

(Added Pub. L. 109-435, title II, §202, Dec. 20, 2006, 120 Stat. 3205.)

### § 3632. Action of the Governors

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

(b) **PROCEDURES.**—

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

(2) **RATES OR CLASSES OF GENERAL APPLICABILITY.**—In the case of rates or classes of general applicability in the Nation as a whole or in any substantial region of the Nation, the Governors shall cause each rate and class decision under this section and the record of the Governors' proceedings in connection with such decision to be published in the Federal Register at least 30 days before the effective date of any new rates or classes.

(3) **RATES OR CLASSES NOT OF GENERAL APPLICABILITY.**—In the case of rates or classes not of general applicability in the Nation as a whole or in any substantial region of the Nation, the Governors shall cause each rate and class decision under this section and the record of the proceedings in connection with such decision to be filed with the Postal Regulatory Commission by such date before the effective date of any new rates or classes as the Governors consider appropriate, but in no case less than 15 days.

(4) **CRITERIA.**—As part of the regulations required under section 3633, the Postal Regulatory Commission shall establish criteria for determining when a rate or class established under this subchapter is or is not of general applicability in the Nation as a whole or in any substantial region of the Nation.

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

(Added Pub. L. 109-435, title II, §202, Dec. 20, 2006, 120 Stat. 3206.)

#### REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (c), is the date of enactment of Pub. L. 109-435, which was approved Dec. 20, 2006.

### § 3633. Provisions applicable to rates for competitive products

(a) **IN GENERAL.**—The Postal Regulatory Commission shall, within 18 months after the date of enactment of this section, promulgate (and may from time to time thereafter revise) regulations to—

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

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

(3) ensure that all competitive products collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service.

(b) **REVIEW OF MINIMUM CONTRIBUTION.**—Five years after the date of enactment of this section, and every 5 years thereafter, the Postal Regulatory Commission shall conduct a review to determine whether the institutional costs contribution requirement under subsection (a)(3) should be retained in its current form, modified, or eliminated. In making its determination, the Commission shall consider all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products.

(Added Pub. L. 109-435, title II, §202, Dec. 20, 2006, 120 Stat. 3206.)

#### REFERENCES IN TEXT

The date of enactment of this section, referred to in text, is the date of enactment of Pub. L. 109-435, which was approved Dec. 20, 2006.

#### STUDY ON EQUAL APPLICATION OF LAWS TO COMPETITIVE PRODUCTS

Pub. L. 109-435, title VII, §703, Dec. 20, 2006, 120 Stat. 3244, provided that:

“(a) **IN GENERAL.**—The Federal Trade Commission shall prepare and submit to the President and Congress, and to the Postal Regulatory Commission, within 1 year after the date of enactment of this Act [Dec. 20, 2006], a comprehensive report identifying Federal and State laws that apply differently to the United States Postal Service with respect to the competitive category of mail (within the meaning of section 102 of title 39, United States Code, as amended by section 101) and to private companies providing similar products.

“(b) **RECOMMENDATIONS.**—The Federal Trade Commission shall include such recommendations as it considers appropriate for bringing such legal differences to an end, and in the interim, to account under section 3633 of title 39, United States Code (as added by this Act), for the net economic effects provided by those laws.

“(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.

“(d) **COMPETITIVE PRODUCT REGULATION.**—The Postal Regulatory Commission shall take into account the recommendations of the Federal Trade Commission, and subsequent events that affect the continuing validity of the estimate of the net economic effect, in promulgating or revising the regulations required under section 3633 of title 39, United States Code.”

### § 3634. Assumed Federal income tax on competitive products income

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

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

(2) the term “assumed taxable income from competitive products”, with respect to a year,

refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—

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

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

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

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

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

(c) DEADLINE FOR TRANSFERS.—Any transfer required to be made under this section for a year shall be due on or before the January 15th next occurring after the close of such year.

(Added Pub. L. 109-435, title IV, §402, Dec. 20, 2006, 120 Stat. 3226.)

#### REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a), is classified to Title 26, Internal Revenue Code.

### SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

#### AMENDMENTS

2006—Pub. L. 109-435, title II, §203, Dec. 20, 2006, 120 Stat. 3207, substituted “PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS” for “TEMPORARY RATES AND CLASSES” in subchapter heading.

### § 3641. Market tests of experimental products

(a) AUTHORITY.—

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

(2) PROVISIONS WAIVED.—A product shall not, while it is being tested under this section, be subject to the requirements of sections 3622, 3633, or 3642, or regulations promulgated under those sections.

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

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

(2) MARKET DISRUPTION.—The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns (as defined under subsection (h)).

(3) CORRECT CATEGORIZATION.—The Postal Service identifies the product, for the purpose of a test under this section, as either market-dominant or competitive, consistent with the criteria under section 3642(b)(1). Costs and revenues attributable to a product identified as competitive shall be included in any determination under section 3633(3)<sup>1</sup> (relating to provisions applicable to competitive products collectively). Any test that solely affects products currently classified as competitive, or which provides services ancillary to only competitive products, shall be presumed to be in the competitive product category without regard to whether a similar ancillary product exists for market-dominant products.

(c) NOTICE.—

(1) IN GENERAL.—At least 30 days before initiating a market test under this section, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register a notice—

(A) setting out the basis for the Postal Service's determination that the market test is covered by this section; and

(B) describing the nature and scope of the market test.

(2) SAFEGUARDS.—For a competitive experimental product, the provisions of section 504(g) shall be available with respect to any information required to be filed under paragraph (1) to the same extent and in the same manner as in the case of any matter described in section 504(g)(1). Nothing in paragraph (1) shall be considered to permit or require the publication of any information as to which confidential treatment is accorded under the preceding sentence (subject to the same exception as set forth in section 504(g)(3)).

(d) DURATION.—

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

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

(e) DOLLAR-AMOUNT LIMITATION.—

(1) IN GENERAL.—A product may only be tested under this section if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed \$10,000,000 in any year, subject to paragraph (2) and subsection (g). In carrying out the preceding sentence, the Postal Regulatory Commission may limit the amount of revenues the Postal Service may obtain from any particular geographic market as necessary to prevent market disruption (as defined under subsection (b)(2)).

(2) EXEMPTION AUTHORITY.—The Postal Regulatory Commission may, upon written applica-

<sup>1</sup> So in original. Probably should be section “3633(a)(3)”.