

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)”.

tion of the Postal Service, exempt the market test from the limit in paragraph (1) if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed \$50,000,000 in any year, subject to subsection (g). In reviewing an application under this paragraph, the Postal Regulatory Commission shall approve such application if it determines that—

(A) the product is likely to benefit the public and meet an expected demand;

(B) the product is likely to contribute to the financial stability of the Postal Service; and

(C) the product is not likely to result in unfair or otherwise inappropriate competition.

(f) CANCELLATION.—If the Postal Regulatory Commission at any time determines that a market test under this section fails, with respect to any particular product, to meet 1 or more of the requirements of this section, it may order the cancellation of the test involved or take such other action as it considers appropriate. A determination under this subsection shall be made in accordance with such procedures as the Commission shall by regulation prescribe.

(g) ADJUSTMENT FOR INFLATION.—For purposes of each year following the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a), each dollar amount contained in this section shall be adjusted by the change in the Consumer Price Index for such year (as determined under regulations of the Commission).

(h) DEFINITION OF A SMALL BUSINESS CONCERN.—The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns shall, for purposes of this section, be established by the Postal Regulatory Commission in conformance with the requirements of section 3 of the Small Business Act.

(i) EFFECTIVE DATE.—Market tests under this subchapter may be conducted in any year beginning with the first year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a).

(Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 763; Pub. L. 94-421, §6(a), Sept. 24, 1976, 90 Stat. 1306; Pub. L. 109-435, title II, §203, Dec. 20, 2006, 120 Stat. 3207.)

#### REFERENCES IN TEXT

Section 3 of the Small Business Act, referred to in subsec. (h), is classified to section 632 of Title 15, Commerce and Trade.

#### AMENDMENTS

2006—Pub. L. 109-435 amended section generally. Prior to amendment, section consisted of subssecs. (a) to (f) relating to temporary changes in rates and classes.

1976—Subsec. (a). Pub. L. 94-421 added subsec. (a). Former subsec. (a) redesignated (e) and amended.

Subsec. (b). Pub. L. 94-421 added subsec. (b). Former subsec. (b) redesignated (f).

Subsec. (c). Pub. L. 94-421 substituted provision limiting the temporary rate increase to an amount no greater than the permanent fee requested for that class or service, for provision which limited a temporary increase to the lesser of either the rate or fee requested or an amount more than one-third greater than the

permanent fee in effect for that class or service at the time a permanent change is requested.

Subsec. (d). Pub. L. 94-421 added subsec. (d).

Subsec. (e). Pub. L. 94-421 redesignated former subsec. (a) as (e) and struck out reference to requests for decisions on change in the rates of postage or fees for postal service.

Subsec. (f). Pub. L. 94-421 redesignated former subsec. (b) as (f).

#### EFFECTIVE DATE

Section effective Jan. 20, 1971, pursuant to Resolution No. 71-10 of the Board of Governors. See section 15(a) of Pub. L. 91-375, set out as a note preceding section 101 of this title.

#### RATE CHANGE REQUEST MADE ON SEPTEMBER 18, 1975, OR UNDER DOCKET NUMBER R76-1

Section 6(b)(1) of Pub. L. 94-421 provided that: "The amendment made by subsection (a) of this section [amending this section] shall not apply to any action or proceeding with respect to the recommended decision of the Postal Rate Commission [now Postal Regulatory Commission] relating to proposed changes in rates of postage and in fees for postal services requested on September 18, 1975, by the United States Postal Service in a request which bears, or which at any time has been included under, Postal Rate Commission Docket Number R76-1."

#### APPLICABILITY OF FORMER PROVISIONS OF SECTION TO RATE CHANGE REQUEST MADE ON SEPTEMBER 18, 1975, UNDER DOCKET NUMBER R76-1

Section 6(b)(2) of Pub. L. 94-421 provided that: "The provisions of section 3641 of title 39, United States Code, as such provisions were in effect on the day before the date of the enactment of this Act [Sept. 24, 1976], shall apply to any temporary rate or fee established by the Postal Service pursuant to its request to the Postal Rate Commission [now Postal Regulatory Commission], dated September 18, 1975, for a recommended decision, bearing Docket Number R76-1."

#### § 3642. New products and transfers of products between the market-dominant and competitive categories of mail

(a) IN GENERAL.—Upon request of the Postal Service or users of the mails, or upon its own initiative, the Postal Regulatory Commission may change the list of market-dominant products under section 3621 and the list of competitive products under section 3631 by adding new products to the lists, removing products from the lists, or transferring products between the lists.

(b) CRITERIA.—All determinations by the Postal Regulatory Commission under subsection (a) shall be made in accordance with the following criteria:

(1) The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products. The competitive category of products shall consist of all other products.

(2) EXCLUSION OF PRODUCTS COVERED BY POSTAL MONOPOLY.—A product covered by the postal monopoly shall not be subject to transfer under this section from the market-dominant category of mail. For purposes of the preced-