

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-

ing sentence, the term “product covered by the postal monopoly” means any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(e)(1).

(3) **ADDITIONAL CONSIDERATIONS.**—In making any decision under this section, due regard shall be given to—

(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

(B) the views of those who use the product involved on the appropriateness of the proposed action; and

(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

(c) **TRANSFERS OF SUBCLASSES AND OTHER SUBORDINATE UNITS ALLOWABLE.**—Nothing in this title shall be considered to prevent transfers under this section from being made by reason of the fact that they would involve only some (but not all) of the subclasses or other subordinate units of the class of mail or type of postal service involved (without regard to satisfaction of minimum quantity requirements standing alone).

(d) **NOTIFICATION AND PUBLICATION REQUIREMENTS.**—

(1) **NOTIFICATION REQUIREMENT.**—The Postal Service shall, whenever it requests to add a product or transfer a product to a different category, file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for its determination that the product satisfies the criteria under subsection (b) and, in the case of a request to add a product or transfer a product to the competitive category of mail, that the product meets the regulations promulgated by the Postal Regulatory Commission under section 3633. The provisions of section 504(g) shall be available with respect to any information required to be filed.

(2) **PUBLICATION REQUIREMENT.**—The Postal Regulatory Commission shall, whenever it changes the list of products in the market-dominant or competitive category of mail, prescribe new lists of products. The revised lists shall indicate how and when any previous lists (including the lists under sections 3621 and 3631) are superseded, and shall be published in the Federal Register.

(e) **PROHIBITION.**—Except as provided in section 3641, no product that involves the physical delivery of letters, printed matter, or packages may be offered by the Postal Service unless it has been assigned to the market-dominant or competitive category of mail (as appropriate) either—

(1) under this subchapter; or

(2) by or under any other provision of law.

(Added Pub. L. 103–123, title VII, §704(a)(2), Oct. 28, 1993, 107 Stat. 1268; amended Pub. L. 109–435, title II, §203, Dec. 20, 2006, 120 Stat. 3209.)

#### AMENDMENTS

2006—Pub. L. 109–435 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (d),

related to special authority relating to reduced-rate categories of mail.

#### EFFECTIVE DATE

Section applicable with respect to rates for mail sent after Sept. 30, 1993, see section 704(c)(1) of Pub. L. 103–123, set out as an Effective Date of 1993 Amendment note under section 3626 of this title.

#### SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

##### PRIOR PROVISIONS

A prior subchapter IV was redesignated subchapter V of this chapter.

#### § 3651. Annual reports by the Commission

(a) **IN GENERAL.**—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title, including the extent to which regulations are achieving the objectives under sections 3622 and 3633, respectively.

(b) **ADDITIONAL INFORMATION.**—

(1) **IN GENERAL.**—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—

(A) 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);

(B) free or reduced rates for postal services as required by this title; and

(C) 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.

(2) **BASIS FOR ESTIMATES.**—The Commission shall detail the basis 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.

(Added Pub. L. 109–435, title II, §204(b), Dec. 20, 2006, 120 Stat. 3211.)

#### § 3652. Annual reports to the Commission

(a) **COSTS, REVENUES, RATES, AND SERVICE.**—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex to the report as the Commission may require under subsection (e))—