which cash bonuses may be paid to officers and employees of the Postal Service out of any profits which are available for that purpose.*

*(2) REQUIREMENTS.—Under the program—*

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

*(B) the sole source of funding shall be any profits from any year, subject to the application of subsection (e)(1) with respect to such year; and*

*(C) bonuses shall not be precluded (in whole or in part) by the limitation on compensation under the last sentence of section 1003(a) in a year, if—*

*(i) total profits attributable to the preceding year, exceed*

*(ii) the amount equal to 1 percent of total revenues of the Postal Service attributable to such preceding year.*

*(3) DISCRETIONARY NATURE OF PROGRAM.—Nothing in this section shall be considered to create any entitlement to receive bonuses or to require that any portion of the profits from any year be used for bonuses in excess of whatever amount the Postal Service, in its sole discretion, considers appropriate.*

*(4) CONSIDERATIONS RELATING TO THE PORTION OF PROFITS TO BE AVAILABLE FOR BONUSES.—In any decision relating to what portion of the available profits from any year shall be made available or used for bonuses under this subsection, there shall be taken into consideration—*

*(A) the obligation on the part of the Postal Service to provide efficient and economical postal services in accordance with this title; and*

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

*(i) to retire debts or other obligations of the Postal Service;*

*(ii) to limit future increases in postal rates or fees for products in the noncompetitive category of mail; or*

*(iii) to carry out any other purpose.*

*(g) DEDICATION OF FUNDS TOWARD REDUCING RATES AND FEES.—*

*(1) IN GENERAL.—Any amounts ordered to be set aside under subsection (e)(1)(A) may not be used for any purpose other than to defray increases in future rates and fees for products in the non competitive category of mail or to reduce the rates and fees already in effect for such products.*

*(2) COMPLIANCE.—Whenever an order under paragraph (1)(A) or (2) of subsection (e) is issued, the Postal Service shall include in its next comprehensive statement under section 2401(e) (and each subsequent statement thereunder until such order has been fully complied with) a statement as to—*

*(A) what measures have been or will be implemented in order to comply with the order, including the schedule in accordance with which any amounts set aside pursuant to an order issued*

*under subsection (e)(1)(A) shall be used or made available for the purposes described in paragraph (1); and*

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

*(i) the amount of savings actually passed on to mailers during the reporting period (whether through reduced rates and fees or otherwise), as compared to the amount of savings scheduled to have been passed on to mailers during such period; and*

*(ii) to the extent that the amount of savings actually passed on to mailers is less than the amount scheduled to have been passed on to mailers during a reporting period, what measures (if any) have been or will be implemented to reconcile the difference.*

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

*(h) REPORTING REQUIREMENT RELATING TO BONUSES.—Included in its comprehensive statement under section 2401(e) for any period shall be—*

*(1) the name of each person receiving a bonus during such period which would not have been allowable but for the provisions of subsection (f)(2)(C);*

*(2) the amount of the bonus; and*

*(3) the amount by which the limitation referred to in subsection (f)(2)(C) was exceeded as a result of such bonus.*

*(i) APPLICABILITY.—For purposes of this section, the term ‘year’ has the meaning given such term under section 3701, but does not include any year preceding the year in which occurs the date as of which baseline rates are determined under section 3721(e)(2).*

### **§ 3774. Other reports**

*(a) IN GENERAL.—The Postal Regulatory Commission shall, at least every 6 years, submit a report to the President and the Congress concerning—*

*(1) the operation of the system consisting of chapter 36 and this chapter; and*

*(2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of that system.*

*(b) POSTAL SERVICE VIEWS.—A report under this section shall be submitted only after reasonable opportunity has been afforded to the Postal Service to review such report and to submit written comments thereon. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).*

*(c) SPECIFIC INFORMATION REQUIRED.—The Postal Regulatory Commission shall include, as part of at least its first report under subsection (a), the following:*

*(1) COST-COVERAGE REQUIREMENT RELATING TO COMPETITIVE PRODUCTS COLLECTIVELY.—With respect to section 3744—*

*(A) a description of how that section has operated; and*

*(B) recommendations as to whether or not that section should remain in effect and, if so, any suggestions as to how it might be improved.*

*(2) COMPETITIVE PRODUCTS FUND.—With respect to the Postal Service Competitive Products Fund, in consultation with the Secretary of the Treasury—*

*(A) a description of how the Competitive Products Fund has operated;*

*(B) any suggestions as to how the operation of the Competitive Products Fund might be improved; and*

*(C) a description and assessment of alternative accounting or financing mechanisms that might be used to achieve the objectives of the Competitive Products Fund.*

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

*(A) a description of how that section has operated;*

*(B) recommendations as to whether or not that section should remain in effect and, if so, any suggestions as to how it might be improved;*

*(C) a description and assessment of—*

*(i) the organizational structure of any corporation established under that section; and*

*(ii) the relationship between such corporation and the Postal Service;*

*(D) a description and assessment of the mechanisms by which the Postal Service is allowed to invest in such corporation; and*

*(E) a description and assessment of the mechanisms by which earnings of such corporation may be shared with the Postal Service, and, with respect to section 3745, recommendations as described in subparagraph (B).*

## **PART V--TRANSPORTATION OF MAIL**

Chap.	Sec.
50. General	5001
<del>52. Transportation of Mail by Surface Carrier</del>	<del>5201</del>
54. Transportation of Mail by Air	5401
56. Transportation of Mail by Vessel	5601

### **CHAPTER 50--GENERAL**

Sec.
5001. Provisions for carrying mail.
5002. Transportation of mail of adjoining countries through the United States.
5003. Establishment of post roads.
5004. Discontinuance of service on post roads.
5005. Mail transportation.
5006. Lien on compensation of contractor.

5007. Free transportation of postal employees.

**§ 5001. Provisions for carrying mail**

The Postal Service shall provide for the transportation of mail in accordance with the policies established under section 101(e) and (f) of this title and the provisions of this chapter. Notwithstanding any other provision of this title, the Postal Service may make arrangements on a temporary basis for the transportation of mail when, as determined by the Postal Service, an emergency arises. Such arrangements shall terminate when the emergency ceases and the Postal Service is promptly able to secure transportation services under other provisions of this title.

**§ 5002. Transportation of mail of adjoining countries through the United States**

The Postal Service, with the consent of the President, may make arrangements to allow the mail of countries adjoining the United States to be transported over the territory of the United States from one point in that country to any other point therein, at the expense of the country to which the mail belongs, upon obtaining a like privilege for the transportation of United States mail through the country to which the privilege is granted.

**§ 5003. Establishment of post roads**

The following are post roads:

- (1) the waters of the United States, during the time the mail is carried thereon;
- (2) railroads or parts of railroads and air routes in operation;
- (3) canals, during the time the mail is carried thereon;
- (4) public roads, highways, and toll roads during the time the mail is carried thereon; and
- (5) letter-carrier routes established for the collection and delivery of mail.

**§ 5004. Discontinuance of service on post roads**

The Postal Service may discontinue service on a post road or part thereof when, in its opinion, the public interest so requires.

**§ 5005. Mail transportation [64]**

- (a) The Postal Service may obtain mail transportation service--
  - ~~(1) from common carriers by rail and motor vehicle or persons as provided in chapter 52 of this title;~~
  - (2) (1) from air carriers as provided in chapter 54 of this title;
  - ~~(3) (2) from water carriers as provided in chapter 56 of this title;~~
 and

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<sup>64</sup> Amended by section 501(a)(2) of H.R. 22 except as indicated in paragraph (b)(1).

~~(4)~~ (3) by contract from any person (as defined in section 5201(6) of this title) or carrier for surface and water transportation under such terms and conditions as it deems appropriate, subject to the provisions of this section.

(b)(1) Contracts for the transportation of mail procured under subsection ~~(a)(4)~~ (a)(3) of this section shall be for periods not in excess of 4 years ~~(or where the Postal Service determines that special conditions or the use of special equipment warrants, not in excess of 6 years)~~ (or such length of time as may be determined by the Postal Service to be advisable or appropriate) <sup>[65]</sup> and shall be entered into only after advertising a sufficient time previously for proposals. The Postal Service, with the consent of the holder of any such contract, may adjust the compensation allowed under that contract for increased or decreased costs resulting from changed conditions occurring during the term of the contract.

(2) A contract under subsection ~~(a)(4)~~ (a)(3) of this section may be renewed at the existing rate by mutual agreement between the contractor or subcontractor and the Postal Service.

(3) Any contract between the Postal Service and any carrier or person for the transportation of mail shall be available for inspection in the office of the Postal Service and either the Surface Transportation Board or the Secretary of Transportation if for the carriage of mail in foreign air transportation (as defined in section 40102(a) of title 49) as appropriate, and in post offices on the post roads involved, as determined by the Postal Service, at least 15 days prior to the effective date of the contract.

(c) The Postal Service, in determining whether to obtain transportation of mail ~~by carrier or person under subsection (a)(1) of this section, by contract under subsection (a)(4) of this section, or by contract under subsection (a)(3) of this section~~ or by Government motor vehicle, shall use the mode of transportation which best serves the public interest, due consideration being given to the cost of the transportation service under each mode.

#### **§ 5006. Lien on compensation of contractor**

(a) A person who—

(1) performs service for a contractor or subcontractor in the transportation of mail;

(2) files his contract for service with the Postal Service; and

(3) files satisfactory evidence of performance with the Postal Service;

shall have a lien on money due the contractor or subcontractor for the service.

(b) The Postal Service may pay the person establishing a lien under subsection (a) of this section the sum due him, when the contractor or subcontractor fails to pay the person the amount of his lien within 2 months after the expiration of the month in which the service was performed. It shall charge the amount so paid to the contract. The payments may not

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<sup>65</sup> Amended by section 501(b)(1) of H.R. 22.

exceed the annual rate of pay of the contractor or subcontractor.

**§ 5007. Free transportation of postal employees**

(a) Each person or carrier engaged in the transportation of mail shall carry on any vessel, train, motor vehicle, or aircraft he operates, upon exhibiting their credentials and without extra charge therefor, persons on duty in charge of the mails or when traveling to and from such duty.

(b)(1) In this subsection, "air carrier" and "aircraft" have the same meanings given those terms in section 40102(a) of title 49.

(2) An air carrier engaged in transporting mail shall carry without charge on any plane it operates those agents and officers of the Postal Service traveling on official business related to transporting mail by aircraft, as prescribed by regulations of the Secretary of Transportation, on exhibiting credentials.

~~CHAPTER 52--TRANSPORTATION OF MAIL BY  
SURFACE CARRIER [66]~~

~~Sec.~~

~~5201. Definitions.~~

~~5202. Applicability.~~

~~5203. Authorization of service by carrier.~~

~~5204. Changes in service; placement of equipment.~~

~~5205. Evidence of service.~~

~~5206. Fines and deductions.~~

~~5207. Surface Transportation Board to fix rates.~~

~~5208. Procedures.~~

~~5209. Special rates.~~

~~5210. Intermodal transportation.~~

~~5211. Statistical studies.~~

~~5212. Special contracts.~~

~~5213. Carrier operations; receipts; expenditures.~~

~~5214. Agreements with passenger common carriers by motor vehicle.~~

~~5215. Star route certification.~~

**§ 5201. Definitions**

~~— For purposes of this chapter—~~

~~— (1) "Board" means the Surface Transportation Board;~~

~~— (2) "carrier" and "regulated surface carrier" mean a railroad, a freight forwarder, or a motor carrier;~~

~~— (3) "railroad" means a railway common carrier, including an electric urban and interurban railway common carrier;~~

~~— (4) "freight forwarder" means any regulated freight forwarder which holds itself out to the general public as a carrier to transport or provide transportation of property as authorized by a registration issued~~

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<sup>66</sup> Chapter repealed by section 501(a)(1) of H.R. 22.

by the Board;

~~(5) "motor carrier" means a motor carrier, except a passenger-carrying motor vehicle of such a carrier, within the meaning of section 13102(12) of title 49, that holds a registration issued by the Board;~~

~~(6) "person" includes any person other than a carrier holding a certificate or registration issued by the Board; and~~

~~(7) "mail" includes equipment and supplies of the Postal Service.~~

~~(8) Redesignated (7)~~

### **§ 5202. Applicability**

~~—This chapter applies to mail transportation performed by any person or carrier or carrier combination regardless of the mode of transportation actually used to provide the service.~~

### **§ 5203. Authorization of service by carrier**

~~—(a) The Postal Service may establish mail routes and authorize mail transportation service thereon.~~

~~—(b) A carrier shall transport mail offered for transportation by the Postal Service in the manner, under the conditions, and with the service prescribed by the Postal Service. A carrier is entitled to receive fair and reasonable compensation for the transportation and service connected therewith.~~

~~—(c) The Postal Service shall determine the trains or motor vehicles upon which mail shall be transported, except that no carrier shall be compelled to transport mail on any train or vehicle which is operated exclusively for the transportation of passengers and their baggage.~~

~~—(d) A carrier shall transport with due speed such mail as the Postal Service directs under this section.~~

~~—(e) No carrier shall be required to serve territory it is not otherwise authorized to serve, to provide service for the Postal Service at a rate which is less than compensatory cost, or to provide service at a detriment to the carrier or its other customers.~~

~~—(f) Any order or determination of the Postal Service providing for the transportation of mail by a motor carrier shall be filed with the Board. If the Board finds, within 90 days after the filing, that the order or determination will be detrimental to the motor carrier or its other customers, or that such carrier does not operate equipment suitable for the transportation of mail, the order or determination shall be terminated.~~

~~—(g) An order or determination of the Postal Service under this section shall be consistent with the orders of the Board under sections 5207 and 5208 of this title.~~

### **§ 5204. Changes in service; placement of equipment**

~~—(a) The Postal Service may authorize, according to the need therefor, new or additional mail transportation service by carriers at the rate or compensation fixed under this chapter. It may reduce or discontinue service with pro-rata reductions in compensation and indemnity for the loss of reasonable investment in equipment used exclusively for mail.~~

~~—(b) A railroad shall place cars used for full or apartment post office service in position at such times before departure as the Postal Service directs.~~

#### **~~§ 5205. Evidence of service~~**

~~—A carrier shall submit evidence of its performance of mail transportation service, signed by an authorized official, in such form and at such times as the Postal Service requires. Mail transportation service is considered that of the carrier performing it regardless of the ownership of the property used by the carrier.~~

#### **~~§ 5206. Fines and deductions~~**

~~—(a) The Postal Service may fine any carrier an amount not to exceed \$500 for each day the carrier refuses to perform mail transportation services required by it at rates or compensation established under this chapter.~~

~~—(b) The Postal Service shall fine a carrier an amount it deems reasonable for failure or refusal by that carrier to transport mail as required by the Postal Service under section 5203 of this title.~~

~~—(c) The Board may make deductions from the compensation of a carrier for failure to perform mail transportation service as required under section 5203 of this title. If the failure to perform is due to the fault of the carrier, it may deduct a sum not exceeding twice the compensation applying to such service. Such deductions shall not be made prior to the expiration of 60 days following service upon the carrier by the Board of notice of intention to assess a fine or make a deduction and of the basis therefor.~~

#### **~~§ 5207. Surface Transportation Board to fix rates~~**

~~—(a) The Board shall determine and fix the fair and reasonable rates or compensation for the transportation of mail by carrier and the service connected therewith, and shall prescribe the method of computing such rates or compensation. The Board shall publish its orders stating its determination under this section which shall remain in force until change by it after notice and hearing.~~

~~—(b) For the purpose of determining and fixing rates or compensation under this section, the Board may make just and reasonable classifications of carriers and, where just and equitable, fix general rates applicable to carriers in the same classification.~~

~~—(c) In determining and fixing fair and reasonable rates or compensation under this section, the Board shall consider the relation between the Government and carriers as public service corporations, and the nature of public service as distinguished, if there is a distinction, from the ordinary transportation business of the carriers.~~

~~—(d) Initial rates or compensation for mail transportation service by any carrier or carriers shall be those agreed to by the Postal Service and the carrier or carriers, and such rates or compensation shall continue in effect until such time as the Board fixes the rates or compensation under subsection (a) of this section.~~

**§ 5208. Procedures**

~~—(a) At any time after 6 months from the entry of an order stating the Board's determination under section 5207 of this title, the Postal Service or an interested carrier may apply for a reexamination and substantially similar proceedings as have theretofore been had shall be followed with respect to the rates of compensation for services covered by the application. At the conclusion of the hearing the Board shall enter an order stating its determination.~~

~~—(b) Except as authorized by sections 5207(d), 5209, 5210, and 5212 of this title, the Postal Service shall pay a carrier the rates or compensation so determined and fixed for application at such stated times as named in the order.~~

~~—(c) The Postal Service may file with the Board a comprehensive plan stating=~~

- ~~—(1) its requirements for the transportation of mail by carrier;~~
- ~~—(2) the character and speed of the trains or motor vehicles which are to carry the various kinds of mail;~~
- ~~—(3) the service, both terminal and en route, which carriers are to render;~~
- ~~—(4) what it believes to be the fair and reasonable rates or compensation for the services required; and~~
- ~~—(5) all other information which may be material to the inquiry, but such other information may be filed at any time in the discretion of the Board.~~

~~—(d) When a comprehensive plan is filed, the Board shall give notice of not less than 30 days to each carrier required by the Postal Service to transport mail pursuant to such plan. A carrier may file its answer at the time fixed by the Board, but not later than 30 days after the expiration date fixed by the Board in the notice, and the Board shall proceed with the hearing.~~

**§ 5209. Special rates**

~~—Upon petition by the Postal Service, the Board shall determine and fix carload or truckload, or less than carload or truckload, rates for the transportation of mail not entitled to high priority in transportation. A carrier shall perform the service at the rates so determined when requested to do so and under the conditions prescribed by the Postal Service.~~

**§ 5210. Intermodal transportation**

~~—The Postal Service may permit a carrier to perform mail transportation by any form of transportation it deems appropriate at rates or compensation not exceeding those allowable for similar service by the designated form of transportation.~~

**§ 5211. Statistical studies**

~~— The Postal Service may arrange for weighing and measuring mail transported on carrier mail routes and make other computations for statistical and administrative purposes to carry out the purposes of this chapter.~~

**§ 5212. Special contracts**

~~— The Postal Service may enter into special contracts with any carrier or person, without advertising, for bids and for periods not in excess of 4 years. It may contract to pay lower rates or compensation or, where in its judgment conditions warrant, higher rates or compensation than those determined or fixed by the Board. The fact that the Board has not prescribed rates or compensation for the carrier involved, under section 5207 of this title, shall not preclude execution of a contract under this section. Such contracts may be negotiated only after reasonable notice has been posted in advance in post offices on the post roads to be served, and other carriers or persons have been given an opportunity to offer to negotiate for the transportation of mail.~~

**§ 5213. Carrier operations; receipts; expenditures**

~~— The Postal Service shall request any carrier transporting the mails to furnish, under seal, such data relating to the operations, receipts, and expenditures of such carrier as may, in its judgment, be deemed necessary to enable it to ascertain the cost of mail transportation and the proper compensation to be paid for such service.~~

**§ 5214. Agreements with passenger common carriers by motor vehicle**

~~— The Postal Service may enter into contracts under such terms and conditions as it shall prescribe and without advertising for bids for the transportation of mail, in passenger-carrying motor vehicles, by passenger common carriers, or by motor vehicles over the regular routes on which the carrier is permitted by law to transport passengers.~~

**§ 5215. Star route certification**

~~— (a) Any person who was a contractor under a star route, mail messenger, or contract motor vehicle service contract on the effective date of this section (or successor in interest to any such person), shall, upon application to the Board for the territory within which such contractor operated on or before the effective date of this section be issued a certificate of public convenience and necessity as a motor carrier for the transportation of mail by the Board without the Board's requiring further proof that the public convenience and necessity will be served by such operation and without further proceedings.~~

~~— (b) Applications of persons who were not contractors on the effective~~

~~date of this section shall be decided in accordance with applicable Board procedure:~~

~~(c) For purposes of this section, the term "person" has the same meaning given that term under section 1 of title 1.~~

## CHAPTER 54--TRANSPORTATION OF MAIL BY AIR

Sec.

5401. Authorization.

5402. Contracts for transportation of mail by air.

~~5403. Fines.~~

### **§ 5401. Authorization**

(a) The Postal Service is authorized to provide for the safe and expeditious transportation of mail by aircraft.

(b) Except as otherwise provided in section 5402 of this title, the Postal Service may make such rules, regulations, and orders consistent with part A of subtitle VII of title 49, or any order, rule, or regulation made by the Secretary of Transportation thereunder, as may be necessary for such transportation.

### **§ 5402. Contracts for transportation of mail by air**

(a) The Postal Service may contract with any certificated air carrier, without advertising for bids, in such manner and under such terms and conditions as it deems appropriate, for the transportation of mail by aircraft between any of the points in foreign air transportation between which the carrier is authorized by the Secretary of Transportation to engage in the transportation of mail. Such contracts shall be for the transportation of at least 750 pounds of mail per flight, and no more than 5 percent, based on weight, of the international mail transported under any such contract shall consist of letter mail. Any such contract shall be filed with the Secretary of Transportation not later than 90 days before its effective date. Unless the Secretary of Transportation shall determine otherwise (under criteria prescribed by section 40101(a) of title 49) not later than 10 days prior to the effective date of the contract, such contract shall become effective.

(b) When the Postal Service deems that the transportation of mail by aircraft is required between points in foreign air transportation between which the Secretary of Transportation has not authorized an air carrier or combination of air carriers to engage in the transportation of mail, it may contract with any air carrier in such manner and under such terms and conditions as it may deem appropriate for the transportation of any class or classes of mail. The transportation of mail under contracts entered into under this subsection is not, except for sections 40109(a) and (c)-(h) and 42112 of title 49, air transportation within the provisions of part A of subtitle VII of title 49. The Postal Service shall cancel such contract, in whole or in respect to certain points as the certificate shall require, upon the issuance by the Secretary of Transportation of an authorization under chapters 411 and 413 of title 49 to any air carrier to engage in the

transportation of mail by aircraft between any of the points named in the contract, and the inauguration of scheduled service by such carrier.

(c) If the Postal Service determines that service by certificated air carriers or combination of air carriers between any pair or pairs of points in foreign air transportation is not adequate for its purposes, it may contract for a period of not more than 4 years, [67] without advertising for bids, in such manner and under such terms and conditions as it may deem appropriate, with any air taxi operator or combination thereof for such air transportation service. Contracts made under this subsection may be renewed at the existing rate by mutual agreement between the holder and the Postal Service. The Postal Service, with the consent of the air taxi operator, may adjust the compensation under such contracts for increased or decreased costs occasioned by changed conditions occurring during the contract term. The Postal Service shall cancel such a contract when the Secretary of Transportation authorizes an additional certificated carrier or carriers to provide service between any pair or pairs of points covered by the contract, and such carrier or carriers inaugurate schedules adequate for its purposes.

~~(d) The Postal Service may determine rates and contract with any air carrier for the transportation of mail by aircraft in interstate air transportation either through negotiations or competitive bidding.~~

*(d)(1) The Postal Service may contract with any air carrier for the transportation of mail by aircraft in interstate air transportation, including the rates therefor, either through negotiations or competitive bidding.*

*(2) Notwithstanding subsections (a)–(c), the Postal Service may contract with any air carrier or foreign air carrier for the transportation of mail by aircraft in foreign air transportation, including the rates therefor, either through negotiations or competitive bidding, except that—*

*(A) any such contract may be awarded only to (i) an air carrier holding a certificate required by section 41101 of title 49 or an exemption therefrom issued by the Secretary of Transportation, (ii) a foreign air carrier holding a permit required by section 41301 of title 49 or an exemption therefrom issued by the Secretary of Transportation, or (iii) a combination of such air carriers or foreign air carriers (or both);*

*(B) mail transported under any such contract shall not be subject to any duty-to-carry requirement imposed by any provision of subtitle VII of title 49 or by any certificate, permit, or corresponding exemption authority issued by the Secretary of Transportation under that subtitle;*

*(C) every contract that the Postal Service awards to a foreign air carrier under this paragraph shall be subject to the continuing requirement that air carriers shall be afforded the same opportunity to carry the mail of the country to and from which the mail is transported and the flag country of the foreign air carrier, if different, as the Postal Service has afforded the foreign air carrier; and*

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<sup>67</sup> Amended by section 501(b)(2) of H.R. 22.

*(D) the Postmaster General shall consult with the Secretary of Defense concerning actions that affect the carriage of military mail transported in foreign air transportation.*

*(3) Paragraph (2) shall not be interpreted as suspending or otherwise diminishing the authority of the Secretary of Transportation under section 41310 of title 49.*

(e) For purposes of this section, the terms "air carrier", "air transportation", "foreign air carrier", "foreign air transportation", "interstate air transportation", and ~~"foreign air transportation"~~ "mail" shall have the meanings given such terms in section 40102(a) of title 49. **[68]**

(f) The authority of the Secretary of Transportation and the Postal Service under subsections (a), (b), and (c) of this section shall also apply, and the authority of the Postal Service under subsection (d) shall not apply, to the transportation of mail by aircraft between any two points both of which are within the State of Alaska and between which the air carrier is authorized by the Secretary to engage in the transportation of mail.

(g)(1) The Postal Service, in selecting carriers of non-priority bypass mail to any point served by more than one carrier in the State of Alaska, shall, at a minimum, require that any such carrier shall--

(A) hold a certificate of public convenience and necessity issued under section 41102(a) of title 49;

(B) operate at least 3 scheduled flights each week to such point;

(C) exhibit an adherence to such scheduled flights to the best of the abilities of such carrier; and

(D) have provided schedule service within the State of Alaska for at least 12 consecutive months with aircraft--

(i) up to 7,500 pounds payload capacity before being selected as a carrier of nonpriority bypass mail at an applicable intra-Alaska bush service mail rate; and

(ii) over 7,500 pounds payload capacity before being selected as a carrier of nonpriority bypass mail at the intra-Alaska mainline service mail rate.

(2) The Postal Service--

(A) may provide direct mainline non-priority bypass mail service to any bush point in the State of Alaska, without regard to paragraph (1)(B), if such service is equal to or better than interline service in cost and quality; and

(B) shall deduct the non-priority bypass mail poundage flown on direct mainline flights to bush points within the State of Alaska by any carrier, from such carrier's allocation of the total poundage of non-priority bypass mail transported to the nearest appropriate Postal Service hub point in any month.

(3)(A) The Postal Service shall determine the bypass mail bush points and hub points described under paragraph (2)(B) after consultation with the State of Alaska and the affected local communities and air carriers.

(B) Any changes in the determinations of the Postal Service

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<sup>68</sup> Subsections (d) and (e) amended by section 502(a) of H.R. 22.

under subparagraph (A) shall be made--

- (i) after consultation with the State of Alaska and the affected local communities and air carriers; and
- (ii) after giving 12 months public notice before any such change takes effect.

**~~§ 5403. Fines [69]~~**

~~—The Postal Service may impose or remit fines on carriers transporting mail by air on routes extending beyond the borders of the United States for--~~

- ~~—(1) unreasonable or unnecessary delay to mail; and~~
- ~~—(2) other delinquencies in the transportation of the mail.~~

**CHAPTER 56--TRANSPORTATION OF MAIL BY  
VESSEL**

Sec.

- 5601. Sea post service.
- 5602. Termination of contracts for foreign transportation.
- 5603. Transportation of mail by vessel as freight or express.
- 5604. Fines on ocean carriers.
- 5605. Contracts for transportation of mail by vessel.

**§ 5601. Sea post service**

The Postal Service may maintain sea post service on ocean vessels conveying mail to and from the United States.

**§ 5602. Termination of contracts for foreign transportation**

Contracts for the transportation of mail by vessel between the United States and a foreign port shall be made subject to cancellation by the Postal Service or the Congress.

**§ 5603. Transportation of mail by vessel as freight or express**

The Postal Service may require that mail be transported by freight or express when--

- (1) there is no competition on a water route and the rate or compensation asked is excessive; or
- (2) no proposal is received.

A common carrier by water that fails or refuses to transport the mail when required to do so under this section shall be fined not more than \$500 for each day of refusal.

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<sup>69</sup> Section repealed by section 504 of H.R. 22.

**§ 5604. Fines on ocean carriers**

The Postal Service may impose or remit fines on carriers transporting mail by vessel on routes extending beyond the borders of the United States for--

- (1) unreasonable or unnecessary delay to the mails; and
- (2) other delinquencies in the transportation of mail.

**§ 5605. Contracts for transportation of mail by vessel**

The Postal Service may contract for the transportation of mail by vessel without advertising for bids for ~~periods of not in excess of 4 years.~~ **[70]**

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<sup>70</sup> Amended by section 501(b)(3) of H.R. 22.

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## II. UNCODIFIED POSTAL PROVISIONS

[The following sections of H.R. 22 do not provide for changes in provisions included in the U.S. Code. Uncodified provisions providing for effective dates, savings provisions, deadlines, and the like are included as notes to related codified provisions.]

### SEC. 104. OTHER REFERENCES.

(a) BOARD OF GOVERNORS, ETC.—Whenever reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, document, or other record of the United States to the Board of Governors of the United States Postal Service (or any Governor or Governors thereof), such reference shall be considered a reference to the Board of Directors of the United States Postal Service (or any Director or Directors thereof, as appropriate).

(b) POSTMASTER GENERAL.—Whenever reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, document, or other record of the United States to the Postmaster General, such reference shall be considered a reference to the Postmaster General and Chief Executive Officer of the United States Postal Service.

(c) POSTAL RATE COMMISSION.—Whenever reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, document, or other record of the United States to the Postal Rate Commission, such reference shall be considered a reference to the Postal Regulatory Commission.

### SEC. 601. EMPLOYEE-MANAGEMENT RELATIONS.

(a) INDEPENDENT STUDY REQUIRED.—The Board of Directors shall, by contract, provide for the National Academy of Public Administration to conduct an independent study as to how employee-management relations within the United States Postal Service may be improved.

(b) SPECIFIC REQUIREMENTS.—Under the contract, the Academy shall be required—

(1) to involve the labor, supervisory, and managerial organizations of the Postal Service in developing the design and specific objectives of the study;

(2) to consult periodically with representatives of the Postal Service, and of those labor, supervisory, and managerial organizations, on the progress of the study; and

(3) to provide opportunity for those labor, supervisory, and managerial organizations to review and submit written comments on the final report.

(c) FINAL REPORT.—

(1) IN GENERAL.—The Academy shall, not later than 12 months after the date on which the contract for the study under this section is entered into, submit its final report to the President, the Congress, the Postal Service, and the labor, supervisory, and managerial organizations of the Postal Service.

(2) CONTENTS.—The report shall contain the findings, conclusions, and recommendations of the Academy on all matters required to be addressed by the study, and shall also include all written comments submitted to the Academy under subsection (b)(3).

(d) COOPERATION.—The Board of Directors shall take appropriate measures to ensure that all components of the Postal Service cooperate fully with the Academy in the conduct of its study under this section.

#### **SEC. 603. STUDY ON EQUAL APPLICATION OF LAWS TO COMPETITIVE PRODUCTS.**

(a) IN GENERAL.—The Federal Trade Commission shall prepare and submit to the President and Congress, within 1 year after the date of enactment of this Act, a comprehensive report identifying Federal and State laws that apply differently to products of the United States Postal Service in the competitive category of mail (as that term is defined in chapter 37 of title 39, United States Code, as amended by this Act) and similar products provided by private companies.

(b) RECOMMENDATIONS.—The Federal Trade Commission shall include such recommendations as it considers appropriate for bringing such legal discrimination to an end.

(c) CONSULTATION.—In preparing its report, the Federal Trade Commission shall consult with the United States Postal Service, the Postal Regulatory Commission, other Federal agencies, mailers, private companies that provide delivery services, and the general public, and shall append to such report any written comments received under this subsection.

#### **SEC. 604. GREATER DIVERSITY IN POSTAL SERVICE EXECUTIVE AND ADMINISTRATIVE SCHEDULE MANAGEMENT POSITIONS.**

(a) STUDY.—The Board of Directors shall study and, within 1 year after the date of enactment of this Act, submit to the President and Congress a report concerning the extent to which women and minorities are represented in supervisory and management positions within the United States Postal Service. Any data included in the report shall be presented in the aggregate and by pay level.

(b) PERFORMANCE EVALUATIONS.—The United States Postal Service shall, as soon as practicable, take such measures as may be necessary to ensure that, for purposes of conducting performance appraisals of supervisory or managerial employees, appropriate consideration shall be given to meeting affirmative action goals, achieving equal employment

opportunity requirements, and implementation of plans designed to achieve greater diversity in the workforce.

**SEC. 605. PLAN FOR ASSISTING DISPLACED WORKERS.**

(a) PLAN.—The United States Postal Service shall, before the deadline specified in subsection (b), develop and be prepared to implement, whenever necessary, a comprehensive plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation or privatization of any of its functions.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the United States Postal Service shall submit to its Board of Directors and Congress a written report describing its plan under this section.

**SEC. 606. CONTRACTS WITH WOMEN, MINORITIES, AND SMALL BUSINESSES.**

The Board of Directors shall study and, within 1 year after the date of enactment of this Act, submit to the President and the Congress a report concerning the number and value of contracts and subcontracts the Postal Service has entered into with women, minorities, and small businesses.

**SEC. 607. DEFINITION.**

For purposes of this title, the term "Board of Directors" has the meaning given such term by section 102 of title 39, United States Code (as amended by section 101 of this Act).

**SEC. 813. ENHANCED PENALTIES.**

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall amend its sentencing guidelines to—

(1) appropriately enhance penalties in cases in which a defendant is convicted of stealing or destroying a quantity of undelivered United States mail, in violation of sections 1702, 1703, 1708, 1709, 2114, or 2115 of title 18, United States Code; and

(2) establish that the intended loss in a theft of an access device as defined in section 1029(e)(1) of title 18, United States Code, shall be based on the credit line of the access device or the actual unauthorized charges, whichever amount is greater.

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## III. INSPECTOR GENERAL ACT OF 1978

[5 USCA App 3 §1 et seq. Selected provisions]

### **§ 2. Purpose and establishment of Offices of Inspector General; departments and agencies involved**

In order to create independent and objective units--

(1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2);

(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations; and

(3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action; there is hereby established in each of such establishments an office of Inspector General.

### **§ 3. Appointment of Inspector General; supervision; removal; political activities; appointment of Assistant Inspector General for Auditing and Assistant Inspector General for Investigations**

(a) There shall be at the head of each Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. Each Inspector General shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment. Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(b) An Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both

Houses of Congress.

(c) For the purposes of section 7324 of Title 5, United States Code, no Inspector General shall be considered to be an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws.

(d) Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service--

(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations of the establishment, and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.

#### **§ 4. Duties and responsibilities; report of criminal violations to Attorney General**

(a) It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established--

(1) to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of such establishment;

(2) to review existing and proposed legislation and regulations relating to programs and operations of such establishment and to make recommendations in the semiannual reports required by section 5(a) concerning the impact of such legislation or regulations on the economy and efficiency in the administration of programs and operations administered or financed by such establishment or the prevention and detection of fraud and abuse in such programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(4) to recommend policies for, and to conduct, supervise, or coordinate relationships between such establishment and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by such establishment, or (B) the identification and prosecution of participants in such fraud or abuse; and

(5) to keep the head of such establishment and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such

corrective action.

(b)(1) In carrying out the responsibilities specified in subsection (a)(1), each Inspector General shall--

(A) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions;

(B) establish guidelines for determining when it shall be appropriate to use non-Federal auditors; and

(C) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General as described in paragraph (1).

(2) For purposes of determining compliance with paragraph (1)(A) with respect to whether internal quality controls are in place and operating and whether established audit standards, policies, and procedures are being followed by Offices of Inspector General of establishments defined under section 11(2), Offices of Inspector General of designated Federal entities defined under section 8F(a)(2), and any audit office established within a Federal entity defined under section 8F(a)(1), reviews shall be performed exclusively by an audit entity in the Federal Government, including the General Accounting Office or the Office of Inspector General of each establishment defined under section 11(2), or the Office of Inspector General of each designated Federal entity defined under section 8F(a)(2).

(c) In carrying out the duties and responsibilities established under this Act, each Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) In carrying out the duties and responsibilities established under this Act, each Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

**§ 5. Semiannual reports; transmittal to Congress; availability to public; immediate report on serious or flagrant problems; disclosure of information; definitions.**

(a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to--

(1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of such establishment disclosed by such activities during the reporting period;

(2) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to paragraph (1);

(3) an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been

completed;

(4) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;

(5) a summary of each report made to the head of the establishment under section 6(b)(2) during the reporting period;

(6) a listing, subdivided according to subject matter, of each audit report issued by the Office during the reporting period and for each audit report, where applicable, the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs) and the dollar value of recommendations that funds be put to better use;

(7) a summary of each particularly significant report;

(8) statistical tables showing the total number of audit reports and the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs), for audit reports--

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including--

(i) the dollar value of disallowed costs; and

(ii) the dollar value of costs not disallowed; and

(D) for which no management decision has been made by the end of the reporting period;

(9) statistical tables showing the total number of audit reports and the dollar value of recommendations that funds be put to better use by management, for audit reports--

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including--

(i) the dollar value of recommendations that were agreed to by management; and

(ii) the dollar value of recommendations that were not agreed to by management; and

(D) for which no management decision has been made by the end of the reporting period;

(10) a summary of each audit report issued before the commencement of the reporting period for which no management decision has been made by the end of the reporting period (including the date and title of each such report), an explanation of the reasons such management decision has not been made, and a statement concerning the desired timetable for achieving a management decision on each such report;

(11) a description and explanation of the reasons for any significant revised management decision made during the reporting period;

(12) information concerning any significant management decision with which the Inspector General is in disagreement; and

(13) the information described under section 05(b) of the Federal

Financial Management Improvement Act of 1996.

(b) Semiannual reports of each Inspector General shall be furnished to the head of the establishment involved not later than April 30 and October 31 of each year and shall be transmitted by such head to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment containing--

- (1) any comments such head determines appropriate;
- (2) statistical tables showing the total number of audit reports and the dollar value of disallowed costs, for audit reports--
  - (A) for which final action had not been taken by the commencement of the reporting period;
  - (B) on which management decisions were made during the reporting period;
  - (C) for which final action was taken during the reporting period, including--
    - (i) the dollar value of disallowed costs that were recovered by management through collection, offset, property in lieu of cash, or otherwise; and
    - (ii) the dollar value of disallowed costs that were written off by management; and
  - (D) for which no final action has been taken by the end of the reporting period;
- (3) statistical tables showing the total number of audit reports and the dollar value of recommendations that funds be put to better use by management agreed to in a management decision, for audit reports--
  - (A) for which final action had not been taken by the commencement of the reporting period;
  - (B) on which management decisions were made during the reporting period;
  - (C) for which final action was taken during the reporting period, including--
    - (i) the dollar value of recommendations that were actually completed; and
    - (ii) the dollar value of recommendations that management has subsequently concluded should not or could not be implemented or completed; and
  - (D) for which no final action has been taken by the end of the reporting period; and
- (4) a statement with respect to audit reports on which management decisions have been made but final action has not been taken, other than audit reports on which a management decision was made within the preceding year, containing--
  - (A) a list of such audit reports and the date each such report was issued;
  - (B) the dollar value of disallowed costs for each report;
  - (C) the dollar value of recommendations that funds be put to better use agreed to by management for each report; and
  - (D) an explanation of the reasons final action has not been taken with respect to each such audit report,

except that such statement may exclude such audit reports that are under formal administrative or judicial appeal or upon which management of an establishment has agreed to pursue a legislative solution, but shall identify the number of reports in each category so excluded.

(c) Within sixty days of the transmission of the semiannual reports of each Inspector General to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost. Within 60 days after the transmission of the semiannual reports of each establishment head to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost.

(d) Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate.

(e)(1) Nothing in this section shall be construed to authorize the public disclosure of information which is--

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(2) Notwithstanding paragraph (1)(C), any report under this section may be disclosed to the public in a form which includes information with respect to a part of an ongoing criminal investigation if such information has been included in a public record.

(3) Except to the extent and in the manner provided under section 6103(f) of the Internal Revenue Code of 1986 [ 26 U.S.C.A. § 6103(f)], nothing in this section or in any other provision of this Act shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof.

(f) As used in this section--

(1) the term "questioned cost" means a cost that is questioned by the Office because of--

(A) an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;

(B) a finding that, at the time of the audit, such cost is not supported by adequate documentation; or

(C) a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable;

(2) the term "unsupported cost" means a cost that is questioned by the Office because the Office found that, at the time of the audit, such cost is not supported by adequate documentation;

(3) the term "disallowed cost" means a questioned cost that

management, in a management decision, has sustained or agreed should not be charged to the Government;

(4) the term "recommendation that funds be put to better use" means a recommendation by the Office that funds could be used more efficiently if management of an establishment took actions to implement and complete the recommendation, including--

(A) reductions in outlays;

(B) deobligation of funds from programs or operations;

(C) withdrawal of interest subsidy costs on loans or loan guarantees, insurance, or bonds;

(D) costs not incurred by implementing recommended improvements related to the operations of the establishment, a contractor or grantee;

(E) avoidance of unnecessary expenditures noted in preaward reviews of contract or grant agreements; or

(F) any other savings which are specifically identified;

(5) the term "management decision" means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary; and

(6) the term "final action" means--

(A) the completion of all actions that the management of an establishment has concluded, in its management decision, are necessary with respect to the findings and recommendations included in an audit report; and

(B) in the event that the management of an establishment concludes no action is necessary, final action occurs when a management decision has been made.

**§ 6. Authority of Inspector General; information and assistance from Federal agencies; unreasonable refusal; office space and equipment**

(a) In addition to the authority otherwise provided by this Act, each Inspector General, in carrying out the provisions of this Act, is authorized--

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act;

(2) to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable;

(3) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State, or local governmental agency or unit thereof;

(4) to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data

and documentary evidence necessary in the performance of the functions assigned by this Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court: Provided, That procedures other than subpoenas shall be used by the Inspector General to obtain documents and information from Federal agencies;

(5) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this Act, which oath, affirmation, or affidavit when administered or taken by or before an employee of an Office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;

(6) to have direct and prompt access to the head of the establishment involved when necessary for any purpose pertaining to the performance of functions and responsibilities under this Act;

(7) to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office subject to the provisions of Title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(8) to obtain services as authorized by section 3109 of Title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS-18 of the General Schedule by section 5332 of Title 5, United States Code; and

(9) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this Act.

(b)(1) Upon request of an Inspector General for information or assistance under subsection (a)(3), the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested, furnish to such Inspector General, or to an authorized designee, such information or assistance.

(2) Whenever information or assistance requested under subsection (a)(1) or (a)(3) is, in the judgment of an Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay.

(c) Each head of an establishment shall provide the Office within such establishment with appropriate and adequate office space at central and field office locations of such establishment, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

(d) For purposes of the provisions of title 5, United States Code,

governing the Senior Executive Service, any reference in such provisions to the "appointing authority" for a member of the Senior Executive Service or for a Senior Executive Service position shall, if such member or position is or would be within the Office of an Inspector General, be deemed to be a reference to such Inspector General.

### **§ 7. Complaints by employees; disclosure of identity; reprisals**

(a) The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

(b) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(c) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

### **§8G. *Special provisions concerning the United States Postal Service* [71]**

*(a) Notwithstanding the last two sentences of section 3(a), the Inspector General of the United States Postal Service shall report to and be under the general supervision of the Postmaster General, but shall not report to, or be subject to supervision by, any other officer or employee of the United States Postal Service or its Board of Directors. No such officer or employee (including the Postmaster General) or member of such Board shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.*

*(b) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the United States Postal Service shall have oversight responsibility for all activities of the Postal Inspection Service, including any internal investigation performed by the Postal Inspection Service. The Chief Postal Inspector shall promptly report the significant activities being carried out by the Postal Inspection Service to such Inspector General.*

*(c) Any report required to be transmitted by the Postmaster General to the appropriate committees or subcommittees of the Congress under*

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<sup>71</sup> Added by subparagraph 702(b)(1)(B) of H.R. 22. For effective date, see note to section 11 of Inspector General Act.

*section 5(d) shall also be transmitted, within the 7-day period specified under such section, to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate.*

*(d) Notwithstanding any provision of paragraph (7) or (8) of section 6(a), the Inspector General of the United States Postal Service may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the United States Postal Service.*

*(e) Nothing in this Act shall restrict, eliminate, or otherwise adversely affect any of the rights, privileges, or benefits of employees of the United States Postal Service, or labor organizations representing employees of the United States Postal Service, under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations with the United States Postal Service, or any collective bargaining agreement.*

*(f) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Office of Inspector General of the United States Postal Service.*

*(g) As used in this section, 'Postmaster General', 'Board of Directors', and 'Board' each has the meaning given it by section 102 of title 39, United States Code.*

## **§ 8G 8H. Requirements for Federal entities and designated Federal entities [72]**

(a) Notwithstanding section 11 of this Act, as used in this section--

(1) the term "Federal entity" means any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive branch of the Government, or any independent regulatory agency, but does not include--

(A) an establishment (as defined under section 11(2) of this Act) or part of an establishment;

(B) a designated Federal entity (as defined under paragraph (2) of this subsection) or part of a designated Federal entity;

(C) the Executive Office of the President;

(D) the Central Intelligence Agency;

(E) the General Accounting Office; or

(F) any entity in the judicial or legislative branches of the

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<sup>72</sup> Renumbered by section 702(b)(1)(A) of H.R. 22. Substantive amendments to this section—other than the addition of "and the Postal Regulatory Commission" in paragraph (a)(2)—provided by subsection 702(e)(1) of H.R. 22. For effective date, see note to section 11 of Inspector General Act.

Government, including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;

(2) the term "designated Federal entity" means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Election Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the Tennessee Valley Authority, the United States International Trade Commission, ~~the Postal Regulatory Commission and the United States Postal Service and the Postal Regulatory Commission~~; [73]

(3) the term "head of the Federal entity" means any person or persons designated by statute as the head of a Federal entity, and if no such designation exists, the chief policymaking officer or board of a Federal entity as identified in the list published pursuant to subsection (h)(1) of this section;

(4) the term "head of the designated Federal entity" means any person or persons designated by statute as the head of a designated Federal entity and if no such designation exists, the chief policymaking officer or board of a designated Federal entity as identified in the list published pursuant to subsection (h)(1) of this section, ~~except that =~~

~~(A) with respect to the National Science Foundation, such term means the National Science Board; and~~

~~(B) with respect to the United States Postal Service, such term means the Governors (within the meaning of section 102(3) of title 39, United States Code);~~

*except that with respect to the National Science Foundation, such term means the National Science Board*

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<sup>73</sup> "Postal Regulatory Commission" added by section 701(a) of H.R. 22. Subsection 701(c) provides:

(c) DEADLINE.—No later than 180 days after the date of enactment of this Act—

(1) the first Inspector General of the Postal Regulatory Commission shall be appointed; and

(2) the Office of Inspector General of the Postal Regulatory Commission shall be established.

The phrase "the Postal Regulatory Commission, and the United States Postal Service" is struck by section 701(e)(1)(i) and "Postal Regulatory Commission" is reinserted. For effective date see note to section 11 of the Inspector General Act.

(5) the term "Office of Inspector General" means an Office of Inspector General of a designated Federal entity; and

(6) the term "Inspector General" means an Inspector General of a designated Federal entity.

(b) No later than 180 days after the date of the enactment of this section [Oct. 18, 1988], there shall be established and maintained in each designated Federal entity an Office of Inspector General. The head of the designated Federal entity shall transfer to such office the offices, units, or other components, and the functions, powers, or duties thereof, that such head determines are properly related to the functions of the Office of Inspector General and would, if so transferred, further the purposes of this section. There shall not be transferred to such office any program operating responsibilities.

~~(c) Except as provided under subsection (f) of this section, the~~ *The* Inspector General shall be appointed by the head of the designated Federal entity in accordance with the applicable laws and regulations governing appointments within the designated Federal entity.

(d) Each Inspector General shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity. The head of the designated Federal entity shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(e) If an Inspector General is removed from office or is transferred to another position or location within a designated Federal entity, the head of the designated Federal entity shall promptly communicate in writing the reasons for any such removal or transfer to both Houses of the Congress.

~~(f)(1) For purposes of carrying out subsection (c) with respect to the United States Postal Service, the appointment provisions of section 202(e) of title 39, United States Code, shall be applied:~~

~~(2) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the United States Postal Service (hereinafter in this subsection referred to as the "Inspector General") shall have oversight responsibility for all activities of the Postal Inspection Service, including any internal investigation performed by the Postal Inspection Service. The Chief Postal Inspector shall promptly report the significant activities being carried out by the Postal Inspection Service to such Inspector General.~~

~~(3) (A)(i) Notwithstanding subsection (d), the Inspector General shall be under the authority, direction, and control of the Governors with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning--~~

~~(I) ongoing civil or criminal investigations or proceedings;~~

~~(II) undercover operations;~~

~~(III) the identity of confidential sources, including protected witnesses;~~

~~(IV) intelligence or counterintelligence matters; or~~

~~(V) other matters the disclosure of which would~~

~~constitute a serious threat to national security.~~

~~(ii) With respect to the information described under clause (i), the Governors may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Governors determine that such prohibition is necessary to prevent the disclosure of any information described under clause (i) or to prevent the significant impairment to the national interests of the United States.~~

~~(iii) If the Governors exercise any power under clause (i) or (ii), the Governors shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.~~

~~(B) In carrying out the duties and responsibilities specified in this Act, the Inspector General--~~

~~(i) may initiate, conduct and supervise such audits and investigations in the United States Postal Service as the Inspector General considers appropriate; and~~

~~(ii) shall give particular regard to the activities of the Postal Inspection Service with a view toward avoiding duplication and insuring effective coordination and cooperation.~~

~~(C) Any report required to be transmitted by the Governors to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives.~~

~~(3) Nothing in this Act shall restrict, eliminate, or otherwise adversely affect any of the rights, privileges, or benefits of either employees of the United States Postal Service, or labor organizations representing employees of the United States Postal Service, under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations with the United States Postal Service, or any collective bargaining agreement.~~

~~(4) As used in this subsection, the term "Governors" has the meaning given such term by section 102(3) of title 39, United States Code.~~

(g)(1) Sections 4, 5, 6 (other than subsections (a)(7) and (a)(8) thereof), and 7 of this Act shall apply to each Inspector General and Office of Inspector General of a designated Federal entity and such sections shall be

applied to each designated Federal entity and head of the designated Federal entity (as defined under subsection (a)) by substituting--

(A) "designated Federal entity" for "establishment"; and

(B) "head of the designated Federal entity" for "head of the establishment".

(2) In addition to the other authorities specified in this Act, an Inspector General is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the designated Federal entity.

(3) Notwithstanding the last sentence of subsection (d) of this section, the provisions of subsection (a) of section 8C (other than the provisions of subparagraphs (A), (B), (C), and (E) of subsection (a)(1)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.

(h)(1) No later than April 30, 1989, and annually thereafter, the Director of the Office of Management and Budget, after consultation with the Comptroller General of the United States, shall publish in the Federal Register a list of the Federal entities and designated Federal entities and the head of each such entity (as defined under subsection (a) of this section).

(2) Beginning on October 31, 1989, and on October 31 of each succeeding calendar year, the head of each Federal entity (as defined under subsection (a) of this section) shall prepare and transmit to the Director of the Office of Management and Budget and to each House of the Congress a report which--

(A) states whether there has been established in the Federal entity an office that meets the requirements of this section;

(B) specifies the actions taken by the Federal entity otherwise to ensure that audits are conducted of its programs and operations in accordance with the standards for audit of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States, and includes a list of each audit report completed by a Federal or non-Federal auditor during the reporting period and a summary of any particularly significant findings; and

(C) summarizes any matters relating to the personnel, programs, and operations of the Federal entity referred to prosecutive authorities, including a summary description of any preliminary investigation conducted by or at the request of the Federal entity concerning these matters, and the prosecutions and convictions which have resulted.

## § 11. Definitions

As used in this Act--

(1) the term "head of the establishment" means the Secretary of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Labor, State, Transportation, or the Treasury; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, Small Business, or Veterans' Affairs; the Director of the Federal Emergency Management Agency, the Office of Personnel Management or the United States Information Agency; the Chairman of the Nuclear Regulatory Commission or the Railroad Retirement Board; the Chairperson of the Thrift Depositor Protection Oversight Board; the Chief Executive Officer of the Corporation for National and Community Service;; the Administrator of the Community Development Financial Institutions Fund; ~~and~~ the chief executive officer of the Resolution Trust Corporation; ~~and~~ the Chairperson of the Federal Deposit Insurance Corporation; ~~or~~ the Commissioner of Social Security, Social Security Administration; *or the Postmaster General and Chief Executive Officer of the United States Postal Service*; as the case may be;

(2) the term "establishment" means the Department of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, or the Treasury; the Agency for International Development, the Community Development Financial Institutions Fund, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Small Business Administration, the United States Information Agency, the Corporation for National and Community Service, ~~or~~ the Veterans' Administration, ~~or~~ the Social Security Administration, *or the United States Postal Service*; as the case may be;

(3) the term "Inspector General" means the Inspector General of an establishment;

(4) the term "Office" means the Office of Inspector General of an establishment; and

(5) the term "Federal agency" means an agency as defined in section 552(e) of Title 5 (including an establishment as defined in paragraph (2)), United States Code, but shall not be construed to include the General Accounting Office. [74]

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<sup>74</sup> This section amended by section 702(a) of H.R. 22. Subsection 702(f) of HR 22 provides that:

(f) EFFECTIVE DATE; ELIGIBILITY OR PRIOR INSPECTOR GENERAL.—

(1) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B) or in subsection (c) or (d), this section and the amendments made by this section shall take effect on the date of enactment of this Act.

(B) SPECIAL RULES.—

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(i) IN GENERAL.—If the position of Inspector General of the United States Postal Service is occupied on the date of enactment of this Act (other than by an individual serving due to a vacancy arising in that position before the expiration of his or her predecessor's term), then, for purposes of the period beginning on such date of enactment and ending on January 5, 2004, or, if earlier, the date on which such individual ceases to serve in that position, title 39, United States Code, and the Inspector General Act of 1978 shall be applied as if the amendments made by this section had not been enacted, except—

(I) for those made by subsections (c) and (d); and

(II) as provided in clause (ii).

(ii) AUTHORIZATION OF APPROPRIATIONS.—

(I) IN GENERAL.—Notwithstanding any other provision of this paragraph, subsection (f) of section 8G of the Inspector General Act of 1978 (as amended by this section) shall be effective for purposes of fiscal years beginning on or after October 1, 2000.

(II) SAVINGS PROVISION.—For purposes of the fiscal year ending on September 30, 2000, funding for the Office of Inspector General of the United States Postal Service shall be made available in the same manner as if this Act had never been enacted.

(2) ELIGIBILITY OF PRIOR INSPECTOR GENERAL.—Nothing in this Act shall prevent any individual who has served as Inspector General of the United States Postal Service at any time before the date of enactment of this Act from being appointed to that position pursuant to the amendments made by this section.

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## IV. TITLE 18 CRIMES AND CRIMINAL PROCEDURE

[Selected provisions. Although not amended by H.R. 22, provisions of Title 18 relating to private express and mailbox access, and associated penalties, are included below for convenience.]

### **§ 111. Assaulting, resisting, or impeding certain officers or employees [75]**

(a) IN GENERAL.—Whoever—

(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or

(2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 on account of the performance of official duties during such person's term of service,

shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and in all other cases, be fined under this title or imprisoned not more than three years, or both.

(b) ENHANCED PENALTY.—Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon (including a weapon intended to cause death or danger but that fails to do so by reason of a defective component) or inflicts bodily injury, shall be fined under this title or imprisoned not more than ten years, or both.

\* \* \* \*

### **§ 501. Postage stamps, postage meter stamps, and postal cards [76]**

Whoever forges or counterfeits any postage stamp, postage meter stamp, or any stamp printed upon any stamped envelope, or postal card, or any die, plate, or engraving thereof; or

Whoever makes or prints, or knowingly ~~uses or sells~~ *uses or sells or attempts to use or sell*, or possesses with intent to use or sell, any such

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<sup>75</sup> Scope of this section affected by related amendment to 39 USC 1008.

<sup>76</sup> Amended by section 815(b)(1) of H.R. 22.

forged or counterfeited postage stamp, postage meter stamp, stamped envelope, postal card, die, plate, or engraving; or

Whoever makes, or knowingly uses or sells, or possesses with intent to use or sell, any paper bearing the watermark of any stamped envelope, or postal card, or any fraudulent imitation thereof; or

Whoever makes or prints, or authorizes to be made or printed, any postage stamp, postage meter stamp, stamped envelope, or postal card, of the kind authorized and provided by the Post Office Department or by the Postal Service, without the special authority and direction of the Department or Postal Service; or

Whoever after such postage stamp, postage meter stamp, stamped envelope, or postal card has been printed, with intent to defraud, delivers the same to any person not authorized by an instrument in writing, duly executed under the hand of the ~~Postmaster General~~ *Postmaster General and Chief Executive Officer of the United States Postal Service* and the seal of the Post Office Department or the Postal Service, to receive it--

Shall be fined under this title or imprisoned not more than five years, or both.

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**§ 881. Stalking Federal and postal officers and employees [77]**

(a) *Whoever—*

*(1) repeatedly engages in conduct (including maintaining a visual or physical proximity or communicating a verbal or written threat) directed at another person who is or was an officer or employee—*

*(A) in the executive, legislative, or judicial branch of the Federal Government; or*

*(B) in the United States Postal Service;*

*while such other person is engaged in official duties or on account of such duties;*

*(2) knows that such conduct is likely to place that other person in reasonable fear of sexual battery, bodily injury, or death; and*

*(3) thereby induces such fear in that other person;*

*shall be punished as provided in subsection (b) of this section.*

*(b)(1) The punishment for an offense under subsection (a) is—*

*(A) in the case of a first conviction under such subsection—*

*(i) if, during the commission of the offense, the offender uses a deadly or dangerous weapon, a fine under this title or imprisonment for not more than 10 years, or both;*

*(ii) if the offense violates a protective order, a fine under this title or imprisonment for not more than 5 years, or both; and*

*(iii) in any other case, a fine under this title or imprisonment for not more than 3 years, or both; and*

*(B) in the case of a second or subsequent conviction under such subsection, a fine under this title or imprisonment for not*

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<sup>77</sup> This section added by section 811(a) of H.R. 22.

*more than 15 years, or both.*

*(2) If a sentence of probation is imposed for an offense under this section, the court shall require the defendant to undergo appropriate psychiatric, psychological, or social counselling.*

*(c)(1) Whoever is aggrieved by a violation of this section may, in a civil action, obtain appropriate relief from the person engaging in that violation. Such relief may include compensatory and punitive damages, and injunctive or declaratory relief, and shall include reasonable attorney's fees.*

*(2) If—*

*(A) the court issues an injunction under this subsection;*

*(B) the person against whom the injunction is issued is an officer or employee in the executive branch of the Federal Government or in the United States Postal Service; and*

*(C) there is a nexus between the enjoined conduct and such person's office or employment; the court may order that the person be suspended or summarily discharged from such office or employment.*

*(d) As used in this section, the term 'protective order' means any court order that requires an individual—*

*(1) to refrain from behavior prohibited by subsection (a); or*

*(2) to refrain from contact with the person who subsequently is a victim of the offense under such subsection that is committed by that individual.*

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#### **§ 1114. Protection of officers and employees of the United States [78]**

Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance, shall be punished--

(1) in the case of murder, as provided under section 1111;

(2) in the case of manslaughter, as provided under section 1112; or

(3) in the case of attempted murder or manslaughter, as provided in section 1113.

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#### **§ 1693. Carriage of mail generally**

Whoever, being concerned in carrying the mail, collects, receives, or carries any letter or packet, contrary to law, shall be fined under this title or imprisoned not more than thirty days, or both.

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<sup>78</sup> Scope of this section affected by related amendment to 39 USC 1008.

**§ 1694. Carriage of matter out of mail over post routes**

Whoever, having charge or control of any conveyance operating by land, air, or water, which regularly performs trips at stated periods on any post route, or from one place to another between which the mail is regularly carried, carries, otherwise than in the mail, any letters or packets, except such as relate to some part of the cargo of such conveyance, or to the current business of the carrier, or to some article carried at the same time by the same conveyance, shall, except as otherwise provided by law, be fined under this title.

**§ 1695. Carriage of matter out of mail on vessels**

Whoever carries any letter or packet on board any vessel which carries the mail, otherwise than in such mail, shall, except as otherwise provided by law, be fined under this title or imprisoned not more than thirty days, or both.

**§ 1696. Private express for letters and packets**

(a) Whoever establishes any private express for the conveyance of letters or packets, or in any manner causes or provides for the conveyance of the same by regular trips or at stated periods over any post route which is or may be established by law, or from any city, town, or place to any other city, town, or place, between which the mail is regularly carried, shall be fined not more than \$500 or imprisoned not more than six months, or both.

This section shall not prohibit any person from receiving and delivering to the nearest post office, postal car, or other authorized depository for mail matter any mail matter properly stamped.

(b) Whoever transmits by private express or other unlawful means, or delivers to any agent thereof, or deposits at any appointed place, for the purpose of being so transmitted any letter or packet, shall be fined under this title.

(c) This chapter shall not prohibit the conveyance or transmission of letters or packets by private hands without compensation, or by special messenger employed for the particular occasion only. Whenever more than twenty-five such letters or packets are conveyed or transmitted by such special messenger, the requirements of section 601 of title 39, shall be observed as to each piece.

**§ 1697. Transportation of persons acting as private express**

Whoever, having charge or control of any conveyance operating by land, air, or water, knowingly conveys or knowingly permits the conveyance of any person acting or employed as a private express for the conveyance of letters or packets, and actually in possession of the same for the purpose of conveying them contrary to law, shall be fined under this title.

**§ 1698. Prompt delivery of mail from vessel**

Whoever, having charge or control of any vessel passing between ports or places in the United States, and arriving at any such port or place where there is a post office, fails to deliver to the postmaster or at the post office, within three hours after his arrival, if in the daytime, and if at night, within two hours after the next sunrise, all letters and packages brought by him or within his power or control and not relating to the cargo, addressed to or destined for such port or place, shall be fined under this title.

**§ 1699. Certification of delivery from vessel**

No vessel arriving within a port or collection district of the United States shall be allowed to make entry or break bulk until all letters on board are delivered to the nearest post office, except where waybilled for discharge at other ports in the United States at which the vessel is scheduled to call and the Postal Service does not determine that unreasonable delay in the mails will occur, and the master or other person having charge or control thereof has signed and sworn to the following declaration before the collector or other proper customs officer:

I, A.B., master \_\_\_\_\_, of the \_\_\_\_\_, arriving from \_\_\_\_\_, and now lying in the port of \_\_\_\_\_, do solemnly swear (or affirm) that I have to the best of my knowledge and belief delivered to the post office at \_\_\_\_\_ every letter and every bag, packet, or parcel of letters on board the said vessel during her last voyage, or in my possession or under my power or control, except where waybilled for discharge at other ports in the United States at which the said vessel is scheduled to call and which the Postal Service has not determined will be unreasonably delayed by remaining on board the said vessel for delivery at such ports.

Whoever, being the master or other person having charge or control of such vessel, breaks bulk before he has arranged for such delivery or onward carriage, shall be fined under this title.

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**§ 1702. Obstruction of correspondence**

Whoever takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined under this title or imprisoned not more than five years, or both.

**§ 1703. Delay or destruction of mail or newspapers**

(a) Whoever, being a Postal Service officer or employee, unlawfully secretes, destroys, detains, delays, or opens any letter, postal card, package,

bag, or mail entrusted to him or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any carrier or other employee of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the ~~Postmaster General~~ *Postmaster General and Chief Executive Officer of the United States Postal Service* or the Postal Service, shall be fined under this title or imprisoned not more than five years, or both.

(b) Whoever, being a Postal Service officer or employee, improperly detains, delays, or destroys any newspaper, or permits any other person to detain, delay, or destroy the same, or opens, or permits any other person to open, any mail or package of newspapers not directed to the office where he is employed; or

Whoever, without authority, opens, or destroys any mail or package of newspapers not directed to him, shall be fined under this title or imprisoned not more than one year, or both.

#### **§ 1704. Keys or locks stolen or reproduced**

Whoever steals, purloins, embezzles, or obtains by false pretense any key suited to any lock adopted by the Post Office Department or the Postal Service and in use on any of the mails or bags thereof, or any key to any lock box, lock drawer, or other authorized receptacle for the deposit or delivery of mail matter; or

Whoever knowingly and unlawfully makes, forges, or counterfeits any such key, or possesses any such mail lock or key with the intent unlawfully or improperly to use, sell, or otherwise dispose of the same, or to cause the same to be unlawfully or improperly used, sold, or otherwise disposed of; or

Whoever, being engaged as a contractor or otherwise in the manufacture of any such mail lock or key, delivers any finished or unfinished lock or the interior part thereof, or key, used or designed for use by the department, to any person not duly authorized under the hand of the ~~Postmaster General~~ *Postmaster General and Chief Executive Officer of the United States Postal Service* and the seal of the Post Office Department or the Postal Service, to receive the same, unless the person receiving it is the contractor for furnishing the same or engaged in the manufacture thereof in the manner authorized by the contract, or the agent of such manufacturer--

Shall be fined under this title or imprisoned not more than ten years, or both.

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#### **§ 1709. Theft of mail matter by officer or employee**

Whoever, being a Postal Service officer or employee, embezzles any letter, postal card, package, bag, or mail, or any article or thing contained therein entrusted to him or which comes into his possession intended to be conveyed by mail, or carried or delivered by any carrier, messenger, agent, or other person employed in any department of the Postal Service, or

forwarded through or delivered from any post office or station thereof established by authority of the ~~Postmaster General~~ *Postmaster General and Chief Executive Officer of the United States Postal Service* or of the Postal Service; or steals, abstracts, or removes from any such letter, package, bag, or mail, any article or thing contained therein, shall be fined under this title or imprisoned not more than five years, or both.

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### **§ 1711. Misappropriation of postal funds [79]**

Whoever, being a Postal Service officer or employee, loans, uses, pledges, hypothecates, or converts to his own use, *attempts to loan, use, pledge, hypothecate, or convert to this own use*, or deposits in any bank, or exchanges for other funds or property, except as authorized by law, any money or property coming into his hands or under his control in any manner, in the execution or under color of his office, employment, or service, whether or not the same shall be the money or property of the United States; or fails or refuses to remit to or deposit in the Treasury of the United States or in a designated depository, or to account for or turn over to the proper officer or agent, any such money or property, when required to do so by law or the regulations of the Postal Service, or upon demand or order of the Postal Service, either directly or through a duly authorized officer or agent, is guilty of embezzlement; and every such person, as well as every other person advising or knowingly participating therein, shall be fined under this title or in a sum equal to the amount or value of the money or property embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount or value thereof does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

This section shall not prohibit any Postal Service officer or employee from depositing, under the direction of the Postal Service, in a national bank designated by the Secretary of the Treasury for that purpose, to his own credit as Postal Service officer or employee, any funds in his charge, nor prevent his negotiating drafts or other evidences of debt through such bank, or through United States disbursing officers, or otherwise, when instructed or required so to do by the Postal Service, for the purpose of remitting surplus funds from one post office to another.

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### **§ 1716. Injurious articles as nonmailable**

(a) All kinds of poison, and all articles and compositions containing poison, and all poisonous animals, insects, reptiles, and all explosives, inflammable materials, infernal machines, and mechanical, chemical, or other devices or compositions which may ignite or explode, and all disease germs or scabs, and all other natural or artificial articles, compositions, or

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<sup>79</sup> Amended by section 815(b)(2) of H.R. 22.

material which may kill or injure another, or injure the mails or other property, whether or not sealed as first-class matter, are nonmailable matter and shall not be conveyed in the mails or delivered from any post office or station thereof, nor by any officer or employee of the Postal Service.

(b) The Postal Service may permit the transmission in the mails, under such rules and regulations as it shall prescribe as to preparation and packing, of any such articles which are not outwardly or of their own force dangerous or injurious to life, health, or property.

(c) The Postal Service is authorized and directed to permit the transmission in the mails, under regulations to be prescribed by it, of live scorpions which are to be used for purposes of medical research or for the manufacture of antivenom. Such regulations shall include such provisions with respect to the packaging of such live scorpions for transmission in the mails as the Postal Service deems necessary or desirable for the protection of Postal Service personnel and of the public generally and for ease of handling by such personnel and by any individual connected with such research or manufacture. Nothing contained in this paragraph shall be construed to authorize the transmission in the mails of live scorpions by means of aircraft engaged in the carriage of passengers for compensation or hire.

(d) The transmission in the mails of poisonous drugs and medicines may be limited by the Postal Service to shipments of such articles from the manufacturer thereof or dealer therein to licensed physicians, surgeons, dentists, pharmacists, druggists, cosmetologists, barbers, and veterinarians under such rules and regulations as it shall prescribe.

(e) The transmission in the mails of poisons for scientific use, and which are not outwardly dangerous or of their own force dangerous or injurious to life, health, or property, may be limited by the Postal Service to shipments of such articles between the manufacturers thereof, dealers therein, bona fide research or experimental scientific laboratories, and such other persons who are employees of the Federal, a State, or local government, whose official duties are comprised, in whole or in part, of the use of such poisons, and who are designated by the head of the agency in which they are employed to receive or send such articles, under such rules and regulations as the Postal Service shall prescribe.

(f) All spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind are nonmailable and shall not be deposited in or carried through the mails.

(g) All knives having a blade which opens automatically (1) by hand pressure applied to a button or other device in the handle of the knife, or (2) by operation of inertia, gravity, or both, are nonmailable and shall not be deposited in or carried by the mails or delivered by any officer or employee of the Postal Service. Such knives may be conveyed in the mails, under such regulations as the Postal Service shall prescribe--

(1) to civilian or Armed Forces supply or procurement officers and employees of the Federal Government ordering, procuring, or purchasing such knives in connection with the activities of the Federal Government;

(2) to supply or procurement officers of the National Guard, the Air National Guard, or militia of a State ordering, procuring, or

purchasing such knives in connection with the activities of such organizations;

(3) to supply or procurement officers or employees of any State, or any political subdivision of a State or Territory, ordering, procuring, or purchasing such knives in connection with the activities of such government; and

(4) to manufacturers of such knives or bona fide dealers therein in connection with any shipment made pursuant to an order from any person designated in paragraphs (1), (2), and (3).

The Postal Service may require, as a condition of conveying any such knife in the mails, that any person proposing to mail such knife explain in writing to the satisfaction of the Postal Service that the mailing of such knife will not be in violation of this section.

(h) Any advertising, promotional, or sales matter which solicits or induces the mailing of anything declared nonmailable by this section is likewise nonmailable unless such matter contains wrapping or packaging instructions which are in accord with regulations promulgated by the Postal Service.

(i)(1) Any ballistic knife shall be subject to the same restrictions and penalties provided under subsection (g) for knives described in the first sentence of that subsection.

(2) As used in this subsection, the term "ballistic knife" means a knife with a detachable blade that is propelled by a spring-operated mechanism.

Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything declared nonmailable by this section, unless in accordance with the rules and regulations authorized to be prescribed by the Postal Service, shall be fined under this title or imprisoned not more than one year, or both.

Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon or at any place to which it is directed to be delivered by the person to whom it is addressed, anything declared nonmailable by this section, whether or not transmitted in accordance with the rules and regulations authorized to be prescribed by the Postal Service, with intent to kill or injure another, or injure the mails or other property, shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both.

Whoever is convicted of any crime prohibited by this section, which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life.

(j) For purposes of this section, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

*Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, unless in accordance with the rules and regulations authorized to be prescribed by the Postal Service, any controlled*

*substance, as that term is defined for the purposes of the Controlled Substances Act, shall, if the distribution of a like amount of such substance is a felony under such Act, be fined under this title or imprisoned not more than 5 years, or both. [80]*

\* \* \* \*

#### **§ 1725. Postage unpaid on deposited mail matter**

Whoever knowingly and willfully deposits any mailable matter such as statements of accounts, circulars, sale bills, or other like matter, on which no postage has been paid, in any letter box established, approved, or accepted by the Postal Service for the receipt or delivery of mail matter on any mail route with intent to avoid payment of lawful postage thereon, shall for each such offense be fined under this title.

\* \* \* \*

#### **§ 1735. Sexually oriented advertisements**

(a) Whoever--

(1) willfully uses the mails for the mailing, carriage in the mails, or delivery of any sexually oriented advertisement in violation of section 3010 of title 39, or willfully violates any regulations of the Board of ~~Governors~~ *Directors* issued under such section; or

(2) sells, leases, rents, lends, exchanges, or licenses the use of, or, except for the purpose expressly authorized by section 3010 of title 39, uses a mailing list maintained by the Board of Governors under such section;

shall be fined under this title or imprisoned not more than five years, or both, for the first offense, and shall be fined under this title or imprisoned not more than ten years, or both, for any second or subsequent offense.

(b) For the purposes of this section, the term "sexually oriented advertisement" shall have the same meaning as given it in section 3010(d) of title 39.

\* \* \* \*

#### **§ 1737. Manufacturer of sexually related mail matter [81]**

(a) Whoever shall print, reproduce, or manufacture any sexually related mail matter, intending or knowing that such matter will be deposited for mailing or delivery by mail in violation of section ~~3008~~ or 3010 of title 39, or in violation of any regulation of the Postal Service issued under such section, shall be fined under this title or imprisoned not more than five years, or both, for the first offense, and shall be fined under this title or

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<sup>80</sup> Amended by section 812 of H.R. 22.

<sup>81</sup> Amended by section 802(b)(2)(B) of H.R. 22. For effective date, see note to 39 USC 3011.

imprisoned not more than ten years, or both, for any second or subsequent offense.

(b) As used in this section, the term "sexually related mail matter" means any matter which is within the scope of section ~~3008(a)~~ or 3010(d) of title 39.

\* \* \* \*

#### **§ 2114. Mail, money, or other property of United States [82]**

~~(a) Assault.--A person who assaults any person having lawful charge, control, or custody of any mail matter or of any money or other property of the United States, with intent to rob, steal, or purloin such mail matter, money, or other property of the United States, or robs or attempts to rob any such person of mail matter, or of any money, or other property of the United States, shall, for the first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery he wounds the person having custody of such mail, money, or other property of the United States, or puts his life in jeopardy by the use of a dangerous weapon, or for a subsequent offense, shall be imprisoned not more than twenty-five years.~~

*(a) ASSAULT.—Whoever assaults any person having lawful charge, control, or custody of any mail matter or of any money or other property of the United States, with intent to rob, steal, or purloin such mail matter, money, or other property of the United States, or robs or attempts to rob any such person of mail matter, or of any money, or other property of the United States, shall, for the first offense, be imprisoned not more than 10 years or fined under this title, or both. If, in effecting or attempting to effect such robbery the defendant wounds the person having custody of such mail, money, or other property of the United States, or puts that person's life in jeopardy by the use of a dangerous weapon, or the offense is a subsequent offense under this subsection, the defendant shall be imprisoned not more than 25 years or fined under this title, or both. If the death of any person results from the offense under this subsection, the defendant shall be punished by death or life imprisonment.*

(b) Receipt, possession, concealment, or disposal of property.--A person who receives, possesses, conceals, or disposes of any money or other property that has been obtained in violation of this section, knowing the same to have been unlawfully obtained, shall be imprisoned not more than 10 years, fined under this title, or both.

#### **§ 2115. Post office [83]**

*(a) Whoever forcibly breaks into or attempts to break into any post office, or any building used in whole or in part as a post office or any post office box or postal products vending machine, with intent to commit in such post office, or building or part thereof, so used or in such box or*

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<sup>82</sup> Amended by section 815(a) of H.R. 22.

<sup>83</sup> Amended by section 814 of H.R. 22.

*machine*, any larceny or other depredation, shall be fined under this title or imprisoned not more than five years, or both.

*(b) Whoever receives, possesses, conceals, or disposes of any mail matter, money, or other property of the United States, that has been obtained in violation of this section, knowing the same to have been unlawfully obtained, shall be fined under this title or imprisoned not more than 5 years, or both.*

\* \* \* \*

### **§ 3061. Investigative powers of Postal Service personnel**

(a) Subject to subsection (b) of this section, Postal Inspectors and other agents of the United States Postal Service designated by the Board of ~~Governors~~ *Directors* to investigate criminal matters related to the Postal Service and the mails may--

- (1) serve warrants and subpoenas issued under the authority of the United States;
- (2) make arrests without warrant for offenses against the United States committed in their presence;
- (3) make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony;
- (4) carry firearms; and
- (5) make seizures of property as provided by law.

(b) The powers granted by subsection (a) of this section shall be exercised only--

- (1) in the enforcement of laws regarding property in the custody of the Postal Service, property of the Postal Service, the use of the mails, and other postal offenses; and
- (2) to the extent authorized by the Attorney General pursuant to agreement between the Attorney General and the Postal Service, in the enforcement of other laws of the United States, if the Attorney General determines that violations of such laws have a detrimental effect upon the operations of the Postal Service.

\* \* \* \*

### **§ 3559. Sentencing classification of offenses**

(a) Classification.--An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is--

- (1) life imprisonment, or if the maximum penalty is death, as a Class A felony;
- (2) twenty-five years or more, as a Class B felony;
- (3) less than twenty-five years but ten or more years, as a Class C felony;
- (4) less than ten years but five or more years, as a Class D felony;

(5) less than five years but more than one year, as a Class E felony;

(6) one year or less but more than six months, as a Class A misdemeanor;

(7) six months or less but more than thirty days, as a Class B misdemeanor;

(8) thirty days or less but more than five days, as a Class C misdemeanor; or

(9) five days or less, or if no imprisonment is authorized, as an infraction.

(b) Effect of classification.--Except as provided in subsection (c), an offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the law describing the offense.

(c) Imprisonment of certain violent felons.--

(1) Mandatory life imprisonment.--Notwithstanding any other provision of law, a person who is convicted in a court of the United States of a serious violent felony shall be sentenced to life imprisonment if--

(A) the person has been convicted (and those convictions have become final) on separate prior occasions in a court of the United States or of a State of--

(i) 2 or more serious violent felonies; or

(ii) one or more serious violent felonies and one or more serious drug offenses; and

(B) each serious violent felony or serious drug offense used as a basis for sentencing under this subsection, other than the first, was committed after the defendant's conviction of the preceding serious violent felony or serious drug offense.

(2) Definitions.--For purposes of this subsection--

(A) the term "assault with intent to commit rape" means an offense that has as its elements engaging in physical contact with another person or using or brandishing a weapon against another person with intent to commit aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242);

(B) the term "arson" means an offense that has as its elements maliciously damaging or destroying any building, inhabited structure, vehicle, vessel, or real property by means of fire or an explosive;

(C) the term "extortion" means an offense that has as its elements the extraction of anything of value from another person by threatening or placing that person in fear of injury to any person or kidnapping of any person;

(D) the term "firearms use" means an offense that has as its elements those described in section 924(c) or 929(a), if the firearm was brandished, discharged, or otherwise used as a weapon and the crime of violence or drug trafficking crime during and relation to which the firearm was used was subject to prosecution in a court of the United States or a court of a State, or both;

(E) the term "kidnapping" means an offense that has as its elements the abduction, restraining, confining, or carrying away of

another person by force or threat of force;

(F) the term "serious violent felony" means--

(i) a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in section 1111); manslaughter other than involuntary manslaughter (as described in section 1112); assault with intent to commit murder (as described in section 113(a)); assault with intent to commit rape; aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242); abusive sexual contact (as described in sections 2244 (a)(1) and (a)(2)); kidnapping; aircraft piracy (as described in section 46502 of Title 49); robbery (as described in section 2111, 2113, or 2118); carjacking (as described in section 2119); extortion; arson; firearms use; or attempt, conspiracy, or solicitation to commit any of the above offenses; and

(ii) any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense;

(G) the term "State" means a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States; and

(H) the term "serious drug offense" means--

(i) an offense that is punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)); or

(ii) an offense under State law that, had the offense been prosecuted in a court of the United States, would have been punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)).

(3) Nonqualifying felonies.--

(A) Robbery in certain cases.--Robbery, an attempt, conspiracy, or solicitation to commit robbery; or an offense described in paragraph (2)(F)(ii) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that--

(i) no firearm or other dangerous weapon was used in the offense and no threat of use of a firearm or other dangerous weapon was involved in the offense; and

(ii) the offense did not result in death or serious bodily injury (as defined in section 1365) to any person.

(B) Arson in certain cases.--Arson shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that--

- (i) the offense posed no threat to human life; and
- (ii) the defendant reasonably believed the offense posed no threat to human life.

(4) Information filed by United States Attorney.--The provisions of section 411(a) of the Controlled Substances Act (21 U.S.C. 851(a)) shall apply to the imposition of sentence under this subsection.

(5) Rule of construction.--This subsection shall not be construed to preclude imposition of the death penalty.

(6) Special provision for Indian country.--No person subject to the criminal jurisdiction of an Indian tribal government shall be subject to this subsection for any offense for which Federal jurisdiction is solely predicated on Indian country (as defined in section 1151) and which occurs within the boundaries of such Indian country unless the governing body of the tribe has elected that this subsection have effect over land and persons subject to the criminal jurisdiction of the tribe.

(7) Resentencing upon overturning of prior conviction.--If the conviction for a serious violent felony or serious drug offense that was a basis for sentencing under this subsection is found, pursuant to any appropriate State or Federal procedure, to be unconstitutional or is vitiated on the explicit basis of innocence, or if the convicted person is pardoned on the explicit basis of innocence, the person serving a sentence imposed under this subsection shall be resentenced to any sentence that was available at the time of the original sentencing.

\* \* \* \*

### **§ 3571. Sentence of fine**

(a) In general.--A defendant who has been found guilty of an offense may be sentenced to pay a fine.

(b) Fines for individuals.--Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of--

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$250,000;
- (4) for a misdemeanor resulting in death, not more than \$250,000;
- (5) for a Class A misdemeanor that does not result in death, not more than \$100,000;
- (6) for a Class B or C misdemeanor that does not result in death, not more than \$5,000; or
- (7) for an infraction, not more than \$5,000.

(c) Fines for organizations.--Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of--

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$500,000;
- (4) for a misdemeanor resulting in death, not more than \$500,000;
- (5) for a Class A misdemeanor that does not result in death, not

more than \$200,000;

(6) for a Class B or C misdemeanor that does not result in death, not more than \$10,000; and

(7) for an infraction, not more than \$10,000.

(d) Alternative fine based on gain or loss.--If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

(e) Special rule for lower fine specified in substantive provision.--If a law setting forth an offense specifies no fine or a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.

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## V. TITLE 28 JUDICIARY AND JUDICIAL PROCEDURE

[Selected provisions]

### § 2341. Definitions [84]

As used in this chapter--

(1) "clerk" means the clerk of the court in which the petition for the review of an order, reviewable under this chapter, is filed;

(2) "petitioner" means the party or parties by whom a petition to review an order, reviewable under this chapter, is filed; and

(3) "agency" means--

(A) the Commission, when the order sought to be reviewed was entered by the Federal Communications Commission, the Federal Maritime Commission, *the Postal Regulatory Commission*, or the Atomic Energy Commission, as the case may be;

(B) the Secretary, when the order was entered by the Secretary of Agriculture or the Secretary of Transportation;

(C) the Administration, when the order was entered by the Maritime Administration;

(D) the Secretary, when the order is under section 812 of the Fair Housing Act; and

(E) the Board, when the order was entered by the Surface Transportation Board.

### § 2342. Jurisdiction of court of appeals [85]

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of--

(1) all final orders of the Federal Communications Commission made reviewable by section 402(a) of title 47;

(2) all final orders of the Secretary of Agriculture made under chapters 9 and 20A of title 7, except orders issued under sections 210(e), 217a, and 499g(a) of title 7;

(3) all rules, regulations, or final orders of--

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<sup>84</sup> Amended by section 202(e)(2)(B) of H.R. 22. For effective date, see note to 39 USC 3621.

<sup>85</sup> Amended by section 202(e)(2)(B) of H.R. 22. For effective date, see note to 39 USC 3621.

(A) the Secretary of Transportation issued pursuant to section 2, 9, 37, or 41 of the Shipping Act, 1916 (46 U.S.C. App. 802, 803, 808, 835, 839, and 841a) or pursuant to part B or C of subtitle IV of title 49; and

(B) the Federal Maritime Commission issued pursuant to--

(i) section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876);

(ii) section 14 or 17 of the Shipping Act of 1984 (46 U.S.C. App. 1713 or 1716); or

(iii) section 2(d) or 3(d) of the Act of November 6, 1966 (46 U.S.C. App. 817d(d) or 817e(d);

[(iv) and (v) Redesignated (ii) and (iii)]

(4) all final orders of the Atomic Energy Commission made reviewable by section 2239 of title 42;

(5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2321 of this title;

(6) all final orders under section 812 of the Fair Housing Act; ~~and~~

(7) all final agency actions described in section 20114(c) of title 49; *and*

(8) *all final orders of the Postal Regulatory Commission made reviewable by section 3628(b) of title 39.*

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

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## VI. OTHER STATUTES

[The following sections of H.R. 22 provide for amendments to provisions in the U.S. Code not included above.]

### SEC. 101. REDESIGNATION OF THE BOARD OF GOVERNORS.

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(b) AMENDMENT TO THE FEDERAL SALARY ACT OF 1967.—Section 225(f)(E) of the Federal Salary Act of 1967 (2 U.S.C. 356(E)) is amended by striking "Governors of the Board of Governors of the United States Postal Service" and inserting "Directors of the Board of Directors of the United States Postal Service".

(c) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended in sections 8344(e) and 8468(c) by striking "Governor of the Board of Governors of the United States Postal Service" and inserting "Director of the Board of Directors of the United States Postal Service".

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

(1) in section 101(f)(6) by striking "Governor of the Board of Governors of the United States Postal Service" and inserting "Director of the Board of Directors of the United States Postal Service"; and

(2) in sections 103(c) and 106(b)(6) by striking "Governors of the Board of Governors of the United States Postal Service" and inserting "Directors of the Board of Directors of the United States Postal Service".

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### SEC. 102. REDESIGNATION OF THE POSTMASTER GENERAL.

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

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### SEC. 103. REDESIGNATION OF THE POSTAL RATE COMMISSION

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(b) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United

States Code, is amended in sections 104(1), 306(f), 2104(b), 3371(3), 5314 (in the item relating to Chairman, Postal Rate Commission), 5315 (in the item relating to Members, Postal Rate Commission), 5514(a)(5)(B), 7342(a)(1)(A), 7511(a)(1)(B)(ii), 8402(c)(1), 8423(b)(1)(B), and 8474(c)(4) by striking "Postal Rate Commission" and inserting "Postal Regulatory Commission".

(c) AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978.—Section 101(f)(6) Of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking "Postal Rate Commission" and inserting "Postal Regulatory Commission".

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

(e) AMENDMENT TO TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking "Postal Rate Commission" and inserting "Postal Regulatory Commission".

**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.**

(a) IN GENERAL.—Section 8 of the Postal Reorganization Act (39 U.S.C. 1001 note) is amended by inserting "(a)" after "8." and by adding at the end the following:

"(b) For purposes of chapter 81 of title 5, United States Code, the Postal Service shall, with respect to any individual receiving benefits under such chapter as an officer or employee of the former Post Office Department, have the same authorities and responsibilities as it has with respect to an officer or employee of the Postal Service receiving such benefits."

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on October 1, 1999.

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

\* \* \* \*

(b) SPECIFIC POWERS.—

\* \* \* \*

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

**SEC. 502. EXPANDED CONTRACTING AUTHORITY**

\* \* \* \*

(b) AMENDMENTS TO TITLE 49, UNITED STATES CODE.—

(1) REPEAL.—Effective December 31, 1998, section 4(k) of Public

Law 103–272 (108 Stat. 1370), as amended by section 7(a)(3)(D) of Public Law 103–429 (108 Stat. 4389), is repealed.

(2) AUTHORITY OF POSTAL SERVICE TO PROVIDE FOR INTERSTATE AIR TRANSPORTATION OF MAIL.—Section 41901(a) of title 49, United States Code, is amended to read as follows:

"(a) TITLE 39.—The United States Postal Service may provide for the transportation of mail by aircraft in air transportation under this chapter and under chapter 54 of title 39."

(3) SCHEDULES FOR CERTAIN TRANSPORTATION OF MAIL.—Section 41902(b) of title 49, United States Code is—

(A) by striking paragraph (1);

(B) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively; and

(C) in paragraph (2), as so redesignated, by striking "clauses (1) and (2)" and inserting "paragraph (1)".

(4) PRICES FOR FOREIGN TRANSPORTATION OF MAIL.—Section 41907 of title 49, United States Code, is amended—

(A) by striking "(a) LIMITATIONS.—"; and

(B) by striking subsection (b).

(5) CONFORMING AMENDMENTS.—Sections 41107, 41901(b), 41902(a), 41903(a), and 41903(b) of title 49, United States Code, are amended by striking "in foreign air transportation or".

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**APPENDIX 1**  
**TABLE OF SECTIONS**  
**AFFECTED**

### Sections of Title 39 Affected by H.R. 22

*Note:* redesignations and minor conforming amendments not included.

*Ordered by section of Title 39*

<u>Title39</u>	<u>H.R.22</u>	<u>Title39</u>	<u>H.R.22</u>
102(4)	702(e)(2)(B)	202(e)	702(e)(2)(A)
102(5)	102(a)	2401(e)	402(a)
102(6)	205(a)	2402	702(c)(2)
102(7)	205(a)	2803(a)	402(b)
202(a)	212(b)	2804(a)	402(b)
202(b)	212(b)	2806	602(a)
401(2)	301	3008	802(b)(1)
403(c)	302	3011(b)	802(a)
404(a)	305(b)(2)	3011(f)	802(b)(2)
404(a)(6)	205(b)	3013	702(d)(1)
404(b)(6)	304	3016	804(a)
404(c)	303	3601(a)	212(a)
404a	305	3603	202(j)
407	306(a)	3604(d)	213(a)
409(a)	307(b)	3604(f)	211
409(c)-(h)	307(a)	3604(g)	211
601(a)	503(b)	3604(h)	701(b)
601(b)	503(a)	3621	202(a)
601(b)	503(b)	3622	202(b)
1003(a)	702(e)(2)(C)	3623	202(c)
1003(b)	702(e)(2)(D)	3624	202(d)
1003(c)	702(e)(2)(E)	3626(a)	202(i)
1008(a)	801(1)	3626(n)	215
1008(b)	801(2)	3628	202(e)
2001	203(b)(1)	3641	202(f)
2002(b)	203(b)(2)	3662	202(g)
2003(a)	203(b)(3)(A)	3663	202(k)
2003(b)	203(b)(3)(B)	3684	202(h)
2003(b)(7)	803	3686	214(a)
2003(c)	203(b)(4)	3701-74	201(a)
2003(e)	213(b)(2)	5005(a)	501(a)(2)(A)
2005(a)	203(b)(5)	5005(b)(1)	501(a)(1)(B)
2005(b)	203(b)(5)(C)	5005(b)(1)	501(b)(1)
2006(b)	203(b)(6)(A)	5005(c)	501(a)(1)(C)
2006(c)	203(b)(6)(B)	5201-15	501(a)(1)
2008(d)	702(c)(3)	5402(c)	501(b)(2)
2008(e)	702(c)(1)	5402(d)	502(a)
2009	213(b)(1)	5403	504(a)
2011	203(a)	5605	501(b)(3)
2012	204(a)		

*Ordered by section of H.R. 22*

<u>Title39</u>	<u>H.R.22</u>	<u>Title39</u>	<u>H.R.22</u>
102(5)	102(a)	404(c)	303
3701-74	201(a)	404(b)(6)	304
3621	202(a)	404a	305
3622	202(b)	407	306(a)
3623	202(c)	409(c)-(h)	307(a)
3624	202(d)	409(a)	307(b)
3628	202(e)	2401(e)	402(a)
3641	202(f)	2803(a)	402(b)
3662	202(g)	2804(a)	402(b)
3684	202(h)	5201-15	501(a)(1)
3626(a)	202(i)	5005(b)(1)	501(a)(1)(B)
3603	202(j)	5005(c)	501(a)(1)(C)
3663	202(k)	5005(a)	501(a)(2)(A)
2011	203(a)	5005(b)(1)	501(b)(1)
2001	203(b)(1)	5402(c)	501(b)(2)
2002(b)	203(b)(2)	5605	501(b)(3)
2003(a)	203(b)(3)(A)	5402(d)	502(a)
2003(b)	203(b)(3)(B)	601(b)	503(a)
2003(c)	203(b)(4)	601(a)	503(b)
2005(a)	203(b)(5)	601(b)	503(b)
2005(b)	203(b)(5)(C)	5403	504(a)
2006(b)	203(b)(6)(A)	2806	602(a)
2006(c)	203(b)(6)(B)	3604(h)	701(b)
2012	204(a)	2008(e)	702(c)(1)
102(6)	205(a)	2402	702(c)(2)
102(7)	205(a)	2008(d)	702(c)(3)
404(a)(6)	205(b)	3013	702(d)(1)
3604(f)	211	202(e)	702(e)(2)(A)
3604(g)	211	102(4)	702(e)(2)(B)
3601(a)	212(a)	1003(a)	702(e)(2)(C)
202(a)	212(b)	1003(b)	702(e)(2)(D)
202(b)	212(b)	1003(c)	702(e)(2)(E)
3604(d)	213(a)	1008(a)	801(1)
2009	213(b)(1)	1008(b)	801(2)
2003(e)	213(b)(2)	3011(b)	802(a)
3686	214(a)	3008	802(b)(1)
3626(n)	215	3011(f)	802(b)(2)
401(2)	301	2003(b)(7)	803
403(c)	302	3016	804(a)

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**APPENDIX 2  
SIDE-BY-SIDE TABLE  
OF CURRENT LAW AND  
HR 22 PROVISIONS**

Key to effective dates, in "ED" column, provided at end.

	Current law	H.R. 22	ED
<b>I. INSTITUTIONAL FRAMEWORK</b>			
1. Application of laws to USPS	USPS is exempt from antitrust laws, has sovereign immunity from tort law (USPS claim of immunity from Lanham Act, rejected by courts), exempt from state regulatory laws.	USPS subject to Lanham Act (unfair competition) and laws prohibiting unfair advertising §307(a) [39§409(c)].  Non-monopoly services subject to antitrust law and sovereign immunity waived. §307(a) [39§409(d)].	01
		Vehicles used primarily for competitive products subject to state traffic laws and licenses. §307(a) [39§409(e)]	40
2. Postal monopoly	USPS has statutory monopoly over carriage of "letters"; USPS regulations claim a broad interpretation of monopoly and "suspend" the monopoly for particular classes of persons and in particular circumstances.	"Letters" are exempt from postal monopoly if either (i) priced more than 6 times basic stamp price or (ii) weighing more than 12.5 oz. §503(b)[39§601(a)].  USPS suspension power repealed, §503(a); services benefitting from current suspensions are grandfathered. §503(b)[39§601(a)].	30
3. Crimes against Postal Service	Various statutes establish criminal penalties for offenses against USPS property or personnel.	New criminal penalties enacted for assaulting persons under contract with USPS; stalking USPS employees; mailing of controlled substances; robbery of post office boxes and vending machines not in post offices. Penalties against sexually oriented advertising and mailing of hazardous matter enhanced. §§801-15	01
4. International postal policy	Dept of State sets US policy at Universal Postal Union, in consultation with other federal agencies and interested parties. USPS negotiates operational treaties and represents US on operational issues. No statutory guidelines on policy or consultation.	Dept. of State sets US policy for all inter-governmental matters, in consultation with other federal agencies and in accord with statutory policy guidelines. US may not conclude treaties giving USPS or anyone else "undue or unreasonable preference" with respect to any competitive product. Dept of State to consult with interested parties and establish an advisory committee per Federal Advisory Committee Act. USPS may conclude international commercial contracts without force of international law. §306 [39§407].	01
5. Application of customs laws	US Customs and foreign customs authorities apply customs laws differently to similar postal and private shipments, partly as matter of national law and partly due to UPU Convention.	For <i>imported and exported</i> shipments, US Customs required to apply US law in the same manner to competitive products as to similar private shipments. §306 [39§407(d)]	01
		For <i>exported</i> shipments, USPS required to use foreign customs procedures available to all US private operators for clearance of competitive products. For <i>imported</i> shipments, US Customs may deny expedited customs procedures to foreign post offices if foreign countries grant expedited customs procedures to postal operators generally but deny to US operators. §306 [39§407(d)].	50

Current law	H.R. 22	ED
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## II. DIVISION OF NON-COMPETITIVE AND COMPETITIVE PRODUCTS

6. Categories of non-competitive and competitive products	No provision.	Present postal products placed in non-competitive category or competitive category by statute. Competitive products: priority mail, express mail, mail grams, bulk international mail, and bulk parcels. §201 [39§3731, 3741].  <b>Category transfer case.</b> PRC may transfer products from non-competitive to competitive category. The test is the presence of "effective competition," not absence of legal monopoly (like FCC "dominant carrier" rule). §201 [39§3764].	01
7. Baseline rate case	No provision.	<b>Baseline rate case:</b> USPS must request PRC Recommended Decision for all rates of non-competitive and competitive products. Retain current ratemaking factors except no allowance for contingency. Recommended Decision will include revenue need determination by PRC. Baseline rates shall become effective no later than 18 months after enactment. §201[39§3721].	02
8. Funds	All USPS funds held in Postal Service Fund. USPS can borrow at low rates from Federal Financing Bank. USPS obligations are, with approval of Treasury, backed by full faith and credit of US.	In addition to Postal Service Fund, a new Competitive Products Fund (CPF) is established for revenues and expenses associated with competitive products. CPF does not have full faith and credit of US or access to Federal Financing Bank.	01
9. Assets	All assets owned by USPS; no distinction between non-competitive and competitive.	PRC, based on a proposals by USPS, is to determine assets associated with competitive products. §203 [39§2011(h)].	01

## III. REGULATION OF NON-COMPETITIVE POSTAL PRODUCTS

11. Baskets of products	No provision.	Non-competitive products divided into 4 baskets: (1) single letters and parcels (domestic and international) and special services; (2) bulk letters; (3) periodicals; (4) advertisements. §201 [39§3731].	10
12 Mail classes	<b>Domestic: Classification case.</b> Prior to any change in classification, USPS must request PRC to give a Recommended Decision.  <i>International:</i> USPS establishes classes and subclasses without PRC Recommended Decision.	<b>Classification case.</b> Prior to any change in classification, USPS must request PRC to give a Recommended Decision; 10-month deadline added. §202(c) [39§3623]; §202(d) [39§3624].	10
13. Rate categories	<i>Domestic:</i> USPS can establish discounts for groups of mailers to reflect costs avoided by worksharing.	Negotiated service agreements (NSAs). In addition to rate categories, USPS can establish NSAs tailored to needs and worksharing abilities of specific mailers, provided NSA makes same unit contribution to institutional costs as undiscounted rates. Must be available to similarly situated mailers; small mailers	10

	Current law	H.R. 22	ED
	<i>International:</i> No restrictions on NSA-type arrangements.	may combine to obtain NSAs. Prior approval by PRC not required but NSA can be disapproved by PRC for violation of statutory standards or implementing regulations. §202(f) [39§3641].	
14. Limits on discrimination between mailers	USPS prohibited from making "undue or unreasonable discrimination among users of the mails."	USPS prohibited from making "undue or unreasonable discrimination among domestic or international users of the mails." §302 [39§403(c)].	30
15. Rate flexibility	<b>Domestic: Rate case.</b> Prior to any rate change, USPS must request PRC to give a Recommended Decision. No cap to rate levels (total revenue need set by USPS). Each rate must cover attributable costs plus a fair share of overhead costs.  <i>International:</i> No rate cases, but each rate must cover attributable costs plus a fair share of overhead costs.	<b>Adjustment factor rate case.</b> Adjustment factor set by PRC prior to start of each 5-year ratemaking cycle. Adjustment factor based on productivity forecasts, same for all baskets and products. PRC may set positive adjustment factor only if necessary to sustain USPS under "honest, efficient, and economical management" or required by new statutory obligation. Adjustment factor shall not affect rights of employees. PRC may delay deadlines in case of USPS non-production of data. §201 [39§3733].  USPS may adjust non-competitive rates provided rates remain below price caps. Price cap consists of 2 factors: (1) Consumer Price Index (CPI) and (2) adjustment factor. §201 [39§3732(c)]. Non-competitive products must cover attributable costs. §201 [39§3732(b)].	40
16. Exigent circumstances	PRC allows includes a contingency factor in Recommended Decisions for domestic rates.	<b>Exigent Rate Case.</b> USPS may ask PRC for relief from price caps only if necessary to sustain USPS under "honest, efficient, and economical management" or required by new statutory funding obligation. §201 [39§3733(f)].	40
17. Annual rate changes	No provision.	Rates cannot vary from previous year by more than 2 percent above or below the percentage change in the price cap and, in any case, cannot exceed statutory maximum and minimums. USPS can adopt a standard lower than allowed by the percentage change in the price cap in order keep the bottom of this 4-percent zone lower that it otherwise would be. §201 [39§3732(d)].  USPS may adjust rates once per year on 45-day notice; all new rates to be effective at same time. §201 [39§3734].	40
18. Quality of service reports	No PRC monitoring of quality of postal services.	USPS must annually report date on quality of service and customer satisfaction to PRC in form set by PRC. Summary data only required for market test products. §201 [39§3772(b)].	01
19. Market tests	No provision.	USPS may conduct 2-year market tests for new postal products ("significantly different" from products offered within 2 prior years) without regard to price cap and minimum rate requirements if annual revenue are less than \$10 million, provided test does not "create an unfair or otherwise inappropriate competitive advantage for the Postal Service, particularly in regard to small business." PRC can extend test to 3 years. PRC can approve, under regulations, "large scale market tests" earning up to \$100 million per year. §201 [39§§3751, 3753].	30

	Current law	H.R. 22	ED
20. New products	USPS must seek a PRC Recommended Decision on classification and rates before introducing new products.	<b>New non-competitive product case.</b> USPS must seek a PRC Recommended Decision on basket assignment, classification, and baseline rate before introducing a new permanent product (does not apply to market tests). §201[39§3762]	01

#### IV. REGULATION OF COMPETITIVE POSTAL PRODUCTS

21. Mail classes	Same as for non-competitive products.	USPS may establish or end classes for competitive products in its discretion. §202(c) [39§3623].	10
22. Rate categories	Same as for non-competitive products.	USPS may establish or end rate categories for competitive products in its discretion. §202(c) [39§3623].	10
23. Discrimination between mailers	Same as for non-competitive products.	USPS may discriminate among customers of competitive products. §302 [39§403(c)].	30
24. Rate flexibility	Same as for non-competitive products.	USPS may set rates for competitive products subject to two minimum price rules. Competitive products must <ul style="list-style-type: none"> <li>• price of each product must cover costs attributable to the individual product, and</li> <li>• revenue from all competitive products must make at least the same percent contribution to institutional (overhead) costs as non-competitive products ("equal cost coverage rule").</li> </ul> PRC must adjust second rule to "compensate for any significant and objective differences in the nature and composition of costs attributable to competitive and noncompetitive products" taking into consideration, inter alia, "differences in purchased transportation costs, operational costs attributable to a single product, and such other factors as the Commission considers appropriate." §201[39§§3743, 3744].	30
		PRC may phase in equal cost coverage rule during first rate cycle. §201 [39§§3744(d)].	40
25. Mandatory discontinuance	No provision.	<b>Mandatory discontinuance proceeding.</b> PRC may require USPS to discontinue a competitive product (other than a market test product) that "persistently fails to cover the costs attributable to such product." §201 [39§3743(c)].	30
26. Market tests.	No provision.	Similar to rule for market tests of non-competitive products. §201 [39§§3752-53(large)].	30
27. New products	Same as for non-competitive products.	20 days prior to introduction of a new competitive product, USPS must file with the PRC evidence to support conclusion that the (i) the product qualifies as a competitive product and (ii) revenues will cover attributable costs. PRC can block introduction of product if not satisfied. §201[39§3763].	01

#### V. POSTAL SERVICE

28. New titles of officers.	"Board of Governors" directs USPS. CEO is "Postmaster General".	Redesignated as "Board of Directors" "Postmaster General and Chief Executive Officer". §§101-02 [39§202-03]	01
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	Current law	H.R. 22	ED
29 Director qualifications	No provision.	Directors selected by President based on "demonstrated ability in managing organizations" of 100,000 employees or more. One Director shall be appointed with unanimous concurrence of postal labor unions for 3 year term. §212(b) [39§202(b)].	01
30. Bonuses (use of profits)	No provision.	USPS can distribute 100 percent of profits as bonuses, but bonuses may not exceed salary cap unless profits exceed 1% of gross revenues.; PRC may sequester up to 50% of profits if USPS fails to comply with performance goals and legal standards. §201 [39§3773(f)].	30
31. Banking practices	USPS banking practices regulated by Treasury. USPS can invest excess funds in any obligation or security, subject to approval by Treasury. USPS can borrow up to certain statutory limits.	Postal Service Fund: USPS regulated by Treasury same as current law but Treasury may not authorize USPS to use to invest in obligations or securities of private companies. §203(b)(3) [39§2003(c)]. USPS can borrow up to statutory limits.  Competitive Products Fund: USPS not subject to Treasury regulation. USPS cannot invest in private companies, other than USPS Corp. CPF can borrow but can only pledge assets of competitive products, including CPF, as collateral. §203(a) [39§2011].	01
32. Authority to provide non-postal products	USPS authority to under non-postal business is unclear. USPS has begun businesses such as wire transfer of money to Mexico, sale of telephone credit cards, and remittance processing and deemed them "non-postal" and therefore outside review of the PRC.	USPS is authorized to provide non-postal products but only by means of USPS Corp. Non-postal products defined as other than "any service that provides for the physical delivery of letters, printed matter, and packages weighing up to 70 pounds, including physical acceptance, collection, sorting, or transportation services ancillary thereto". §204[39§2012(e)(2)]; §205 [39§102].	01
		Non-postal products begun by USPS after 1/1/94 must be terminated if not transferred to USPS Corp. §305[39§404a(e)].	40
33. USPS Corporation: private law corporation	No provision.	USPS authorized to establish private law corporation to provide any postal or non-postal business. USPS Corp can invest in private companies. USPS Corp can buy services from USPS at fair market value; PRC review limited relations between Corp and USPS. USPS Corp. has no legal privileges of USPS. §204 [39§2012].  After USPS establishes Corp, USPS is required to transfer 50 percent of annual profits (if any) from Competitive Products Fund to Postal Service Fund. §201[39§3745]	30
34. Rulemaking authority of USPS	USPS rulemaking authorized "as it deems necessary to accomplish the objectives of this title."	USPS rulemaking limited to rules "as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title." Excludes USPS rulemaking over postal monopoly. §301 [39§401(2)].	01
		USPS barred from issuing regulations which create an competitive advantage for itself or Corp. §305 [39§404a].	01

	Current law	H.R. 22	ED
34. Limitations on authority of USPS and USPS Corp.	No provision.	USPS and Corp barred from competing in an area which one entity regulates. §305 [39 §404a].	01
		USPS Corp may not provide preparation or processing services for non-competitive products except as authorized by PRC after considering impact on small business. §204[39§2012(h)].	01
35. Air transportation of international mail	Rates that USPS pays airlines for international air transportation of mail generally regulated by Dept of Transportation. USPS may fine international carriers for delays.	USPS may contract for international air transportation of all products except USPS may not contract with foreign air carriers if foreign country does not permit US carriers to transport mail of foreign post office. §502 [39§5402].  USPS may not fine international carriers for delays. §504 [39§5403].	01
36. Commercial mail receiving agencies	Mail received by a CMRA and re-forwarded to new address requires new postage.	Mail received by a CMRA (e.g., Mailboxes, Etc.) and re-forwarded to new address does not require new postage. §214 [39§3686].	01
37. Legal representation	Except in appeal of PRC rate decisions, USPS may not represent itself in court without permission of DOJ.	USPS is authorized and required to represent itself in court in all cases involving application of certain laws (antitrust laws, unfair competition, tort, etc.), appeals of PRC Recommended Decisions, and cases involving PRC subpoenas. §307 [39§409(g)]	01
38. Inspector General	IG appointed by the Board of Governors.	USPS Inspector General appointed by the President with Senate confirmation. §702 [5 USC App 3§8G]. Inspector General of USPS to audit USPS accounts annually. §702(c) [39§2008].	01
39. Diversity in management	No provision.	In performance evaluations for managerial positions, USPS shall take measures necessary to give appropriate consideration to affirmative action, equal employment, and greater diversity. §604(b).	01
40. Forfeiture recoveries	Forfeiture recoveries deposited in Treasury	Forfeiture recoveries deposited in Postal Service Fund if USPS has primary responsibility for investigation. §803[39§2003(b)].	01

#### VI. POSTAL REGULATORY COMMISSION

41. Name of Commission	"Postal Rate Commission"	Redesignate as "Postal Regulatory Commission." §103.	01
42. PRC qualifications	No provision.	Commissioners selected by President based only on "demonstrated expertise in ability in economics, accounting, law or public administration" §212(a) [39§202(a)].	01
43. Annual report	No provision.	PRC shall file an annual report with Congress. §201 [39§3771(a)].	01
44. Cost of public service	No provision.	PRC to estimate public service costs borne by USPS as part of annual audit. §201 [39§3771(b)].	01
45. PRC review of rates	<i>Domestic</i> : statutory standards implemented by PRC through Recommended Decisions prior to rate	Annual audits. Within in 3 months of end of each fiscal year, USPS is required to report costs and revenues to PRC in format set by PRC. §201 [39§3772].	01

	Current law	H.R. 22	ED
	changes. <i>International:</i> PRC provides annual audit of rates.	<b>Costing methodology update case.</b> PRC can initiate case to review and update cost attributions as needed. §201 [39§3772(e)(2)].	
46. Complaints and enforcement	<b>Complaint case.</b> On complaint, PRC can adjust domestic rates via a Recommended Decision. On other issues, PRC gives public report.	<b>Complaint case.</b> On complaint by any party or PRC Consumer Advocate, PRC can issue Recommended Decision for illegal classes, revise illegal rates, cancel illegal market tests, rescind illegal USPS regulations, adjust illegal transfer pricing between USPS and Corp, prohibit USPS from offering illegal non-postal product, and in serious cases issue fines. §202(g) [39§3662].	10
47. PRC subpoena authority	PRC has no subpoena power; USPS maintains right to refuse to comply with PRC discovery orders.	PRC has subpoena power for all proceedings to any individual; failure to obey punishable by court as contempt. §211 [39§3604(f)]	01
48. Protection of confidential USPS data	No provision.	Discovery of commercially sensitive information provided by USPS to PRC, via subpoena or annual reports, subject to PRC protective orders similar to those used by federal courts. §211 [39§3604(g)]; §201 [39§3772(f)], p61.	01
49. Appeal of PRC orders	Final decisions of PRC are reviewed by District Court (except where Governors seek review of a PRC Recommended Decision).	Final decisions by PRC may be appealed to Courts of Appeal. §202(e) [39§3628(b)].	10
50. 6-year reviews	No provision.	PRC is required to report every 6 years on operation of regulatory system with proposals for new legislation, including operation of the equal cost coverage rule, the Competitive Products Fund (with Treasury and DOC), and USPS Corp (with DOJ and DOC). §201 [39§3774].	01
51. Inspector General	No provision.	PRC Inspector General established, appointed by the President, with Senate confirmation. §701 [5 USCA App 3§8G], p133.	02

## VII. STUDIES

52. Employee-management relations	No provision.	National Academy of Public Administration shall prepare a study of employee-management relations and make recommendations within 1 year. §601.	01
53. Universal service	No provision.	USPS shall prepare a review of the universal service obligation and propose specific standards for review by President, Congress, and PRC within 18 months. §602 [39§2806].	01
54. Equal legal treatment for competitive products	No provision.	Federal Trade Commission shall prepare a study of differences in legal treatment of competitive products within 1 year. §603.	01
55. Diversity in postal management	No provision.	Directors shall submit a report to President and Congress on extent to which women and minorities are represented in supervisory and management positions within 1 year. § 604(a).	01

	Current law	H.R. 22	ED
56. Plan for displaced workers	No provision.	USPS shall submit a plan to the Board of Directors and Congress for re-employment assistance for employees displaced as a result of automation or privatization within 1 year. §605.	01
57. Contracts with women, minorities, and small business	No provision.	USPS shall submit a report to President and Congress on the number and value of contracts with women, minorities, and small businesses within 1 year. §606.	01

### Effective dates

- 01 Date of enactment.
- 02 Within 6 months or 180 days after date of enactment.
- 10 *Date on which baseline rates are determined.* Not more than 18 months after date of filing of baseline rate case by Postal Service, which is not more than 6 months after date of enactment. I.e. roughly 1½ to 2 years after date enactment.
- 30 First day of first fiscal year after date on which baseline rates are determined; between 1 day and 1 year after date on which baseline rates are determined. I.e., roughly 2½ to 3½ years after date of enactment.
- 40 *First day of first ratemaking cycle.* First day of second fiscal year beginning after date on which baseline rates are determined, *but* PRC may advance 1 year; between 1 day and 2 years after date on which baseline rates are determined. I.e., roughly 3½ to 4½ years after date of enactment.
- 41 First day of second fiscal year beginning after date on which baseline rates are determined; between 1 year and 2 years after date on which baseline rates are determined.
- 50 5 years after date of enactment.