There are tons of scientific studies that show there is no connection between that and asbestos, but we have this in the bill. It is dependent on an IOM study, but it should not be in the bill. If new science sometime later shows some connection between colorectal cancer, stomach cancer, or esophageal, laryngeal, and pharyngeal cancer, we can put it back. We are putting it in, when there is no science whatsoever—and the small studies on laryngeal and pharyngeal cancer that show some connection were not modified for smoking and alcohol use, the No. 1 and No. 2 causes. So it is not good science.

Therefore, we have a large group. If you take lung cancers combined with all the other cancers and put them together and you say 10 percent of those who are coming through will try to go to the trust fund, you have $267 billion that will blow this thing wide open.

This trust fund, with the medical criteria it has today, will not work. That is why having a bill that has specific medical criteria in it will work.

Let me be clear why I support the Cornyn substitute. The Cornyn substitute does not shut anyone out of the courts. If you think you have asbestos exposure, and you want to sue, you can. But you will have to meet the medical criteria for it to be related to asbestos or silicosis. There is no unreasonable requirement; there is just upfront medical criteria that must be met to have application and that requirement must apply.

It does not mean you cannot have your day in court. You can. You have to demonstrate your disease matches the medical criteria which are recognized medical criteria associated with asbestos disease.

The other thing that is good about this bill is if you have had asbestos exposure and have no disease now, this does not cut you off from the future. If you develop disease that is truly related to asbestos, you will be able to have your day in court years—30, 40 years—down the road if, in fact, you develop impairment related to asbestos within this medical criteria that the medical community and the scientific community recognize is accurate.

Under this substitute, as compared to the present bill, physicians will have to comply with strict scientifically sound requirements. There is no room for doctors and x-ray B readers to fudge the data under the Cornyn substitute. The substitute makes sense. The trust fund concept will work if we have good medical criteria. We do not, so it is not going to work.

The answer is to keep people in the court system but define the medical criteria where they can win when they truly have a disease that is caused by asbestos, and they lose when they do not have a disease caused by asbestos.

The science is not that hard. But we cannot take care of the trial lawyers and take care of all the executives who want this problem solved the way they want it. They want an answer now. The answer is, use what this country has used in the past: the judgment of courts based on sound criteria that cannot be manipulated. Then we will get this problem solved and the people who are suffering today, who cannot get into court because of false claims—hundreds of thousands of them by people who do not have asbestos-related illness—the people who are injured will get compensated.

I thank Senator CORNYN for, first, his courage to offer a substitute. He is on the Judiciary Committee. We have a great chairman. He has done a lot of hard work on this. He has brought a bipartisan bill to the Senate. The bill will fail. It takes a great deal of courage on Senator CORNYN's part to offer a commonsense alternative to this. It is my hope that the many Members in this Senate will look at the trust fund with the medical criteria as set out today, and reject it as it is written. Either modify this bill or take the Cornyn substitute and put it in its stead.

This is an issue we will spend a lot of time on. I know people are considering points of order against the legislation. In fairness to the Senate and also the public, if that is going to happen, they ought to do it so we do not continue to spend time. Part of the process around here is to make things not happen so you can have a political advantage. If people are going to offer a point of order, they ought to offer it. Let's go on to the next thing on the agenda for the American people. If they are not going to offer it, let's have a real debate, file cloture, get a vote on this bill and move on.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAHAM). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

POSTAL ACCOUNTABILITY AND ENHANCEMENT ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 164, S. 662.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 662) to reform the postal laws of the United States.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Homeland Security and Governmental Affairs, with an amendment.

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 662

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

[(a) SHORT TITLE.—This Act may be cited as the ''Postal Accountability and Enhancement Act''.

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

[Sec. 1. Short title; table of contents.

[TITLE I—DEFINITIONS; POSTAL SERVICES

[Sec. 101. Definitions.
[Sec. 102. Postal services.

[TITLE II—MODERN RATE REGULATION

[Sec. 201. Provisions relating to market-dominant products.
[Sec. 202. Provisions relating to competitive products.
[Sec. 203. Provisions relating to experimental and new products.
[Sec. 204. Reporting requirements and related provisions.
[Sec. 205. Complaints; appellate review and enforcement.
[Sec. 206. Clerical amendment.

[TITLE III—MODERN SERVICE STANDARDS

[Sec. 301. Establishment of modern service standards.
[Sec. 302. Postal service plan.

[TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

[Sec. 401. Postal Service Competitive Products Fund.
[Sec. 402. Assumed Federal income tax on competitive products income.
[Sec. 403. Unfair competition prohibited.
[Sec. 404. Suits by and against the Postal Service.
[Sec. 405. International postal arrangements.

[TITLE V—GENERAL PROVISIONS

[Sec. 501. Qualification and term requirements for Governors.
[Sec. 502. Obligations.
[Sec. 503. Private carriage of letters.
[Sec. 504. Rulemaking authority.
[Sec. 505. Noninterference with collective bargaining agreements.
[Sec. 506. Bonus authority.

[TITLE VI—ENHANCED REGULATORY COMMISSION

[Sec. 601. Reorganization and modification of certain provisions relating to the Postal Regulatory Commission.
]Sec. 602. Authority for Postal Regulatory Commission to issue subpoenas.
[Sec. 603. Appropriations for the Postal Regulatory Commission.
[Sec. 604. Redesignation of the Postal Rate Commission.
[Sec. 605. Financial transparency.

[TITLE VII—EVALUATIONS

[Sec. 701. Assessments of ratemaking, classification, and other provisions.
[Sec. 702. Report on universal postal service and the postal monopoly.
[Sec. 703. Study on equal application of laws to competitive products.
[Sec. 704. Report on postal workplace safety and workplace-related injuries.
[Sec. 705. Study on recycled paper.

[TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

[Sec. 801. Short title.
[Sec. 802. Civil Service Retirement System.
[Sec. 803. Health insurance.
[Sec. 804. Repeal of disposition of savings provision.
[Sec. 805. Effective dates.

[TITLE IX—COMPENSATION FOR WORK INJURIES

[Sec. 901. Temporary disability; continuation of pay.

[Sec. 902. Disability retirement for postal employees.

[TITLE X—MISCELLANEOUS

[Sec. 1001. Employment of postal police officers.

[Sec. 1002. Expanded contracting authority.

[Sec. 1003. Report on the United States Postal Inspection Service and the Office of the Inspector General of the United States Postal Service.

[Sec. 1004. Sense of Congress regarding Postal Service purchasing reform.

[TITLE I—DEFINITIONS; POSTAL SERVICES

[SEC. 101. DEFINITIONS.

[Section 102 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following:

[''(5) 'postal service' refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other functions ancillary thereto;

[''(6) 'product' means a postal service with a distinct cost or market characteristic for which a rate or rates are applied;

[''(7) 'rates', as used with respect to products, includes fees for postal services;

[''(8) 'market-dominant product' or 'product in the market-dominant category of mail' means a product subject to subchapter I of chapter 36; and

[''(9) 'competitive product' or 'product in the competitive category of mail' means a product subject to subchapter II of chapter 36; and

[''(10) 'year', as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.''.

[SEC. 102. POSTAL SERVICES.

[(a) IN GENERAL.—Section 404 of title 39, United States Code, is amended—

[(1) in subsection (a), by striking paragraph (6) and by redesignating paragraphs (7) through (9) as paragraphs (6) through (8), respectively; and

[(2) by adding at the end the following:

[''(c) Except as provided in section 411, nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services.''.

[(b) CONFORMING AMENDMENTS.—(1) 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)''.

[(2) Section 2003(b)(1) of title 39, United States Code, is amended by striking ''and nonpostal''.

[TITLE II—MODERN RATE REGULATION

[SEC. 201. PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS.

[(a) IN GENERAL.—Chapter 36 of title 39, United States Code, is amended by striking sections 3621 and 3622 and inserting the following:

[''§ 3621. Applicability; definitions

[''(a) APPLICABILITY.—This subchapter shall apply with respect to—

[''(1) first-class mail letters and sealed parcels;

[''(2) first-class mail cards;

[''(3) periodicals;

[''(4) standard mail;

[''(5) single-piece parcel post;

[''(6) media mail;

[''(7) bound printed matter;

[''(8) library mail;

[''(9) special services; and

[''(10) single-piece international mail,

[subject to any changes the Postal Regulatory Commission may make under section 3642.

[''(b) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

[''§ 3622. Modern rate regulation

[''(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

[''(b) OBJECTIVES.—Such system shall be designed to achieve the following objectives:

[''(1) To reduce the administrative burden and increase the transparency of the ratemaking process while affording reasonable opportunities for interested parties to participate in that process.

[''(2) To create predictability and stability in rates.

[''(3) To maximize incentives to reduce costs and increase efficiency.

[''(4) To enhance mail security and deter terrorism by promoting secure, sender-identified mail.

[''(5) To allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent mail and encourage increased mail volume during nonpeak periods.

[''(6) To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.

[''(7) To allocate the total institutional costs of the Postal Service equitably between market-dominant and competitive products.

[''(c) FACTORS.—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

[''(1) the establishment and maintenance of a fair and equitable schedule for rates and classification system;

[''(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 each class or type of mail service 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 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;

[''(9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

[''(10) the desirability of special classifications from the point of view of both the user and of the Postal Service;

[''(11) the educational, cultural, scientific, and informational value to the recipient of mail matter;

[''(12) the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable, universal postal service; and

[''(13) the policies of this title as well as such other factors as the Commission determines appropriate.

[''(d) REQUIREMENTS.—

[''(1) IN GENERAL.—The system for regulating rates and classes for market-dominant products shall—

[''(A) require the Postal Regulatory Commission to set annual limitations on the percentage changes in rates based on the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation over the 12-month period preceding the date the Postal Service proposes to increase rates;

[''(B) establish a schedule whereby rates, when necessary and appropriate, would change at regular intervals by predictable amounts;

[''(C) not later than 45 days before the implementation of any adjustment in rates under this section—

[''(i) require the Postal Service to provide public notice of the adjustment;

[''(ii) provide an opportunity for review by the Postal Regulatory Commission;

[''(iii) provide for the Postal Regulatory Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under subparagraph (A); and

[''(iv) require the Postal Service to respond to the notice provided under clause (iii) and describe the actions to be taken to comply with the limitation under subparagraph (A); and

[''(D) notwithstanding any limitation set under subparagraphs (A) and (C), establish procedures whereby rates may be adjusted on an expedited basis due to unexpected and extraordinary circumstances.

[''(2) LIMITATIONS.—

[''(A) CLASSES OF MAIL.—The annual limitations under paragraph (1)(A) shall apply to a class of mail, as defined in the Domestic Mail Classification Schedule as in effect on the date of enactment of the Postal Accountability and Enhancement Act.

[''(B) ROUNDING OF RATES AND FEES.—Nothing in this subsection shall preclude the Postal Service from rounding rates and fees to the nearest whole integer, if the effect of such rounding does not cause the overall rate increase for any class to exceed the Consumer Price Index for All Urban Consumers.

[''(e) WORKSHARE DISCOUNTS.—

[''(1) DEFINITION.—In this subsection, the term 'workshare discount' refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

[''(2) REGULATIONS.—As part of the regulations established under subsection (a), the Postal Regulatory Commission shall establish rules for workshare discounts that ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless—

[''(A) the discount is—

[''(i) associated with a new postal service, a change to an existing postal service, or with a new workshare initiative related to an existing postal service; and

[''(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service and the portion of the discount in excess of the cost that the

Postal Service avoids as a result of the workshare activity will be phased out over a limited period of time;

[''(B) a reduction in the discount would—

[''(i) lead to a loss of volume in the affected category or subclass of mail and reduce the aggregate contribution to the institutional costs of the Postal Service from the category or subclass subject to the discount below what it otherwise would have been if the discount had not been reduced to costs avoided;

[''(ii) result in a further increase in the rates paid by mailers not able to take advantage of the discount; or

[''(iii) impede the efficient operation of the Postal Service;

[''(C) the amount of the discount above costs avoided—

[''(i) is necessary to mitigate rate shock; and

[''(ii) will be phased out over time; or

[''(D) the discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, scientific, or informational value.

[''(3) REPORT.—Whenever the Postal Service establishes or maintains a workshare discount, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report that—

[''(A) explains the Postal Service's reasons for establishing or maintaining the rate;

[''(B) sets forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate; and

[''(C) certifies that the discount will not adversely affect rates or services provided to users of postal services who do not take advantage of the discount rate.

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

[(b) REPEALED SECTIONS.—Sections 3623, 3624, 3625, and 3628 of title 39, United States Code, are repealed.

[(c) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect after the amendment made by section 601, but before the amendment made by section 202) is amended by striking the heading for subchapter II and inserting the following:

[''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS''.

[SEC. 202. PROVISIONS RELATING TO COMPETITIVE PRODUCTS.

[Chapter 36 of title 39, United States Code, is amended by inserting after section 3629 the following:

[''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

[''§ 3631. Applicability; definitions and updates

[''(a) APPLICABILITY.—This subchapter shall apply with respect to—

[''(1) priority mail;

[''(2) expedited mail;

[''(3) bulk parcel post;

[''(4) bulk international mail; and

[''(5) mailgrams;

[subject to subsection (d) and any changes the Postal Regulatory Commission may make under section 3642.

[''(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.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

[''(d) LIMITATION.—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply with respect to any product then currently in the market-dominant category of mail.

[''§ 3632. Action of the Governors

[''(a) AUTHORITY TO ESTABLISH RATES AND CLASSES.—The Governors, with the written 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) PUBLIC NOTICE; REVIEW; AND COMPLIANCE.—Not later than 30 days before the date of implementation of any adjustment in rates under this section—

[''(A) the Governors shall provide public notice of the adjustment and an opportunity for review by the Postal Regulatory Commission;

[''(B) the Postal Regulatory Commission shall notify the Governors of any noncompliance of the adjustment with section 3633; and

[''(C) the Governors shall respond to the notice provided under subparagraph (B) and describe the actions to be taken to comply with section 3633.

[''(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.

[''§ 3633. Provisions applicable to rates for competitive products

[''(a) IN GENERAL.—The Postal Regulatory Commission shall, within 180 days 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 their 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.''.

[SEC. 203. PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS.

[Subchapter III of chapter 36 of title 39, United States Code, is amended to read as follows:

[''SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

[''§ 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)(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).

[''(2) EXEMPTION AUTHORITY.—The Postal Regulatory Commission may, upon written application 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 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).

["§ 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 substantial 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 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(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.''.

[SEC. 204. REPORTING REQUIREMENTS AND RELATED PROVISIONS.

[(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by subsection (b)) is amended—

[(1) by striking the heading for subchapter IV and inserting the following:

[''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW''; and

[(2) by striking the heading for subchapter V and inserting the following:

[''SUBCHAPTER VI—GENERAL''.

[(b) REPORTS AND COMPLIANCE.—Chapter 36 of title 39, United States Code, is amended by inserting after subchapter III the following:

[''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

["§ 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, 3633, and 3691.

[''(b) 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.

["§ 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))—

[''(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

[''(2) which shall, for each market-dominant product provided in such year, provide—

[''(A) product information, including mail volumes; and

[''(B) measures of the service afforded by the Postal Service in connection with such product, including—

[''(i) the level of service (described in terms of speed of delivery and reliability) provided; and

[''(ii) the degree of customer satisfaction with the service provided.

[Before submitting a report under this subsection (including any annex to the report and the information required under subsection (b)), 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) INFORMATION RELATING TO WORKSHARE DISCOUNTS.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

[''(1) The per-item cost avoided by the Postal Service by virtue of such discount.

[''(2) The percentage of such per-item cost avoided that the per-item workshare discount represents.

[''(3) The per-item contribution made to institutional costs.

[''(c) SERVICE AGREEMENTS AND MARKET TESTS.—In carrying out subsections (a) and (b) with respect to service agreements and experimental products offered through market tests under section 3641 in a year, the Postal Service—

[''(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

[''(2) shall 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 to the report) 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 timely, 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 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 under 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 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

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

[''(1) comprehensive statement under section 2401(e);

[''(2) strategic plan under section 2802;

[''(3) performance plan under section 2803; and

[''(4) program performance reports under section 2804.

["§ 3653. Annual determination of compliance

[''(a) OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3652 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.

[''(b) DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3652 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 chapter (or regulations promulgated thereunder); or

[''(2) whether any service standards in effect during such year were not met.

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.

[''(c) IF ANY NONCOMPLIANCE IS FOUND.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take any appropriate remedial action authorized by section 3662(c).

[''(d) REBUTTABLE PRESUMPTION.—A timely written determination described in the last sentence of subsection (b) 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 under paragraphs (1) and (2) of subsection (b)) during the year to which such determination relates.''.

[SEC. 205. COMPLAINTS; APPELLATE REVIEW AND ENFORCEMENT.

[Chapter 36 of title 39, United States Code, is amended by striking sections 3662 and 3663 and inserting the following:

["§ 3662. Rate and service complaints

[''(a) IN GENERAL.—Any person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of chapter 1, 4, or 6, or this chapter (or regulations promulgated under any of those chapters) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

[''(b) PROMPT RESPONSE REQUIRED.—

[''(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a), either—

[''(A) begin proceedings on such complaint; [or

[''(B) issue an order dismissing the complaint (together with a statement of the reasons therefor).

[''(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, 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 under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

[''(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds the complaint to be justified, it shall order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance including ordering unlawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, and requiring the Postal Service to make up for revenue shortfalls in competitive products.

[''(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—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 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. Appellate review

[''A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

["§ 3664. Enforcement of orders

[''The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain the Postal Service from violating, any order issued by the Postal Regulatory Commission.''.

[SEC. 206. CLERICAL AMENDMENT.

[Chapter 36 of title 39, United States Code, is amended by striking the heading and analysis for such chapter and inserting the following:

["CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

[''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS

[''Sec.
[''3621. Applicability; definitions.
[''3622. Modern rate regulation.
[''[3623. Repealed.]
[''[3624. Repealed.]
[''[3625. Repealed.]
[''3626. Reduced Rates.
[''3627. Adjusting free rates.
[''[3628. Repealed.]
[''3629. Reduced rates for voter registration purposes.

[''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

[''3631. Applicability; definitions and updates.
[''3632. Action of the Governors.
[''3633. Provisions applicable to rates for competitive products.
[''3634. Assumed Federal income tax on competitive products.

[''SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

[''3641. Market tests of experimental products.
[''3642. New products and transfers of products between the market-dominant and competitive categories of mail.

[''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

[''3651. Annual reports by the Commission.
[''3652. Annual reports to the Commission.
[''3653. Annual determination of compliance.

[''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW

[''3661. Postal Services.
[''3662. Rate and service complaints.
[''3663. Appellate review.
[''3664. Enforcement of orders.

[''SUBCHAPTER VI—GENERAL

[''3681. Reimbursement.
[''3682. Size and weight limits.
[''3683. Uniform rates for books; films, other materials.
[''3684. Limitations.
[''3685. Filing of information relating to periodical publications.
[''3686. Bonus authority.

[''SUBCHAPTER VII—MODERN SERVICE STANDARDS

[''3691. Establishment of modern service standards.''.

[TITLE III—MODERN SERVICE STANDARDS

[SEC. 301. ESTABLISHMENT OF MODERN SERVICE STANDARDS.

[Chapter 36 of title 39, United States Code, as amended by this Act, is further amended by adding at the end the following:

[''SUBCHAPTER VII—MODERN SERVICE STANDARDS

[''§ 3691. Establishment of modern service standards

[''(a) AUTHORITY GENERALLY.—Not later than 12 months after the date of enactment of this section, the Postal Service shall, in consultation with the Postal Regulatory Commission, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with the Postal Service's universal service obligation as defined in sections 101 (a) and (b) and 403.

[''(b) OBJECTIVES.—Such standards shall be designed to achieve the following objectives:

[''(1) To enhance the value of postal services to both senders and recipients.

[''(2) To preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.

[''(3) To reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

[''(4) To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.

[''(c) FACTORS.—In establishing or revising such standards, the Postal Service shall take into account—

[''(1) the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;

[''(2) the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail;

[''(3) the needs of Postal Service customers, including those with physical impairments;

[''(4) mail volume and revenues projected for future years;

[''(5) the projected growth in the number of addresses the Postal Service will be required to serve in future years;

[''(6) the current and projected future cost of serving Postal Service customers;

[''(7) the effect of changes in technology, demographics, and population distribution on the efficient and reliable operation of the postal delivery system; and

[''(8) the policies of this title and such other factors as the Commission determines appropriate.

[''(d) REVIEW.—The regulations promulgated pursuant to this section (and any revisions thereto) shall be subject to review upon complaint under sections 3662 and 3663.

[SEC. 302. POSTAL SERVICE PLAN.

[(a) IN GENERAL.—Within 6 months after the establishment of the service standards under section 3691 of title 39, United States Code, as added by this Act, the Postal Service shall, in consultation with the Postal Regulatory Commission, develop and submit to Congress a plan for meeting those standards.

[(b) CONTENTS.—The plan under this section shall—

[(1) establish performance goals;

[(2) describe any changes to the Postal Service's processing, transportation, delivery, and retail networks necessary to allow the Postal Service to meet the performance goals;

[(3) describe any changes to planning and performance management documents previously submitted to Congress to reflect new performance goals; and

[(4) contain the matters relating to postal facilities provided under subsection (c).

[(c) POSTAL FACILITIES.—

[(1) FINDINGS.—Congress finds that—

[(A) the Postal Service has more than 400 logistics facilities, separate from its post office network;

[(B) as noted by the President's Commission on the United States Postal Service, the Postal Service has more facilities than it needs and the streamlining of this distribution network can pave the way for the potential consolidation of sorting facilities and the elimination of excess costs;

[(C) the Postal Service has always revised its distribution network to meet changing conditions and is best suited to address its operational needs; and

[(D) Congress strongly encourages the Postal Service to—

[(i) expeditiously move forward in its streamlining efforts; and

[(ii) keep unions, management associations, and local elected officials informed as an essential part of this effort and abide by any procedural requirements contained in the national bargaining agreements.

[(2) IN GENERAL.—The Postal Service plan shall include a description of—

[(A) the long-term vision of the Postal Service for rationalizing its infrastructure and workforce; and

[(B) how the Postal Service intends to implement that vision.

[(3) CONTENT OF FACILITIES PLAN.—The plan under this subsection shall include—

[(A) a strategy for how the Postal Service intends to rationalize the postal facilities network and remove excess processing capacity and space from the network, including estimated timeframes, criteria, and processes to be used for making changes to the facilities network, and the process for engaging policy makers and the public in related decisions;

[(B) a discussion of what impact any facility changes may have on the postal workforce and whether the Postal Service has sufficient flexibility to make needed workforce changes; and

[(C) an identification of anticipated costs, cost savings, and other benefits associated with the infrastructure rationalization alternatives discussed in the plan.

[(4) ANNUAL REPORTS.—

[(A) IN GENERAL.—Not later than 90 days after the end of each fiscal year, the Postal Service shall prepare and submit a report to Congress on how postal decisions have impacted or will impact rationalization plans.

[(B) CONTENTS.—Each report under this paragraph shall include—

[(i) an account of actions taken during the preceding fiscal year to improve the efficiency and effectiveness of its processing, transportation, and distribution networks while preserving the timely delivery of postal services, including overall estimated costs and cost savings;

[(ii) an account of actions taken to identify any excess capacity within its processing, transportation, and distribution networks and implement savings through realignment or consolidation of facilities including overall estimated costs and cost savings;

[(iii) an estimate of how postal decisions related to mail changes, security, automation initiatives, worksharing, information technology systems, excess capacity, consolidating and closing facilities, and other areas will impact rationalization plans;

[(iv) identification of any statutory or regulatory obstacles that prevented or will prevent or hinder the Postal Service from taking action to realign or consolidate facilities; and

[(v) such additional topics and recommendations as the Postal Service considers appropriate.

[(d) ALTERNATE RETAIL OPTIONS.—The Postal Service plan shall include plans to expand and market retail access to postal services, in addition to post offices, including—

[(1) vending machines;

[(2) the Internet;

[(3) Postal Service employees on delivery routes;

[(4) retail facilities in which overhead costs are shared with private businesses and other government agencies; or

[(5) any other nonpost office access channel providing market retail access to postal services.

[(e) REEMPLOYMENT ASSISTANCE AND RETIREMENT BENEFITS.—The Postal Service plan shall include—

[(1) a plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation of any of its functions or the closing and consolidation of any of its facilities; and

[(2) a plan, developed in consultation with the Office of Personnel Management, to offer early retirement benefits.

[(f) INSPECTOR GENERAL REPORT.—

[(1) IN GENERAL.—Before submitting the plan under subsection (a) and each annual report under subsection (c) to Congress, the Postal Service shall submit the plan and each annual report to the Inspector General of the United States Postal Service in a timely manner to carry out this subsection.

[(2) REPORT.—The Inspector General shall prepare a report describing the extent to which the Postal Service plan and each annual report under subsection (c)—

[(A) are consistent with the continuing obligations of the Postal Service under title 39, United States Code;

[(B) provide for the Postal Service to meet the service standards established under section 3691 of title 39, United States Code; and

[(C) allow progress toward improving overall efficiency and effectiveness consistent with the need to maintain universal postal service at affordable rates.

[(g) CONTINUED AUTHORITY.—Nothing in this section shall be construed to prohibit the Postal Service from implementing any change to its processing, transportation, delivery, and retail networks under any authority granted to the Postal Service for those purposes.

[TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

[SEC. 401. POSTAL SERVICE COMPETITIVE PRODUCTS FUND.

[(a) PROVISIONS RELATING TO POSTAL SERVICE COMPETITIVE PRODUCTS FUND AND RELATED MATTERS.—

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

[''§ 2011. Provisions relating to competitive products

[''(a)(1) In this subsection, the term 'costs attributable' has the meaning given such term by section 3631.

[''(2) 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—

[''(A) costs attributable to competitive products; and

[''(B) all other costs incurred by the Postal Service, to the extent allocable to competitive products.

[''(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 Postal Service under subsection (e);

[''(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) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, the Postal Service may request the investment of such amounts as the Postal Service determines 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 the Postal Service determines appropriate.

[''(d) With the approval of the Secretary of the Treasury, the Postal Service may deposit moneys of the Competitive Products 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)(A) 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 the Postal Service determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund.

[''(B) Subject to paragraph (5), any borrowings by the Postal Service under subparagraph (A) shall be supported and serviced by—

[''(i) the revenues and receipts from competitive products and the assets related to the provision of competitive products (as determined under subsection (h)); or

[''(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e).

[''(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with any trustee under any agreement entered into in connection with the issuance of such obligations 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) shall be in such forms and denominations;

[''(B) shall be sold at such times and in such amounts;

[''(C) shall mature at such time or times;

[''(D) shall be sold at such prices;

[''(E) shall bear such rates of interest;

[''(F) may be redeemable before maturity in such manner, at such times, and at such redemption premiums;

[''(G) may be entitled to such relative priorities of claim on the assets of the Postal Service with respect to principal and interest payments; and

[''(H) shall be subject to such other terms and conditions,

[as the Postal Service determines.

[''(4) Obligations issued by the Postal Service under this subsection—

[''(A) shall be negotiable or nonnegotiable and bearer or registered instruments, as specified therein and in any indenture or covenant relating thereto;

[''(B) shall contain a recital that such obligations are issued under this subsection, and such recital shall be conclusive evidence of the regularity of the issuance and sale of such obligations and of their validity;

[''(C) shall 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;

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

[''(E) except as provided in section 2006(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.

[''(5)(A) Subject to subparagraph (B), the Postal Service shall make payments of principal, or interest, or both on obligations issued under this subsection from—

[''(i) revenues and receipts from competitive products and assets related to the provision of competitive products (as determined under subsection (h)); or

[''(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available, including the audited statements required by section 2008(e).

[''(B) Based on the audited financial statements for the most recently completed fiscal year, the total assets of the Competitive Products Fund may not be less than the amount determined by multiplying—

[''(i) the quotient resulting from the total revenue of the Competitive Products Fund divided by the total revenue of the Postal Service; and

[''(ii) the total assets of the Postal Service.

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

[''(h)(1)(A) The Secretary of the Treasury, in consultation with the Postal Service and an independent, certified public accounting firm and other advisors as the Secretary considers appropriate, shall develop recommendations regarding—

[''(i) the accounting practices and principles that should be followed by the Postal Service with the objectives of—

[''(I) identifying and valuing the assets and liabilities of the Postal Service associated with providing competitive products, including the capital and operating costs incurred by the Postal Service in providing such competitive products; and

[''(II) subject to subsection (e)(5), preventing the subsidization of such products by market-dominant products; and

[''(ii) the substantive and procedural rules that should be followed in determining the assumed Federal income tax on competitive products income of the Postal Service for any year (within the meaning of section 3634).

[''(B) Not earlier than 6 months after the date of enactment of this section, and not later than 12 months after such date, the Secretary of the Treasury shall submit the recommendations under subparagraph (A) to the Postal Regulatory Commission.

[''(2)(A) Upon receiving the recommendations of the Secretary of the Treasury under paragraph (1), the Commission shall give interested parties, including 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, 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.

[''(B)(i) 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;

[''(II) provide for the establishment and application of the substantive and procedural rules described under paragraph (1)(A)(ii); and

[''(III) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

[''(ii) Final rules under this subparagraph shall be issued not later than 12 months after the date on which recommendations are submitted under paragraph (1) (or by such later date on which the Commission and the Postal Service may agree). The Commission may revise such rules.

[''(C)(i) Reports described under subparagraph (B)(i)(III) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

[''(ii) 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 information under subparagraph (B)(i)(III) 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 described under subparagraph (B)(i)(III) shall be submitted by the Postal Service to the Secretary of the Treasury and the Inspector General of the United States Postal Service.

[''(i)(1) The Postal Service shall submit an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund. The report shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses.

[''(2) A copy of the most recent report submitted under paragraph (1) shall be included in the annual report submitted by the Postal Regulatory Commission under section 3652(g).''.

[(2) CLERICAL AMENDMENT.—The table of sections for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:

[''2011. Provisions relating to competitive products.''.

[(b) TECHNICAL AND CONFORMING AMENDMENTS.—

[(1) DEFINITION.—Section 2001 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

[''(2) COMPETITIVE PRODUCTS FUND.—The term 'Competitive Products Fund' means the Postal Service Competitive Products Fund established by section 2011; and''.

[(2) CAPITAL OF THE POSTAL SERVICE.—Section 2002(b) of title 39, United States Code, is amended by striking ''Fund,'' and inserting ''Fund and the balance in the Competitive Products Fund,''.

[(3) POSTAL SERVICE FUND.—

[(A) PURPOSES FOR WHICH AVAILABLE.—Section 2003(a) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available).''.

[(B) DEPOSITS.—Section 2003(b) of title 39, United States Code, is amended by striking ''There'' and inserting ''Except as otherwise provided in section 2011, there''.

[(4) RELATIONSHIP BETWEEN THE TREASURY AND THE POSTAL SERVICE.—Section 2006 of title 39, United States Code, is amended—

[(A) in subsection (a), in the first sentence, by inserting ''or 2011'' after ''section 2005'';

[(B) in subsection (b)—

[(i) in the first sentence, by inserting ''under section 2005'' before ''in such amounts''; and

[(ii) in the second sentence, by inserting ''under section 2005'' before ''in excess of such amount.''; and

[(C) in subsection (c), by inserting ''or 2011(e)(4)(E)'' after ''section 2005(d)(5)''.

[SEC. 402. ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS INCOME.

[Subchapter II of chapter 36 of title 39, United States Code, as amended by section 202, is amended by adding at the end the following:

["§ 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.''.

[SEC. 403. UNFAIR COMPETITION PROHIBITED.

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

["§ 404a. Specific limitations

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

[''(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;

[''(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or

[''(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any postal 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) from an independent source or is otherwise obtained (or obtainable).

[''(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

[''(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.''.

[(b) CONFORMING AMENDMENTS.—

[(1) GENERAL POWERS.—Section 401 of title 39, United States Code, is amended by striking ''The'' and inserting ''Subject to the provisions of section 404a, the''.

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

[(c) CLERICAL AMENDMENT.—The analysis for chapter 4 of title 39, United States Code, is amended by inserting after the item relating to section 404 the following:

[''404a. Specific limitations.''.

[SEC. 404. SUITS BY AND AGAINST THE POSTAL SERVICE.

[(a) IN GENERAL.—Section 409 of title 39, United States Code, is amended by striking subsections (d) and (e) and inserting the following:

[''(d)(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 '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.

[''(e)(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 product 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 Federal law by such agency or any officer or employee thereof; and

[''(B) 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 such subsection); 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) No damages, interest on damages, costs or attorney's fees may be recovered, and no criminal liability may be imposed, under the antitrust laws (as so defined) from any officer or employee of the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, acting in an official capacity.

[''(3) This subsection shall not apply with respect to conduct occurring before the date of enactment of this subsection.

[''(f) To the extent that the Postal Service engages in conduct with respect to the provision of competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.

[''(g)(1) Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with 1 of the nationally recognized model building codes and with other applicable nationally recognized codes. To the extent practicable, model building codes should meet the voluntary consensus criteria established for codes and standards as required in the National Technology Transfer and Advancement Act of 1995 as defined in Office of Management and Budget Circular A1190. For purposes of life safety, the Postal Service shall continue to comply with the most current edition of the Life Safety Code of the National Fire Protection Association (NFPA 101).

[''(2) Each building constructed or altered by the Postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.

[''(3) For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—

[''(A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;

[''(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

[''(C) permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—

[''(i) a copy of such schedule before construction of the building is begun; and

[''(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

[Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding

sentence, nor shall anything in this subsection require the Postal Service or any of its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

[''(4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.

[''(5) In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.

[''(6) For purposes of this subsection, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

[''(h)(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 (d) or (e) of this section.

[''(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

[''(C) Section 3663 (relating to appellate review).

[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.

[''(i) 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(g).''.

[(b) TECHNICAL AMENDMENT.—Section 409(a) of title 39, United States Code, is amended by striking ''Except as provided in section 3628 of this title,'' and inserting ''Except as otherwise provided in this title,''.

[SEC. 405. INTERNATIONAL POSTAL ARRANGEMENTS.

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

[''§ 407. International postal arrangements

[''(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

[''(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, coordination, and oversight of foreign policy related to international postal services and shall have the power to conclude postal treaties and conventions, except that the Secretary may not conclude any postal treaty or convention if such treaty or convention would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal 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, 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, should consider 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 Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives;

[''(D) shall maintain appropriate liaison with both representatives of the Postal Service and 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

[''(E) 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 (D) of paragraph (2).

[''(c) Before concluding any postal treaty or convention that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

[''(d) 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 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 binding under 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.

[''(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, 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.

[''(2) In exercising the authority under subsection (b) to conclude new postal treaties and conventions related to international postal services and to renegotiate such treaties and conventions, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

[''(3) The provisions of this subsection 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) 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—

[(1) with respect to market-dominant products, the date as of which the regulations promulgated under section 3622 of title 39, United States Code (as amended by section 201(a)) take effect; and

[(2) with respect to competitive products, the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

[TITLE V—GENERAL PROVISIONS

[SEC. 501. QUALIFICATION AND TERM REQUIREMENTS FOR GOVERNORS.

[(a) QUALIFICATIONS.—

[(1) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking ''(a)'' and inserting ''(a)(1)'' and by striking

the fourth sentence and inserting the following: ''The Governors 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 private sector) of substantial size. Experience in the fields of law and accounting shall be considered in making appointments of Governors. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.''.

[(2) APPLICABILITY.—The amendment made by paragraph (1) shall not affect the appointment or tenure of any person serving as a Governor of the United States Postal Service under an appointment made before the date of enactment of this Act however, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment. The requirement set forth in the fourth sentence of section 202(a)(1) of title 39, United States Code (as amended by subsection (a)) shall be met beginning not later than 9 years after the date of enactment of this Act.

[(b) CONSULTATION REQUIREMENT.—Section 202(a) of title 39, United States Code, is amended by adding at the end the following:

[''(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, 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.''.

[(c) 5-YEAR TERMS.—

[(1) IN GENERAL.—Section 202(b) of title 39, United States code, is amended in the first sentence by striking ''9 years'' and inserting ''5 years''.

[(2) APPLICABILITY.—

[(A) CONTINUATION BY INCUMBENTS.—The amendment made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act and such person may continue to serve the remainder of the applicable term.

[(B) VACANCY BY INCUMBENT BEFORE 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served less than 5 years of that term, the resulting vacancy in office shall be treated as a vacancy in a 5-year term.

[(C) VACANCY BY INCUMBENT AFTER 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served 5 years or more of that term, that term shall be deemed to have been a 5-year term beginning on its commencement date for purposes of determining vacancies in office. Any appointment to the vacant office shall be for a 5-year term beginning at the end of the original 9-year term determined without regard to the deeming under the preceding sentence. Nothing in this subparagraph shall be construed to affect any action or authority of any Governor or the Board of Governors during any portion of a 9-year term deemed to be 5-year term under this subparagraph.

[(d) TERM LIMITATION.—

[(1) IN GENERAL.—Section 202(b) of title 39, United States Code, is amended—

[(A) by inserting ''(1)'' after ''(b)''; and

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

[''(2) No person may serve more than 3 terms as a Governor.''.

[(2) APPLICABILITY.—The amendments made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act with respect to the term which that person is serving on that date. Such person may continue to serve the remainder of the applicable term, after which the amendments made by paragraph (1) shall apply.

[SEC. 502. OBLIGATIONS.

[(a) PURPOSES FOR WHICH OBLIGATIONS MAY BE ISSUED.—The first sentence of section 2005(a)(1) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title, other than any of the purposes for which the corresponding authority is available to the Postal Service under section 2011.''.

[(b) INCREASE RELATING TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS.—Section 2005(a)(1) of title 39, United States Code, is amended by striking the third sentence.

[(c) AMOUNTS WHICH MAY BE PLEDGED.—

[(1) OBLIGATIONS TO WHICH PROVISIONS APPLY.—The first sentence of section 2005(b) of title 39, United States Code, is amended by striking ''such obligations,'' and inserting ''obligations issued by the Postal Service under this section,''.

[(2) ASSETS, REVENUES, AND RECEIPTS TO WHICH PROVISIONS APPLY.—Subsection (b) of section 2005 of title 39, United States Code, is amended by striking ''(b)'' and inserting ''(b)(1)'', and by adding at the end the following:

[''(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) or, for purposes of any period before accounting practices and principles under section 2011(h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)); and

[''(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.''.

[SEC. 503. PRIVATE CARRIAGE OF LETTERS.

[(a) IN GENERAL.—Section 601 of title 39, United States Code, is amended by striking subsection (b) and inserting the following:

[''(b) A letter may also 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 12½ ounces; or

[''(3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that permit private carriage by suspension of the operation of this section (as then in effect).

[''(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.''.

[(b) EFFECTIVE DATE.—This section shall take effect on the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

[SEC. 504. RULEMAKING AUTHORITY.

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

[''(2) to adopt, amend, and repeal such rules and regulations, 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;''.

[SEC. 505. NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.

[(a) LABOR DISPUTES.—Section 1207 of title 39, United States Code, is amended to read as follows:

[''§ 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 after 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 within 10 days appoint a mediator of nationwide reputation and professional stature, and who is also a member of the National Academy of Arbitrators. The parties shall cooperate with the mediator in an effort to reach an agreement and shall meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, shall direct.

[''(c)(1) If no agreement is reached within 60 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 therefore, an arbitration board shall be established consisting of 3 members, 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 from a list of names provided by the Director. This list shall consist of not less then 9 names of arbitrators of nationwide reputation and professional nature, who are also members of the National Academy of Arbitrators, and whom the Director has determined are available and willing to serve.

[''(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 mediation 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 the agreement within 90 days after the commencement of collective bargaining, a mediator shall be appointed in accordance with the terms in 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 after 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.''.

[(b) NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.—Except as otherwise provided by the amendment made by subsection (a), nothing in this Act shall restrict, expand, or otherwise affect any of the rights, privileges, or benefits of either employees of 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 within the United States Postal Service, or any collective bargaining agreement.

[(c) FREE MAILING PRIVILEGES CONTINUE UNCHANGED.—Nothing in this Act or any amendment made by this Act shall affect any free mailing privileges accorded under section 3217 or sections 3403 through 3406 of title 39, United States Code.

[SEC. 506. BONUS AUTHORITY.

[Chapter 36 of title 39, United States Code, is amended by inserting after section 3685 the following:

[''§ 3686. Bonus authority

[''(a) IN GENERAL.—The Postal Service may establish 1 or more programs to provide bonuses or other rewards to officers and employees of the Postal Service in senior executive or equivalent positions to achieve the objectives of this chapter.

[''(b) LIMITATION ON TOTAL COMPENSATION.—

[''(1) IN GENERAL.—Under any such program, the Postal Service may award a bonus or other reward in excess of the limitation set forth in the last sentence of section 1003(a), if such program has been approved under paragraph (2). Any such award or bonus may not cause the total compensation of such officer or employee to exceed the total annual compensation payable to the Vice President under section 104 of title 3 as of the end of the calendar year in which the bonus or award is paid.

[''(2) APPROVAL PROCESS.—If the Postal Service wishes to have the authority, under any program described in subsection (a), to award bonuses or other rewards in excess of the limitation set forth in the last sentence of section 1003(a)—

[''(A) the Postal Service shall make an appropriate request to the Board of Governors of the Postal Service in such form and manner as the Board requires; and

[''(B) the Board of Governors shall approve any such request if the Board certifies, for the annual appraisal period involved, that the performance appraisal system for affected officers and employees of the Postal Service (as designed and applied) makes meaningful distinctions based on relative performance.

[''(3) REVOCATION AUTHORITY.—If the Board of Governors of the Postal Service finds that a performance appraisal system previously approved under paragraph (2)(B) does not (as designed and applied) make meaningful distinctions based on relative performance, the Board may revoke or suspend the authority of the Postal Service to continue a program approved under paragraph (2) until such time as appropriate corrective measures have, in the judgment of the Board, been taken.

[''(c) REPORTING REQUIREMENT RELATING TO BONUSES OR OTHER REWARDS.—Included in its comprehensive statement under section 2401(e) for any period shall be—

[''(1) the name of each person receiving a bonus or other reward during such period which would not have been allowable but for the provisions of subsection (b);

[''(2) the amount of the bonus or other reward; and

[''(3) the amount by which the limitation referred to in subsection (b)(1) was exceeded as a result of such bonus or other reward.''.

[TITLE VI—ENHANCED REGULATORY COMMISSION

[SEC. 601. REORGANIZATION AND MODIFICATION OF CERTAIN PROVISIONS RELATING TO THE POSTAL REGULATORY COMMISSION.

[(a) TRANSFER AND REDESIGNATION.—Title 39, United States Code, is amended—

[(1) by inserting after chapter 4 the following:

[''CHAPTER 5—POSTAL REGULATORY COMMISSION

[''Sec.
[''501. Establishment.
[''502. Commissioners.
[''503. Rules; regulations; procedures.
[''504. Administration.
[''505. Officer of the Postal Regulatory Commission representing the general public.

[''§ 501. Establishment

[''The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.

[''§ 502. Commissioners

[''(a) The Postal Regulatory 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 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. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability and Enhancement Act. Not more than 3 of the Commissioners may be adherents of the same political party.

[''(b) No Commissioner shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.

[''(c) 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 subsection (f).

[''(d) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

[''(e) 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.

[''(f) The Commissioners shall serve for terms of 6 years.'';

[(2) by striking, in subchapter I of chapter 36 (as in effect before the amendment made by section 201(c)), the heading for such subchapter I and all that follows through section 3602;

[(3) by redesignating sections 3603 and 3604 as sections 503 and 504, respectively, and transferring such sections to the end of chapter 5 (as inserted by paragraph (1)); and

[(4) by adding after such section 504 the following:

[''§ 505. Officer of the Postal Regulatory Commission representing the general public

[''The Postal Regulatory Commission shall designate an officer of the Postal Regulatory Commission in all public proceedings who shall represent the interests of the general public.''.

[(b) APPLICABILITY.—The amendment made by subsection (a)(1) shall not affect the appointment or tenure of any person serving as a Commissioner on the Postal Regulatory Commission (as so redesignated by section 604) under an appointment made before the date of enactment of this Act or any nomination made before that date, but, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.

[(c) CLERICAL AMENDMENT.—The analysis for part I of title 39, United States Code, is amended by inserting after the item relating to chapter 4 the following:

[''5. Postal Regulatory Commission 501''

[SEC. 602. AUTHORITY FOR POSTAL REGULATORY COMMISSION TO ISSUE SUBPOENAS.

[Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding at the end the following:

[''(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 or to obtain information to be used to prepare a report under this title—

[''(A) issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and

[''(B) order the taking of depositions and responses to written interrogatories by a covered person.

[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.

[''(4) For purposes of this subsection, the term 'covered person' means an officer, employee, agent, or contractor of the Postal Service.

[''(g)(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission under 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) Except as provided in paragraph (3), 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)(A) Paragraph (2) shall not prohibit the Commission from publicly disclosing relevant information in furtherance of its duties under this title, provided that the Commission has adopted regulations under section 553 of title 5, that establish a procedure for according appropriate confidentiality to information identified by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service under paragraph (1), the Commission shall balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

[''(B) Paragraph (2) shall not prevent the Commission from requiring production of information in the course of any discovery procedure established in connection with a proceeding under this title. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for information furnished to any party.''.

[SEC. 603. APPROPRIATIONS FOR THE POSTAL REGULATORY COMMISSION.

[(a) AUTHORIZATION OF APPROPRIATIONS.—Subsection (d) of section 504 of title 39, United States Code (as so redesignated by section 601) is amended to read as follows:

[''(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.''.

[(b) BUDGET PROGRAM.—

[(1) IN GENERAL.—The next to last sentence of section 2009 of title 39, United States Code, is amended to read as follows: ''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 504(d) of this title.''.

[(2) CONFORMING AMENDMENT.—Section 2003(e)(1) of title 39, United States Code, is amended by striking the first sentence and inserting the following: ''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 under section 504(d); and (C) all expenses of the Office of Inspector General, subject to the availability of amounts appropriated under section 8G(f) of the Inspector General Act of 1978.''.

[(c) EFFECTIVE DATE.—

[(1) IN GENERAL.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 2002.

[(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.

[SEC. 604. REDESIGNATION OF THE POSTAL RATE COMMISSION.

[(a) AMENDMENTS TO TITLE 39, UNITED STATES CODE.—Title 39, United States Code, is amended in sections 404, 503 and 504 (as so redesignated by section 601), 1001 and 1002, by striking ''Postal Rate Commission'' each place it appears and inserting ''Postal Regulatory Commission'';

[(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''.

[(f) OTHER REFERENCES.—Whenever a 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. 605. FINANCIAL TRANSPARENCY.

[(a) IN GENERAL.—Section 101 of title 39, United States Code, is amended—

[(1) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

[(2) by inserting after subsection (c) the following:

[''(d) As an independent establishment of the executive branch of the Government of the United States, the Postal Service shall be subject to a high degree of transparency to ensure fair treatment of customers of the Postal Service's market-dominant products and companies competing with the Postal Service's competitive products.''.

[(b) FINANCIAL REPORTING REQUIREMENTS AND ENFORCEMENT POWERS APPLICABLE TO POSTAL SERVICE.—Section 503 of title 39, United States Code (as so redesignated by section 601 and 604) is amended by—

[(1) inserting ''(a)'' before ''The Postal Regulatory Commission shall promulgate''; and

[(2) adding at the end the following:

[''(b)(1) Beginning with the first full fiscal year following the date of enactment of the Postal Accountability and Enhancement Act, the Postal Service shall file with the Postal Regulatory Commission —

[''(A) within 35 days after the end of each fiscal quarter, a quarterly report containing the information prescribed in Form 10–Q of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form;

[''(B) within 60 days after the end of each fiscal year, an annual report containing the information prescribed in Form 10–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form; and

[''(C) periodic reports within the time frame and containing the information prescribed in Form 8–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form.

[''(2) For purposes of preparing the reports required under paragraph (1), the Postal Service shall be deemed to be the registrant described in the Securities and Exchange Commission forms, and references contained in such forms to Securities and Exchange Commission regulations are applicable.

[''(3) For purposes of preparing the reports required under paragraph (1), the Postal Service shall comply with the rules prescribed by the Securities and Exchange Commission implementing section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262; Public Law 107–204) beginning with fiscal year 2007 and in each fiscal year thereafter.

[''(c)(1) The reports required under subsection (b)(1)(B) shall include, with respect to the financial obligations of the Postal Service under chapters 83, 84, and 89 of title 5 for retirees of the Postal Service—

[''(A) the funded status of such obligations of the Postal Service;

[''(B) components of the net change in the fund balances and obligations and the nature and cause of any significant changes;

[''(C) components of net periodic costs;

[''(D) cost methods and assumptions underlying the relevant actuarial valuations;

[''(E) the effect of a one-percentage point increase in the assumed health care cost trend rate for each future year on the service and interest costs components of net periodic cost and the accumulated obligation of the Postal Service under chapter 89 of title 5 for retirees of the Postal Service;

[''(F) actual contributions to and payments from the funds for the years presented and the estimated future contributions and payments for each of the following 5 years;

[''(G) the composition of plan assets reflected in the fund balances; and

[''(H) the assumed rate of return on fund balances and the actual rates of return for the years presented.

[''(2)(A) Beginning with the fiscal year 2007 and in each fiscal year thereafter, for purposes of the reports required under subsection (b)(1) (A) and (B), the Postal Service shall include segment reporting.

[''(B) The Postal Service shall determine the appropriate segment reporting under subparagraph (A), after consultation with the Postal Regulatory Commission.

[''(d) For purposes of the annual reports required under subsection (b)(1)(B), the Postal Service shall obtain an opinion from an independent auditor on whether the information listed under subsection (c) is fairly stated in all material respects, either in relation to the basic financial statements as a whole or on a stand-alone basis.

[''(e) The Postal Regulatory Commission shall have access to the audit documentation and any other supporting matter of the Postal Service and its independent auditor in connection with any information submitted under subsection (b)(1)(B).

[''(f) The Postal Regulatory 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 section whenever it shall appear that the data—

[''(1) have become significantly inaccurate;

[''(2) can be significantly improved; or

[''(3) are not cost beneficial.''.

[TITLE VII—EVALUATIONS

[SEC. 701. ASSESSMENTS OF RATEMAKING, CLASSIFICATION, AND OTHER PROVISIONS.

[(a) IN GENERAL.—The Postal Regulatory Commission shall, at least every 3 years, submit a report to the President and Congress concerning—

[(1) the operation of the amendments made by this Act; and

[(2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States.

[(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 the report and to submit written comments on the report. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).

[SEC. 702. REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY.

[(a) REPORT BY THE POSTAL REGULATORY COMMISSION.—

[(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Postal Regulatory Commission shall submit a report to the President and Congress on universal postal service and the postal monopoly in the United States (in this section referred to as ''universal service and the postal monopoly''), including the monopoly on the delivery of mail and on access to mailboxes.

[(2) CONTENTS.—The report under this subsection shall include—

[(A) a comprehensive review of the history and development of universal service and the postal monopoly, including how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas;

[(B) the scope and standards of universal service and the postal monopoly provided under current law (including sections 101 and 403 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service;

[(C) a description of any geographic areas, populations, communities (including both urban and rural communities), organizations, or other groups or entities not currently covered by universal service or that are covered but that are receiving services deficient in scope or quality or both; and

[(D) the scope and standards of universal service and the postal monopoly likely to be required in the future in order to meet the needs and expectations of the United States public, including all types of mail users, based on discussion of such assumptions, alternative sets of assumptions, and analyses as the Postal Service considers plausible.

[(b) RECOMMENDED CHANGES TO UNIVERSAL SERVICE AND THE MONOPOLY.—The Postal Regulatory Commission shall include in the report under subsection (a), and in all reports submitted under section 701 of this Act—

[(1) any recommended changes to universal service and the postal monopoly as the Commission considers appropriate, including changes that the Commission may implement under current law and changes that would require changes to current law, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service;

[(2) with respect to each recommended change described under paragraph (1)—

[(A) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

[(B) an analysis of the likely benefit of the current postal monopoly to the ability of the Postal Service to sustain the current scope and standards of universal service, including estimates of the financial benefit of the postal monopoly to the extent practicable, under current law; and

[(3) such additional topics and recommendations as the Commission considers appropriate, with estimated effects of the recommendations on the service, financial condition, rates, and the security of mail provided by the Postal Service.

[SEC. 703. 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, and to the Postal Regulatory Commission, within 1 year after the date of enactment of this Act, 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 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, and in the interim, to account under section 3633 of title 39, United States Code (as added by this Act), for the net economic advantages 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 in promulgating or revising the regulations required under section 3633 of title 39, United States Code.

[SEC. 704. REPORT ON POSTAL WORKPLACE SAFETY AND WORKPLACE-RELATED INJURIES.

[(a) REPORT BY THE INSPECTOR GENERAL.—

[(1) IN GENERAL.—Not later than 6 months after the enactment of this Act, the Inspector General of the United States Postal Service shall submit a report to Congress and the Postal Service that—

[(A) details and assesses any progress the Postal Service has made in improving workplace safety and reducing workplace-related injuries nationwide; and

[(B) identifies opportunities for improvement that remain with respect to such improvements and reductions.

[(2) CONTENTS.—The report under this subsection shall also—

[(A) discuss any injury reduction goals established by the Postal Service;

[(B) describe the actions that the Postal Service has taken to improve workplace safety and reduce workplace-related injuries, and assess how successful the Postal Service has been in meeting its injury reduction goal; and

[(C) identify areas where the Postal Service has failed to meet its injury reduction goals, explain the reasons why these goals were not met, and identify opportunities for making further progress in meeting these goals.

[(b) REPORT BY THE POSTAL SERVICE.—

[(1) REPORT TO CONGRESS.—Not later than 6 months after receiving the report under subsection (a), the Postal Service shall submit a report to Congress detailing how it plans to improve workplace safety and reduce workplace-related injuries nationwide, including goals and metrics.

[(2) PROBLEM AREAS.—The report under this subsection shall also include plans, developed in consultation with the Inspector General and employee representatives, including representatives of each postal labor union and management association, for addressing the problem areas identified by the Inspector General in the report under subsection (a)(2)(C).

[SEC. 705. STUDY ON RECYCLED PAPER.

[(a) IN GENERAL.—Within 12 months after the date of enactment of this Act, the Government Accountability Office shall study and submit to the Congress, the Board of Governors of the Postal Service, and to the Postal Regulatory Commission a report concerning—

[(1) the economic and environmental efficacy of establishing rate incentives for mailers linked to the use of recycled paper;

[(2) a description of the accomplishments of the Postal Service in each of the preceding 5 years involving recycling activities, including the amount of annual revenue generated and savings achieved by the Postal Service as a result of its use of recycled paper and other recycled products and its efforts to recycle undeliverable and discarded mail and other materials; and

[(3) additional opportunities that may be available for the United States Postal Service to engage in recycling initiatives and the projected costs and revenues of undertaking such opportunities.

[(b) RECOMMENDATIONS.—The report shall include recommendations for any administrative or legislative actions that may be appropriate.

[TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

[SEC. 801. SHORT TITLE.

[This title may be cited as the ''Postal Civil Service Retirement and Health Benefits Funding Amendments of 2004''.

[SEC. 802. CIVIL SERVICE RETIREMENT SYSTEM.

[(a) IN GENERAL.—Chapter 83 of title 5, United States Code, is amended—

[(1) in section 8334(a)(1)(B), by striking clause (ii) and inserting the following:

[''(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph.''; and

[(2) by amending section 8348(h) to read as follows:

[''(h)(1) In this subsection, the term 'Postal surplus or supplemental liability' means the estimated difference, as determined by the Office, between—

[''(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

[''(B) the sum of—

[''(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

[''(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United

States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

[''(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

[''(2)(A) Not later than June 15, 2006, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2005. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a by June 30, 2006. If the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing September 30, 2006, which provides for the liquidation of such liability by September 30, 2043.

[''(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2006, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C), and any prior amortization schedule for payments shall be terminated. If the result is a supplemental liability, the Office shall establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

[''(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

[''(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

[''(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

[''(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.''.

[(b) CREDIT ALLOWED FOR MILITARY SERVICE.—In the application of section 8348(g)(2) of title 5, United States Code, for the fiscal year 2006, the Office of Personnel Management shall include, in addition to the amount otherwise computed under that paragraph, the amounts that would have been included for the fiscal years 2003 through 2005 with respect to credit for military service of former employees of the United States Postal Service as though the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) had not been enacted, and the Secretary of the Treasury shall make the required transfer to the Civil Service Retirement and Disability Fund based on that amount.

[SEC. 803. HEALTH INSURANCE.

[(a) IN GENERAL.—

[(1) FUNDING.—Chapter 89 of title 5, United States Code, is amended—

[(A) in section 8906(g)(2)(A), by striking ''shall be paid by the United States Postal Service.'' and inserting ''shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service.''; and

[(B) by inserting after section 8909 the following:

[''§ 8909a. Postal Service Retiree Health Benefit Fund

[''(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

[''(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

[''(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

[''(d)(1) Not later than June 30, 2006, and by June 30 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

[''(2)(A) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year, the Office shall recompute the difference between—

[''(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

[''(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

[''(II) the net present value computed under paragraph (1).

[''(B) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year shall recompute, an amortization schedule including a series of annual installments which provide for the liquidation by September 30, 2045, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

[''(3) Not later than September 30, 2006, and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund—

[''(A) the net present value computed under paragraph (1); and

[''(B) the annual installment computed under paragraph (2)(B).

[''(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

[''(5) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.''.

[(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8909 the following:

[''8909a. Postal Service Retiree Health Benefits Fund.''.

[(b) TRANSITIONAL ADJUSTMENT FOR FISCAL YEAR 2006.—For fiscal year 2006, the amounts paid by the Postal Service in Government contributions under section 8906(g)(2)(A) of title 5, United States Code, for fiscal year 2006 contributions shall be deducted from the initial payment otherwise due from the Postal Service to the Postal Service Retiree Health Benefits Fund under section 8909a(d)(3) of such title as added by this section.

[SEC. 804. REPEAL OF DISPOSITION OF SAVINGS PROVISION.

[Section 3 of the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) is repealed.

[SEC. 805. EFFECTIVE DATES.

[(a) IN GENERAL.—Except as provided under subsection (b), this title shall take effect on October 1, 2005.

[(b) TERMINATION OF EMPLOYER CONTRIBUTION.—The amendment made by paragraph (1) of section 802(a) shall take effect on the first day of the first pay period beginning on or after October 1, 2005.

[TITLE IX—COMPENSATION FOR WORK INJURIES

[SEC. 901. TEMPORARY DISABILITY; CONTINUATION OF PAY.

[(a) TIME OF ACCRUAL OF RIGHT.—Section 8117 of title 5, United States Code, is amended—

[(1) by striking ''An employee'' and inserting ''(a) An employee other than a Postal Service employee''; and

[(2) by adding at the end the following:

[''(b) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period, except that if the disability exceeds 14 days or is followed by permanent disability, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.''.

[(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 8118(b)(1) of title 5, United States Code, is amended to read as follows:

[''(1) without a break in time, except as provided under section 8117(b), unless controverted under regulations of the Secretary''.

[SEC. 902. DISABILITY RETIREMENT FOR POSTAL EMPLOYEES.

[(a) TOTAL DISABILITY.—Section 8105 of title 5, United States Code, is amended—

[(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (c).''; and

[(2) by adding at the end the following:

[''(c)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(*l*)(1) of the Social Security Act (42 U.S.C. 416(*l*)(1)).

[''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of the Postal Accountability and Enhancement Act, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for total disability is converted to 50 percent of the monthly pay of the employee on the later of—

[''(A) the date on which the injured employee reaches retirement age; or

[''(B) 1 year after the employee begins receiving compensation.''.

[(b) PARTIAL DISABILITY.—Section 8106 of title 5, United States Code, is amended—

[(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (d).''; and

[(2) by adding at the end the following:

[''(d)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(*l*)(1) of the Social Security Act (42 U.S.C. 416(*l*)(1)).

[''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of this subsection, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for partial disability is converted to 50 percent of the difference between the monthly pay of an employee and the monthly wage earning capacity of the employee after the beginning of partial disability on the later of—

[''(A) the date on which the injured employee reaches retirement age; or

[''(B) 1 year after the employee begins receiving compensation.''.

[TITLE X—MISCELLANEOUS

[SEC. 1001. EMPLOYMENT OF POSTAL POLICE OFFICERS.

[Section 404 of title 39, United States Code (as amended by this Act), is further amended by adding at the end the following:

[''(d) 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 may give such guards, with respect to such property, any of the powers of special policemen provided under section 1315 of title 40. The Postmaster General, or the designee of the Postmaster General, may take any action that the Secretary of Homeland Security may take under section 1315 of title 40, with respect to that property.

[SEC. 1002. EXPANDED CONTRACTING AUTHORITY.

[(a) AMENDMENT TO TITLE 39, UNITED STATES CODE.—

[(1) CONTRACTS WITH AIR CARRIERS.—Subsection (e) of section 5402 of title 39, United States Code, is amended—

[(A) by striking the matter preceding paragraph (2) and inserting the following:

[''(e)(1) The Postal Service may contract with any air carrier for the transportation of mail by aircraft in interstate air transportation, including the rates for that transportation, either through negotiations or competitive bidding.'';

[(B) by redesignating paragraph (2) as paragraph (4); and

[(C) by inserting after paragraph (1) the following:

[''(2) Notwithstanding subsections (b) through (d), 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 for that transportation, 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) during the 5-year period beginning 1 year after the date of enactment of the Postal Accountability and Enhancement Act, the Postal Service may not under this paragraph—

[''(i) contract for service between a pair or combination of pairs of points in foreign air transportation with—

[''(I) a foreign air carrier; or

[''(II) an air carrier to the extent that service provided would be offered through a code sharing arrangement in which the air carrier's designator code is used to identify a flight operated by a foreign air carrier; or

[''(ii) tender mail in foreign air transportation under contracts providing for the carriage of mail in foreign air transportation over all (or substantially all, as determined by the Postal Service) of a carrier's routes or all or substantially all of a carrier's routes within a geographic area determined by the Postal Service on the basis of a common unit price per mile and a separate terminal price to—

[''(I) a foreign air carrier; or

[''(II) an air carrier to the extent that service provided would be offered through a code sharing arrangement in which the air carrier's designator code is used to identify a flight operated by a foreign air carrier, unless—

[''(aa) with respect to clause (i) and this clause, fewer than 2 air carriers capable of providing service to the Postal Service adequate for its purposes between the pair or combination of pairs of points in foreign air transportation offer scheduled service between the pair or combination of pairs of points in foreign air transportation which are the subject of the contract or tender;

[''(bb) with respect to clause (i), after competitive solicitation, the Postal Service has not received at least 2 offers from eligible air carriers capable of providing service to the Postal Service adequate for its purposes between the pair of combination of pairs of points in foreign air transportation; or

[''(cc) with respect to this clause, after competitive solicitation, fewer than 2 air carriers under contract with the Postal Service offer service adequate for the Postal Service's purposes between the pair or combination of pairs of points in foreign air transportation for which tender is being made;

[''(D) beginning 6 years after the date of enactment of the Postal Accountability and Enhancement Act, 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

[''(E) 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.''.

[(2) DEFINITIONS.—Section 5402(a) of title 39, United States Code, is amended by striking paragraph (2) and inserting the following:

[''(2) The terms 'air carrier', 'air transportation', 'foreign air carrier', 'foreign air transportation', 'interstate air transportation', and 'mail' have the meanings given such terms in section 40102(a) of title 49.''.

[(b) AMENDMENTS TO TITLE 49, UNITED STATES CODE.—

[(1) 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.''.

[(2) SCHEDULES FOR CERTAIN TRANSPORTATION OF MAIL.—Section 41902 of title 49, United States Code, is amended—

[(A) by striking subsection (b) and inserting the following:

[''(b) STATEMENTS ON PLACES AND SCHEDULES.—Every air carrier shall file with the Secretary of Transportation and the United States Postal Service a statement showing—

[''(1) the places between which the carrier is authorized to transport mail in Alaska;

[''(2) every schedule of aircraft regularly operated by the carrier between places described under paragraph (1) and every change in each schedule; and

[''(3) for each schedule, the places served by the carrier and the time of arrival at, and departure from, each place.'';

[(B) in subsection (c), by striking ''(b)(3)'' and inserting ''(b)''; and

[(C) in subsection (d), in the first sentence, by striking ''(b)(3)'' and inserting ''(b)''.

[(3) 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).

[(4) TECHNICAL AND CONFORMING AMENDMENTS.—Sections 41107, 41901(b)(1), 41902(a), and 41903 (a) and (b) of title 49, United States Code, are amended by striking ''in foreign air transportation or''.

[(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of enactment of this Act.

[SEC. 1003. REPORT ON THE UNITED STATES POSTAL INSPECTION SERVICE AND THE OFFICE OF THE INSPECTOR GENERAL OF THE UNITED STATES POSTAL SERVICE.

[(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Government Accountability Office shall review the functions, responsibilities, and areas of possible duplication of the United States Postal Inspection Service and the Office of the Inspector General of the United States Postal Service and submit a report on the review to the Committee on Homeland Security and Governmental Affairs of the Senate.

[(b) CONTENTS.—The report under this section shall include recommendations for legislative actions necessary to clarify the roles of the United States Postal Inspection Service and the Office of the Inspector General of the United States Postal Service to strengthen oversight of postal operations.

[SEC. 1004. SENSE OF CONGRESS REGARDING POSTAL SERVICE PURCHASING REFORM.

[It is the sense of Congress that the Postal Service should—

[(1) ensure the fair and consistent treatment of suppliers and contractors in its current purchasing policies and any revision or replacement of such policies, such as through the use of competitive contract award procedures, effective dispute resolution mechanisms, and socioeconomic programs; and

[(2) implement commercial best practices in Postal Service purchasing policies to achieve greater efficiency and cost savings as recommended in July 2003 by the President's Commission on the United States Postal Service, in a manner that is compatible with the fair and consistent treatment of suppliers and contractors, as befitting an establishment in the United States Government.]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Postal Accountability and Enhancement Act''.

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

Sec. 1. Short title; table of contents.

TITLE I—DEFINITIONS; POSTAL SERVICES
Sec. 101. Definitions.
Sec. 102. Postal services.
TITLE II—MODERN RATE REGULATION
Sec. 201. Provisions relating to market-dominant products.
Sec. 202. Provisions relating to competitive products.
Sec. 203. Provisions relating to experimental and new products.
Sec. 204. Reporting requirements and related provisions.
Sec. 205. Complaints; appellate review and enforcement.
Sec. 206. Clerical amendment.
TITLE III—MODERN SERVICE STANDARDS
Sec. 301. Establishment of modern service standards.
Sec. 302. Postal service plan.
TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION
Sec. 401. Postal Service Competitive Products Fund.
Sec. 402. Assumed Federal income tax on competitive products income.
Sec. 403. Unfair competition prohibited.
Sec. 404. Suits by and against the Postal Service.
Sec. 405. International postal arrangements.
TITLE V—GENERAL PROVISIONS
Sec. 501. Qualification and term requirements for Governors.
Sec. 502. Obligations.
Sec. 503. Private carriage of letters.
Sec. 504. Rulemaking authority.
Sec. 505. Noninterference with collective bargaining agreements.
Sec. 506. Bonus authority.
TITLE VI—ENHANCED REGULATORY COMMISSION
Sec. 601. Reorganization and modification of certain provisions relating to the Postal Regulatory Commission.
Sec. 602. Authority for Postal Regulatory Commission to issue subpoenas.
Sec. 603. Authorization of appropriations from the Postal Service Fund.
Sec. 604. Redesignation of the Postal Rate Commission.
Sec. 605. Financial transparency.
TITLE VII—EVALUATIONS
Sec. 701. Assessments of ratemaking, classification, and other provisions.
Sec. 702. Report on universal postal service and the postal monopoly.
Sec. 703. Study on equal application of laws to competitive products.
Sec. 704. Report on postal workplace safety and workplace-related injuries.
Sec. 705. Study on recycled paper.
TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING
Sec. 801. Short title.
Sec. 802. Civil Service Retirement System.
Sec. 803. Health insurance.
Sec. 804. Repeal of disposition of savings provision.
Sec. 805. Effective dates.
TITLE IX—COMPENSATION FOR WORK INJURIES
Sec. 901. Temporary disability; continuation of pay.
Sec. 902. Disability retirement for postal employees.
TITLE X—MISCELLANEOUS
Sec. 1001. Employment of postal police officers.
Sec. 1002. Obsolete provisions.
Sec. 1003. Reduced rates.
Sec. 1004. Sense of Congress regarding Postal Service purchasing reform.

TITLE I—DEFINITIONS; POSTAL SERVICES

SEC. 101. DEFINITIONS.

Section 102 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following:

''(5) 'postal service' refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other functions ancillary thereto;

''(6) 'product' means a postal service with a distinct cost or market characteristic for which a rate or rates are applied;

''(7) 'rates', as used with respect to products, includes fees for postal services;

''(8) 'market-dominant product' or 'product in the market-dominant category of mail' means a product subject to subchapter I of chapter 36; and

''(9) 'competitive product' or 'product in the competitive category of mail' means a product subject to subchapter II of chapter 36; and

''(10) 'year', as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.''.

SEC. 102. POSTAL SERVICES.

(a) IN GENERAL.—Section 404 of title 39, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and by redesignating paragraphs (7) through (9) as paragraphs (6) through (8), respectively; and

(2) by adding at the end the following:

''(c) Except as provided in section 411, nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services.''.

(b) CONFORMING AMENDMENTS.—(1) 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)''.

(2) Section 2003(b)(1) of title 39, United States Code, is amended by striking ''and nonpostal''.

TITLE II—MODERN RATE REGULATION

SEC. 201. PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS.

(a) IN GENERAL.—Chapter 36 of title 39, United States Code, is amended by striking sections 3621 and 3622 and inserting the following:

''§ 3621. Applicability; definitions

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1) first-class mail letters and sealed parcels;

''(2) first-class mail cards;

''(3) periodicals;

''(4) standard mail;

''(5) single-piece parcel post;

''(6) media mail;

''(7) bound printed matter;

''(8) library mail;

''(9) special services; and

''(10) single-piece international mail,

subject to any changes the Postal Regulatory Commission may make under section 3642.

''(b) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''§ 3622. Modern rate regulation

''(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

''(b) OBJECTIVES.—Such system shall be designed to achieve the following objectives:

''(1) To reduce the administrative burden and increase the transparency of the ratemaking process while affording reasonable opportunities for interested parties to participate in that process.

''(2) To create predictability and stability in rates.

''(3) To maximize incentives to reduce costs and increase efficiency.

''(4) To enhance mail security and deter terrorism by promoting secure, sender-identified mail.

''(5) To allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent mail and encourage increased mail volume during nonpeak periods.

''(6) To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.

''(7) To allocate the total institutional costs of the Postal Service equitably between market-dominant and competitive products.

''(c) FACTORS.—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

''(1) the establishment and maintenance of a fair and equitable schedule for rates and classification system;

''(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 each class or type of mail service through reliably identified causal relationships 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 importance of pricing flexibility to encourage increased mail volume and operational efficiency;

''(9) 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;

''(10) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

''(11) the desirability of special classifications from the point of view of both the user and of the Postal Service;

''(12) the educational, cultural, scientific, and informational value to the recipient of mail matter;

''(13) the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable, universal postal service; and

''(14) the policies of this title as well as such other factors as the Commission determines appropriate.

''(d) REQUIREMENTS.—

''(1) IN GENERAL.—The system for regulating rates and classes for market-dominant products shall—

''(A) include an annual limitation on the percentage changes in rates to be set by the Postal Regulatory Commission that will be equal to the change in the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation over the most recent available 12-month period preceding the date the Postal Service files notice of its intention to increase rates;

''(B) establish a schedule whereby rates, when necessary and appropriate, would change at regular intervals by predictable amounts;

''(C) not later than 45 days before the implementation of any adjustment in rates under this section—

''(i) require the Postal Service to provide public notice of the adjustment;

''(ii) provide an opportunity for review by the Postal Regulatory Commission;

''(iii) provide for the Postal Regulatory Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under subparagraph (A); and

''(iv) require the Postal Service to respond to the notice provided under clause (iii) and describe the actions to be taken to comply with the limitation under subparagraph (A);

''(D) establish procedures whereby the Postal Service may adjust rates not in excess of the annual limitations under subparagraph (A); and

''(E) notwithstanding any limitation set under subparagraphs (A) and (C), establish procedures whereby rates may be adjusted on an expedited basis due to unexpected and extraordinary circumstances.

''(2) LIMITATIONS.—

''(A) CLASSES OF MAIL.—The annual limitations under paragraph (1)(A) shall apply to a class of mail, as defined in the Domestic Mail Classification Schedule as in effect on the date of enactment of the Postal Accountability and Enhancement Act.

''(B) ROUNDING OF RATES AND FEES.—Nothing in this subsection shall preclude the Postal Service from rounding rates and fees to the nearest whole integer, if the effect of such rounding does not cause the overall rate increase for any class to exceed the Consumer Price Index for All Urban Consumers.

''(C) BANKING UNUSED PRICING AUTHORITY.—Notwithstanding paragraph (1), for any class or service that failed to recover its attributable costs in the previous fiscal year, or for all classes and services when the Postal Service has operated at a loss for the last 2 years, rate increases may exceed Consumer Price Index for All Urban Consumers by the amount rate increases in the previous year were less than Consumer Price Index for All Urban Consumers.

''(e) WORKSHARE DISCOUNTS.—

''(1) DEFINITION.—In this subsection, the term 'workshare discount' refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

''(2) REGULATIONS.—As part of the regulations established under subsection (a), the Postal Regulatory Commission shall establish rules for workshare discounts that ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless—

''(A) the discount is—

''(i) associated with a new postal service, a change to an existing postal service, or with a new workshare initiative related to an existing postal service; and

''(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service and the portion of the discount in excess of the cost that the Postal Service avoids as a result of the workshare activity will be phased out over a limited period of time;

''(B) a reduction in the discount would—

''(i) lead to a loss of volume in the affected category or subclass of mail and reduce the aggregate contribution to the institutional costs of the Postal Service from the category or subclass subject to the discount below what it otherwise would have been if the discount had not been reduced to costs avoided;

''(ii) result in a further increase in the rates paid by mailers not able to take advantage of the discount; or

''(iii) impede the efficient operation of the Postal Service;

''(C) the amount of the discount above costs avoided—

''(i) is necessary to mitigate rate shock; and

''(ii) will be phased out over time; or

''(D) the discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, scientific, or informational value.

''(3) REPORT.—Whenever the Postal Service establishes or maintains a workshare discount, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report that—

''(A) explains the Postal Service's reasons for establishing or maintaining the rate;

''(B) sets forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate; and

''(C) certifies that the discount will not adversely affect rates or services provided to users of postal services who do not take advantage of the discount rate.

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

(b) REPEALED SECTIONS.—Sections 3623, 3624, 3625, and 3628 of title 39, United States Code, are repealed.

(c) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect after the amendment made by section 601, but before the amendment made by section 202) is amended by striking the heading for subchapter II and inserting the following:

''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS''.

SEC. 202. PROVISIONS RELATING TO COMPETITIVE PRODUCTS.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3629 the following:

''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

''§ 3631. Applicability; definitions and updates

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1) priority mail;

''(2) expedited mail;

''(3) bulk parcel post;

''(4) bulk international mail; and

''(5) mailgrams;

subject to subsection (d) and any changes the Postal Regulatory Commission may make under section 3642.

''(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 through reliably identified causal relationships.

''(c) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''(d) LIMITATION.—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply with respect to any product then currently in the market-dominant category of mail.

''§ 3632. Action of the Governors

''(a) AUTHORITY TO ESTABLISH RATES AND CLASSES.—The Governors, with the written 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) PUBLIC NOTICE; REVIEW; AND COMPLIANCE.—Not later than 30 days before the date of implementation of any adjustment in rates under this section—

''(A) the Governors shall provide public notice of the adjustment and an opportunity for review by the Postal Regulatory Commission;

''(B) the Postal Regulatory Commission shall notify the Governors of any noncompliance of the adjustment with section 3633; and

''(C) the Governors shall respond to the notice provided under subparagraph (B) and describe the actions to be taken to comply with section 3633.

''(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.

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

''(a) IN GENERAL.—The Postal Regulatory Commission shall, within 180 days 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 their 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.''.

SEC. 203. PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS.

Subchapter III of chapter 36 of title 39, United States Code, is amended to read as follows:

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

''§ 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)(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).

''(2) EXEMPTION AUTHORITY.—The Postal Regulatory Commission may, upon written application 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 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).

''§ 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 substantial 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 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(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.''.

SEC. 204. REPORTING REQUIREMENTS AND RELATED PROVISIONS.

(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by subsection (b)) is amended—

(1) by striking the heading for subchapter IV and inserting the following:

''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW''; and

(2) by striking the heading for subchapter V and inserting the following:

''SUBCHAPTER VI—GENERAL''.

(b) REPORTS AND COMPLIANCE.—Chapter 36 of title 39, United States Code, is amended by inserting after subchapter III the following:

''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

''§ 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, 3633, and 3691.

''(b) 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.

''§ 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))—

''(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

''(2) which shall, for each market-dominant product provided in such year, provide—

''(A) product information, including mail volumes; and

''(B) measures of the service afforded by the Postal Service in connection with such product, including—

''(i) the level of service (described in terms of speed of delivery and reliability) provided; and

''(ii) the degree of customer satisfaction with the service provided.

Before submitting a report under this subsection (including any annex to the report and the information required under subsection (b)), 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) INFORMATION RELATING TO WORKSHARE DISCOUNTS.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

''(1) The per-item cost avoided by the Postal Service by virtue of such discount.

''(2) The percentage of such per-item cost avoided that the per-item workshare discount represents.

''(3) The per-item contribution made to institutional costs.

''(c) SERVICE AGREEMENTS AND MARKET TESTS.—In carrying out subsections (a) and (b) with respect to service agreements and experimental products offered through market tests under section 3641 in a year, the Postal Service—

''(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

''(2) shall 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 to the report) 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 timely, 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 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 under 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 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

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

''(1) comprehensive statement under section 2401(e);

''(2) strategic plan under section 2802;

''(3) performance plan under section 2803; and

''(4) program performance reports under section 2804.

''§ 3653. Annual determination of compliance

''(a) OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3652 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.

''(b) DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3652 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 chapter (or regulations promulgated thereunder); or

''(2) whether any service standards in effect during such year were not met.

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.

''(c) IF ANY NONCOMPLIANCE IS FOUND.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take any appropriate remedial action authorized by section 3662(c).

''(d) REBUTTABLE PRESUMPTION.—A timely written determination described in the last sentence of subsection (b) 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 under paragraphs (1) and (2) of subsection (b)) during the year to which such determination relates.''.

SEC. 205. COMPLAINTS; APPELLATE REVIEW AND ENFORCEMENT.

Chapter 36 of title 39, United States Code, is amended by striking sections 3662 and 3663 and inserting the following:

''§ 3662. Rate and service complaints

''(a) IN GENERAL.—Any person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of chapter 1, 4, or 6, or this chapter (or regulations promulgated under any of those chapters) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

''(b) PROMPT RESPONSE REQUIRED.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a), either—

''(A) begin proceedings on such complaint; or

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

''(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, 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 under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

''(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds the complaint to be justified, it shall order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance including ordering unlawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, and requiring the Postal Service to make up for revenue shortfalls in competitive products.

''(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—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 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. Appellate review

''A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

''§ 3664. Enforcement of orders

''The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain the Postal Service from violating, any order issued by the Postal Regulatory Commission.''.

SEC. 206. CLERICAL AMENDMENT.

Chapter 36 of title 39, United States Code, is amended by striking the heading and analysis for such chapter and inserting the following:

''CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS

''Sec.
''3621. Applicability; definitions.
''3622. Modern rate regulation.
''[3623. Repealed.]
''[3624. Repealed.]
''[3625. Repealed.]
''3626. Reduced Rates.
''3627. Adjusting free rates.
''[3628. Repealed.]
''3629. Reduced rates for voter registration purposes.

''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

''3631. Applicability; definitions and updates.
''3632. Action of the Governors.
''3633. Provisions applicable to rates for competitive products.
''3634. Assumed Federal income tax on competitive products.

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

''3641. Market tests of experimental products.
''3642. New products and transfers of products between the market-dominant and competitive categories of mail.

''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

''3651. Annual reports by the Commission.
''3652. Annual reports to the Commission.
''3653. Annual determination of compliance.

''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW

''3661. Postal Services.
''3662. Rate and service complaints.
''3663. Appellate review.
''3664. Enforcement of orders.

''SUBCHAPTER VI—GENERAL

''3681. Reimbursement.

''3682. Size and weight limits.
''3683. Uniform rates for books; films, other materials.
''3684. Limitations.
''3685. Filing of information relating to periodical publications.
''3686. Bonus authority.

''SUBCHAPTER VII—MODERN SERVICE STANDARDS

''3691. Establishment of modern service standards.''.

TITLE III—MODERN SERVICE STANDARDS

SEC. 301. ESTABLISHMENT OF MODERN SERVICE STANDARDS.

Chapter 36 of title 39, United States Code, as amended by this Act, is further amended by adding at the end the following:

''SUBCHAPTER VII—MODERN SERVICE STANDARDS

''§3691. Establishment of modern service standards

''(a) AUTHORITY GENERALLY.—Not later than 12 months after the date of enactment of this section, the Postal Service shall, in consultation with the Postal Regulatory Commission, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with the Postal Service's universal service obligation as defined in sections 101 (a) and (b) and 403.

''(b) OBJECTIVES.—Such standards shall be designed to achieve the following objectives:

''(1) To enhance the value of postal services to both senders and recipients.

''(2) To preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.

''(3) To reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

''(4) To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.

''(c) FACTORS.—In establishing or revising such standards, the Postal Service shall take into account—

''(1) the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;

''(2) the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail;

''(3) the needs of Postal Service customers, including those with physical impairments;

''(4) mail volume and revenues projected for future years;

''(5) the projected growth in the number of addresses the Postal Service will be required to serve in future years;

''(6) the current and projected future cost of serving Postal Service customers;

''(7) the effect of changes in technology, demographics, and population distribution on the efficient and reliable operation of the postal delivery system; and

''(8) the policies of this title and such other factors as the Commission determines appropriate.

''(d) REVIEW.—The regulations promulgated pursuant to this section (and any revisions thereto) shall be subject to review upon complaint under sections 3662 and 3663.

SEC. 302. POSTAL SERVICE PLAN.

(a) IN GENERAL.—Within 6 months after the establishment of the service standards under section 3691 of title 39, United States Code, as added by this Act, the Postal Service shall, in consultation with the Postal Regulatory Commission, develop and submit to Congress a plan for meeting those standards.

(b) CONTENTS.—The plan under this section shall—

(1) establish performance goals;

(2) describe any changes to the Postal Service's processing, transportation, delivery, and retail networks necessary to allow the Postal Service to meet the performance goals;

(3) describe any changes to planning and performance management documents previously submitted to Congress to reflect new performance goals; and

(4) contain the matters relating to postal facilities provided under subsection (c).

(c) POSTAL FACILITIES.—

(1) FINDINGS.—Congress finds that—

(A) the Postal Service has more than 400 logistics facilities, separate from its post office network;

(B) as noted by the President's Commission on the United States Postal Service, the Postal Service has more facilities than it needs and the streamlining of this distribution network can pave the way for the potential consolidation of sorting facilities and the elimination of excess costs;

(C) the Postal Service has always revised its distribution network to meet changing conditions and is best suited to address its operational needs; and

(D) Congress strongly encourages the Postal Service to—

(i) expeditiously move forward in its streamlining efforts; and

(ii) keep unions, management associations, and local elected officials informed as an essential part of this effort and abide by any procedural requirements contained in the national bargaining agreements.

(2) IN GENERAL.—The Postal Service plan shall include a description of—

(A) the long-term vision of the Postal Service for rationalizing its infrastructure and workforce; and

(B) how the Postal Service intends to implement that vision.

(3) CONTENT OF FACILITIES PLAN.—The plan under this subsection shall include—

(A) a strategy for how the Postal Service intends to rationalize the postal facilities network and remove excess processing capacity and space from the network, including estimated timeframes, criteria, and processes to be used for making changes to the facilities network, and the process for engaging policy makers and the public in related decisions;

(B) a discussion of what impact any facility changes may have on the postal workforce and whether the Postal Service has sufficient flexibility to make needed workforce changes; and

(C) an identification of anticipated costs, cost savings, and other benefits associated with the infrastructure rationalization alternatives discussed in the plan.

(4) ANNUAL REPORTS.—

(A) IN GENERAL.—Not later than 90 days after the end of each fiscal year, the Postal Service shall prepare and submit a report to Congress on how postal decisions have impacted or will impact rationalization plans.

(B) CONTENTS.—Each report under this paragraph shall include—

(i) an account of actions taken during the preceding fiscal year to improve the efficiency and effectiveness of its processing, transportation, and distribution networks while preserving the timely delivery of postal services, including overall estimated costs and cost savings;

(ii) an account of actions taken to identify any excess capacity within its processing, transportation, and distribution networks and implement savings through realignment or consolidation of facilities including overall estimated costs and cost savings;

(iii) an estimate of how postal decisions related to mail changes, security, automation initiatives, worksharing, information technology systems, excess capacity, consolidating and closing facilities, and other areas will impact rationalization plans;

(iv) identification of any statutory or regulatory obstacles that prevented or will prevent or hinder the Postal Service from taking action to realign or consolidate facilities; and

(v) such additional topics and recommendations as the Postal Service considers appropriate.

(d) ALTERNATE RETAIL OPTIONS.—The Postal Service plan shall include plans to expand and market retail access to postal services, in addition to post offices, including—

(1) vending machines;

(2) the Internet;

(3) postage meter;

(4) stamps by mail;

(5) Postal Service employees on delivery routes;

(6) retail facilities in which overhead costs are shared with private businesses and other government agencies; or

(7) any other nonpost office access channel providing market retail access to postal services.

(e) REEMPLOYMENT ASSISTANCE AND RETIREMENT BENEFITS.—The Postal Service plan shall include—

(1) a plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation of any of its functions or the closing and consolidation of any of its facilities; and

(2) a plan, developed in consultation with the Office of Personnel Management, to offer early retirement benefits.

(f) INSPECTOR GENERAL REPORT.—

(1) IN GENERAL.—Before submitting the plan under subsection (a) and each annual report under subsection (c) to Congress, the Postal Service shall submit the plan and each annual report to the Inspector General of the United States Postal Service in a timely manner to carry out this subsection.

(2) REPORT.—The Inspector General shall prepare a report describing the extent to which the Postal Service plan and each annual report under subsection (c)—

(A) are consistent with the continuing obligations of the Postal Service under title 39, United States Code;

(B) provide for the Postal Service to meet the service standards established under section 3691 of title 39, United States Code; and

(C) allow progress toward improving overall efficiency and effectiveness consistent with the need to maintain universal postal service at affordable rates.

(g) CONTINUED AUTHORITY.—Nothing in this section shall be construed to prohibit the Postal Service from implementing any change to its processing, transportation, delivery, and retail networks under any authority granted to the Postal Service for those purposes.

TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

SEC. 401. POSTAL SERVICE COMPETITIVE PRODUCTS FUND.

(a) PROVISIONS RELATING TO POSTAL SERVICE COMPETITIVE PRODUCTS FUND AND RELATED MATTERS.—

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

''§2011. Provisions relating to competitive products

''(a)(1) In this subsection, the term 'costs attributable' has the meaning given such term by section 3631.

''(2) 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—

''(A) costs attributable to competitive products; and

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

''(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 Postal Service under subsection (e);

''(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) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, the Postal Service may request the investment of such amounts as the Postal Service determines 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 the Postal Service determines appropriate.

''(d) With the approval of the Secretary of the Treasury, the Postal Service may deposit moneys of the Competitive Products 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)(A) 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 the Postal Service determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund.

''(B) Subject to paragraph (5), any borrowings by the Postal Service under subparagraph (A) shall be supported and serviced by—

''(i) the revenues and receipts from competitive products and the assets related to the provision of competitive products (as determined under subsection (h)); or

''(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e).

''(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with any trustee under any agreement entered into in connection with the issuance of such obligations 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) shall be in such forms and denominations;

''(B) shall be sold at such times and in such amounts;

''(C) shall mature at such time or times;

''(D) shall be sold at such prices;

''(E) shall bear such rates of interest;

''(F) may be redeemable before maturity in such manner, at such times, and at such redemption premiums;

''(G) may be entitled to such relative priorities of claim on the assets of the Postal Service with respect to principal and interest payments; and

''(H) shall be subject to such other terms and conditions,

as the Postal Service determines.

''(4) Obligations issued by the Postal Service under this subsection—

''(A) shall be negotiable or nonnegotiable and bearer or registered instruments, as specified therein and in any indenture or covenant relating thereto;

''(B) shall contain a recital that such obligations are issued under this subsection, and such recital shall be conclusive evidence of the regularity of the issuance and sale of such obligations and of their validity;

''(C) shall 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;

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

''(E) except as provided in section 2006(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.

''(5)(A) Subject to subparagraph (B), the Postal Service shall make payments of principal, or interest, or both on obligations issued under this subsection from—

''(i) revenues and receipts from competitive products and assets related to the provision of competitive products (as determined under subsection (h)); or

''(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available, including the audited statements required by section 2008(e).

''(B) Based on the audited financial statements for the most recently completed fiscal year, the total assets of the Competitive Products Fund may not be less than the amount determined by multiplying—

''(i) the quotient resulting from the total revenue of the Competitive Products Fund divided by the total revenue of the Postal Service; and

''(ii) the total assets of the Postal Service.

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

''(h)(1)(A) The Secretary of the Treasury, in consultation with the Postal Service and an independent, certified public accounting firm and other advisors as the Secretary considers appropriate, shall develop recommendations regarding—

''(i) the accounting practices and principles that should be followed by the Postal Service with the objectives of—

''(I) identifying and valuing the assets and liabilities of the Postal Service associated with providing competitive products, including the capital and operating costs incurred by the Postal Service in providing such competitive products; and

''(II) subject to subsection (e)(5), preventing the subsidization of such products by market-dominant products; and

''(ii) the substantive and procedural rules that should be followed in determining the assumed Federal income tax on competitive products income of the Postal Service for any year (within the meaning of section 3634).

''(B) Not earlier than 6 months after the date of enactment of this section, and not later than 12 months after such date, the Secretary of the Treasury shall submit the recommendations under subparagraph (A) to the Postal Regulatory Commission.

''(2)(A) Upon receiving the recommendations of the Secretary of the Treasury under paragraph (1), the Commission shall give interested parties, including 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, 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.

''(B)(i) 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;

''(II) provide for the establishment and application of the substantive and procedural rules described under paragraph (1)(A)(ii); and

''(III) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

''(ii) Final rules under this subparagraph shall be issued not later than 12 months after the date on which recommendations are submitted under paragraph (1) (or by such later date on which the Commission and the Postal Service may agree). The Commission may revise such rules.

''(C)(i) Reports described under subparagraph (B)(i)(III) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

''(ii) 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 information under subparagraph (B)(i)(III) 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 described under subparagraph (B)(i)(III) shall be submitted by the Postal Service to the Secretary of the Treasury and the Inspector General of the United States Postal Service.

''(i)(1) The Postal Service shall submit an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund. The report shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses.

''(2) A copy of the most recent report submitted under paragraph (1) shall be included in the annual report submitted by the Postal Regulatory Commission under section 3652(g).''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:

''2011. Provisions relating to competitive products.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 2001 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

''(2) COMPETITIVE PRODUCTS FUND.—The term 'Competitive Products Fund' means the Postal Service Competitive Products Fund established by section 2011; and''.

(2) CAPITAL OF THE POSTAL SERVICE.—Section 2002(b) of title 39, United States Code, is amended by striking ''Fund,'' and inserting ''Fund

and the balance in the Competitive Products Fund,''.

(3) POSTAL SERVICE FUND.—

(A) PURPOSES FOR WHICH AVAILABLE.—Section 2003(a) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available).''.

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

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

(A) in subsection (a), in the first sentence, by inserting ''or 2011'' after ''section 2005'';

(B) in subsection (b)—

(i) in the first sentence, by inserting ''under section 2005'' before ''in such amounts''; and

(ii) in the second sentence, by inserting ''under section 2005'' before ''in excess of such amount.''; and

(C) in subsection (c), by inserting ''or 2011(e)(4)(E)'' after ''section 2005(d)(5)''.

SEC. 402. ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS INCOME.

Subchapter II of chapter 36 of title 39, United States Code, as amended by section 202, is amended by adding at the end the following:

''§ 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.''.

SEC. 403. UNFAIR COMPETITION PROHIBITED.

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

''§ 404a. Specific limitations

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

''(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;

''(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or

''(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any postal 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) from an independent source or is otherwise obtained (or obtainable).

''(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

''(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.''.

(b) CONFORMING AMENDMENTS.—

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

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

(c) CLERICAL AMENDMENT.—The analysis for chapter 4 of title 39, United States Code, is amended by inserting after the item relating to section 404 the following:

''404a. Specific limitations.''.

SEC. 404. SUITS BY AND AGAINST THE POSTAL SERVICE.

(a) IN GENERAL.—Section 409 of title 39, United States Code, is amended by striking subsections (d) and (e) and inserting the following:

''(d)(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 '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.

''(e)(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 product 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 Federal law by such agency or any officer or employee thereof; and

''(B) 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 such subsection); 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) No damages, interest on damages, costs or attorney's fees may be recovered, and no criminal liability may be imposed, under the antitrust laws (as so defined) from any officer or employee of the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, acting in an official capacity.

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

''(f) To the extent that the Postal Service engages in conduct with respect to the provision of competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.

''(g)(1) Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with 1 of the nationally recognized model building codes and with other applicable nationally recognized codes. To the extent practicable, model building codes should meet the voluntary consensus criteria established for codes and standards as required in the National Technology Transfer and Advancement Act of 1995 as defined in Office of Management and Budget Circular A1190. For purposes of life safety, the Postal Service shall continue to comply with the most current edition of the Life Safety Code of the National Fire Protection Association (NFPA 101).

''(2) Each building constructed or altered by the Postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.

''(3) For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—

''(A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;

''(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

''(C) permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—

''(i) a copy of such schedule before construction of the building is begun; and

''(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding sentence, nor shall anything in this subsection require the Postal Service or any of its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

''(4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.

''(5) In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.

''(6) For purposes of this subsection, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

''(h)(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 (d) or (e) of this section.

''(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

''(C) Section 3663 (relating to appellate review).

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.

''(i) 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(g).''.

(b) TECHNICAL AMENDMENT.—Section 409(a) of title 39, United States Code, is amended by striking ''Except as provided in section 3628 of this title,'' and inserting ''Except as otherwise provided in this title,''.

SEC. 405. INTERNATIONAL POSTAL ARRANGEMENTS.

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

''§ 407. International postal arrangements

''(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

''(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, coordination, and oversight of foreign policy related to international postal services and shall have the power to conclude postal treaties and conventions, except that the Secretary may not conclude any postal treaty or convention if such treaty or convention would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal 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, 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, should consider 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 Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives;

''(D) shall maintain appropriate liaison with both representatives of the Postal Service and 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

''(E) 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 (D) of paragraph (2).

''(c) Before concluding any postal treaty or convention that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

''(d) 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 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 binding under 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.

''(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, 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.

''(2) In exercising the authority under subsection (b) to conclude new postal treaties and conventions related to international postal services and to renegotiate such treaties and conventions, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

''(3) The provisions of this subsection 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) 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—

(1) with respect to market-dominant products, the date as of which the regulations promulgated under section 3622 of title 39, United States Code (as amended by section 201(a)) take effect; and

(2) with respect to competitive products, the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

TITLE V—GENERAL PROVISIONS

SEC. 501. QUALIFICATION AND TERM REQUIREMENTS FOR GOVERNORS.

(a) QUALIFICATIONS.—

(1) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking ''(a)'' and inserting ''(a)(1)'' and by striking the fourth sentence and inserting the following: ''The Governors 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 private sector) of substantial size. Experience in the fields of law and accounting shall be considered in making appointments of Governors. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.''.

(2) APPLICABILITY.—The amendment made by paragraph (1) shall not affect the appointment or tenure of any person serving as a Governor of the United States Postal Service under an appointment made before the date of enactment of this Act however, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment. The requirement set forth in the fourth sentence of section 202(a)(1) of title 39, United States Code (as amended by subsection (a)) shall be met beginning not later than 9 years after the date of enactment of this Act.

(b) CONSULTATION REQUIREMENT.—Section 202(a) of title 39, United States Code, is amended by adding at the end the following:

''(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, 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.''.

(c) 5-YEAR TERMS.—

(1) IN GENERAL.—Section 202(b) of title 39, United States code, is amended in the first sentence by striking ''9 years'' and inserting ''5 years''.

(2) APPLICABILITY.—

(A) CONTINUATION BY INCUMBENTS.—The amendment made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act and such person

may continue to serve the remainder of the applicable term.

(B) VACANCY BY INCUMBENT BEFORE 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served less than 5 years of that term, the resulting vacancy in office shall be treated as a vacancy in a 5-year term.

(C) VACANCY BY INCUMBENT AFTER 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served 5 years or more of that term, that term shall be deemed to have been a 5-year term beginning on its commencement date for purposes of determining vacancies in office. Any appointment to the vacant office shall be for a 5-year term beginning at the end of the original 9-year term determined without regard to the deeming under the preceding sentence. Nothing in this subparagraph shall be construed to affect any action or authority of any Governor or the Board of Governors during any portion of a 9-year term deemed to be 5-year term under this subparagraph.

(d) TERM LIMITATION.—

(1) IN GENERAL.—Section 202(b) of title 39, United States Code, is amended—

(A) by inserting ''(1)'' after ''(b)''; and

(B) by adding at the end the following:

''(2) No person may serve more than 3 terms as a Governor.''.

(2) APPLICABILITY.—The amendments made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act with respect to the term which that person is serving on that date. Such person may continue to serve the remainder of the applicable term, after which the amendments made by paragraph (1) shall apply.

SEC. 502. OBLIGATIONS.

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

(b) INCREASE RELATING TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS.—Section 2005(a)(1) of title 39, United States Code, is amended by striking the third sentence.

(c) AMOUNTS WHICH MAY BE PLEDGED.—

(1) OBLIGATIONS TO WHICH PROVISIONS APPLY.—The first sentence of section 2005(b) of title 39, United States Code, is amended by striking ''such obligations,'' and inserting ''obligations issued by the Postal Service under this section,''.

(2) ASSETS, REVENUES, AND RECEIPTS TO WHICH PROVISIONS APPLY.—Subsection (b) of section 2005 of title 39, United States Code, is amended by striking ''(b)'' and inserting ''(b)(1)'', and by adding at the end the following:

''(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) or, for purposes of any period before accounting practices and principles under section 2011(h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)); and

''(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.''.

SEC. 503. PRIVATE CARRIAGE OF LETTERS.

(a) IN GENERAL.—Section 601 of title 39, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) A letter may also 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 12½ ounces; or

''(3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that permit private carriage by suspension of the operation of this section (as then in effect).

''(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.''.

(b) EFFECTIVE DATE.—This section shall take effect on the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

SEC. 504. RULEMAKING AUTHORITY.

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

''(2) to adopt, amend, and repeal such rules and regulations, 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;''.

SEC. 505. NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.

(a) LABOR DISPUTES.—Section 1207 of title 39, United States Code, is amended to read as follows:

''§ 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 after 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 within 10 days appoint a mediator of nationwide reputation and professional stature, and who is also a member of the National Academy of Arbitrators. The parties shall cooperate with the mediator in an effort to reach an agreement and shall meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, shall direct.

''(c)(1) If no agreement is reached within 60 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 therefore, an arbitration board shall be established consisting of 3 members, 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 from a list of names provided by the Director. This list shall consist of not less then 9 names of arbitrators of nationwide reputation and professional nature, who are also members of the National Academy of Arbitrators, and whom the Director has determined are available and willing to serve.

''(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 mediation 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 the agreement within 90 days after the commencement of collective bargaining, a mediator shall be appointed in accordance with the terms in 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 after 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.''.

(b) NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.—Except as otherwise provided by the amendment made by subsection (a), nothing in this Act shall restrict, expand, or otherwise affect any of the rights, privileges, or benefits of either employees of 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 within the United States Postal Service, or any collective bargaining agreement.

(c) FREE MAILING PRIVILEGES CONTINUE UNCHANGED.—Nothing in this Act or any amendment made by this Act shall affect any free mailing privileges accorded under section 3217 or sections 3403 through 3406 of title 39, United States Code.

SEC. 506. BONUS AUTHORITY.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3685 the following:

''§ 3686. Bonus authority

''(a) IN GENERAL.—The Postal Service may establish 1 or more programs to provide bonuses or other rewards to officers and employees of the Postal Service in senior executive or equivalent positions to achieve the objectives of this chapter.

''(b) LIMITATION ON TOTAL COMPENSATION.—

''(1) IN GENERAL.—Under any such program, the Postal Service may award a bonus or other reward in excess of the limitation set forth in the last sentence of section 1003(a), if such program has been approved under paragraph (2). Any such award or bonus may not cause the total compensation of such officer or employee to exceed the total annual compensation payable to the Vice President under section 104 of title 3 as of the end of the calendar year in which the bonus or award is paid.

''(2) APPROVAL PROCESS.—If the Postal Service wishes to have the authority, under any program described in subsection (a), to award bonuses or other rewards in excess of the limitation set forth in the last sentence of section 1003(a)—

''(A) the Postal Service shall make an appropriate request to the Board of Governors of the Postal Service in such form and manner as the Board requires; and

''(B) the Board of Governors shall approve any such request if the Board certifies, for the

annual appraisal period involved, that the performance appraisal system for affected officers and employees of the Postal Service (as designed and applied) makes meaningful distinctions based on relative performance.

''(3) REVOCATION AUTHORITY.—If the Board of Governors of the Postal Service finds that a performance appraisal system previously approved under paragraph (2)(B) does not (as designed and applied) make meaningful distinctions based on relative performance, the Board may revoke or suspend the authority of the Postal Service to continue a program approved under paragraph (2) until such time as appropriate corrective measures have, in the judgment of the Board, been taken.

''(c) REPORTING REQUIREMENT RELATING TO BONUSES OR OTHER REWARDS.—Included in its comprehensive statement under section 2401(e) for any period shall be—

''(1) the name of each person receiving a bonus or other reward during such period which would not have been allowable but for the provisions of subsection (b);

''(2) the amount of the bonus or other reward; and

''(3) the amount by which the limitation referred to in subsection (b)(1) was exceeded as a result of such bonus or other reward.''.

TITLE VI—ENHANCED REGULATORY COMMISSION

SEC. 601. REORGANIZATION AND MODIFICATION OF CERTAIN PROVISIONS RELATING TO THE POSTAL REGULATORY COMMISSION.

(a) TRANSFER AND REDESIGNATION.—Title 39, United States Code, is amended—

(1) by inserting after chapter 4 the following:

''CHAPTER 5—POSTAL REGULATORY COMMISSION

''Sec.
''501. Establishment.
''502. Commissioners.
''503. Rules; regulations; procedures.
''504. Administration.
''505. Officer of the Postal Regulatory Commission representing the general public.

''§ 501. Establishment

''The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.

''§ 502. Commissioners

''(a) The Postal Regulatory 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 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. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability and Enhancement Act. Not more than 3 of the Commissioners may be adherents of the same political party.

''(b) No Commissioner shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.

''(c) 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 subsection (f).

''(d) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

''(e) 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.

''(f) The Commissioners shall serve for terms of 6 years.'';

(2) by striking, in subchapter I of chapter 36 (as in effect before the amendment made by section 201(c)), the heading for such subchapter I and all that follows through section 3602;

(3) by redesignating sections 3603 and 3604 as sections 503 and 504, respectively, and transferring such sections to the end of chapter 5 (as inserted by paragraph (1)); and

(4) by adding after such section 504 the following:

''§ 505. Officer of the Postal Regulatory Commission representing the general public

''The Postal Regulatory Commission shall designate an officer of the Postal Regulatory Commission in all public proceedings who shall represent the interests of the general public.''.

(b) APPLICABILITY.—The amendment made by subsection (a)(1) shall not affect the appointment or tenure of any person serving as a Commissioner on the Postal Regulatory Commission (as so redesignated by section 604) under an appointment made before the date of enactment of this Act or any nomination made before that date, but, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.

(c) CLERICAL AMENDMENT.—The analysis for part I of title 39, United States Code, is amended by inserting after the item relating to chapter 4 the following:

''5. Postal Regulatory Commission ... 501''

SEC. 602. AUTHORITY FOR POSTAL REGULATORY COMMISSION TO ISSUE SUBPOENAS.

Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding at the end the following:

''(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 or to obtain information to be used to prepare a report under this title—

''(A) issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and

''(B) order the taking of depositions and responses to written interrogatories by a covered person.

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.

''(4) For purposes of this subsection, the term 'covered person' means an officer, employee, agent, or contractor of the Postal Service.

''(g)(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission under 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) Except as provided in paragraph (3), 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)(A) Paragraph (2) shall not prohibit the Commission from publicly disclosing relevant information in furtherance of its duties under this title, provided that the Commission has adopted regulations under section 553 of title 5, that establish a procedure for according appropriate confidentiality to information identified by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service under paragraph (1), the Commission shall balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

''(B) Paragraph (2) shall not prevent the Commission from requiring production of information in the course of any discovery procedure established in connection with a proceeding under this title. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for information furnished to any party.''.

SEC. 603. APPROPRIATIONS FOR THE POSTAL REGULATORY COMMISSION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Subsection (d) of section 504 of title 39, United States Code (as so redesignated by section 601) is amended to read as follows:

''(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.''.

(b) BUDGET PROGRAM.—

(1) IN GENERAL.—The next to last sentence of section 2009 of title 39, United States Code, is amended to read as follows: ''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 504(d) of this title.''.

(2) CONFORMING AMENDMENT.—Section 2003(e)(1) of title 39, United States Code, is amended by striking the first sentence and inserting the following: ''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 under section 504(d); and (C) all expenses of the Office of Inspector General, subject to the availability of amounts appropriated under section 8G(f) of the Inspector General Act of 1978.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 2002.

(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.

SEC. 604. REDESIGNATION OF THE POSTAL RATE COMMISSION.

(a) AMENDMENTS TO TITLE 39, UNITED STATES CODE.—Title 39, United States Code, is amended in sections 404, 503 and 504 (as so redesignated by section 601), 1001 and 1002, by striking ''Postal Rate Commission'' each place it appears and inserting ''Postal Regulatory Commission'';

(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''.

(f) OTHER REFERENCES.—Whenever a 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. 605. FINANCIAL TRANSPARENCY.

(a) IN GENERAL.—Section 101 of title 39, United States Code, is amended—

(1) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

(2) by inserting after subsection (c) the following:

''(d) As an independent establishment of the executive branch of the Government of the United States, the Postal Service shall be subject to a high degree of transparency to ensure fair treatment of customers of the Postal Service's market-dominant products and companies competing with the Postal Service's competitive products.''.

(b) FINANCIAL REPORTING REQUIREMENTS AND ENFORCEMENT POWERS APPLICABLE TO POSTAL SERVICE.—Section 503 of title 39, United States Code (as so redesignated by section 601 and 604) is amended by—

(1) inserting ''(a)'' before ''The Postal Regulatory Commission shall promulgate''; and

(2) adding at the end the following:

''(b)(1) Beginning with the first full fiscal year following the date of enactment of the Postal Accountability and Enhancement Act, the Postal Service shall file with the Postal Regulatory Commission —

''(A) within 35 days after the end of each fiscal quarter, a quarterly report containing the information prescribed in Form 10–Q of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form;

''(B) within 60 days after the end of each fiscal year, an annual report containing the information prescribed in Form 10–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form; and

''(C) periodic reports within the time frame and containing the information prescribed in Form 8–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form.

''(2) For purposes of preparing the reports required under paragraph (1), the Postal Service shall be deemed to be the registrant described in the Securities and Exchange Commission forms, and references contained in such forms to Securities and Exchange Commission regulations are applicable.

''(3) For purposes of preparing the reports required under paragraph (1), the Postal Service shall comply with the rules prescribed by the Securities and Exchange Commission implementing section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262; Public Law 107–204) beginning with fiscal year 2007 and in each fiscal year thereafter.

''(c)(1) The reports required under subsection (b)(1)(B) shall include, with respect to the financial obligations of the Postal Service under chapters 83, 84, and 89 of title 5 for retirees of the Postal Service—

''(A) the funded status of such obligations of the Postal Service;

''(B) components of the net change in the fund balances and obligations and the nature and cause of any significant changes;

''(C) components of net periodic costs;

''(D) cost methods and assumptions underlying the relevant actuarial valuations;

''(E) the effect of a one-percentage point increase in the assumed health care cost trend rate for each future year on the service and interest costs components of net periodic cost and the accumulated obligation of the Postal Service under chapter 89 of title 5 for retirees of the Postal Service;

''(F) actual contributions to and payments from the funds for the years presented and the estimated future contributions and payments for each of the following 5 years;

''(G) the composition of plan assets reflected in the fund balances; and

''(H) the assumed rate of return on fund balances and the actual rates of return for the years presented.

''(2)(A) Beginning with the fiscal year 2007 and in each fiscal year thereafter, for purposes of the reports required under subsection (b)(1)(A) and (B), the Postal Service shall include segment reporting.

''(B) The Postal Service shall determine the appropriate segment reporting under subparagraph (A), after consultation with the Postal Regulatory Commission.

''(d) For purposes of the annual reports required under subsection (b)(1)(B), the Postal Service shall obtain an opinion from an independent auditor on whether the information listed under subsection (c) is fairly stated in all material respects, either in relation to the basic financial statements as a whole or on a standalone basis.

''(e) The Postal Regulatory Commission shall have access to the audit documentation and any other supporting matter of the Postal Service and its independent auditor in connection with any information submitted under subsection (b)(1)(B).

''(f) The Postal Regulatory 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 section whenever it shall appear that the data—

''(1) have become significantly inaccurate;

''(2) can be significantly improved; or

''(3) are not cost beneficial.''.

TITLE VII—EVALUATIONS

SEC. 701. ASSESSMENTS OF RATEMAKING, CLASSIFICATION, AND OTHER PROVISIONS.

(a) IN GENERAL.—The Postal Regulatory Commission shall, at least every 3 years, submit a report to the President and Congress concerning—

(1) the operation of the amendments made by this Act; and

(2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States.

(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 the report and to submit written comments on the report. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).

SEC. 702. REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY.

(a) REPORT BY THE POSTAL REGULATORY COMMISSION.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Postal Regulatory Commission shall submit a report to the President and Congress on universal postal service and the postal monopoly in the United States (in this section referred to as ''universal service and the postal monopoly''), including the monopoly on the delivery of mail and on access to mailboxes.

(2) CONTENTS.—The report under this subsection shall include—

(A) a comprehensive review of the history and development of universal service and the postal monopoly, including how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas;

(B) the scope and standards of universal service and the postal monopoly provided under current law (including sections 101 and 403 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service;

(C) a description of any geographic areas, populations, communities (including both urban and rural communities), organizations, or other groups or entities not currently covered by universal service or that are covered but that are receiving services deficient in scope or quality or both; and

(D) the scope and standards of universal service and the postal monopoly likely to be required in the future in order to meet the needs and expectations of the United States public, including all types of mail users, based on discussion of such assumptions, alternative sets of assumptions, and analyses as the Postal Service considers plausible.

(b) RECOMMENDED CHANGES TO UNIVERSAL SERVICE AND THE MONOPOLY.—The Postal Regulatory Commission shall include in the report under subsection (a), and in all reports submitted under section 701 of this Act—

(1) any recommended changes to universal service and the postal monopoly as the Commission considers appropriate, including changes that the Commission may implement under current law and changes that would require changes to current law, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service;

(2) with respect to each recommended change described under paragraph (1)—

(A) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

(B) an analysis of the likely benefit of the current postal monopoly to the ability of the Postal Service to sustain the current scope and standards of universal service, including estimates of the financial benefit of the postal monopoly to the extent practicable, under current law; and

(3) such additional topics and recommendations as the Commission considers appropriate, with estimated effects of the recommendations on the service, financial condition, rates, and the security of mail provided by the Postal Service.

SEC. 703. 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, and to the Postal Regulatory Commission, within 1 year after the date of enactment of this Act, 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 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, and in the interim, to account under section 3633 of title 39, United States Code (as added by this Act), for the net economic advantages 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 in promulgating or revising the regulations required under section 3633 of title 39, United States Code.

SEC. 704. REPORT ON POSTAL WORKPLACE SAFETY AND WORKPLACE-RELATED INJURIES.

(a) REPORT BY THE INSPECTOR GENERAL.—

(1) IN GENERAL.—Not later than 6 months after the enactment of this Act, the Inspector General of the United States Postal Service shall submit a report to Congress and the Postal Service that—

(A) details and assesses any progress the Postal Service has made in improving workplace safety and reducing workplace-related injuries nationwide; and

(B) identifies opportunities for improvement that remain with respect to such improvements and reductions.

(2) CONTENTS.—The report under this subsection shall also—

(A) discuss any injury reduction goals established by the Postal Service;

(B) describe the actions that the Postal Service has taken to improve workplace safety and reduce workplace-related injuries, and assess how successful the Postal Service has been in meeting its injury reduction goal; and

(C) identify areas where the Postal Service has failed to meet its injury reduction goals, explain the reasons why these goals were not met, and identify opportunities for making further progress in meeting these goals.

(b) REPORT BY THE POSTAL SERVICE.—

(1) REPORT TO CONGRESS.—Not later than 6 months after receiving the report under subsection (a), the Postal Service shall submit a report to Congress detailing how it plans to improve workplace safety and reduce workplace-related injuries nationwide, including goals and metrics.

(2) PROBLEM AREAS.—The report under this subsection shall also include plans, developed in consultation with the Inspector General and employee representatives, including representatives of each postal labor union and management association, for addressing the problem areas identified by the Inspector General in the report under subsection (a)(2)(C).

SEC. 705. STUDY ON RECYCLED PAPER.

(a) IN GENERAL.—Within 12 months after the date of enactment of this Act, the Government Accountability Office shall study and submit to the Congress, the Board of Governors of the Postal Service, and to the Postal Regulatory Commission a report concerning—

(1) the economic and environmental efficacy of establishing rate incentives for mailers linked to the use of recycled paper;

(2) a description of the accomplishments of the Postal Service in each of the preceding 5 years involving recycling activities, including the amount of annual revenue generated and savings achieved by the Postal Service as a result of its use of recycled paper and other recycled products and its efforts to recycle undeliverable and discarded mail and other materials; and

(3) additional opportunities that may be available for the United States Postal Service to engage in recycling initiatives and the projected costs and revenues of undertaking such opportunities.

(b) RECOMMENDATIONS.—The report shall include recommendations for any administrative or legislative actions that may be appropriate.

TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

SEC. 801. SHORT TITLE.

This title may be cited as the ''Postal Civil Service Retirement and Health Benefits Funding Amendments of 2004''.

SEC. 802. CIVIL SERVICE RETIREMENT SYSTEM.

(a) IN GENERAL.—Chapter 83 of title 5, United States Code, is amended—

(1) in section 8334(a)(1)(B), by striking clause (ii) and inserting the following:

''(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph.''; and

(2) by amending section 8348(h) to read as follows:

''(h)(1) In this subsection, the term 'Postal surplus or supplemental liability' means the estimated difference, as determined by the Office, between—

''(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

''(B) the sum of—

''(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

''(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

''(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

''(2)(A) Not later than June 15, 2006, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2005. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a by June 30, 2006. If the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing September 30, 2006, which provides for the liquidation of such liability by September 30, 2043.

''(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2006, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C), and any prior amortization schedule for payments shall be terminated. If the result is a supplemental liability, the Office shall establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

''(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

''(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

''(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

''(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.''.

(b) CREDIT ALLOWED FOR MILITARY SERVICE.—In the application of section 8348(g)(2) of title 5, United States Code, for the fiscal year 2006, the Office of Personnel Management shall include, in addition to the amount otherwise computed under that paragraph, the amounts that would have been included for the fiscal years 2003 through 2005 with respect to credit for military service of former employees of the United States Postal Service as though the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) had not been enacted, and the Secretary of the Treasury shall make the required transfer to the Civil Service Retirement and Disability Fund based on that amount.

(c) REVIEW.—

(1) IN GENERAL.—

(A) REQUEST FOR REVIEW.—Notwithstanding any other provision of this section (including any amendment made by this section), any determination or redetermination made by the Office of Personnel Management under this section (including any amendment made by this section) shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this subsection.

(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of pension obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(2) RECONSIDERATION.—Upon receiving the report from the Commission under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

SEC. 803. HEALTH INSURANCE.

(a) IN GENERAL.—

(1) FUNDING.—Chapter 89 of title 5, United States Code, is amended—

(A) in section 8906(g)(2)(A), by striking ''shall be paid by the United States Postal Service.'' and inserting ''shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service.''; and

(B) by inserting after section 8909 the following:

''§ 8909a. Postal Service Retiree Health Benefit Fund

''(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

''(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

''(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

''(d)(1) Not later than June 30, 2006, and by June 30 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

''(2)(A) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year, the Office shall recompute the difference between—

''(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

''(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

''(II) the net present value computed under paragraph (1).

''(B) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year shall recompute, an amortization schedule including a series of annual installments which provide for the liquidation by September 30, 2045, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

''(3) Not later than September 30, 2006, and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund—

''(A) the net present value computed under paragraph (1); and

''(B) the annual installment computed under paragraph (2)(B).

''(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

''(5)(A)(i) Any computation or other determination of the Office under this subsection shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

''(ii) Upon receiving a request under clause (i), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this subparagraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

''(B) Upon receiving the report under subparagraph (A), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

''(6) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8909 the following:

''8909a. Postal Service Retiree Health Benefits Fund.''.

(b) REVIEW.—

(1) IN GENERAL.—

(A) REQUEST FOR REVIEW.—Any regulation established under section 8909a(d)(5) of title 5, United States Code (as added by subsection (a)), shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(2) RECONSIDERATION.—Upon receiving the report under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

(c) TRANSITIONAL ADJUSTMENT FOR FISCAL YEAR 2006.—For fiscal year 2006, the amounts paid by the Postal Service in Government contributions under section 8906(g)(2)(A) of title 5, United States Code, for fiscal year 2006 contributions shall be deducted from the initial payment otherwise due from the Postal Service to the Postal Service Retiree Health Benefits Fund under section 8909a(d)(3) of such title as added by this section.

SEC. 804. REPEAL OF DISPOSITION OF SAVINGS PROVISION.

Section 3 of the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) is repealed.

SEC. 805. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided under subsection (b), this title shall take effect on October 1, 2005.

(b) TERMINATION OF EMPLOYER CONTRIBUTION.—The amendment made by paragraph (1) of section 802(a) shall take effect on the first day of the first pay period beginning on or after October 1, 2005.

TITLE IX—COMPENSATION FOR WORK INJURIES

SEC. 901. TEMPORARY DISABILITY; CONTINUATION OF PAY.

(a) TIME OF ACCRUAL OF RIGHT.—Section 8117 of title 5, United States Code, is amended—

(1) by striking ''An employee'' and inserting ''(a) An employee other than a Postal Service employee''; and

(2) by adding at the end the following:

''(b) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period, except that if the disability exceeds 14 days or is followed by permanent disability, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 8118(b)(1) of title 5, United States Code, is amended to read as follows:

''(1) without a break in time, except as provided under section 8117(b), unless controverted under regulations of the Secretary''.

SEC. 902. DISABILITY RETIREMENT FOR POSTAL EMPLOYEES.

(a) TOTAL DISABILITY.—Section 8105 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1)).

''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of the Postal Accountability and Enhancement Act, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for total disability is converted to 50 percent of the monthly pay of the employee on the later of—

''(A) the date on which the injured employee reaches retirement age; or

''(B) 1 year after the employee begins receiving compensation.''.

(b) PARTIAL DISABILITY.—Section 8106 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (d).''; and

(2) by adding at the end the following:

''(d)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1)).

''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of this subsection, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for partial disability is converted to 50 percent of the difference between the monthly pay of an employee and the monthly wage earning capacity of the employee after the beginning of partial disability on the later of—

''(A) the date on which the injured employee reaches retirement age; or

''(B) 1 year after the employee begins receiving compensation.''.

TITLE X—MISCELLANEOUS

SEC. 1001. EMPLOYMENT OF POSTAL POLICE OFFICERS.

Section 404 of title 39, United States Code (as amended by this Act), is further amended by adding at the end the following:

''(d) 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 may give such guards, with respect to such property, any of the powers of special policemen provided under section 1315 of title 40. The Postmaster General, or the designee of the Postmaster General, may take any action that the Secretary of Homeland

Security may take under section 1315 of title 40, with respect to that property.

SEC. 1002. OBSOLETE PROVISIONS.

(a) REPEAL.—

(1) IN GENERAL.—Chapter 52 of title 39, United States Code, is repealed.

(2) CONFORMING AMENDMENTS.—(A) Section 5005(a) of title 39, United States Code, is amended—

(i) by striking paragraph (1), and by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively; and

(ii) in paragraph (3) (as so designated by clause (i)), by striking ''(as defined in section 5201(6) of this title)''.

(B) Section 5005(b) of such title 39 is amended by striking ''(a)(4)'' each place it appears and inserting ''(a)(3)''.

(C) Section 5005(c) of such title 39 is amended by striking ''by carrier or person under subsection (a)(1) of this section, by contract under subsection (a)(4) of this section, or'' and inserting ''by contract under subsection (a)(3) of this section or''.

(b) ELIMINATING RESTRICTION ON LENGTH OF CONTRACTS.—(1) Section 5005(b)(1) of title 39, United States Code, is amended by striking ''(or where the Postal Service determines that special conditions or the use of special equipment warrants, not in excess of 6 years)'' and inserting ''(or such longer period of time as may be determined by the Postal Service to be advisable or appropriate)''.

(2) Section 5402(d) of such title 39 is amended by striking ''for a period of not more than 4 years''.

(3) Section 5605 of such title 39 is amended by striking ''for periods of not in excess of 4 years''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V of title 39, United States Code, is amended by repealing the item relating to chapter 52.

SEC. 1003. REDUCED RATES.

Section 3626 of title 39, United States Code, is amended—

(1) in subsection (a), by striking all before paragraph (4) and inserting the following:

''(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), 4554(b), or 4554(c) of this title shall be established in accordance with section 3622.

''(2) For the purpose of this subsection, the term 'regular-rate category' means any class of mail or kind of mailer, other than a class or kind referred to in section 2401(c).

''(3) Rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title shall be established so that postage on each mailing of such mail reflects its preferred status as compared to the postage for the most closely corresponding regular-rate category mailing.'';

(2) in subsection (g), by adding at the end the following:

''(3) For purposes of this section and former section 4358(a) through (c) of this title, those copies of an issue of a publication entered within the county in which it is published, but distributed outside such county on postal carrier routes originating in the county of publication, shall be treated as if they were distributed within the county of publication.

''(4)(A) In the case of an issue of a publication, any number of copies of which are mailed at the rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title, any copies of such issue which are distributed outside the county of publication (excluding any copies subject to paragraph (3)) shall be subject to rates of postage provided for under this paragraph.

''(B) The rates of postage applicable to mail under this paragraph shall be established in accordance with section 3622.

''(C) This paragraph shall not apply with respect to an issue of a publication unless the total paid circulation of such issue outside the county of publication (not counting recipients of copies subject to paragraph (3)) is less than 5,000.''; and

(3) by adding at the end the following:

''(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).''.

SEC. 1004. SENSE OF CONGRESS REGARDING POSTAL SERVICE PURCHASING REFORM.

It is the sense of Congress that the Postal Service should—

(1) ensure the fair and consistent treatment of suppliers and contractors in its current purchasing policies and any revision or replacement of such policies, such as through the use of competitive contract award procedures, effective dispute resolution mechanisms, and socioeconomic programs; and

(2) implement commercial best practices in Postal Service purchasing policies to achieve greater efficiency and cost savings as recommended in July 2003 by the President's Commission on the United States Postal Service, in a manner that is compatible with the fair and consistent treatment of suppliers and contractors, as befitting an establishment in the United States Government.

Mr. FRIST. Mr. President, I ask unanimous consent that the amendments at the desk be agreed to, the committee-reported amendment, as amended, be agreed to, and the bill, as amended, be read a third time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments (Nos. 2750, 2751, 2752, and 2753) were agreed to, as follows:

AMENDMENT NO. 2750

(Purpose: To modify provisions relating to objectives, unused rate adjustment authority, transition rules, rate and service complaints, and for other purposes)

On page 133, line 25, insert before the colon '', each of which shall be applied in conjunction with the others''.

On page 134, between lines 21 and 22, insert the following:

''(8) To establish and maintain a just and reasonable schedule for rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.

On page 135, strike lines 1 through 3.

On page 135, line 4, strike ''(2)'' and insert ''(1)''.

On page 135, line 9, strike ''(3)'' and insert ''(2)''.

On page 135, line 15, strike ''(4)'' and insert ''(3)''.

On page 135, line 19, strike ''(5)'' and insert ''(4)''.

On page 135, line 22, strike ''(6)'' and insert ''(5)''.

On page 136, line 1, strike ''(7)'' and insert ''(6)''.

On page 136, line 5, strike ''(8)'' and insert ''(7)''.

On page 136, line 8, strike ''(9)'' and insert ''(8)''.

On page 136, line 12, strike ''(10)'' and insert ''(9)''.

On page 136, line 16, strike ''(11)'' and insert ''(10)''.

On page 136, line 19, strike ''(12)'' and insert ''(11)''.

On page 136, line 21, strike ''(13)'' and insert ''(12)''.

On page 137, line 1, strike ''(14)'' and insert ''(13)''.

On page 138, line 19, strike ''The'' and insert ''Except as provided under subparagraph (C), the''.

On page 139, strike lines 8 through 17, and insert the following:

''(C) USE OF UNUSED RATE AUTHORITY.—

''(i) DEFINITION.—In this subparagraph, the term 'unused rate adjustment authority' means the difference between—

''(I) the maximum amount of a rate adjustment that the Postal Service is authorized to make in any year subject to the annual limitation under paragraph (1); and

''(II) the amount of the rate adjustment the Postal Service actually makes in that year.

''(ii) AUTHORITY.—Subject to clause (iii), the Postal Service may use any unused rate adjustment authority for any of the 5 years following the year such authority occurred.

''(iii) LIMITATIONS.—In exercising the authority under clause (ii) in any year, the Postal Service—

''(I) may use unused rate adjustment authority from more than 1 year;

''(II) may use any part of the unused rate adjustment authority from any year;

''(III) shall use the unused rate adjustment authority from the earliest year such authority first occurred and then each following year; and

''(IV) for any class or service, may not exceed the annual limitation under paragraph (1) by more than 2 percentage points.

On page 142, strike lines 5 through 10, and insert the following:

''(f) TRANSITION RULE.—For the 1-year period beginning on the date of enactment of this section, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of enactment of this section. Proceedings initiated to consider a request for a recommended decision filed by the Postal Service during that 1-year period shall be completed in accordance with subchapter II of chapter 36 of this title and implementing regulations, as in effect before the date of enactment of this section.''.

On page 162, line 10, strike all through page 164, line 9, and insert the following:

''§ 3662. Rate and service complaints

''(a) IN GENERAL.—Any interested party (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of chapter 1 (except section 101(c)), sections 401, 403, 404, 404a, 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

''(b) PROMPT RESPONSE REQUIRED.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a)—

''(A) either—

''(i) upon a finding that such complaint raises substantial and material issues of fact or law, begin proceedings on such complaint; or

''(ii) issue an order dismissing the complaint; and

''(B) with respect to any action taken under subparagraph (A) (i) or (ii), issue a written statement setting forth the bases of its determination.

''(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, 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 under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

''(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds upon clear and convincing evidence the complaint to be justified, it shall order that the Postal Service take such action as is necessary to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance.

''(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—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 shall be paid from 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.

On page 168, line 11, strike ''Commission'' and insert ''Postal Service''.

AMENDMENT NO. 2751

(Purpose: To provide for procedures by the Postal Service to give notice on certain actions affecting communities)

On page 171, line 6, strike ''and''.

On page 171, line 10, strike the period and insert ''; and''.

On page 171, between lines 10 and 11, insert the following:

(D) procedures that the Postal Service will use to—

(i) provide adequate public notice to communities potentially affected by a proposed rationalization decision;

(ii) make available, upon request, any data, analyses, or other information considered by the Postal Service in making the proposed decision;

(iii) afford affected persons ample opportunity to provide input on the proposed decision; and

(iv) take such comments into account in making a final decision.

On page 172, between lines 22 and 23, insert the following:

(5) EXISTING EFFORTS.—Effective on the date of enactment of this Act, the Postal Service may not close or consolidate any processing or logistics facilities without using procedures for public notice and input consistent with those described under paragraph (3)(D).

AMENDMENT NO. 2752

(Purpose: To modify qualifications and terms of Governors of the United States Postal Service)

On page 202, lines 10 through 14, strike ''demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. Experience in the fields of law and accounting shall be considered in making appointments of Governors.'' and insert ''experience in the fields of public service, law or accounting or on their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size.''

On page 203, line 14, strike ''5'' and insert ''7''.

On page 203, line 17, strike ''5'' and insert ''7''.

On page 205, line 9, strike ''3'' and insert ''2''.

AMENDMENT NO. 2753

(Purpose: To modify contracts for the transportation of mail by air, and for other purposes)

On page 256, add after line 3, the following:

SEC. 1005. CONTRACTS FOR TRANSPORTATION OF MAIL BY AIR.

(a) DEFINITIONS.—Section 5402(a) of title 39, United States Code, is amended—

(1) in paragraph (4), by striking ''(g)(1)(D)(i)'' and inserting ''(g)(1)(A)(iv)(I)'';

(2) in paragraph (5), by striking ''(g)(1)(D)(i)'' and inserting ''(g)(1)(A)(iv)(I)'';

(3) in paragraph (6), by striking ''only'';

(4) in paragraph (8), by striking ''rates paid to a bush carrier'' and inserting ''linehaul rates and a single terminal handling payment at a bush terminal handling rate paid to a bush carrier'';

(5) in paragraph (11), by striking ''(g)(1)(D)(ii)'' and inserting ''(g)(1)(A)(iv)(II)'';

(6) in paragraph (13)—

(A) in subparagraph (A)—

(i) by striking ''clause (i) or (ii) of subsection (g)(1)(D)'' and inserting ''subclause (I) or (II) of subsection (g)(1)(A)(iv)''; and

(ii) by striking ''and'' after the semicolon;

(B) in subparagraph (B), by adding ''and'' after the semicolon; and

(C) by adding at the end the following:

''(C) is not comprised of previously qualified existing mainline carriers as a result of merger or sale;'';

(7) in paragraph (18), by striking ''bush routes'' and inserting ''routes''; and

(8) in paragraph (22), by striking ''bush routes'' and inserting ''routes''.

(b) NONPRIORITY BYPASS MAIL.—Section 5402(g) of title 39, United States Code, is amended—

(1) in paragraph (2)(C), by inserting ''or a destination city'' after ''acceptance point and a hub'';

(2) in paragraph (3), by adding at the end the following:

''(C) When a new hub results from a change in a determination under subparagraph (B), mail tender from that hub during the 12-month period beginning on the effective date of that change shall be based on the passenger and freight shares to the destinations of the affected hub or hubs resulting in the new hub.''; and

(3) in paragraph (5)(A)(i), by striking ''(g)(1)(D)(ii)'' and inserting ''(g)(1)(A)(iv)(II)''.

(c) EQUITABLE TENDER.—Section 5402(h) of title 39, United States Code, is amended—

(1) in paragraph (1), by inserting ''bush'' after ''providing scheduled'';

(2) by striking paragraph (3) and inserting the following:

''(3)(A) Except as provided under subparagraph (C), a new or existing 121 bush passenger carrier qualified under subsection (g)(1) shall be exempt from the requirements under paragraphs (1)(B) and (2)(A) on a city pair route for a period which shall extend for—

''(i) 1 year;

''(ii) 1 year in addition to the extension under clause (i) if, as of the conclusion of the first year, such carrier has been providing not less than 5 percent of the passenger service on that route (as calculated under paragraph (5)); and

''(iii) 1 year in addition to the extension under clause (ii) if, as of the conclusion of the second year, such carrier has been providing not less than 10 percent of the passenger service on that route (as calculated under paragraph (5)).

''(B)(i) The first 3 121 bush passenger carriers entitled to the exemptions under subparagraph (A) on any city pair route shall divide no more than an additional 10 percent of the mail, apportioned equally, comprised of no more than—

''(I) 5 percent of the share of each qualified passenger carrier servicing that route that is not a 121 bush passenger carrier; and

''(II) 5 percent of the share of each nonpassenger carrier servicing that route that transports 25 percent or more of the total nonmail freight under subsection (i)(1).

''(ii) Additional 121 bush passenger carriers entering service on that city pair route after the first 3 shall not receive any additional mail share.

''(iii) If any 121 bush passenger carrier on a city pair route receiving an additional share of the mail under clause (ii) discontinues service on that route, the 121 bush passenger carrier that has been providing the longest period of service on that route and is otherwise eligible but is not receiving a share by reason of clause (ii), shall receive the share of the carrier discontinuing service.

''(C) Notwithstanding the requirements of this subsection, if only 1 passenger carrier or aircraft is qualified to be tendered nonpriority bypass mail as a passenger carrier or aircraft on a city pair route in the State of Alaska, the Postal Service shall tender 20 percent of the nonpriority bypass mail described under paragraph (1) to the passenger carrier or aircraft providing at least 10 percent of the passenger service on such route.'';

(3) in paragraph (5)(A)—

(A) by striking ''(i)'' after ''(A)''; and

(B) by striking clause (ii).

(d) PERCENT OF NONMAIL FREIGHT.—Section 5402(i)(6) of title 39, United States Code, is amended—

(1) by striking ''(A)'' after ''(6)''; and

(2) by striking subparagraph (B).

(e) PERCENT OF TENDER RATE.—Section 5402(j)(3)(B) of title 39, United States Code, is amended by striking ''bush routes in the State of Alaska'' and inserting ''routes served exclusively by bush carriers in the State of Alaska''.

(f) DETERMINATION OF RATES.—Section 5402(k) of title 39, United States Code, is amended by striking paragraph (5).

(g) TECHNICAL AND CONFORMING AMENDMENT.—Section 5402(p)(3) of title 39, United States Code, is amended by striking ''(g)(1)(D)'' and inserting ''(g)(1)(A)(iv)''.

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided under paragraph (2), this section shall take effect on the date of enactment of this Act.

(2) EQUITABLE TENDER.—Subsection (c) shall take effect on July 1, 2006.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. FRIST. Mr. President, I further ask unanimous consent that the Senate now proceed to Calendar No. 176, H.R. 22.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 22) to reform the postal laws of the United States.

Mr. FRIST. Mr. President, I now ask consent that all after the enacting clause be stricken, the text of S. 662, as amended, be inserted in lieu thereof, and the bill, as amended, be read a third time and passed, and the Senate insist on its amendment, request a conference with the House, and the Chair

be authorized to appoint conferees with a ratio of 5 to 3.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 22), as amended, was read the third time and passed, as follows:

H.R. 22

Resolved, That the bill from the House of Representatives (H.R. 22) entitled ''An Act to reform the postal laws of the United States.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Postal Accountability and Enhancement Act''.

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

Sec. 1. Short title; table of contents.

TITLE I—DEFINITIONS; POSTAL SERVICES

Sec. 101. Definitions.
Sec. 102. Postal Services.

TITLE II—MODERN RATE REGULATION

Sec. 201. Provisions relating to market-dominant products.
Sec. 202. Provisions relating to competitive products.
Sec. 203. Provisions relating to experimental and new products.
Sec. 204. Reporting requirements and related provisions.
Sec. 205. Complaints; appellate review and enforcement.
Sec. 206. Clerical amendment.

TITLE III—MODERN SERVICE STANDARDS

Sec. 301. Establishment of modern service standards.
Sec. 302. Postal service plan.

TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

Sec. 401. Postal Service Competitive Products Fund.
Sec. 402. Assumed Federal income tax on competitive products income.
Sec. 403. Unfair competition prohibited.
Sec. 404. Suits by and against the Postal Service.
Sec. 405. International postal arrangements.

TITLE V—GENERAL PROVISIONS

Sec. 501. Qualification and term requirements for Governors.
Sec. 502. Obligations.
Sec. 503. Private carriage of letters.
Sec. 504. Rulemaking authority.
Sec. 505. Noninterference with collective bargaining agreements.
Sec. 506. Bonus authority.

TITLE VI—ENHANCED REGULATORY COMMISSION

Sec. 601. Reorganization and modification of certain provisions relating to the Postal Regulatory Commission.
Sec. 602. Authority for Postal Regulatory Commission to issue subpoenas.
Sec. 603. Authorization of appropriations from the Postal Service Fund.
Sec. 604. Redesignation of the Postal Rate Commission.
Sec. 605. Financial transparency.

TITLE VII—EVALUATIONS

Sec. 701. Assessments of ratemaking, classification, and other provisions.
Sec. 702. Report on universal postal service and the postal monopoly.
Sec. 703. Study on equal application of laws to competitive products.
Sec. 704. Report on postal workplace safety and workplace-related injuries.
Sec. 705. Study on recycled paper.

TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

Sec. 801. Short title.
Sec. 802. Civil Service Retirement System.
Sec. 803. Health insurance.
Sec. 804. Repeal of disposition of savings provision.
Sec. 805. Effective dates.

TITLE IX—COMPENSATION FOR WORK INJURIES

Sec. 901. Temporary disability; continuation of pay.
Sec. 902. Disability retirement for postal employees.

TITLE X—MISCELLANEOUS

Sec. 1001. Employment of postal police officers.
Sec. 1002. Obsolete provisions.
Sec. 1003. Reduced rates.
Sec. 1004. Sense of Congress regarding Postal Service purchasing reform.
Sec. 1005. Contracts for transportation of mail by air.

TITLE I—DEFINITIONS; POSTAL SERVICES

SEC. 101. DEFINITIONS.

Section 102 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following:

''(5) 'postal service' refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other functions ancillary thereto;

''(6) 'product' means a postal service with a distinct cost or market characteristic for which a rate or rates are applied;

''(7) 'rates', as used with respect to products, includes fees for postal services;

''(8) 'market-dominant product' or 'product in the market-dominant category of mail' means a product subject to subchapter I of chapter 36; and

''(9) 'competitive product' or 'product in the competitive category of mail' means a product subject to subchapter II of chapter 36; and

''(10) 'year', as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.''.

SEC. 102. POSTAL SERVICES.

(a) IN GENERAL.—Section 404 of title 39, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and by redesignating paragraphs (7) through (9) as paragraphs (6) through (8), respectively; and

(2) by adding at the end the following:

''(c) Except as provided in section 411, nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services.''.

(b) CONFORMING AMENDMENTS.—(1) 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)''.

(2) Section 2003(b)(1) of title 39, United States Code, is amended by striking ''and nonpostal''.

TITLE II—MODERN RATE REGULATION

SEC. 201. PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS.

(a) IN GENERAL.—Chapter 36 of title 39, United States Code, is amended by striking sections 3621 and 3622 and inserting the following:

''§ 3621. Applicability; definitions

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1) first-class mail letters and sealed parcels;
''(2) first-class mail cards;
''(3) periodicals;
''(4) standard mail;
''(5) single-piece parcel post;
''(6) media mail;
''(7) bound printed matter;
''(8) library mail;
''(9) special services; and
''(10) single-piece international mail,

subject to any changes the Postal Regulatory Commission may make under section 3642.

''(b) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''§ 3622. Modern rate regulation

''(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

''(b) OBJECTIVES.—Such system shall be designed to achieve the following objectives, each of which shall be applied in conjunction with the others:

''(1) To reduce the administrative burden and increase the transparency of the ratemaking process while affording reasonable opportunities for interested parties to participate in that process.

''(2) To create predictability and stability in rates.

''(3) To maximize incentives to reduce costs and increase efficiency.

''(4) To enhance mail security and deter terrorism by promoting secure, sender-identified mail.

''(5) To allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent mail and encourage increased mail volume during nonpeak periods.

''(6) To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.

''(7) To allocate the total institutional costs of the Postal Service equitably between market-dominant and competitive products.

''(8) To establish and maintain a just and reasonable schedule for rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.

''(c) FACTORS.—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

''(1) 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;

''(2) the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail service through reliably identified causal relationships plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

''(3) 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;

''(4) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

''(5) 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;

''(6) 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;

''(7) the importance of pricing flexibility to encourage increased mail volume and operational efficiency;

''(8) 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;

''(9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

''(10) the desirability of special classifications from the point of view of both the user and of the Postal Service;

''(11) the educational, cultural, scientific, and informational value to the recipient of mail matter;

''(12) the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable, universal postal service; and

''(13) the policies of this title as well as such other factors as the Commission determines appropriate.

''(d) REQUIREMENTS.—

''(1) IN GENERAL.—The system for regulating rates and classes for market-dominant products shall—

''(A) include an annual limitation on the percentage changes in rates to be set by the Postal Regulatory Commission that will be equal to the change in the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation over the most recent available 12-month period preceding the date the Postal Service files notice of its intention to increase rates;

''(B) establish a schedule whereby rates, when necessary and appropriate, would change at regular intervals by predictable amounts;

''(C) not later than 45 days before the implementation of any adjustment in rates under this section—

''(i) require the Postal Service to provide public notice of the adjustment;

''(ii) provide an opportunity for review by the Postal Regulatory Commission;

''(iii) provide for the Postal Regulatory Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under subparagraph (A); and

''(iv) require the Postal Service to respond to the notice provided under clause (iii) and describe the actions to be taken to comply with the limitation under subparagraph (A);

''(D) establish procedures whereby the Postal Service may adjust rates not in excess of the annual limitations under subparagraph (A); and

''(E) notwithstanding any limitation set under subparagraphs (A) and (C), establish procedures whereby rates may be adjusted on an expedited basis due to unexpected and extraordinary circumstances.

''(2) LIMITATIONS.—

''(A) CLASSES OF MAIL.—Except as provided under subparagraph (C), the annual limitations under paragraph (1)(A) shall apply to a class of mail, as defined in the Domestic Mail Classification Schedule as in effect on the date of enactment of the Postal Accountability and Enhancement Act.

''(B) ROUNDING OF RATES AND FEES.—Nothing in this subsection shall preclude the Postal Service from rounding rates and fees to the nearest whole integer, if the effect of such rounding does not cause the overall rate increase for any class to exceed the Consumer Price Index for All Urban Consumers.

''(C) USE OF UNUSED RATE AUTHORITY.—

''(i) DEFINITION.—In this subparagraph, the term 'unused rate adjustment authority' means the difference between—

''(I) the maximum amount of a rate adjustment that the Postal Service is authorized to make in any year subject to the annual limitation under paragraph (1); and

''(II) the amount of the rate adjustment the Postal Service actually makes in that year.

''(ii) AUTHORITY.—Subject to clause (iii), the Postal Service may use any unused rate adjustment authority for any of the 5 years following the year such authority occurred.

''(iii) LIMITATIONS.—In exercising the authority under clause (ii) in any year, the Postal Service—

''(I) may use unused rate adjustment authority from more than 1 year;

''(II) may use any part of the unused rate adjustment authority from any year;

''(III) shall use the unused rate adjustment authority from the earliest year such authority first occurred and then each following year; and

''(IV) for any class or service, may not exceed the annual limitation under paragraph (1) by more than 2 percentage points.

''(e) WORKSHARE DISCOUNTS.—

''(1) DEFINITION.—In this subsection, the term 'workshare discount' refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

''(2) REGULATIONS.—As part of the regulations established under subsection (a), the Postal Regulatory Commission shall establish rules for workshare discounts that ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless—

''(A) the discount is—

''(i) associated with a new postal service, a change to an existing postal service, or with a new workshare initiative related to an existing postal service; and

''(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service and the portion of the discount in excess of the cost that the Postal Service avoids as a result of the workshare activity will be phased out over a limited period of time;

''(B) a reduction in the discount would—

''(i) lead to a loss of volume in the affected category or subclass of mail and reduce the aggregate contribution to the institutional costs of the Postal Service from the category or subclass subject to the discount below what it otherwise would have been if the discount had not been reduced to costs avoided;

''(ii) result in a further increase in the rates paid by mailers not able to take advantage of the discount; or

''(iii) impede the efficient operation of the Postal Service;

''(C) the amount of the discount above costs avoided—

''(i) is necessary to mitigate rate shock; and

''(ii) will be phased out over time; or

''(D) the discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, scientific, or informational value.

''(3) REPORT.—Whenever the Postal Service establishes or maintains a workshare discount, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report that—

''(A) explains the Postal Service's reasons for establishing or maintaining the rate;

''(B) sets forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate; and

''(C) certifies that the discount will not adversely affect rates or services provided to users of postal services who do not take advantage of the discount rate.

''(f) TRANSITION RULE.—For the 1-year period beginning on the date of enactment of this section, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of enactment of this section. Proceedings initiated to consider a request for a recommended decision filed by the Postal Service during that 1-year period shall be completed in accordance with subchapter II of chapter 36 of this title and implementing regulations, as in effect before the date of enactment of this section.''.

(b) REPEALED SECTIONS.—Sections 3623, 3624, 3625, and 3628 of title 39, United States Code, are repealed.

(c) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect after the amendment made by section 601, but before the amendment made by section 202) is amended by striking the heading for subchapter II and inserting the following:

''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS''.

SEC. 202. PROVISIONS RELATING TO COMPETITIVE PRODUCTS.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3629 the following:

''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

''§ 3631. Applicability; definitions and updates

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1) priority mail;

''(2) expedited mail;

''(3) bulk parcel post;

''(4) bulk international mail; and

''(5) mailgrams;

subject to subsection (d) and any changes the Postal Regulatory Commission may make under section 3642.

''(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 through reliably identified causal relationships.

''(c) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''(d) LIMITATION.—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply with respect to any product then currently in the market-dominant category of mail.

''§ 3632. Action of the Governors

''(a) AUTHORITY TO ESTABLISH RATES AND CLASSES.—The Governors, with the written 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) PUBLIC NOTICE; REVIEW; AND COMPLIANCE.—Not later than 30 days before the date of implementation of any adjustment in rates under this section—

''(A) the Governors shall provide public notice of the adjustment and an opportunity for review by the Postal Regulatory Commission;

''(B) the Postal Regulatory Commission shall notify the Governors of any noncompliance of the adjustment with section 3633; and

''(C) the Governors shall respond to the notice provided under subparagraph (B) and describe the actions to be taken to comply with section 3633.

''(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.

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

''(a) IN GENERAL.—The Postal Regulatory Commission shall, within 180 days 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 their 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.''.

SEC. 203. PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS.

Subchapter III of chapter 36 of title 39, United States Code, is amended to read as follows:

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

''§ 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)(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).

''(2) EXEMPTION AUTHORITY.—The Postal Regulatory Commission may, upon written application 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 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).

''§ 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 substantial 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 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(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.''.

SEC. 204. REPORTING REQUIREMENTS AND RELATED PROVISIONS.

(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by subsection (b)) is amended—

(1) by striking the heading for subchapter IV and inserting the following:

''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW''; and

(2) by striking the heading for subchapter V and inserting the following:

''SUBCHAPTER VI—GENERAL''.

(b) REPORTS AND COMPLIANCE.—Chapter 36 of title 39, United States Code, is amended by inserting after subchapter III the following:

''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

''§ 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, 3633, and 3691.

''(b) 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.

''§ 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))—

''(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

''(2) which shall, for each market-dominant product provided in such year, provide—

''(A) product information, including mail volumes; and

''(B) measures of the service afforded by the Postal Service in connection with such product, including—

''(i) the level of service (described in terms of speed of delivery and reliability) provided; and

''(ii) the degree of customer satisfaction with the service provided.

Before submitting a report under this subsection (including any annex to the report and the information required under subsection (b)), 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) INFORMATION RELATING TO WORKSHARE DISCOUNTS.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

''(1) The per-item cost avoided by the Postal Service by virtue of such discount.

''(2) The percentage of such per-item cost avoided that the per-item workshare discount represents.

''(3) The per-item contribution made to institutional costs.

''(c) SERVICE AGREEMENTS AND MARKET TESTS.—In carrying out subsections (a) and (b) with respect to service agreements and experimental products offered through market tests under section 3641 in a year, the Postal Service—

''(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

''(2) shall 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 to the report) 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 timely, 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 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 under 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 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

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

''(1) comprehensive statement under section 2401(e);

''(2) strategic plan under section 2802;

''(3) performance plan under section 2803; and

''(4) program performance reports under section 2804.

''§ 3653. Annual determination of compliance

''(a) OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3652 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.

''(b) DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3652 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 chapter (or regulations promulgated thereunder); or

''(2) whether any service standards in effect during such year were not met.

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.

''(c) IF ANY NONCOMPLIANCE IS FOUND.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take any appropriate remedial action authorized by section 3662(c).

''(d) REBUTTABLE PRESUMPTION.—A timely written determination described in the last sentence of subsection (b) 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 under paragraphs (1) and (2) of subsection (b)) during the year to which such determination relates.''.

SEC. 205. COMPLAINTS; APPELLATE REVIEW AND ENFORCEMENT.

Chapter 36 of title 39, United States Code, is amended by striking sections 3662 and 3663 and inserting the following:

''§ 3662. Rate and service complaints

''(a) IN GENERAL.—Any interested party (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of chapter 1 (except section 101(c)), sections 401, 403, 404, 404a, 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

''(b) PROMPT RESPONSE REQUIRED.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a)—

''(A) either—

''(i) upon a finding that such complaint raises substantial and material issues of fact or law, begin proceedings on such complaint; or

''(ii) issue an order dismissing the complaint; and

''(B) with respect to any action taken under subparagraph (A) (i) or (ii), issue a written statement setting forth the bases of its determination.

''(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, 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 under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

''(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds upon clear and convincing evidence the complaint to be justified, it shall order that the Postal Service take such action as is necessary to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance.

''(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—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 shall be paid from 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. Appellate review

''A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision

becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

"§ 3664. Enforcement of orders

''The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain the Postal Service from violating, any order issued by the Postal Regulatory Commission.''.

SEC. 206. CLERICAL AMENDMENT.

Chapter 36 of title 39, United States Code, is amended by striking the heading and analysis for such chapter and inserting the following:

"CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS

''Sec.
''3621. Applicability; definitions.
''3622. Modern rate regulation.
''[3623. Repealed.]
''[3624. Repealed.]
''[3625. Repealed.]
''3626. Reduced Rates.
''3627. Adjusting free rates.
''[3628. Repealed.]
''3629. Reduced rates for voter registration purposes.

''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

''3631. Applicability; definitions and updates.
''3632. Action of the Governors.
''3633. Provisions applicable to rates for competitive products.
''3634. Assumed Federal income tax on competitive products.

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

''3641. Market tests of experimental products.
''3642. New products and transfers of products between the market-dominant and competitive categories of mail.

''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

''3651. Annual reports by the Commission.
''3652. Annual reports to the Commission.
''3653. Annual determination of compliance.

''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW

''3661. Postal Services.
''3662. Rate and service complaints.
''3663. Appellate review.
''3664. Enforcement of orders.

''SUBCHAPTER VI—GENERAL

''3681. Reimbursement.
''3682. Size and weight limits.
''3683. Uniform rates for books; films, other materials.
''3684. Limitations.
''3685. Filing of information relating to periodical publications.
''3686. Bonus authority.

''SUBCHAPTER VII—MODERN SERVICE STANDARDS

''3691. Establishment of modern service standards.''.

TITLE III—MODERN SERVICE STANDARDS

SEC. 301. ESTABLISHMENT OF MODERN SERVICE STANDARDS.

Chapter 36 of title 39, United States Code, as amended by this Act, is further amended by adding at the end the following:

''SUBCHAPTER VII—MODERN SERVICE STANDARDS

"§ 3691. Establishment of modern service standards

''(a) AUTHORITY GENERALLY.—Not later than 12 months after the date of enactment of this section, the Postal Service shall, in consultation with the Postal Regulatory Commission, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with the Postal Service's universal service obligation as defined in sections 101 (a) and (b) and 403.

''(b) OBJECTIVES.—Such standards shall be designed to achieve the following objectives:

''(1) To enhance the value of postal services to both senders and recipients.

''(2) To preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.

''(3) To reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

''(4) To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.

''(c) FACTORS.—In establishing or revising such standards, the Postal Service shall take into account—

''(1) the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;

''(2) the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail;

''(3) the needs of Postal Service customers, including those with physical impairments;

''(4) mail volume and revenues projected for future years;

''(5) the projected growth in the number of addresses the Postal Service will be required to serve in future years;

''(6) the current and projected future cost of serving Postal Service customers;

''(7) the effect of changes in technology, demographics, and population distribution on the efficient and reliable operation of the postal delivery system; and

''(8) the policies of this title and such other factors as the Postal Service determines appropriate.

''(d) REVIEW.—The regulations promulgated pursuant to this section (and any revisions thereto) shall be subject to review upon complaint under sections 3662 and 3663.''.

SEC. 302. POSTAL SERVICE PLAN.

(a) IN GENERAL.—Within 6 months after the establishment of the service standards under section 3691 of title 39, United States Code, as added by this Act, the Postal Service shall, in consultation with the Postal Regulatory Commission, develop and submit to Congress a plan for meeting those standards.

(b) CONTENTS.—The plan under this section shall—

(1) establish performance goals;

(2) describe any changes to the Postal Service's processing, transportation, delivery, and retail networks necessary to allow the Postal Service to meet the performance goals;

(3) describe any changes to planning and performance management documents previously submitted to Congress to reflect new performance goals; and

(4) contain the matters relating to postal facilities provided under subsection (c).

(c) POSTAL FACILITIES.—

(1) FINDINGS.—Congress finds that—

(A) the Postal Service has more than 400 logistics facilities, separate from its post office network;

(B) as noted by the President's Commission on the United States Postal Service, the Postal Service has more facilities than it needs and the streamlining of this distribution network can pave the way for the potential consolidation of sorting facilities and the elimination of excess costs;

(C) the Postal Service has always revised its distribution network to meet changing conditions and is best suited to address its operational needs; and

(D) Congress strongly encourages the Postal Service to—

(i) expeditiously move forward in its streamlining efforts; and

(ii) keep unions, management associations, and local elected officials informed as an essential part of this effort and abide by any procedural requirements contained in the national bargaining agreements.

(2) IN GENERAL.—The Postal Service plan shall include a description of—

(A) the long-term vision of the Postal Service for rationalizing its infrastructure and workforce; and

(B) how the Postal Service intends to implement that vision.

(3) CONTENT OF FACILITIES PLAN.—The plan under this subsection shall include—

(A) a strategy for how the Postal Service intends to rationalize the postal facilities network and remove excess processing capacity and space from the network, including estimated timeframes, criteria, and processes to be used for making changes to the facilities network, and the process for engaging policy makers and the public in related decisions;

(B) a discussion of what impact any facility changes may have on the postal workforce and whether the Postal Service has sufficient flexibility to make needed workforce changes;

(C) an identification of anticipated costs, cost savings, and other benefits associated with the infrastructure rationalization alternatives discussed in the plan; and

(D) procedures that the Postal Service will use to—

(i) provide adequate public notice to communities potentially affected by a proposed rationalization decision;

(ii) make available, upon request, any data, analyses, or other information considered by the Postal Service in making the proposed decision;

(iii) afford affected persons ample opportunity to provide input on the proposed decision; and

(iv) take such comments into account in making a final decision.

(4) ANNUAL REPORTS.—

(A) IN GENERAL.—Not later than 90 days after the end of each fiscal year, the Postal Service shall prepare and submit a report to Congress on how postal decisions have impacted or will impact rationalization plans.

(B) CONTENTS.—Each report under this paragraph shall include—

(i) an account of actions taken during the preceding fiscal year to improve the efficiency and effectiveness of its processing, transportation, and distribution networks while preserving the timely delivery of postal services, including overall estimated costs and cost savings;

(ii) an account of actions taken to identify any excess capacity within its processing, transportation, and distribution networks and implement savings through realignment or consolidation of facilities including overall estimated costs and cost savings;

(iii) an estimate of how postal decisions related to mail changes, security, automation initiatives, worksharing, information technology systems, excess capacity, consolidating and closing facilities, and other areas will impact rationalization plans;

(iv) identification of any statutory or regulatory obstacles that prevented or will prevent or hinder the Postal Service from taking action to realign or consolidate facilities; and

(v) such additional topics and recommendations as the Postal Service considers appropriate.

(5) EXISTING EFFORTS.—Effective on the date of enactment of this Act, the Postal Service may not close or consolidate any processing or logistics facilities without using procedures for public notice and input consistent with those described under paragraph (3)(D).

(d) ALTERNATE RETAIL OPTIONS.—The Postal Service plan shall include plans to expand and market retail access to postal services, in addition to post offices, including—

(1) vending machines;

(2) the Internet;

(3) postage meters;

(4) Stamps by Mail;

(5) Postal Service employees on delivery routes;

(6) retail facilities in which overhead costs are shared with private businesses and other government agencies; or

(7) any other nonpost office access channel providing market retail access to postal services.

(e) REEMPLOYMENT ASSISTANCE AND RETIREMENT BENEFITS.—The Postal Service plan shall include—

(1) a plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation of any of its functions or the closing and consolidation of any of its facilities; and

(2) a plan, developed in consultation with the Office of Personnel Management, to offer early retirement benefits.

(f) INSPECTOR GENERAL REPORT.—

(1) IN GENERALBefore submitting the plan under subsection (a) and each annual report under subsection (c) to Congress, the Postal Service shall submit the plan and each annual report to the Inspector General of the United States Postal Service in a timely manner to carry out this subsection.

(2) REPORT.—The Inspector General shall prepare a report describing the extent to which the Postal Service plan and each annual report under subsection (c)—

(A) are consistent with the continuing obligations of the Postal Service under title 39, United States Code;

(B) provide for the Postal Service to meet the service standards established under section 3691 of title 39, United States Code; and

(C) allow progress toward improving overall efficiency and effectiveness consistent with the need to maintain universal postal service at affordable rates.

(g) CONTINUED AUTHORITY.—Nothing in this section shall be construed to prohibit the Postal Service from implementing any change to its processing, transportation, delivery, and retail networks under any authority granted to the Postal Service for those purposes.

TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

SEC. 401. POSTAL SERVICE COMPETITIVE PRODUCTS FUND.

(a) PROVISIONS RELATING TO POSTAL SERVICE COMPETITIVE PRODUCTS FUND AND RELATED MATTERS.—

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

"§2011. Provisions relating to competitive products

''(a)(1) In this subsection, the term 'costs attributable' has the meaning given such term by section 3631.

''(2) 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—

''(A) costs attributable to competitive products; and

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

''(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 Postal Service under subsection (e);

''(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) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, the Postal Service may request the investment of such amounts as the Postal Service determines 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 the Postal Service determines appropriate.

''(d) With the approval of the Secretary of the Treasury, the Postal Service may deposit moneys of the Competitive Products 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)(A) 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 the Postal Service determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund.

''(B) Subject to paragraph (5), any borrowings by the Postal Service under subparagraph (A) shall be supported and serviced by—

''(i) the revenues and receipts from competitive products and the assets related to the provision of competitive products (as determined under subsection (h)); or

''(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e).

''(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with any trustee under any agreement entered into in connection with the issuance of such obligations 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) shall be in such forms and denominations;

''(B) shall be sold at such times and in such amounts;

''(C) shall mature at such time or times;

''(D) shall be sold at such prices;

''(E) shall bear such rates of interest;

''(F) may be redeemable before maturity in such manner, at such times, and at such redemption premiums;

''(G) may be entitled to such relative priorities of claim on the assets of the Postal Service with respect to principal and interest payments; and

''(H) shall be subject to such other terms and conditions,

as the Postal Service determines.

''(4) Obligations issued by the Postal Service under this subsection—

''(A) shall be negotiable or nonnegotiable and bearer or registered instruments, as specified therein and in any indenture or covenant relating thereto;

''(B) shall contain a recital that such obligations are issued under this subsection, and such recital shall be conclusive evidence of the regularity of the issuance and sale of such obligations and of their validity;

''(C) shall 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;

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

''(E) except as provided in section 2006(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.

''(5)(A) Subject to subparagraph (B), the Postal Service shall make payments of principal, or interest, or both on obligations issued under this subsection from—

''(i) revenues and receipts from competitive products and assets related to the provision of competitive products (as determined under subsection (h)); or

''(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available, including the audited statements required by section 2008(e).

''(B) Based on the audited financial statements for the most recently completed fiscal year, the total assets of the Competitive Products Fund may not be less than the amount determined by multiplying—

''(i) the quotient resulting from the total revenue of the Competitive Products Fund divided by the total revenue of the Postal Service; and

''(ii) the total assets of the Postal Service.

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

''(h)(1)(A) The Secretary of the Treasury, in consultation with the Postal Service and an independent, certified public accounting firm and other advisors as the Secretary considers appropriate, shall develop recommendations regarding—

''(i) the accounting practices and principles that should be followed by the Postal Service with the objectives of—

''(I) identifying and valuing the assets and liabilities of the Postal Service associated with providing competitive products, including the capital and operating costs incurred by the Postal Service in providing such competitive products; and

''(II) subject to subsection (e)(5), preventing the subsidization of such products by market-dominant products; and

''(ii) the substantive and procedural rules that should be followed in determining the assumed Federal income tax on competitive products income of the Postal Service for any year (within the meaning of section 3634).

''(B) Not earlier than 6 months after the date of enactment of this section, and not later than 12 months after such date, the Secretary of the Treasury shall submit the recommendations under subparagraph (A) to the Postal Regulatory Commission.

''(2)(A) Upon receiving the recommendations of the Secretary of the Treasury under paragraph (1), the Commission shall give interested parties, including 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, 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.

''(B)(i) 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;

''(II) provide for the establishment and application of the substantive and procedural rules described under paragraph (1)(A)(ii); and

''(III) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

''(ii) Final rules under this subparagraph shall be issued not later than 12 months after the date on which recommendations are submitted under paragraph (1) (or by such later date on which the Commission and the Postal Service may agree). The Commission may revise such rules.

''(C)(i) Reports described under subparagraph (B)(i)(III) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

''(ii) 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 information under subparagraph (B)(i)(III) 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 described under subparagraph (B)(i)(III) shall be submitted by the Postal Service to the Secretary of the Treasury and the Inspector General of the United States Postal Service.

''(i)(1) The Postal Service shall submit an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund. The report shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses.

''(2) A copy of the most recent report submitted under paragraph (1) shall be included in the annual report submitted by the Postal Regulatory Commission under section 3652(g).''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:

''2011. Provisions relating to competitive products.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 2001 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

''(2) COMPETITIVE PRODUCTS FUND.—The term 'Competitive Products Fund' means the Postal Service Competitive Products Fund established by section 2011; and''.

(2) CAPITAL OF THE POSTAL SERVICE.—Section 2002(b) of title 39, United States Code, is amended by striking ''Fund,'' and inserting ''Fund and the balance in the Competitive Products Fund,''.

(3) POSTAL SERVICE FUND.—

(A) PURPOSES FOR WHICH AVAILABLE.—Section 2003(a) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available).''.

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

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

(A) in subsection (a), in the first sentence, by inserting ''or 2011'' after ''section 2005'';

(B) in subsection (b)—

(i) in the first sentence, by inserting ''under section 2005'' before ''in such amounts''; and

(ii) in the second sentence, by inserting ''under section 2005'' before ''in excess of such amount.''; and

(C) in subsection (c), by inserting ''or 2011(e)(4)(E)'' after ''section 2005(d)(5)''.

SEC. 402. ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS INCOME.

Subchapter II of chapter 36 of title 39, United States Code, as amended by section 202, is amended by adding at the end the following:

''§ 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.''.

SEC. 403. UNFAIR COMPETITION PROHIBITED.

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

''§ 404a. Specific limitations

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

''(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;

''(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or

''(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any postal 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) from an independent source or is otherwise obtained (or obtainable).

''(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

''(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.''.

(b) CONFORMING AMENDMENTS.—

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

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

(c) CLERICAL AMENDMENT.—The analysis for chapter 4 of title 39, United States Code, is amended by inserting after the item relating to section 404 the following:

''404a. Specific limitations.''.

SEC. 404. SUITS BY AND AGAINST THE POSTAL SERVICE.

(a) IN GENERAL.—Section 409 of title 39, United States Code, is amended by striking subsections (d) and (e) and inserting the following:

''(d)(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 '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.

''(e)(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 product 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 Federal law by such agency or any officer or employee thereof; and

''(B) 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 such subsection); 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) No damages, interest on damages, costs or attorney's fees may be recovered, and no criminal liability may be imposed, under the antitrust laws (as so defined) from any officer or employee of the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, acting in an official capacity.

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

''(f) To the extent that the Postal Service engages in conduct with respect to the provision of

competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.

''(g)(1) Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with 1 of the nationally recognized model building codes and with other applicable nationally recognized codes. To the extent practicable, model building codes should meet the voluntary consensus criteria established for codes and standards as required in the National Technology Transfer and Advancement Act of 1995 as defined in Office of Management and Budget Circular A1190. For purposes of life safety, the Postal Service shall continue to comply with the most current edition of the Life Safety Code of the National Fire Protection Association (NFPA 101).

''(2) Each building constructed or altered by the Postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.

''(3) For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—

''(A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;

''(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

''(C) permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—

''(i) a copy of such schedule before construction of the building is begun; and

''(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding sentence, nor shall anything in this subsection require the Postal Service or any of its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

''(4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.

''(5) In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.

''(6) For purposes of this subsection, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

''(h)(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 (d) or (e) of this section.

''(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

''(C) Section 3663 (relating to appellate review).

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.

''(i) 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(g).''.

(b) TECHNICAL AMENDMENT.—Section 409(a) of title 39, United States Code, is amended by striking ''Except as provided in section 3628 of this title,'' and inserting ''Except as otherwise provided in this title,''.

SEC. 405. INTERNATIONAL POSTAL ARRANGEMENTS.

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

''§ 407. International postal arrangements

''(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

''(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, coordination, and oversight of foreign policy related to international postal services and shall have the power to conclude postal treaties and conventions, except that the Secretary may not conclude any postal treaty or convention if such treaty or convention would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal 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, 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, should consider 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 Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives;

''(D) shall maintain appropriate liaison with both representatives of the Postal Service and 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

''(E) 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 (D) of paragraph (2).

''(c) Before concluding any postal treaty or convention that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

''(d) 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 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 binding under 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.

''(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, 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.

''(2) In exercising the authority under subsection (b) to conclude new postal treaties and conventions related to international postal services and to renegotiate such treaties and conventions, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs

procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

''(3) The provisions of this subsection 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) 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—

(1) with respect to market-dominant products, the date as of which the regulations promulgated under section 3622 of title 39, United States Code (as amended by section 201(a)) take effect; and

(2) with respect to competitive products, the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

TITLE V—GENERAL PROVISIONS

SEC. 501. QUALIFICATION AND TERM REQUIREMENTS FOR GOVERNORS.

(a) QUALIFICATIONS.—

(1) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking ''(a)'' and inserting ''(a)(1)'' and by striking the fourth sentence and inserting the following: ''The Governors shall represent the public interest generally, and shall be chosen solely on the basis of their experience in the fields of public service, law or accounting or on their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.''.

(2) APPLICABILITY.—The amendment made by paragraph (1) shall not affect the appointment or tenure of any person serving as a Governor of the United States Postal Service under an appointment made before the date of enactment of this Act however, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment. The requirement set forth in the fourth sentence of section 202(a)(1) of title 39, United States Code (as amended by subsection (a)) shall be met beginning not later than 9 years after the date of enactment of this Act.

(b) CONSULTATION REQUIREMENT.—Section 202(a) of title 39, United States Code, is amended by adding at the end the following:

''(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, 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.''.

(c) 7-YEAR TERMS.—

(1) IN GENERAL.—Section 202(b) of title 39, United States code, is amended in the first sentence by striking ''9 years'' and inserting ''7 years''.

(2) APPLICABILITY.—

(A) CONTINUATION BY INCUMBENTS.—The amendment made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act and such person may continue to serve the remainder of the applicable term.

(B) VACANCY BY INCUMBENT BEFORE 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served less than 5 years of that term, the resulting vacancy in office shall be treated as a vacancy in a 5-year term.

(C) VACANCY BY INCUMBENT AFTER 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served 5 years or more of that term, that term shall be deemed to have been a 5-year term beginning on its commencement date for purposes of determining vacancies in office. Any appointment to the vacant office shall be for a 5-year term beginning at the end of the original 9-year term determined without regard to the deeming under the preceding sentence. Nothing in this subparagraph shall be construed to affect any action or authority of any Governor or the Board of Governors during any portion of a 9-year term deemed to be 5-year term under this subparagraph.

(d) TERM LIMITATION.—

(1) IN GENERAL.—Section 202(b) of title 39, United States Code, is amended—

(A) by inserting ''(1)'' after ''(b)''; and

(B) by adding at the end the following:

''(2) No person may serve more than 2 terms as a Governor.''.

(2) APPLICABILITY.—The amendments made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act with respect to the term which that person is serving on that date. Such person may continue to serve the remainder of the applicable term, after which the amendments made by paragraph (1) shall apply.

SEC. 502. OBLIGATIONS.

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

(b) INCREASE RELATING TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS.—Section 2005(a)(1) of title 39, United States Code, is amended by striking the third sentence.

(c) AMOUNTS WHICH MAY BE PLEDGED.—

(1) OBLIGATIONS TO WHICH PROVISIONS APPLY.—The first sentence of section 2005(b) of title 39, United States Code, is amended by striking ''such obligations,'' and inserting ''obligations issued by the Postal Service under this section,''.

(2) ASSETS, REVENUES, AND RECEIPTS TO WHICH PROVISIONS APPLY.—Subsection (b) of section 2005 of title 39, United States Code, is amended by striking ''(b)'' and inserting ''(b)(1)'', and by adding at the end the following:

''(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) or, for purposes of any period before accounting practices and principles under section 2011(h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)); and

''(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.''.

SEC. 503. PRIVATE CARRIAGE OF LETTERS.

(a) IN GENERAL.—Section 601 of title 39, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) A letter may also 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 12½ ounces; or

''(3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that permit private carriage by suspension of the operation of this section (as then in effect).

''(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.''.

(b) EFFECTIVE DATE.—This section shall take effect on the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

SEC. 504. RULEMAKING AUTHORITY.

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

''(2) to adopt, amend, and repeal such rules and regulations, 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;''.

SEC. 505. NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.

(a) LABOR DISPUTES.—Section 1207 of title 39, United States Code, is amended to read as follows:

''§ 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 after 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 within 10 days appoint a mediator of nationwide reputation and professional stature, and who is also a member of the National Academy of Arbitrators. The parties shall cooperate with the mediator in an effort to reach an agreement and shall meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, shall direct.

''(c)(1) If no agreement is reached within 60 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 therefore, an arbitration board shall be established consisting of 3 members, 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 from a list of names provided by the Director. This list shall consist of not less then 9 names of arbitrators of nationwide reputation and professional nature, who are also members of the National Academy of Arbitrators, and whom the Director has determined are available and willing to serve.

''(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 mediation 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 the agreement within 90 days after the commencement of collective bargaining, a mediator shall be appointed in accordance with the terms in 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 after 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.''.

(b) NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.—Except as otherwise provided by the amendment made by subsection (a), nothing in this Act shall restrict, expand, or otherwise affect any of the rights, privileges, or benefits of either employees of 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 within the United States Postal Service, or any collective bargaining agreement.

(c) FREE MAILING PRIVILEGES CONTINUE UNCHANGED.—Nothing in this Act or any amendment made by this Act shall affect any free mailing privileges accorded under section 3217 or sections 3403 through 3406 of title 39, United States Code.

SEC. 506. BONUS AUTHORITY.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3685 the following:

''§ 3686. Bonus authority

''(a) IN GENERAL.—The Postal Service may establish 1 or more programs to provide bonuses or other rewards to officers and employees of the Postal Service in senior executive or equivalent positions to achieve the objectives of this chapter.

''(b) LIMITATION ON TOTAL COMPENSATION.—

''(1) IN GENERAL.—Under any such program, the Postal Service may award a bonus or other reward in excess of the limitation set forth in the last sentence of section 1003(a), if such program has been approved under paragraph (2). Any such award or bonus may not cause the total compensation of such officer or employee to exceed the total annual compensation payable to the Vice President under section 104 of title 3 as of the end of the calendar year in which the bonus or award is paid.

''(2) APPROVAL PROCESS.—If the Postal Service wishes to have the authority, under any program described in subsection (a), to award bonuses or other rewards in excess of the limitation set forth in the last sentence of section 1003(a)—

''(A) the Postal Service shall make an appropriate request to the Board of Governors of the Postal Service in such form and manner as the Board requires; and

''(B) the Board of Governors shall approve any such request if the Board certifies, for the annual appraisal period involved, that the performance appraisal system for affected officers and employees of the Postal Service (as designed and applied) makes meaningful distinctions based on relative performance.

''(3) REVOCATION AUTHORITY.—If the Board of Governors of the Postal Service finds that a performance appraisal system previously approved under paragraph (2)(B) does not (as designed and applied) make meaningful distinctions based on relative performance, the Board may revoke or suspend the authority of the Postal Service to continue a program approved under paragraph (2) until such time as appropriate corrective measures have, in the judgment of the Board, been taken.

''(c) REPORTING REQUIREMENT RELATING TO BONUSES OR OTHER REWARDS.—Included in its comprehensive statement under section 2401(e) for any period shall be—

''(1) the name of each person receiving a bonus or other reward during such period which would not have been allowable but for the provisions of subsection (b);

''(2) the amount of the bonus or other reward; and

''(3) the amount by which the limitation referred to in subsection (b)(1) was exceeded as a result of such bonus or other reward.''.

TITLE VI—ENHANCED REGULATORY COMMISSION

SEC. 601. REORGANIZATION AND MODIFICATION OF CERTAIN PROVISIONS RELATING TO THE POSTAL REGULATORY COMMISSION.

(a) TRANSFER AND REDESIGNATION.—Title 39, United States Code, is amended—

(1) by inserting after chapter 4 the following:

''CHAPTER 5—POSTAL REGULATORY COMMISSION

''Sec.
''501. Establishment.
''502. Commissioners.
''503. Rules; regulations; procedures.
''504. Administration.
''505. Officer of the Postal Regulatory Commission representing the general public.

''§ 501. Establishment

''The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.

''§ 502. Commissioners

''(a) The Postal Regulatory 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 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. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability and Enhancement Act. Not more than 3 of the Commissioners may be adherents of the same political party.

''(b) No Commissioner shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.

''(c) 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 subsection (f).

''(d) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

''(e) 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.

''(f) The Commissioners shall serve for terms of 6 years.'';

(2) by striking, in subchapter I of chapter 36 (as in effect before the amendment made by section 201(c)), the heading for such subchapter I and all that follows through section 3602;

(3) by redesignating sections 3603 and 3604 as sections 503 and 504, respectively, and transferring such sections to the end of chapter 5 (as inserted by paragraph (1)); and

(4) by adding after such section 504 the following:

''§ 505. Officer of the Postal Regulatory Commission representing the general public

''The Postal Regulatory Commission shall designate an officer of the Postal Regulatory Commission in all public proceedings who shall represent the interests of the general public.''.

(b) APPLICABILITY.—The amendment made by subsection (a)(1) shall not affect the appointment or tenure of any person serving as a Commissioner on the Postal Regulatory Commission (as so redesignated by section 604) under an appointment made before the date of enactment of this Act or any nomination made before that date, but, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.

(c) CLERICAL AMENDMENT.—The analysis for part I of title 39, United States Code, is amended by inserting after the item relating to chapter 4 the following:

''5. Postal Regulatory Commission ... 501''

SEC. 602. AUTHORITY FOR POSTAL REGULATORY COMMISSION TO ISSUE SUBPOENAS.

Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding at the end the following:

''(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 or to obtain information to be used to prepare a report under this title—

''(A) issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and

''(B) order the taking of depositions and responses to written interrogatories by a covered person.

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.

''(4) For purposes of this subsection, the term 'covered person' means an officer, employee, agent, or contractor of the Postal Service.

''(g)(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission under 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) Except as provided in paragraph (3), 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)(A) Paragraph (2) shall not prohibit the Commission from publicly disclosing relevant information in furtherance of its duties under this title, provided that the Commission has adopted regulations under section 553 of title 5, that establish a procedure for according appropriate confidentiality to information identified by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service under paragraph (1), the Commission shall balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

''(B) Paragraph (2) shall not prevent the Commission from requiring production of information in the course of any discovery procedure established in connection with a proceeding under this title. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for information furnished to any party.''.

SEC. 603. AUTHORIZATION OF APPROPRIATIONS FROM THE POSTAL SERVICE FUND.

(a) POSTAL REGULATORY COMMISSION.—Subsection (d) of section 504 of title 39, United States Code (as so redesignated by section 601) is amended to read as follows:

''(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.''.

(b) OFFICE OF INSPECTOR GENERAL OF THE UNITED STATES POSTAL SERVICE.—Section 8G(f) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating paragraph (4) as paragraph (5);

(2) by redesignating the second paragraph (3) (relating to employees and labor organizations) as paragraph (4); and

(3) by adding at the end the following:

''(6) 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.''.

(c) BUDGET PROGRAM.—

(1) IN GENERAL.—The next to last sentence of section 2009 of title 39, United States Code, is amended to read as follows: ''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 504(d) of this title.''.

(2) CONFORMING AMENDMENT.—Section 2003(e)(1) of title 39, United States Code, is amended by striking the first sentence and inserting the following: ''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 under section 504(d); and (C) all expenses of the Office of Inspector General, subject to the availability of amounts appropriated under section 8G(f) of the Inspector General Act of 1978.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 2005.

(2) SAVINGS PROVISION.—The provisions of title 39, United States Code, and the Inspector General Act of 1978 (5 U.S.C. App.) 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.

SEC. 604. REDESIGNATION OF THE POSTAL RATE COMMISSION.

(a) AMENDMENTS TO TITLE 39, UNITED STATES CODE.—Title 39, United States Code, is amended in sections 404, 503 and 504 (as so redesignated by section 601), 1001 and 1002, by striking ''Postal Rate Commission'' each place it appears and inserting ''Postal Regulatory Commission'';

(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''.

(f) OTHER REFERENCES.—Whenever a 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. 605. FINANCIAL TRANSPARENCY.

(a) IN GENERAL.—Section 101 of title 39, United States Code, is amended—

(1) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

(2) by inserting after subsection (c) the following:

''(d) As an independent establishment of the executive branch of the Government of the United States, the Postal Service shall be subject to a high degree of transparency to ensure fair treatment of customers of the Postal Service's market-dominant products and companies competing with the Postal Service's competitive products.''.

(b) FINANCIAL REPORTING REQUIREMENTS AND ENFORCEMENT POWERS APPLICABLE TO POSTAL SERVICE.—Section 503 of title 39, United States Code (as so redesignated by section 601 and 604) is amended by—

(1) inserting ''(a)'' before ''The Postal Regulatory Commission shall promulgate''; and

(2) adding at the end the following:

''(b)(1) Beginning with the first full fiscal year following the date of enactment of the Postal Accountability and Enhancement Act, the Postal Service shall file with the Postal Regulatory Commission —

''(A) within 35 days after the end of each fiscal quarter, a quarterly report containing the information prescribed in Form 10–Q of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form;

''(B) within 60 days after the end of each fiscal year, an annual report containing the information prescribed in Form 10–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form; and

''(C) periodic reports within the time frame and containing the information prescribed in Form 8–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form.

''(2) For purposes of preparing the reports required under paragraph (1), the Postal Service shall be deemed to be the registrant described in the Securities and Exchange Commission forms, and references contained in such forms to Securities and Exchange Commission regulations are applicable.

''(3) For purposes of preparing the reports required under paragraph (1), the Postal Service shall comply with the rules prescribed by the Securities and Exchange Commission implementing section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262; Public Law 107–204) beginning with fiscal year 2007 and in each fiscal year thereafter.

''(c)(1) The reports required under subsection (b)(1)(B) shall include, with respect to the financial obligations of the Postal Service under chapters 83, 84, and 89 of title 5 for retirees of the Postal Service—

''(A) the funded status of such obligations of the Postal Service;

''(B) components of the net change in the fund balances and obligations and the nature and cause of any significant changes;

''(C) components of net periodic costs;

''(D) cost methods and assumptions underlying the relevant actuarial valuations;

''(E) the effect of a one-percentage point increase in the assumed health care cost trend rate for each future year on the service and interest costs components of net periodic cost and the accumulated obligation of the Postal Service under chapter 89 of title 5 for retirees of the Postal Service;

''(F) actual contributions to and payments from the funds for the years presented and the estimated future contributions and payments for each of the following 5 years;

''(G) the composition of plan assets reflected in the fund balances; and

''(H) the assumed rate of return on fund balances and the actual rates of return for the years presented.

''(2)(A) Beginning with the fiscal year 2007 and in each fiscal year thereafter, for purposes of the reports required under subsection (b)(1)(A) and (B), the Postal Service shall include segment reporting.

''(B) The Postal Service shall determine the appropriate segment reporting under subparagraph (A), after consultation with the Postal Regulatory Commission.

''(d) For purposes of the annual reports required under subsection (b)(1)(B), the Postal Service shall obtain an opinion from an independent auditor on whether the information listed under subsection (c) is fairly stated in all material respects, either in relation to the basic financial statements as a whole or on a standalone basis.

''(e) The Postal Regulatory Commission shall have access to the audit documentation and any other supporting matter of the Postal Service and its independent auditor in connection with any information submitted under subsection (b)(1)(B).

''(f) The Postal Regulatory 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 section whenever it shall appear that the data—

''(1) have become significantly inaccurate;

''(2) can be significantly improved; or

''(3) are not cost beneficial.''.

TITLE VII—EVALUATIONS

SEC. 701. ASSESSMENTS OF RATEMAKING, CLASSIFICATION, AND OTHER PROVISIONS.

(a) IN GENERAL.—The Postal Regulatory Commission shall, at least every 3 years, submit a report to the President and Congress concerning—

(1) the operation of the amendments made by this Act; and

(2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States.

(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 the report and to submit written comments on the report. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).

SEC. 702. REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY.

(a) REPORT BY THE POSTAL REGULATORY COMMISSION.—

(1) IN GENERAL.—Not later than 24 months after the date of enactment of this Act, the Postal Regulatory Commission shall submit a report to the President and Congress on universal postal service and the postal monopoly in the United States (in this section referred to as ''universal service and the postal monopoly''), including the monopoly on the delivery of mail and on access to mailboxes.

(2) CONTENTS.—The report under this subsection shall include—

(A) a comprehensive review of the history and development of universal service and the postal monopoly, including how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas;

(B) the scope and standards of universal service and the postal monopoly provided under current law (including sections 101 and 403 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service;

(C) a description of any geographic areas, populations, communities (including both urban and rural communities), organizations, or other groups or entities not currently covered by universal service or that are covered but that are receiving services deficient in scope or quality or both; and

(D) the scope and standards of universal service and the postal monopoly likely to be required in the future in order to meet the needs and expectations of the United States public, including all types of mail users, based on discussion of such assumptions, alternative sets of assumptions, and analyses as the Postal Service considers plausible.

(b) RECOMMENDED CHANGES TO UNIVERSAL SERVICE AND THE MONOPOLY.—The Postal Regulatory Commission shall include in the report under subsection (a), and in all reports submitted under section 701 of this Act—

(1) any recommended changes to universal service and the postal monopoly as the Commission considers appropriate, including changes that the Commission may implement under current law and changes that would require changes to current law, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service;

(2) with respect to each recommended change described under paragraph (1)—

(A) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

(B) an analysis of the likely benefit of the current postal monopoly to the ability of the Postal Service to sustain the current scope and standards of universal service, including estimates of the financial benefit of the postal monopoly to the extent practicable, under current law; and

(3) such additional topics and recommendations as the Commission considers appropriate, with estimated effects of the recommendations on the service, financial condition, rates, and the security of mail provided by the Postal Service.

SEC. 703. 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, and to the Postal Regulatory Commission, within 1 year after the date of enactment of this Act, 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 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, and in the interim, to account under section 3633 of title 39, United States Code (as added by this Act), for the net economic advantages 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 in promulgating or revising the regulations required under section 3633 of title 39, United States Code.

SEC. 704. REPORT ON POSTAL WORKPLACE SAFETY AND WORKPLACE-RELATED INJURIES.

(a) REPORT BY THE INSPECTOR GENERAL.—

(1) IN GENERAL.—Not later than 6 months after the enactment of this Act, the Inspector General of the United States Postal Service shall submit a report to Congress and the Postal Service that—

(A) details and assesses any progress the Postal Service has made in improving workplace safety and reducing workplace-related injuries nationwide; and

(B) identifies opportunities for improvement that remain with respect to such improvements and reductions.

(2) CONTENTS.—The report under this subsection shall also—

(A) discuss any injury reduction goals established by the Postal Service;

(B) describe the actions that the Postal Service has taken to improve workplace safety and reduce workplace-related injuries, and assess how successful the Postal Service has been in meeting its injury reduction goal; and

(C) identify areas where the Postal Service has failed to meet its injury reduction goals, explain the reasons why these goals were not met, and identify opportunities for making further progress in meeting these goals.

(b) REPORT BY THE POSTAL SERVICE.—

(1) REPORT TO CONGRESS.—Not later than 6 months after receiving the report under subsection (a), the Postal Service shall submit a report to Congress detailing how it plans to improve workplace safety and reduce workplace-related injuries nationwide, including goals and metrics.

(2) PROBLEM AREAS.—The report under this subsection shall also include plans, developed in consultation with the Inspector General and employee representatives, including representatives of each postal labor union and management association, for addressing the problem areas identified by the Inspector General in the report under subsection (a)(2)(C).

SEC. 705. STUDY ON RECYCLED PAPER.

(a) IN GENERAL.—Within 12 months after the date of enactment of this Act, the Government Accountability Office shall study and submit to the Congress, the Board of Governors of the Postal Service, and to the Postal Regulatory Commission a report concerning—

(1) the economic and environmental efficacy of establishing rate incentives for mailers linked to the use of recycled paper;

(2) a description of the accomplishments of the Postal Service in each of the preceding 5 years involving recycling activities, including the amount of annual revenue generated and savings achieved by the Postal Service as a result of its use of recycled paper and other recycled products and its efforts to recycle undeliverable and discarded mail and other materials; and

(3) additional opportunities that may be available for the United States Postal Service to engage in recycling initiatives and the projected costs and revenues of undertaking such opportunities.

(b) RECOMMENDATIONS.—The report shall include recommendations for any administrative or legislative actions that may be appropriate.

TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

SEC. 801. SHORT TITLE.

This title may be cited as the ''Postal Civil Service Retirement and Health Benefits Funding Amendments of 2004''.

SEC. 802. CIVIL SERVICE RETIREMENT SYSTEM.

(a) IN GENERAL.—Chapter 83 of title 5, United States Code, is amended—

(1) in section 8334(a)(1)(B), by striking clause (ii) and inserting the following:

''(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph.''; and

(2) by amending section 8348(h) to read as follows:

''(h)(1) In this subsection, the term 'Postal surplus or supplemental liability' means the estimated difference, as determined by the Office, between—

''(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

''(B) the sum of—

''(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

''(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

''(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

''(2)(A) Not later than June 15, 2006, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2005. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a by June 30, 2006. If the result is a

supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing September 30, 2006, which provides for the liquidation of such liability by September 30, 2043.

''(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2006, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C), and any prior amortization schedule for payments shall be terminated. If the result is a supplemental liability, the Office shall establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

''(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

''(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

''(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

''(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.''.

(b) CREDIT ALLOWED FOR MILITARY SERVICE.—In the application of section 8348(g)(2) of title 5, United States Code, for the fiscal year 2006, the Office of Personnel Management shall include, in addition to the amount otherwise computed under that paragraph, the amounts that would have been included for the fiscal years 2003 through 2005 with respect to credit for military service of former employees of the United States Postal Service as though the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) had not been enacted, and the Secretary of the Treasury shall make the required transfer to the Civil Service Retirement and Disability Fund based on that amount.

(c) REVIEW.—

(1) IN GENERAL.—

(A) REQUEST FOR REVIEW.—Notwithstanding any other provision of this section (including any amendment made by this section), any determination or redetermination made by the Office of Personnel Management under this section (including any amendment made by this section) shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this subsection.

(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of pension obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(2) RECONSIDERATION.—Upon receiving the report from the Commission under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

SEC. 803. HEALTH INSURANCE.

(a) IN GENERAL.—

(1) FUNDING.—Chapter 89 of title 5, United States Code, is amended—

(A) in section 8906(g)(2)(A), by striking ''shall be paid by the United States Postal Service.'' and inserting ''shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service.''; and

(B) by inserting after section 8909 the following:

''§ 8909a. Postal Service Retiree Health Benefit Fund

''(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

''(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

''(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

''(d)(1) Not later than June 30, 2006, and by June 30 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

''(2)(A) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year, the Office shall recompute the difference between—

''(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

''(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

''(II) the net present value computed under paragraph (1).

''(B) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year shall recompute, an amortization schedule including a series of annual installments which provide for the liquidation by September 30, 2045, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

''(3) Not later than September 30, 2006, and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund—

''(A) the net present value computed under paragraph (1); and

''(B) the annual installment computed under paragraph (2)(B).

''(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

''(5)(A)(i) Any computation or other determination of the Office under this subsection shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

''(ii) Upon receiving a request under clause (i), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this subparagraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

''(B) Upon receiving the report under subparagraph (A), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

''(6) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8909 the following:

''8909a. Postal Service Retiree Health Benefits Fund.''.

(b) REVIEW.—

(1) IN GENERAL.—

(A) REQUEST FOR REVIEW.—Any regulation established under section 8909a(d)(5) of title 5, United States Code (as added by subsection (a)), shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(2) RECONSIDERATION.—Upon receiving the report under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

(c) TRANSITIONAL ADJUSTMENT FOR FISCAL YEAR 2006.—For fiscal year 2006, the amounts paid by the Postal Service in Government contributions under section 8906(g)(2)(A) of title 5, United States Code, for fiscal year 2006 contributions shall be deducted from the initial payment otherwise due from the Postal Service to the Postal Service Retiree Health Benefits Fund under section 8909a(d)(3) of such title as added by this section.

SEC. 804. REPEAL OF DISPOSITION OF SAVINGS PROVISION.

Section 3 of the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) is repealed.

SEC. 805. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided under subsection (b), this title shall take effect on October 1, 2005.

(b) TERMINATION OF EMPLOYER CONTRIBUTION.—The amendment made by paragraph (1) of section 802(a) shall take effect on the first day of the first pay period beginning on or after October 1, 2005.

TITLE IX—COMPENSATION FOR WORK INJURIES

SEC. 901. TEMPORARY DISABILITY; CONTINUATION OF PAY.

(a) TIME OF ACCRUAL OF RIGHT.—Section 8117 of title 5, United States Code, is amended—

(1) by striking ''An employee'' and inserting ''(a) An employee other than a Postal Service employee''; and

(2) by adding at the end the following:

''(b) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period, except that if the disability exceeds 14 days or is followed by permanent disability, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 8118(b)(1) of title 5, United States Code, is amended to read as follows:

''(1) without a break in time, except as provided under section 8117(b), unless controverted under regulations of the Secretary''.

SEC. 902. DISABILITY RETIREMENT FOR POSTAL EMPLOYEES.

(a) TOTAL DISABILITY.—Section 8105 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1)).

''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of the Postal Accountability and Enhancement Act, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for total disability is converted to 50 percent of the monthly pay of the employee on the later of—

''(A) the date on which the injured employee reaches retirement age; or

''(B) 1 year after the employee begins receiving compensation.''.

(b) PARTIAL DISABILITY.—Section 8106 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (d).''; and

(2) by adding at the end the following:

''(d)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1)).

''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of this subsection, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for partial disability is converted to 50 percent of the difference between the monthly pay of an employee and the monthly wage earning capacity of the employee after the beginning of partial disability on the later of—

''(A) the date on which the injured employee reaches retirement age; or

''(B) 1 year after the employee begins receiving compensation.''.

TITLE X—MISCELLANEOUS

SEC. 1001. EMPLOYMENT OF POSTAL POLICE OFFICERS.

Section 404 of title 39, United States Code (as amended by this Act), is further amended by adding at the end the following:

''(d) 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 may give such guards, with respect to such property, any of the powers of special policemen provided under section 1315 of title 40. The Postmaster General, or the designee of the Postmaster General, may take any action that the Secretary of Homeland Security may take under section 1315 of title 40, with respect to that property.

SEC. 1002. OBSOLETE PROVISIONS.

(a) REPEAL.—

(1) IN GENERAL.—Chapter 52 of title 39, United States Code, is repealed.

(2) CONFORMING AMENDMENTS.—(A) Section 5005(a) of title 39, United States Code, is amended—

(i) by striking paragraph (1), and by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively; and

(ii) in paragraph (3) (as so designated by clause (i)), by striking ''(as defined in section 5201(6) of this title)''.

(B) Section 5005(b) of such title 39 is amended by striking ''(a)(4)'' each place it appears and inserting ''(a)(3)''.

(C) Section 5005(c) of such title 39 is amended by striking ''by carrier or person under subsection (a)(1) of this section, by contract under subsection (a)(4) of this section, or'' and inserting ''by contract under subsection (a)(3) of this section or''.

(b) ELIMINATING RESTRICTION ON LENGTH OF CONTRACTS.—(1) Section 5005(b)(1) of title 39, United States Code, is amended by striking ''(or where the Postal Service determines that special conditions or the use of special equipment warrants, not in excess of 6 years)'' and inserting ''(or such longer period of time as may be determined by the Postal Service to be advisable or appropriate)''.

(2) Section 5402(d) of such title 39 is amended by striking ''for a period of not more than 4 years''.

(3) Section 5605 of such title 39 is amended by striking ''for periods of not in excess of 4 years''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V of title 39, United States Code, is amended by repealing the item relating to chapter 52.

SEC. 1003. REDUCED RATES.

Section 3626 of title 39, United States Code, is amended—

(1) in subsection (a), by striking all before paragraph (4) and inserting the following:

''(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), 4554(b), or 4554(c) of this title shall be established in accordance with section 3622.

''(2) For the purpose of this subsection, the term 'regular-rate category' means any class of mail or kind of mailer, other than a class or kind referred to in section 2401(c).

''(3) Rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title shall be established so that postage on each mailing of such mail reflects its preferred status as compared to the postage for the most closely corresponding regular-rate category mailing.'';

(2) in subsection (g), by adding at the end the following:

''(3) For purposes of this section and former section 4358(a) through (c) of this title, those copies of an issue of a publication entered within the county in which it is published, but distributed outside such county on postal carrier routes originating in the county of publication, shall be treated as if they were distributed within the county of publication.

''(4)(A) In the case of an issue of a publication, any number of copies of which are mailed at the rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title, any copies of such issue which are distributed outside the county of publication (excluding any copies subject to paragraph (3)) shall be subject to rates of postage provided for under this paragraph.

''(B) The rates of postage applicable to mail under this paragraph shall be established in accordance with section 3622.

''(C) This paragraph shall not apply with respect to an issue of a publication unless the total paid circulation of such issue outside the county of publication (not counting recipients of copies subject to paragraph (3)) is less than 5,000.''; and

(3) by adding at the end the following:

''(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).''.

SEC. 1004. SENSE OF CONGRESS REGARDING POSTAL SERVICE PURCHASING REFORM.

It is the sense of Congress that the Postal Service should—

(1) ensure the fair and consistent treatment of suppliers and contractors in its current purchasing policies and any revision or replacement of such policies, such as through the use of competitive contract award procedures, effective dispute resolution mechanisms, and socioeconomic programs; and

(2) implement commercial best practices in Postal Service purchasing policies to achieve greater efficiency and cost savings as recommended in July 2003 by the President's Commission on the United States Postal Service, in a manner that is compatible with the fair and consistent treatment of suppliers and contractors, as befitting an establishment in the United States Government.

SEC. 1005. CONTRACTS FOR TRANSPORTATION OF MAIL BY AIR.

(a) DEFINITIONS.—Section 5402(a) of title 39, United States Code, is amended—

(1) in paragraph (4), by striking ''(g)(1)(D)(i)'' and inserting ''(g)(1)(A)(iv)(I)'';

(2) in paragraph (5), by striking ''(g)(1)(D)(i)'' and inserting ''(g)(1)(A)(iv)(I)'';

(3) in paragraph (6), by striking ''only'';

(4) in paragraph (8), by striking ''rates paid to a bush carrier'' and inserting ''linehaul rates and a single terminal handling payment at a bush terminal handling rate paid to a bush carrier'';

(5) in paragraph (11), by striking ''(g)(1)(D)(ii)'' and inserting ''(g)(1)(A)(iv)(II)'';

(6) in paragraph (13)—

(A) in subparagraph (A)—

(i) by striking ''clause (i) or (ii) of subsection (g)(1)(D)'' and inserting ''subclause (I) or (II) of subsection (g)(1)(A)(iv)''; and

(ii) by striking ''and'' after the semicolon;

(B) in subparagraph (B), by adding ''and'' after the semicolon; and

(C) by adding at the end the following:

''(C) is not comprised of previously qualified existing mainline carriers as a result of merger or sale;'';

(7) in paragraph (18), by striking ''bush routes'' and inserting ''routes''; and

(8) in paragraph (22), by striking ''bush routes'' and inserting ''routes''.

(b) NONPRIORITY BYPASS MAIL.—Section 5402(g) of title 39, United States Code, is amended—

(1) in paragraph (2)(C), by inserting ''or a destination city'' after ''acceptance point and a hub'';

(2) in paragraph (3), by adding at the end the following:

''(C) When a new hub results from a change in a determination under subparagraph (B), mail tender from that hub during the 12-month period beginning on the effective date of that

change shall be based on the passenger and freight shares to the destinations of the affected hub or hubs resulting in the new hub.''; and

(3) in paragraph (5)(A)(i), by striking ''(g)(1)(D)(ii)'' and inserting ''(g)(1)(A)(iv)(II)''.

(c) EQUITABLE TENDER.—Section 5402(h) of title 39, United States Code, is amended—

(1) in paragraph (1), by inserting ''bush'' after ''providing scheduled'';

(2) by striking paragraph (3) and inserting the following:

''(3)(A) Except as provided under subparagraph (C), a new or existing 121 bush passenger carrier qualified under subsection (g)(1) shall be exempt from the requirements under paragraphs (1)(B) and (2)(A) on a city pair route for a period which shall extend for—

''(i) 1 year;

''(ii) 1 year in addition to the extension under clause (i) if, as of the conclusion of the first year, such carrier has been providing not less than 5 percent of the passenger service on that route (as calculated under paragraph (5)); and

''(iii) 1 year in addition to the extension under clause (ii) if, as of the conclusion of the second year, such carrier has been providing not less than 10 percent of the passenger service on that route (as calculated under paragraph (5)).

''(B)(i) The first 3 121 bush passenger carriers entitled to the exemptions under subparagraph (A) on any city pair route shall divide no more than an additional 10 percent of the mail, apportioned equally, comprised of no more than—

''(I) 5 percent of the share of each qualified passenger carrier servicing that route that is not a 121 bush passenger carrier; and

''(II) 5 percent of the share of each nonpassenger carrier servicing that route that transports 25 percent or more of the total nonmail freight under subsection (i)(1).

''(ii) Additional 121 bush passenger carriers entering service on that city pair route after the first 3 shall not receive any additional mail share.

''(iii) If any 121 bush passenger carrier on a city pair route receiving an additional share of the mail under clause (ii) discontinues service on that route, the 121 bush passenger carrier that has been providing the longest period of service on that route and is otherwise eligible but is not receiving a share by reason of clause (ii), shall receive the share of the carrier discontinuing service.

''(C) Notwithstanding the requirements of this subsection, if only 1 passenger carrier or aircraft is qualified to be tendered nonpriority bypass mail as a passenger carrier or aircraft on a city pair route in the State of Alaska, the Postal Service shall tender 20 percent of the nonpriority bypass mail described under paragraph (1) to the passenger carrier or aircraft providing at least 10 percent of the passenger service on such route.'';

(3) in paragraph (5)(A)—

(A) by striking ''(i)'' after ''(A)''; and

(B) by striking clause (ii).

(d) PERCENT OF NONMAIL FREIGHT.—Section 5402(i)(6) of title 39, United States Code, is amended—

(1) by striking ''(A)'' after ''(6)''; and

(2) by striking subparagraph (B).

(e) PERCENT OF TENDER RATE.—Section 5402(j)(3)(B) of title 39, United States Code, is amended by striking ''bush routes in the State of Alaska'' and inserting ''routes served exclusively by bush carriers in the State of Alaska''.

(f) DETERMINATION OF RATES.—Section 5402(k) of title 39, United States Code, is amended by striking paragraph (5).

(g) TECHNICAL AND CONFORMING AMENDMENT.—Section 5402(p)(3) of title 39, United States Code, is amended by striking ''(g)(1)(D)'' and inserting ''(g)(1)(A)(iv)''.

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided under paragraph (2), this section shall take effect on the date of enactment of this Act.

(2) EQUITABLE TENDER.—Subsection (c) shall take effect on July 1, 2006.

Mr. FRIST. Mr. President, I further ask unanimous consent that S. 662, as amended, be returned to the calendar and that it not be in order for the Senate to consider any conference report or House amendments to H.R. 22 if it would cause a net increase in on- or off-budget direct spending in excess of $5 billion in any of the four 10-year periods beginning in 2016 to 2055, as estimated by the Congressional Budget Office.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER appointed Ms. COLLINS, Mr. STEVENS, Mr. VOINOVICH, Mr. COLEMAN, Mr. BENNETT, Mr. LIEBERMAN, Mr. AKAKA, and Mr. CARPER conferees on the part of the Senate.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. President, I would like to take a moment to comment on the passage of the Postal Accountability and Enhancement Act.

Today's passage of S. 662 is a first step towards meaningful postal reform. The Postal Service forms a crucial part of the backbone of our economy, and I am encouraged by today's action toward bringing meaningful reform to the Postal Service.

I am optimistic that the process of resolving the differences between the Senate and House bills will result in a product that goes even further to ensure that America's Postal Service has the resources and flexibility necessary to remain relevant and competitive in the global marketplace.

I want to thank the chairman of the Homeland Security and Governmental Affairs Committee, Senator SUSAN COLLINS of Maine, and Senator TOM CARPER of Delaware, for their leadership. They worked diligently with their colleagues in the Senate, the U.S. Postal Service, the administration, and kept their focus on the thousands of postal workers in communities across America, and the businesses which rely on the mail system to craft the current compromise.

In the past three and a half decades, the needs of the Postal Service have changed dramatically. Indeed, the way we communicate has been transformed by technology through e-mail, faxes, and my personal favorite, Blackberries.

We can now pay our bills on the Internet. And online shopping is more common than catalog sales.

Nevertheless, the Postal Service remains a critical part of America's economy. Between paper manufacturing, printing, catalog production, direct mailing and financial services, the $900 billion mailing industry employs 11 million workers in America.

And it is fair to say that we rely on the U.S. Postal Service more than any other governmental service. In Nashville and Knoxville, and towns all across the country, the local post office still represents the heart of the community.

In recent years, the Postal Service has undergone some of its most challenging and difficult times. In 2001 and 2003, it was hit with deadly anthrax and ricin bioterrorism attacks. It was a frightening time for our country's postal workers, and shook us all to the core.

The Postal Service has also undergone significant modernization on the business side. These reforms have made the postal service more efficient and productive, and I applaud the leadership of Postal Master Jack Potter who has been a steady, forward-thinking, responsible leader of the U.S. Postal Service.

I have worked with the Postmaster General on a number of occasions. The attacks in 2001 and 2003 brought us together to address the public health risks of mail-born bioterrorism, and to develop better ways of protecting the Postal Service's employees and America's mail.

And most recently, Jack and I announced the transfer of the historic post office on the Mississippi River in Memphis, to the University of Memphis for their new law school. He personally worked with me, the city and the university to get this done for the Memphis community.

The Postal Service is in good hands, and under Jack Potter's leadership has significantly improved its financial performance. But in order for America to have a healthy and stable mail system into the future, the Postal Service needs a less cumbersome rate-setting process and better flexibility to respond to an increasingly competitive and demanding marketplace. S. 662 takes important steps toward that goal.

It grants the Postal Service Board of Governors new authority to set rates for competitive products like express mail and priority mail, and replaces the current rate-setting process for products such as first-class mail, periodicals, and library mail with a more efficient, less litigious rate cap-based structure.

The Postal Accountability and Enhancement Act also transforms the existing Postal Rate Commission into the Postal Regulatory Commission with authority to regulate rates for noncompetitive rates and services, ensure financial transparency, and establish limits on the accumulation of retained earnings, among other things.

I look forward to seeing more work done on this issue, but today's action represents the beginning of real reform to the Postal Service which will benefit the taxpayers, ratepayers, and the thousands of dedicated U.S. Postal Service employees.

Every day, we are working to keep America moving forward.

U.S. POSTAL SERVICE

Mr. HARKIN. Mr. President, I appreciate the work done by Senator COLLINS, Chair of the Homeland Security and Governmental Affairs Committee, by the ranking member Senator LIEBERMAN, and also by Senator CARPER. It has literally taken years to

move this important postal reform legislation.

As my colleagues are aware, the Postal Service faces multiple challenges in our changing economy. One of these challenges is how it should manage its network of processing and logistics facilities. In order to remain competitive and maintain universal service, the Postal Service is currently studying how best to streamline its processing and logistics network and remove excess capacity. The decisions it will make as part of this process will have a long term impact on many of the communities and businesses that it serves.

Sadly, the process that the Postal Service has developed to date to study facility closures and consolidations fails to adequately allow stakeholders, key customers, postal employees or community leaders necessary input. The current process also fails to provide an open and transparent explanation to affected communities for what may be quite compelling reasons underlying the decisions to close or consolidate a facility.

I learned how completely lacking in public participation and transparency this process is from my constituents in Sioux City, IA. Until I convened a meeting with postal officials in my office last week, the Sioux City community had been unable to get any information from the Postal Service about the timing or reasons for the proposed consolidation of a mail processing and distribution center there with a similar facility in another state.

Senators COLLINS, LIEBERMAN, and CARPER have agreed to include language in S. 662 that would ensure that this does not happen. This language does not stop the Postal Service from studying consolidation options for its processing operations. What it does do is require that the Postal Service revise the area mail processing study process by which it analyzes which of its processing facilities should be closed or consolidated.

While the language does not prevent the Postal Service from proceeding with ongoing area mail processing studies on consolidation of specific facilities, it does provide that no facility closing or consolidation may actually be implemented until the Postal Service has met the requirements of public notice, transparency and public input specified in new section 302(c)(3)(D)(i–iv) .

The new language requires that the Postal Service's decisionmaking process be transparent, with any analyses made available to the community upon request. It will also require that the businesses and communities affected by proposed consolidations of Postal Service facilities have the opportunity to provide input and guarantees that their concerns and advice are taken fully into account by the Postal Service before the Postal Service issues a decision on a closure or consolidation.

The first section of the amendment provides that the Postal Service notify an affected community about the potential of a facility being closed or consolidated in their district; such notification will be provided at the beginning stage of the matter or as soon as the Postal Service makes a decision to begin reviewing the matter. The Postal Service should do their best to ensure that this notification reaches all of businesses, residents, employees, government entities, and other organizations that depend on the facility.

The second section will require the Postal Service to make available to the community, upon request, any data, analyses, or other information that is being considered by the Postal Service as part of its decisionmaking process. This will ensure that the Postal Service's decisionmaking analysis on this matter is transparent.

The third section will allow the affected members of the community ample opportunity to provide input on the proposed decision. This will ensure that the community has the chance to provide valuable input into the decisionmaking process.

The fourth section requires the Postal Service to take community input into account prior to making a final decision at the district level. Once the district level decision on consolidation is made, which includes taking the community input into account, the district level recommendation can then be forwarded to the next decisionmaking step at the regional level. It is worth noting that the community served by a postal facility can be a valuable information resource and that it should benefit the Postal Service to listen to the community's suggestions as they seek to arrive at a result that works for them, their customers and those they serve.

Mr. CARPER. While I fully support efforts by the Postal Service to rationalize its processing operations, I also believe that the Postal Service can engage in consolidation decisions that are rational and justified and can withstand public scrutiny. I believe that this language will improve the consolidation process, and I was pleased to work with my colleague from Iowa in drafting it. I believe that the language strikes the appropriate balance by not stopping the Postal Service from studying proposed consolidations of particular facilities, while at the same time requiring the Postal Service to meet some basic obligations to its customer and affected communities before a consolidation can be implemented.

Mr. LIEBERMAN. I am pleased to lend my strong support to adding this provision to S. 622 in order to improve the procedures by which the Postal Service consolidates its mail processing operations. The problems local communities are encountering from the Postal Service's consolidations hit home for me in Waterbury, CT. Connecticut residents affected by the Postal Service's decision to close its Waterbury mail processing center have a right to participate in a process that is transparent and open. This new provision in S. 622 will help ensure that, when the Postal Service streamlines its mail processing or logistics network, it gives adequate public notice and takes other steps to be sure that those who are potentially affected—including postal customers, postal employees, and other businesses and individuals in the community—have an opportunity to understand and provide input into the Postal Service's decision before facilities are consolidated or closed.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER (Mr. VITTER). Without objection, it is so ordered.

OIL DRILLING

Mr. NELSON of Florida. Mr. President, I wanted to call to the attention of the Senate that over the past couple of days the question of drilling for oil off the coast of Florida has been joined. Indeed, the question and the debate has accelerated.

Yesterday, the Department of the Interior offered their proposed new alignment of the Gulf of Mexico and the central planning area where drilling for oil will occur and the eastern planning area where oil drilling will not occur.

As we have speculated for some period of time, when the Department of the Interior published in the Federal Register that State boundaries were going to be redrawn so that the boundaries of the State of Louisiana, indeed, went into the waters off of the State of Florida, we could well speculate, with some justification, that indeed that was going to be the plan. That, in fact, was the plan offered yesterday by the Secretary of the Interior, Gale Norton, for the next 5 years in the Outer Continental Shelf.

The Secretary's plan increases the drilling in the eastern Gulf of Mexico off the State of Florida by 2 million acres. That was simultaneously followed by the filing of a bill by the chairman of the Energy Committee, the Senator from New Mexico, which would encompass almost the entirety of an area not included in the moratorium on the Outer Continental Shelf, known as lease sale 181.

The essence of the proposal by the Senator from New Mexico is to drill for oil and gas in an area of 4 million acres, in a bulge which bulges out from the imaginary Florida-Alabama line into the waters off the State of Florida.

This senior Senator from Florida, joined by my colleague, Senator MARTINEZ, recognizing this was coming, laid out a plan last week—a plan that would allow some drilling in a part of

lease sale 181 but far from the Florida coast—indeed, 260 miles west of Tampa Bay and Clearwater Beach, that from Pensacola, FL, in the panhandle, would be 150 miles to the south but then would honor the so-called ''military mission line,'' about which Secretary of Defense Don Rumsfeld stated in a letter before Christmas that oil and gas drilling in that area, which has been restricted space because we train and test our military weapons, would not be compatible; to use his words: It would be incompatible with military objectives, with military preparedness through our training and testing in the waters, off the waters, and around the waters of the Gulf of Mexico off Florida.

Therefore, Senator MARTINEZ and I proposed a line that would honor the request of the Department of Defense. That request was corroborated the day before yesterday in front of the Senate Armed Services Committee, when this Senator put the question to Secretary Rumsfeld, again in the form of thanking him for his clear statement, and he acknowledged that statement again.

Where does this leave us? We must continue to have this fight.

We have the prodrilling forces, as evidenced by Senator DOMENICI and his proposal wanting additional drilling off the coast of Florida. We have a more modest proposal by the Secretary of the Interior, who consulted with a couple of dozen oil companies and their proposal, and we have the proposal of the two Senators from Florida, recognizing there is much at stake beyond drilling.

The stakes are very high, not even to speak of Florida's economy, which is certainly evidenced by a $50 billion a year tourism industry which depends on pristine beaches, without oilspills the likes of which occurred last week in Alaska.

When people say: Oh, it is gas that we want to drill, not oil, ignoring the fact that one of the largest and most costly oil spills occurred when a gas rig blew off the coast of California in 1968, causing this massive oilspill, which led to the enactment of a moratorium of all drilling off the Continental Shelf of the United States.

Certainly, economic interests of our State are clearly one component. But there is another component; that is, we have bays and estuaries where so much of our marine life is spawned where the delicate environment would be savaged with an oilspill.

People said it would be far from Florida shores, but winds and currents do not understand mileage. Indeed, there is that current that comes up into the Gulf of Mexico in a northward arc off of the Yucatan Peninsula of Mexico and then turns southward and comes around the Florida Keys, then northward it is the current known as the Gulf Stream.

The idea that long distances are going to protect the delicate environment, I hope that can be recognized as a false argument.

Another component of the argument is simply that there is very little oil out there. They have had several dry holes. The geology shows there is not very much oil. The oil, in fact, in the Gulf of Mexico, is where the 4,000-plus oil rigs are, which is the central gulf and the western gulf off of, primarily, Louisiana and Texas.

But then, of course, there is the fourth component of why we should not drill in the eastern gulf. That is our military preparedness. If you fly commercially from Tampa to New Orleans, you do not fly across the gulf. You hug the coast of Florida. Why? It is restricted space. It is the largest testing and training area for our U.S. military. It is what Secretary Rumsfeld memorialized in the letter to the Senate Committee on Armed Services in December saying: Do not drill east of that military mission line.

We are testing weapons systems such as the F/A–22. All pilot training is being done at Tyndall Air Force Base in Panama City. Why? Because the Gulf of Mexico is restricted space. In a dog fight with the F/A–22, compared to the F–15, the F/A–22 is engaging in air-to-air combat at a speed of 1.5 mach, not like the F–15 and the F–16 at .75 mach, three-quarters of the speed of sound. In other words, the new stealth fighter is engaging in air-to-air combat at twice the speed of our present fleet of aircraft. Therefore, the training area has to be so much larger.

We are testing right now a laser weapon shot from a ship, which goes several hundred miles. We have to have restricted space. Secretary of Defense Rumsfeld said oil and gas rigs are incompatible with the military uses of that space.

That is four components. Senator MARTINEZ and I took all those components into consideration in suggesting our plan. And we added a 20-mile cushion since that military mission line that Secretary Rumsfeld referred to was established in 1981, and the weapons have gotten more sophisticated and, as I stated, require much more space in which to test and to train our military.

That is the line we have drawn which is in effect from Clearwater Beach, right there at Tampa Bay, St. Petersburg Beach, 260 miles to the west from a position further south of Florida, like Fort Myers or Naples. It is in excess of 300 miles from the coast of Florida.

To my knowledge, as of today every newspaper editorial page in the State of Florida, save for one newspaper, has editorialized in favor of Senator MARTINEZ and my proposal from last week. I don't have the exact count, but that is something upwards of 20 editorial pages.

As we come here for the fights that are going to occur, Senator MARTINEZ and I are looking for a practical line that will accommodate the interests of everyone, including our military preparedness. That is why we cannot have a bill that was offered in the House of Representatives last fall that says leave it up to the States. We can't leave it up to a State to set military policy. We cannot leave it up to an individual State legislature to determine whether the U.S. military is going to be prepared in this long war on terror. That is why Senator MARTINEZ and I have said these boundaries ought to be permanent, not in some 5-year plan that is now being offered but permanent.

We are going to continue the fight. I can tell the Senate there is no daylight between Senator MARTINEZ, who sits on that side of the aisle, and this senior Senator of Florida, who sits on this side of the aisle. We will employ every opportunity we have under the rules of the Senate to try to get others who disagree to understand the practicality and the wisdom of the proposal we have laid out to accommodate all of the interests, including the military interests of this country.

I share that with the Senate. This is not going to be the last time we will discuss that, but I make this Senator's position unalterably clear. I thank the Senate for this opportunity to share these thoughts.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Montana.

Mr. BAUCUS. What is the pending business before the Senate?

The PRESIDING OFFICER. The Senate is on S. 852, the asbestos legislation.

Mr. BAUCUS. I ask the Presiding Officer, is there an amendment pending?

The PRESIDING OFFICER. There are several amendments pending.

Mr. BAUCUS. Is one of the amendments the Cornyn substitute?

The PRESIDING OFFICER. There are two Cornyn amendments pending. There is a perfecting amendment pending and a second degree to that perfecting amendment.

Mr. BAUCUS. I thank the Chair.

Mr. President, I strongly oppose the Cornyn amendment to the underlying bill. I want the record to reflect my deep disappointment in those two amendments. I am deeply concerned we are losing sight of what is at stake.

What is that? Making sure that people who are sick, who are likely to become sick from exposure to tremolite asbestos are not denied the ability to fight for their rights against the persons or companies that injured them. That is absolutely the bottom line. If these amendments are agreed to, people in the small county of northwest Montana will not get justice. These people will not get relief. They will not get support. They will not be able to pay for needed health care as they die.

We are talking about hundreds of sick and dying people. This amendment turns our back on them. It will hurt them while they are already down. It will hurt the people of Libby. The people in Libby are proud. They have had more than their share of hard knocks. They just keep going, getting up and

keep trying. They are good, proud people. But they have been injured. They have been deceived. They have been wronged. They have been lied to.

They have tried to put their faith in our Congress and in our legislative process to make things right. They are survivors. I am privileged to know them so well and to represent them.

Let me tell you about the first time I went to Libby. It was January of the year 2000. I traveled to Libby to meet with 25 extremely ill people for the first time. I had been briefed a number of times on what I might expect to hear that night. These kind men and women, some of whom are no longer with us, gathered to share huckleberry pie and coffee in the home of Gayla Benefield.

They opened their hearts. They poured out unimaginable stories of suffering and tragedy on a scale that absolutely stunned me. Entire families—fathers, mothers, uncles, aunts, sons, and daughters—all sick, hundreds are dead—they are all bound together by their exposure to the company mine, exposure to tremolite asbestos mined by W.R. Grace.

This is an isolated community of a few thousand people located as far away from Washington, DC, as you could possibly get, way up in northwest Montana.

I will never forget a man I met that night. He has become my dear friend. His name is Les Skramstad. I mentioned Les yesterday. Let me tell you about our first introduction.

At that meeting in the home of Gayla Benefield, Les watched me closely all evening. He was weary and came up to me after his friends and neighbors finished speaking and said to me:

> Senator, a lot of people have come to Libby and told us they would help, then they leave and we never hear from them again.
>
> Max, please, as a man like me, as someone's father, too, as someone's husband, as someone's son, help me. Help us. Help us make this town safer for Libby's sons and daughters not even born yet. They should not suffer my fate, too. I was a miner and I breathed that dust in.
>
> And what happened to me and all the other men and women who mined wasn't right—but what has happened to the others is a sin. Every day I carried that deadly dust home on my clothes. I took it into our house. I contaminated my own wife and each of our babies with it too. Just like me, they are sick and we will each die the same way.
>
> I just don't know how to live with the pain of what I have done to them. If we can make something good come of this maybe I will stick around to see that, maybe that could help make this worthwhile.

That is what Les said to me that evening. It riveted me. I told him I would do all that I could, that I would not back down, and I would not give up. I said to myself that evening, if I do anything, I am going to help get justice for the people of Libby, MT.

Les accepted my offer and then pointed his finger at me and said: I'll be watching, Senator.

Les is my inspiration. He is the face of thousands of sick and exposed folks in this tiny Montana community. When I get tired, and I see the difficulties we face to try to get justice for the people of Libby, I think of Les, and I cannot shake what he asked me to do. In all my years as an elected official, this issue of doing what is right for Libby is among the most personally compelling things I have ever been called on to do.

Doing what is right for the community and making something good come of it is my mission in Libby. I thank Les Skramstad every day for handing me my marching orders. My staff and I have worked tirelessly for Libby—not for thanks, not for recognition but because the tragedy is that gripping. There is no other choice. It is a no-brainer. We do all we can. It is such a tragedy for the people of Libby.

The extent of asbestos contamination in Libby, the number of people who are sick and who have died from asbestos exposure is staggering. The people of Libby suffer from a deadly asbestos-caused cancer, mesothelioma, at a rate 100 times greater than the rest of the Nation. Mr. President, 1 in 1,000 residents of Libby suffers from this disease. The national average is 1 out of 1 million. Libby residents suffer from all asbestos-related diseases at a rate of 40 to 60 times the national average.

So how could this happen? Well, a company named W.R. Grace owned and operated a vermiculite mining and milling operation in Libby. It just so happened the vermiculite was contaminated by a deadly form of asbestos called tremolite asbestos. It is much more pernicious than the ordinary chrysotile asbestos. Tremolite asbestos is so bad, it gets into your lungs. It has hooks in it. It stays there and does not ever get out.

Mr. President, 5,000 pounds of tremolite asbestos was blown over the town every day. Every day this dust contaminated the air. Dust settled in the town of Libby, on cars, on homes, in gardens. Think of it. You get up in the morning to go outside, and there is this tremolite asbestos dust on your car. It is on your home. It is everywhere, your garden. It settled on children as they played in the parks. Workers brought the dust home on their clothes and exposed their families. Hundreds have died, hundreds more are sick.

The very worst part about this story is that W.R. Grace knew exactly what it was doing and did not tell anyone. It was making a buck while it was hurting people. It knew that the vermiculite dust was contaminated with deadly tremolite asbestos. Yet it had told workers in the town it was harmless. It was just dust, they said. W.R. Grace not only said it was harmless, then what did it do? To add insult to injury, it bagged this stuff. It put all this tremolite asbestos in bags and then gave bags to residents for their gardens and to the high school for covering for the high school track and for parks and playgrounds.

Well, W.R. Grace filed for bankruptcy. Before they did that, what did they do? They transferred almost all their assets away to other companies so they could not be sued. So people in Libby could not get justice. Through all of this, W.R. Grace has yet to step up and do the right thing for Libby.

So I stepped up. I stood up for the people of Libby. And I am standing up now for Les and his family to do all I can to help him and those other people in Libby.

I worked hard with the Judiciary Committee, especially my colleagues, Senator SPECTER and Senator LEAHY, to tailor a solution that addresses the unique problems in Libby. I am extremely grateful to Senator SPECTER, the chairman of the committee, and Senator LEAHY, the ranking member, for all their work to help protect Libby. I spent a lot of time explaining to them the problems of Libby, and to their credit, they listened and put provisions in the bill, the underlying bill, that address the very unique, special problems of the tragedy in Libby.

The original medical criteria in the bill did not address the specific needs of Libby because disease resulting from exposure to tremolite asbestos progresses differently than disease from exposure to the traditional form of asbestos. Tremolite asbestos, the latency period is a lot longer. You cannot detect it until much later. It is also a pernicious kind of asbestos that causes much more injury and makes it much more difficult to breathe. It is wicked stuff.

So we worked hard, and we included medical criteria that specifically address the unique needs of Libby. My colleagues, I hope, understand—they must understand; the right thing to do is to understand—this whole community was exposed, not just the mine workers but everyone.

W.R. Grace mined the raw vermiculite in the mines of Libby and then milled that vermiculite to remove up to 96 percent of the tremolite asbestos contained in the vermiculite. That milling process then shot 5,000 pounds of tremolite asbestos into the air each and every day. That asbestos blanketed the town. The asbestos did not discriminate where it fell. It covered the school playground and little league baseball field. And it is now growing in the bark of trees, if you can imagine. It is everywhere.

I am offended some of my colleagues think they know best. I am offended some of my colleagues, who think they know better, have not taken the time to know the issue, to travel to Libby, to understand what is going on there, to open up their minds and their hearts, to try to understand. They have not taken the time to meet the people, to understand there are different types of asbestos or that the disease from exposure to tremolite asbestos progresses very differently and is much more pernicious.

So if you do not support the bill, I ask my colleagues to say so. But do not

hold the people and the community of Libby hostage. Whatever we do, however we deal with the underlying asbestos bill, we cannot hold the people of Libby hostage. Do not ask the innocent people of Libby to do your bidding for you.

And if this amendment passes—the Cornyn amendments—I will have to go back to Libby. I will look into the eyes of that community, and I will tell them that their Nation turned its back on them.

Let me be very clear. I will keep fighting for Libby until they get the help that is desperately needed and long overdue. Until they get the compensation they deserve, I am going to keep fighting. We are going to find a way, eventually, to give these people the justice they deserve.

Thank you, Mr. President.

I see the chairman of the committee on the floor. I thank him for his help and his recognition of the unique differences in Libby, MT. I tell him, I appreciate that.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the Senator from Montana for those comments and for his leadership in structuring the bill now on the floor, S. 852. He has accurately described the very serious situation in Libby, MT, where many people have been exposed to asbestos in a dreadful situation, a situation where the W.R. Grace Company sent this deadly substance into the atmosphere knowing its dangers.

The bill which has been structured would compensate the people there. The Senator from Montana accurately and forcefully articulates the reasons why the pending amendment for medical criteria is totally insufficient. It simply does not cover people such as those in Libby, MT. It does not cover the thousands of people who worked for companies which were bankrupted—77 of them. It does not cover the veterans of America who are suffering from exposure to asbestos. It does not cover the real core of the issue and the problem at hand.

I have talked to Senator CORNYN about scheduling a vote. We would like to have a vote reasonably soon. A vote is always a salutary method of getting Senators to the floor to move the bill along in other respects. Senator CORNYN wanted to have some time for discussion and argument. And a few minutes after 2, I said I would try to accommodate him on what he wanted to do in that respect. But I hoped we could have a vote no later than 3 o'clock. That is still my hope, and to get there, I am going to be brief.

I see Senator LEAHY on the floor, and I yield to him.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, did the Senator from Montana wish to say something?

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I do not care who has the floor, but I wish to say I appreciate the comments of the chairman of the committee and, also, how much I appreciate the efforts of the ranking member of the committee, Senator LEAHY from Vermont. He has also, as has the chairman of the committee, been very receptive in his understanding of the issue.

I might say, I thank again the Senators. They sent staff to Montana to get a firsthand understanding of what is going on. I thank the chairman. I also again thank the Senator from Vermont for his deep understanding. He has taken the time and effort to learn the problems that face Libby, MT. I again thank both Senators.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank the distinguished senior Senator from Montana for his comments. I should note that from the first day Senator SPECTER and I started talking about this legislation, the distinguished Senator from Montana was there visiting with us. He made it very clear he wanted to make sure that whatever we passed took care of what is an extraordinary and unique situation in Libby, MT. His help and his counsel have been extraordinarily important throughout.

We had so much testimony that said the same thing, that said the current system for compensating asbestos victims is broken. Victims are dying. Ironically, they are dying while they are waiting for their day in court—a day that will not come. Even for those who finally receive their day in court, they often receive only a small percentage of the costs involved in our tort system. Of course, if the defendant has been forced to file for bankruptcy, or decided to file for bankruptcy, these victims receive little or no compensation.

I think, as both Chief Justice Rehnquist and Justice Ruth Bader Ginsburg have said, this cries out for a solution outside of the court system that streamlines the claims process for victims, to make sure they receive timely and fair compensation relative to the severity of their injuries. That will protect compensation they receive from subrogation by insurance companies.

Actually, we find from the most recent RAND study asbestos victims receive an average of only 42 cents for every dollar spent on asbestos litigation. What may surprise some, 31 cents of every dollar goes to defense costs. A somewhat smaller amount, 27 cents, goes to plaintiffs' attorneys and other related costs. All that is eaten up before the victim, the one suffering, sees anything.

I think the enactment of a medical criteria bill, such as the amendment the distinguished Senator from Texas, Mr. CORNYN, has proposed, for asbestos would fail to reduce the high transaction costs of the asbestos tort system.

Medical criteria bills do nothing to protect businesses from going bankrupt or victims who were injured by bankrupt companies to receive fair compensation.

The plain fact—the plain and easy fact—is many of these asbestos manufacturers are in bankruptcy proceedings and, therefore, are immune from suit. Victims, such as our Nation's veterans, are unable to recover for asbestos exposure while serving their country in the current tort system. Think of that, our veterans.

We received the following testimony from Hershel Gober, the national legislative director of the Military Order of the Purple Heart. He said:

> We believe the compensation fund approach is the only solution that will provide veterans suffering from asbestos-related illnesses with fair [with fair] and certain compensation.

But he also pointed out:

> The avenues open to veterans to seek compensation through the tort system, however, are very limited. The Federal government, as the members of this Committee know, has sovereign immunity, thereby restricting veterans' ability to recover from the government; and most of the companies that supplied asbestos to the Federal government have either disappeared or are bankrupt and, therefore, are only able to provide a fraction of the compensation that should be paid to asbestos victims, if anything at all.

This distinguished veteran went on to say:

> Even if there is a solvent defendant company for a veteran or his/her family to pursue, there remains the lengthy, costly, and uncertain ordeal of filing a civil lawsuit and going through discovery and trial, where the plaintiff bears a heavy burden of proof and often has the very difficult to impossible task of establishing which defendant's product caused their injuries.

Criteria bills, such as that of the distinguished Senator from Texas, will do nothing to compensate victims such as our Nation's veterans who are injured by bankrupt companies during their service to our great country. Legislation imposing medical criteria on the tort system is inherently unfair to victims. These measures don't alleviate the delays victims face when they are confronted with overwhelmed court dockets. Criteria bills, such as the Cornyn amendment, allow defendants and insurers to enjoy the delays of litigation and maintain all of their defenses in the tort system. They are far away from streamlining a procedure to help people who are sick and dying, and they impose new hurdles for plaintiffs and continue to require the identification and proof of the manufacturer or entity responsible for exposing them to asbestos decades ago.

In contrast, the bill Senator SPECTER and I have brought to the floor will not require victims to identify and prove the manufacturer or entity that exposed them to asbestos. They only have to show the suffering they have had from asbestos. They will not have to hope that the entity responsible for their exposure is still in existence or financially solvent. They will recover

compensation under the fund in proportion to their impairment or disease. The current system for compensating victims of asbestos exposure is inefficient and inequitable.

This medical criteria amendment is not a solution. It actually operates within that same broken tort system.

I could go further, but I know the distinguished chairman hopes we will come to a point where we can vote. I would note that this amendment will preempt the silica claims of thousands of victims. I understand that the AFL–CIO and other labor unions representing thousands of workers, like this distinguished veterans association, oppose the Cornyn amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COLEMAN). Without objection, it is so ordered.

Mr. HATCH. Mr. President, I rise in support of S. 852, the bipartisan Fairness in Asbestos Injury Resolution Act of 2005. Over the last several days, several of the opponents of this legislation have made serious, misleading claims, and I would like to take a moment to respond.

Opponents of this bill have claimed that it amounts to a bailout of big business generally, and asbestos manufacturers specifically. Guess what. They are, as usual, almost right. Webster's Dictionary defines ''bailout'' as a rescue from financial distress. It is true that we are trying to save 90 percent of this country's industry from financial distress. It is also true that we are trying to rescue literally hundreds of thousands of asbestos victims from the plague of uncertainty that advances from the efforts of asbestos attorneys and the cruelty of asbestos bankruptcies. So using the word ''bailout'' is not a complete mischaracterization of what this bill does.

This bill saves an overburdened legal system. We have been asked by no less than the Supreme Court of the United States of America three times to do something about this mess. If we don't do something about this mess, we are going to have a severe economic crises in this country, driven by this approach that is literally bankrupting some very innocent companies.

This bill saves asbestos victims from unfair and untimely compensation. This bill saves ordinary Americans from the tremendous strain on our national economy. And this bill saves veterans who have nowhere else to turn. I ask my colleagues if they know that once vibrant companies, now bankrupt due to asbestos liability, employed over 200,000 workers—200,000. The asbestos crisis affects over 85 percent of the U.S. economy. Over $200 million in lost wages—$200 million—gone. Almost no one has been spared. Mr. President, 75 out of 83 industrial sectors in this country are affected.

Has not this body been working for several years now to save domestic jobs and help our industries? Not a single Senator questions the fact that this Nation faces an immediate crisis. Not a single Senator disputes the fact that our legal system cannot handle the thousands upon thousands of asbestos claims. And, hopefully, not a single Senator questions that we must do something, and do it now, and this is the only vehicle we have.

Too much time has passed, too many people have died, too many people have lost their jobs, too many people have gone uncompensated, and too many asbestos lawyers have private jets and luxurious yachts as a result.

Some colleagues claim this bill lets defendant companies off the hook. I believe the distinguished senior Senator from Massachusetts said yesterday that S. 852 would shift more of the financial burden onto the backs of injured workers. I share my colleague's concern for injured workers. I disagree with his assessment of how this bill works.

The FAIR Act does not add to the burden on injured workers; it lessens it. This bill will ensure that asbestos victims are compensated over a 3- to 4-year period. Individuals with exigent claims will receive their compensation within 1 year.

Moreover, asbestos victims under this bill will receive the entire award themselves instead of giving enormous percentages to attorneys in transaction costs. Of course, claimants may elect to utilize an attorney, in which case attorney's fees are capped at 5 percent, rather than 40 percent. That is a far cry from some of the exorbitant attorney's fees that are being charged today.

I wholeheartedly believe attorneys should be compensated for their efforts, but I also believe that such compensation should be reasonable. Under the FAIR Act, defendant companies are not let off the hook. Defendant companies, along with insurers and reinsurers, do not get a free ride under S. 852—unless one thinks a combined $136 billion obligation constitutes a free ride. Defendant companies are responsible for payments up to $90 billion over the life of the fund. Insurer participants are responsible for payments up to $46 billion. That is not pocket change. Indeed, as some of my colleagues have pointed out, there are companies and insurers who oppose this bill because of this obligation.

I ask my colleagues: Why would some of these companies oppose this legislation if it amounted to a free ride? This brings me to my next subject.

Some of my colleagues have alleged that taxpayers will be footing the bill for the FAIR Act—$140 billion, they claim. That would be a truly frightening allegation if it were true. Fortunately for us, if you read this bill, it is not true. The FAIR Act is entirely funded by private means. American taxpayers do not pay one dime. Although an argument could be made that during the war our Government used asbestos in shipbuilding and so many other ways. And I am just talking about the war. You can extrapolate way beyond that. But we haven't asked the Federal Government to pay anything. This bill does not require any payments by the Federal Government—not one nickel, not one penny.

The truth is, as I mentioned before, private entities provide the funds for this bill—$140 billion—and none of it comes from the coffers of the United States of America. Defendant companies pay $90 billion, participant insurers pay $46 billion, and the remaining $4 billion? Bankruptcy trusts: At present, there is somewhere in the range of $4 billion to $7 billion that sits in bankruptcy trust. This bill would consolidate those moneys and fold them into the trust it creates.

It is true that some of those trusts do not relish this idea. I don't blame them. I do not like living in the shadow of this problem either. But the fact is, Congress can and should consolidate the existing bankruptcy trusts as part of the comprehensive solution to a critical national problem.

Let me also say this: If we don't do something about this—and this is just step 1. We have to get the House to do something. I doubt seriously they are going to do this bill. If they don't do this bill, they have to come up with one of their own. When they do, that means we have to go to conference and hopefully work out any of the problems we uncover between now and then.

If we don't do this bill, then I personally believe the economy is going to be very badly damaged and ultimately hurt. I hate to be a doomsayer, but I really believe that is what is going to happen. I think virtually everybody in this body knows we need to do something. This is the vehicle that we have to get through the Senate, and then we are going to have to, hopefully, get the House to come up with a similar vehicle, or at least whatever they think is the best way of doing this. Then we have to go to conference, and people working with goodwill have to try to solve these problems, hopefully using the best things in this bill and the best things in a House bill so we can solve this problem for our country, for our economy, for our workers, and for companies so that in the future they aren't going to go bankrupt.

When I first started working on this, there were only 30 companies in bankruptcy. Today there are almost 80. That is just a few years. It is going to get worse.

As I understand it, the problem is going to get worse because of superficialities and a tort system run amok, and because we are unwilling to stand together and do something about it, and because of special interests. No,

not special interests down at K Street, special interests that are the largest hard-money supporters of our friends on the other side today.

As I understand the situation, there are two primary claims against including the existing bankruptcy trusts in this legislation. The first argument amounts to a finality claim. Some argue that Congress should let sleeping dogs lie. Critics in this camp believe we should not undo what has been done in the bankruptcy court since victims in those circumstances have been compensated to a degree and the channeling injunction that accompanies a 524(g) trust effectively terminates residual liability.

There are problems here. In many instances the sleeping dog here is, in fact, a very sick puppy. It cannot take care of itself. The Manville Trust, for example, pays only pennies on the dollar and it does not address the global problem. In fact, the Supreme Court has, on more than one occasion as I have said, struck down attempted global settlements while simultaneously calling upon Congress to act.

The fact is, the Supreme Court is right. The asbestos problem is a horrific mess and it is time for Congress to intervene. I understand why companies on the receiving end of a channeling injunction would not want to upset the balance they have struck. But they will have the protections of this bill while simultaneously providing much needed funding that will be used to compensate the true victims of the asbestos crisis.

One further point on existing asbestos bankruptcy trusts. For reasons I will explain in a moment, most bankruptcy trusts in this context were established by the plaintiffs' trial bar. The provisions of 11 United States Code 524(g) do not permit a channeling injunction unless 75 percent of the claimants approve of the measure. That means that plaintiffs' attorneys in these cases—and there are about 12 major law firms, that is what it comes down to—have a very big say in how the trust is set up and, more troubling, how they, the asbestos lawyers in these 12 firms, basically are compensated. I can see why the asbestos plaintiffs' bar would not like to see this change. Can you blame them? This is a cow they want to milk. It is high quality milk at that.

The second problem is a little more complicated. Certain asbestos bankruptcy trustees have argued that the inclusion of their assets in the larger trust established under the FAIR Act constitutes an unlawful taking in violation of the fifth amendment to the Constitution. I admit I was surprised when I discovered that my friend Professor Laurence Tribe and I actually agree on a point of constitutional law. But it is true. He was correct to say:

> It is a well-settled rule that legislatures may act rationally to modify or abolish causes of action, impose assessments, and create new compensation programs without violating due process or triggering the right to just compensation under the Takings Clause.

I also agree with Professor Tribe's assessment:

> The bankruptcy process, and in particular the confirmation of a plan of organization, does not provide a debtor or a resulting trust with ongoing immunity from the operation of federal law as it might evolve over time.

In a nutshell, there is not a final property interest at issue in this context. I agree with Mr. Carter G. Phillips:

> Any property rights arising from the trusts are contractual in nature and the law is well established that contracts, however expressed, cannot fetter the constitutional authority of the Congress.

I do not believe a valid takings claim can exist in a vacuum of property rights.

In the interest of time, I will not bore my colleagues with a more detailed legal explanation on the takings issue, but I wish to submit two letters for the RECORD, the first dated February 6, 2006, from Professor Laurence H. Tribe, and the second dated February 7, 2006, from Mr. Carter G. Phillips. I ask unanimous consent they be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CAMBRIDGE, MA,
February 6, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER, I am writing in response to your request for my current views of the constitutional questions posed by S. 852, the Fairness in Abestos Injury Resolution Act (''FAIR.''). The bill was voted out of committee on May 26, 2005, with a bipartisan majority of 13–5, and is scheduled for floor debate in the near future.

As I testified before the Committee on June 4, 2003 (and as I reiterated in subsequent responses to questions from members of the Committee), Congress has ample constitutional authority to replace the current avalanche of asbestos litigation with an administrative compensation scheme to minimize transaction costs and to allocate responsibility more rationally than the badly broken status quo. Carte G. Phillips of Sidley Austin Brown & Wood, LLP, and former Solicitor General Seth P. Waxman, now of Wilmer Cutler & Pickering, joined in my conclusions at the hearing in 2003.

Nothing since that time has led me to alter my legal views. I continue to believe that Congress possesses clear constitutional power to use past histories of payments for asbestos-related judgments, combined with current revenues, to substitute predictable fiscal obligations for unpredictable future liabilities. The aim of S. 852 is to apportion liability according to likely responsibility, tempered by some attention to ability to absorb the burden—not (as in cases like Eastern Enterprises v. Apfel, 524 U.S. 498 (1998)) to saddle one company with liability because it is the last remaining solvent defendant. Indeed, a principal aim of S. 852 is precisely to avoid such a scenario, which is currently being played out in the tort system.

Urging Congress to let the litigation avalanche continue lest the Supreme Court invalidate the proposed alternative makes little sense. After all, it was that Court that wrote in 1997, in a landmark asbestos case I successfully argued, ''a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.'' In 1999 and 2003, the Supreme Court repeated this invitation to congressional action.

In your latest request of me, you have called special attention to the transfer of assets held by certain bankruptcy trusts to the FAIR Fund. In particular, former Senator Don Nickles argued in a February 1, 2006 oped on behalf of a group of existing trusts that ''[m]ore than $7 billion currently set aside to compensate 524(g) beneficiaries would be taken from the trusts and paid to the national fund created by S. 852. This represents a 'taking' of property by our government without just compensation, which is expressly prohibited by the Fifth Amendment.'' With all respect to Senator Nickles, I believe his objection has no merit as a constitutional matter.

First, it is not enough to assert that S. 852 changes the rules applicable to bankruptcy trusts. After all, the bill changes the rules applicable to other participants as well. It abrogates insurance contracts, eliminates causes of action, and overrides numerous existing legal entitlements. All of these changes could be said to upset expectations regarding future liabilities and tort recoveries. But none of the changes states a takings claim, in light of the well settled rule that legislatures may act rationally to modify or abolish causes of action, impose assessments, and create new compensation programs without violating due process or triggering the right to just compensation under the Takings Clause. See Logan v. Zimmerman Brush Co., 455 U.S. 422, 432–33 (1982); Martinez v. California, 444 U.S. 277, 281–83 (1980). State workers' compensation laws, federal pension regulation, and the Black Lung D1sability Trust Fund, 30 U.S.C. §901, et seq., all rely on this principle. ''[L]egislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations . . . even though the effect of the legislation is to impose a new duty or liability based on past acts.'' Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 16 (1976).

Second, it is well settled that the bankruptcy process, and in particular the confirmation of a plan of reorganization, does not provide a debtor or a resulting trust with ongoing immunity from the operation of federal law as it might evolve over time. Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Protection, 474 U.S. 494, 502 (1986). See NLRB v. Bildisco & Bildisco, 465 U.S. 513, 534 (1984) (bankrupt debtor not relieved of labor law obligations); In re Baker & Drake, Inc., 35 F.3d 1348, 1353–55 (9th Cir. 1994) (reorganization plan does not immunize debtor from state law on ongoing basis); see also City & County of San Francisco v. PG & E Corp., 2006 WL 44315, *9 (9th Cir. Jan. 10. 2006) (governmental regulatory actions are exempt from bankruptcy court jurisdiction).

This principle is particularly salient with respect to bankruptcy trusts, which are themselves the specialized creatures of the federal Bankruptcy Code. Having responded to the asbestos litigation crisis by creating such trusts in 1994, Congress is not in any way disabled from taking further legislative steps toward reform a decade later. Cf. Dames & Moore v. Regan, 453 U.S. 654, 674 n.6 (1981) (President's action in nullifying government-created attachments of Iranian assets pursuant to hostage release agreement did not effect a taking of property in violation of Fifth Amendment).

Bankruptcy trusts are subject to the longstanding rule that ''[p]rospective relief under

a continuing decree remains subject to alteration due to changes in the underlying law.'' Miller v. French, 530 U.S. 327, 344 (2000). ''The provision of prospective relief is subject to the continuing supervisory jurisdiction of the court, and therefore may be altered according to subsequent changes in the law.'' Id. at 347.

Otherise, the bankruptcy system would create a whole constellation of black holes in the fabric of the U.S. Code. To avoid such profound disruption of innumerable federal statutory regimes—from product liability reforms to telecommunications auctions, from energy conservation legislation to coal safety laws—courts have routinely applied statutory changes to debtors in ongoing reorganization plans, even post-confirmation, and even when the effect has been to leave the estate without property that private parties expect to receive. For example, the 1996 amendment to 28 U.S.C. §1930(a)(6), governing the imposition of quarterly fees for the United States Trustee in certain Chapter 11 bankruptcy reorganizations, has been repeatedly applied even to debtors in confirmed reorganization plans that had made no provision for the payment of such fees.

In exactly the same way, S. 82 represents an intervening change in federal law that is neutral in design and general in application and accordingly must be accommodated prospectively by bankruptcy trusts. If bankruptcy trusts won some special exemption or immunity on a prospective basis from intervening changes in federal law in relation to asbestos liability, there would be no field within the broad reach of Congress' legislative power that would not be compromised by the unpredictable appearance of a potentially limitless number of financially crippling gaps.

An order establishing a bankruptcy trust hardly resembles a final judgment for money damages, of the kind that creates ''vested'' rights. Bankruptcy trusts are ongoing administrative entities created for the processing and payment of claims. They typically pay claims at a small fraction of their face value, and those rates may change overtime. For example, the Manville Trust is paying out claims at approximately 5% of their face value. In fact, the Supreme Court has squarely rejected any analogy between bankruptcy orders and final judgments for money damages. In Tennessee Student Assistance Corp. v. Hood, 541 U.S. 440 (2004), the Court held that, precisely because bankruptcy orders are completely unlike judgments for money damages, a confirmation order can bind a nonconsenting state under the Eleventh Amendment, even if the state does not participate in the bankruptcy process. The Court used much the same reasoning in Central Virginia Community College v. Katz, 2006 WL 151985 (U.S. Jan. 23, 2006), to hold that states are subject to in rem bankruptcy proceedings to recover preferential transfers.

Finally, any ''takings'' claim by bankruptcy trusts would be ill-founded because any assets they hold are uniquely dedicated to the payment of asbestos-related claims. Yet S. 852 would eliminate the trusts' liability in that regard. It is difficult to understand why the trusts would have a reasonable expectation of retaining property in the situation where their pertinent liabilities have been eliminated. See Keystone Bituminous Coal Ass'n v. DeBenedictis. 480 U.S. 470, 488 (1987) (noting that ''reciprocity of advantage'' ''has been recognized as a justification of various laws'' to defeat takings claims) (quoting Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415 (1922) (Holmes, J.); Penn Central Transportation Co. v. New York City, 438 U.S. 104, 140 (1978) (no compensation due where there is a ''reciprocity of advantage'').

For all these reasons, I adhere to my conclusion that S. 852 falls well within Congress' constitutional authority to enact.

Sincerely,

LAURENCE H. TRIBE.

SIDLEY AUSTIN LLP,
Washington, DC, February 7, 2006.

Re S. 852 Fairness in Asbestos Injury Resolution Act.

Hon. ARLEN SPECTER,
Chairman, U.S. Senate, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR SPECTER: On April 28, 2005, I submitted a letter explaining my views that S. 852's requirement that the assets of asbestos bankruptcy trusts be transferred to the national compensation fund was fully constitutional. You have asked whether my views have changed in the interim, and also how I would respond to the points raised by former Senator Nickles in his recent editorial, Let Existing Trusts Opt Out Of Asbestos Plan (Feb. 1, 2006), available at http://thehill.com/thehill/export/TheHill/Comment/OpEd/201006_oped.htl (attached as an addendum to this letter (''Add.'')).

My views have not changed in the interim. As more fully set forth in my letter of April 28, 2005, which responded to arguments raised by Theodore B. Olson, there are multiple reasons why S. 852 presents no constitutional difficulties. Asbestos trusts created under section 524(g) of the Bankruptcy Code, 11 U.S.C. §524(g), even when they assume the form of state law trusts, are prospective federal judicial remedies authorized and defined by Congress to administer the ongoing payment of asbestos-related injury claims, present and future. They are claims-paying mechanisms subject to the ongoing superintendence of the federal court during the pendency of the bankruptcy case, as the terms of confirmation orders and reorganization plans creating asbestos trusts generally reflect. See Findley v. Blinken (In re Joint E. & S. Dists. Asbestos Litig.), 982 F.2d 721, 750 (2d Cir. 1992) (noting that the Johns-MansviUe Trust, after which section 524(g) trusts were modeled, ''is not an ordinary private undertaking of a settlor to carry out private preferences. It is the mechanism established under the auspices of the Bankruptcy Court to implement a plan of reorganization. The Bankruptcy Court has continuing responsibilities to satisfy itself that the Plan is being properly implemented''). There are no separation of powers concerns when Congress modifies the law applicable to such trusts. As the Supreme Court has repeatedly declared, ''[p]rospective relief under a continuing, executory decree remains subject to alteration due to changes in the underlying law.'' Miller v. French, 530 U.S. 327, 344 (2000). A bankruptcy confirmation order itself is not kindred to a final and unappealable judgment for damages in federal court; moreover, to the extent other aspects of a confirmation order may be deemed to create some vested rights, there is certainly no finality in a prospective claims-paying mechanism. See United States Tr. v. CF & I Fabricators of Utah, Inc. (In re CF & I Fabricators of Utah, Inc.), 150F.3d 1233, 1239 (10th Cir. 1998); Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n, 997 F.2d. 581, 587 n.11 (9th Cir. 1993); Findley v. Trustees of the Manville Personal Injury Settlement Trust (In re Joint E. & S. Dists. Asbestos Litig.), 237 F. Supp. 2d 297, 316–17 (B.D.N.Y. 2002). Just like any other prospective remedial decree, the trust is subject to the continuing jurisdiction of the federal district court, and thus subject to the power of Congress to change the governing law that the court will apply in exercising that jurisdiction.

Furthermore, any property rights arising from the trusts are contractual in nature, United States Tr. v. Craige (In re Salina Speedway, Inc.), 210 B.R. 851, 855 (10th Cir. B.A.P. 1997), and the law is well established that ''[c]ontracts, however expressed, cannot fetter the constitutional authority of the Congress.'' Norman v. Baltimore & Ohio R.R., 294, U.S. 240, 307–08 (1935). For all the foregoing reasons, nothing in the decrees creating asbestos trusts under section 524(g) create property rights that would be subject to a federal takings analysis.

Finally, the only ''property right'' that an asbestos plaintiff can colorably claim is the right to file a claim with the trust and to prove that his injury meets the criteria for compensation; no individual beneficiary of the trust with an unliquidated claim has a property right in the trust assets themselves. In essence, a bankruptcy court creating a section 524(g) trust converts the plaintiff's claim against the debtor under state tort law into a claim against the trust. While a claim for relief is a species of property right, it is not a vested right that entitles the plaintiff to compensation under the Takings Clause if abrogated. Indeed, if the law were otherwise, Congress could not pass legislation preempting accrued state or federal law claims without federal takings liability. That is not the rule; rather '' 'a legal claim affords no definite or enforceable property right until reduced to final judgment.' '' Arbour v. Jenkins, 903 F.2d 416, 420 (6th Cir. 1990) (quoting Sowell v. Am. Cyanamid Co., 888 F.2d 802, 805 (11th Cir. 1989)); see also, e.g, Hammond v. United States, 786 F.2d 812 (1st Cir. 1986) (no vested right ''until a final, unreviewable judgment is obtained''). Finally. as more fully reviewed in my April 28, 2005 letter, even if all these hurdles could be overcome, asbestos claimants would have no right of recovery under regulatory takings analysis.

Former Senator Nickles' editorial lacks force because it does not recognize these legal principles. Senator Nickles characterizes the bankruptcy court orders as ''final court judgments approving reorganization plans that resolved asbestos claims against debtor companies].'' Add. 1. However, as noted above, bankruptcy reorganization plans (and especially settlement trusts) are subject to the continuing jurisdiction of the bankruptcy court and are not final in the constitutional sense; they do not limit the power of Congress to change governing law. Nor do the confirmation orders themselves ''resolve claims'' against the debtor; instead, they crate a new prospective remedial mechanism and new form of claim that must be proven in order to secure payment. Beneficiaries with the right to file a claim against federal asbestos trusts are not ''entitled to timely compensation from those trusts,'' and they have no greater property right (and no more ''certainty and security'' against abrogation by Congress in the public interest) than any other asbestos plaintiff. Add. 1, 2. Senator Nickles asserts that the transfer of trust assets is an unconstitutional ''taking of trust beneficiaries' property'' without just compensation, Add. 2, but that claim cannot withstand legal analysis.

Senator Nickles is absolutely right that Congress must be vigilant against legislation that results in the unconstitutional taking of vested property rights; however, those doctrines are not implicated here. In essence, S. 852 requires all asbestos defendants to contribute substantial assets to a national fund to create a uniform federal administrative remedy; the requirement that the assets of asbestos trusts (which were originally the assets of the debtor) be transferred to the national fund serves the same end of marshaling defendant assets for the

benefit of injured parties. Not only are no vested property rights of trust claimants ''taken'' under the Fifth Amendment, but there is no inequity in having plaintiffs all treated the same, regardless of whether the defendant who allegedly injured them happened to have sought bankruptcy protection. S. 852's requirement that the assets of asbestos trusts be transferred to the national fund is not only perfectly legal, but it is also highly just and equitable.

Sincerely,

CARTER G. PHILLIPS.

Mr. HATCH. I wish to close by taking a brief moment to address the budgetary issues. Earlier I spoke to the private versus public funding issue. Some of my colleagues believe the taxpayer is on the hook for this bill and I wish to help explain how that is not the case. These are serious concerns, but the FAIR Act does not use Federal funds. It is privately funded—lock, stock, and barrel.

Those of you who might be watching at home might be wondering why some people are worrying about the FAIR Act, if it is privately funded, and in the spirit that underlies this bill I will try to explain it. To my knowledge, there is only one way by which the FAIR Act may touch Federal funds and that is through the borrowing mechanism. The administrator created by this act may borrow such funds as are necessary to maintain the liquidity of the fund, but—and this is a big ''but''—the administrator may not borrow amounts which exceed the fund's ability to repay. So the bottom line is that American taxpayers do not pay for this fund. The defendant companies and insurer participants do.

At the end of the day, asbestos victims cannot wait any longer. Veterans cannot wait any longer. The overburdened legal system cannot wait any longer. The only group that does not mind waiting consists mainly of 12 law firms filled with asbestos lawyers who do not mind exploiting a broken system because of the billions of dollars that are in it for them. You can hardly blame them. It is a plum tree waiting to be picked. They are slow walking this bill. I have to implore my colleagues to resist these efforts.

Before I conclude my remarks, I wish to speak briefly to Senator CORNYN's medical criteria amendment. I agree with my colleague from Texas that the FAIR Act is not a perfect bill. I think Senator SPECTER has made that clear. Others have made it clear. We have done the best we can through the Judiciary Committee. This is the first step in a number of steps that simply have to be taken. I have several concerns of my own about this bill, and I suppose most everybody does. But I have to say, as much as I agree in principle with Senator CORNYN, I am not sure his approach does the trick.

I might add, my colleague from Utah raises the point that there are some companies that will go bankrupt if we pass this bill. That may be the case. I will do everything in my power through the whole process here to make sure that doesn't happen, and I believe Senator SPECTER is dedicated to doing everything in his power to make sure that doesn't happen. I personally believe Senator LEAHY will do everything in his power to make sure that doesn't happen. I believe there are 435 Members of the House who will do everything in their power to make sure that doesn't happen. I believe any conference committee that comes up is going to make sure that doesn't happen. I wouldn't tolerate that, in the end.

But we have to have a vehicle. We have to have a bill. If we do not have a bill, we have nothing. And, we have a future prospect of a number of very fine companies—with the loss of hundreds of thousands of more jobs—going into bankruptcy at a cost to our economy that may be overwhelming after a while—all because of a runaway tort system that basically is out of whack.

In my opinion, the medical criteria approach fails to help too many sick and injured people. It does nothing for the mesothelioma victims. These are the ones who deserve compensation. First and foremost, the reason we basically started this bill, was to help those who are going to die because they have mesothelioma. They are going to die. Once they are diagnosed, it is just a matter of months, and their families are left with nothing. They didn't cause this problem and they are the ones who deserve compensation. Yet they are the ones who, if we do nothing, are left out while others—hundreds of thousands—who are not sick at all are going to get rewards. This is wrong.

In my opinion, as I say, the medical criteria approach fails to help too many sick and injured people. Let me give another illustration. The veterans, for example, have very few places to turn under a medical criteria bill. We just had 10 veterans organizations on Capitol Hill holding a press conference this week—I was there with them—making it clear that of all people who deserve to be compensated, they do. This medical criteria approach does nothing for them. This is the main reason why we switched to the trust fund approach; so we can take care of the truly sick—those who really have difficulties.

But, as I do with every amendment, I am going to give the medical criteria approach a very hard look as we go through this process. In an ideal world we could run with my colleague's idea. But, unfortunately, the realities of the asbestos crisis prevent a medical-criteria-only solution. There may be, down the line, a way of doing a medical criteria bill that will take care of people who truly deserve to be taken care of. This amendment is not that. But I am willing to work with my colleague from Texas and see what we can do to come up with something that will work as well, if not better, than what we have here. But right now this is it.

This is a bill that is well thought out in spite of the difficulties with it. But I submit that any bill this size is going to have some difficulties.

As I say, this is step No. 1 in what always has been a legislative process that does not end here. It starts here. If we do not start it, we don't have a chance of correcting these tremendous ills to our society that could swamp us. So it is very important that we support Senator SPECTER and Senator LEAHY and get this bill out of the Senate. If we don't, I have to say I believe this is probably the last chance to resolve issues that deserve to be resolved, and to do justice instead of continue the injustices that are currently resulting from the current out-of-control asbestos tort system.

I commend my colleagues for their steadfastness in working on this very difficult, complex set of issues. It is a difficult problem for us. There are very sincere and good people on both sides of this issue. There are very sincere and good people on both sides of this aisle. I have tremendous respect for my colleagues.

On the other hand, for those who are voting against the bill because the trial lawyers are their largest hard-money supporters, I don't think that is a good enough reason. I admit it is a powerful reason, but not if you are interested in the country, not if you are interested in our economy, not if you are interested in the people who have suffered from asbestosis and from all of the derivatives of asbestosis, not if you are interested in helping these mesothelioma victims who deserve help, helping the veterans who did nothing to cause these problems but are left high and dry.

This is an effort by the leadership of the Judiciary Committee, led by Senator SPECTER and Senator LEAHY, to do justice. It is an effort to comply with at least three requests by the U.S. Supreme Court: Congress, please do something about this awful issue because we can't.

They can't legislate from the bench to resolve this issue. Some people think individual States can resolve this issue. That might be so, if you had absolutely honest judges and absolutely nonpartisan judges down the line, and if they were willing to work hard, and if every State would do it. But only a few are going to. Only a few are going to pass laws that possibly will help in this area. It is up to us to get this done.

I hope our colleagues who want to do something right here will realize this is step one. You have to go ahead with it. Good people of good values, well-intentioned people are going to be able, hopefully, in the end to get this so it works; so no company is going to be hurt by it, but the economy as a whole will be helped by it. But above all, people who deserve compensation will receive compensation with a minimum of charges that reduce that compensation, compared to the almost 60 percent attorneys' fees and transaction costs it is costing us today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, we have been trying to set a vote here on the amendment offered by Senator CORNYN since about 2, 2:15. I had hoped to vote at 3, and then I had hoped to vote at 3:30. The Senator from Illinois advised me a few moments ago that his preference would be to vote at 4:15. We are willing to accommodate that preference unless there is some inclination to vote sooner than 4:15.

Therefore, I ask unanimous consent that we set the vote on the Cornyn amendment for 4:15, with the time equally divided between now and then.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Reserving the right to object, is this a vote on the Cornyn amendment? My understanding was there was going to be a tabling motion. If it is on the Cornyn amendment, I don't agree, but if it is on the tabling motion, I am willing to agree to 4:15. But if it is on or in relation, I am not willing to do that at this time.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. I withdraw my request. I suggest the absence of a quorum.

The PRESIDING OFFICER. The request is withdrawn. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, after lots of discussion, as usual around here, I ask unanimous consent that at 4:45 I be recognized for a motion to table Cornyn amendment No. 2748, and that the time between now and then be equally divided between the two managers or their designees.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, the manager on this side of the aisle is Senator DURBIN. I wonder if the distinguished Senator from Pennsylvania would change the unanimous consent request so the time would be divided between Senator DURBIN and Senator SPECTER.

Mr. SPECTER. I agree.

Mr. REID. Mr. President, I have a very brief statement on an unrelated matter. Could I be recognized?

The PRESIDING OFFICER. Is there objection to the request as modified?

Mr. CORNYN. Mr. President, reserving the right to object, I want to make sure I have an opportunity to address the debate, and under the unanimous consent request there is ample opportunity given to me.

Mr. SPECTER. Mr. President, the way the sides are aligned here, we need a scorecard to figure out who will give Senator CORNYN time. I think the manager in favor of Senator CORNYN's amendment would give him time, and that turns out to be Senator DURBIN.

The PRESIDING OFFICER. Is there objection to the request as modified? Without objection, it is so ordered.

Who yields time?

Mr. DURBIN. Mr. President, I hope to restate the unanimous consent request which was agreed to accurately. It is my understanding that at 4:45 we will have a vote on the motion to table the pending amendment by Senator CORNYN of Texas, and that the time be equally divided between now and then, which would be 60 minutes, 30 minutes to each side; that I am controlling the 30 minutes in opposition to the motion to table. I will yield from that amount 15 minutes to Senator CORNYN to speak during the same period. He can use that time, even if I don't have to give him the floor at the moment.

We have to understand what we are considering. I am sure people who are watching this debate wonder why we take so much time going into quorum calls and talking among ourselves trying to come to some agreement about what we are going to do. That is the way the Senate operates. We operate by unanimous consent. Everyone has to agree. Think about that—100 different Senators coming to an agreement. However, we have managed, at least to the point of bringing this to a vote.

The vote is important because the bill before the Senate right now is a bill about asbestos. Everyone knows asbestos is a lethal substance which, if inhaled, can kill you. It can cause your lungs to stop functioning, you can start to suffocate, and you can develop something like lung cancer called mesothelioma and die. People all across America, since we started using asbestos in products, have been exposed to it. Some are fortunate and they do not get sick. Others, with very minor exposure inhaling these asbestos fibers, have set off little timebombs in their lungs, and they never know when they will detonate. Victims can go for 10, 20, 30, 40 years after exposure and nothing happens; then something terrible happens. How do they know it is asbestos that causes it? Some of these conditions are only related to asbestos. Mesothelioma is one of them.

People who have been exposed to asbestos over the years have gone to court and said: The companies that exposed me to products that harmed me should be held accountable. Some courts and some juries have said, yes, they should pay; others have said, no, they should not pay. But what is the nature of our system of justice? You go to a court for your day in court, you tell them how you were injured, and you let a judge or jury of your neighbors and peers decide your fate. It happens every day across America in thousands and thousands of courtrooms.

Now comes this bill, Senate bill 852, which wants to change the way people across America will be able to recover for their injuries from asbestos. The first thing it does is to eliminate your option to go to court. As an American, you could be injured from exposure to some toxic chemical and go to court, have your day in court, and let the court decide. But if you have been exposed to this substance, to asbestos, if this law is passed, you will no longer be able to go to court.

What happens to you? This bill creates a brand new approach—replacing the courtrooms of America with a trust fund created by this bill, administered by an agency which does not exist at this moment, which will handle hundreds of thousands of people who have been exposed to asbestos.

Some Members come to the floor skeptical that we can change a judicial system in America and eliminate access to court to hundreds of thousands of people and get it right. If we do not get it right, the losers are not going to be embarrassed Senators; the losers are going to be victims across America, people whose lives have been changed and in some cases ended because of asbestos.

I don't know of a single person in America who said: Listen, I know asbestos will kill me; let me take a whiff of it. Not one. Virtually all the victims and families I have run into were unsuspecting people—workers on the job; a mechanic putting in an asbestos brake lining; somebody trying to put in a heating duct in a home and using an asbestos substance; asbestos shingles on your roof; asbestos tile on the floor—grinding it, cutting it, powder flying in every direction. Who knew? Who had any idea what was going on? So these victims, innocent victims, are the ones who will be affected by this bill.

It is a large bill, a bill of 393 pages. It should be because it is changing the basic system of justice in America. But this morning, this bill has become a dead letter. We are no longer considering that bill. We have a new bill. We were handed this bill this morning. It is 392 pages. It includes some 40 significant changes to the bill we had on our desks when we came to work this morning. We knew it was coming, we knew there would be a change, but these changes are significant.

Many Members believe that before we start enacting laws that are going to impact millions of victims across America, before we close down the courtrooms of America and say to people, what you used to assume was your right as an American citizen is no longer your right, we ought to be careful and we ought to take the time to get it right.

Some of the things that have been filed with this bill reflect the fact that even those preparing it really do not have it quite clear in their minds how it is going to work.

One of the amendments filed this morning, amendment 2747 by the chairman of the Judiciary Committee—I am

certain this was inadvertent—inadvertently included the following on lines 7 through 9:

(Note: I recognize that this may not be the most adequate indicator of insurance matching liabilities—however, it is a political reality that must be addressed.)

Does that sound like a sentence out of a law? I am sure it is not. It is a sentence from a staffer who, in preparing this language, notified someone that they were not sure what they were writing would achieve the goal they want to achieve. That happens all the time. I expect my staff to be candid with me when they are preparing a law. But it tells something. By inadvertently including this staff note with this amendment, it is clear that the people writing this bill are not sure what is in it. They are not sure what the impact will be.

What is driving this debate? Why are we so hellbent on passing this legislation at this moment? There are many good reasons, and there are many real reasons. One of the real reasons is that for many of the major corporations in America, this bill is a windfall.

This morning, Senator BENNETT, a Republican from Utah, brought a chart to the Chamber and showed 10 of the major corporations in America, corporations that could be taken to court today because people were exposed to their products and have asbestos disease. He calculated how much they would pay into this trust fund under this bill against what they have said they would have to pay if they went to court. Those 10 corporations will save, with this bill, $20 billion. Do you think they want to see this bill passed? Why, of course they do. They have an economic interest in it. But the obvious question is: If they do not pay the $20 billion to victims, who will? Other companies?

Senator BENNETT brought to the Senate another chart of companies that have never been sued for asbestos, never been held liable. Those companies will end up paying into this fund even though they never, ever have been sued successfully.

There is a basic unfairness here. There is a transfer of wealth in this bill from some of the largest corporations in America and a burden to smaller companies, not to mention that at the heart of this issue are hundreds of thousands, perhaps millions, of asbestos victims.

Now comes Senator CORNYN of Texas. He says: Consider another approach. Consider an approach that will look to what the States are currently doing to deal with this. Are there ways to change asbestos lawsuits so that victims get more, so that people are treated fairly, so that those who are trying to rip off the system on either side are not advantaged? And he turns to State laws. There have been several State laws, including Texas, Florida, and Ohio.

He says in his amendment: Let's establish medical criteria so that if you want to go to court, we know you are truly sick. Perhaps you cannot go shopping around for the friendliest court in your State or the Nation. He goes through a variety of different scenarios. All of them are worthy of debate.

The good thing about Senator CORNYN's amendment is it is based on the fundamental American right to have your day in court. Senator CORNYN is trying to achieve a procedural change in the courts of America which will not extinguish a basic American right to have your day in court.

I believe he filed the amendment early this afternoon, maybe late this morning. I am not certain. And now the other side is saying: That is it, we do not want to talk about that amendment anymore, let's get rid of it. They want to table that amendment.

As it is currently written, I could not support the amendment by the Senator from Texas, but I will stand with him to keep this amendment on the floor so we can try to find a bipartisan solution which does not have such great damage to our judicial system and to the people who rely on it. There will have to be significant changes in the Cornyn amendment before I would support it. But he has said to me that he is willing to sit down on a bipartisan basis in good faith to work out those differences, and he tells me there is significant support on the Republican side of the aisle for that effort.

Wouldn't that be the best outcome—an outcome that is bipartisan, one which tries to work out differences between both sides, keeping in mind the innocent victims, tries to make this system a little fairer, not basically abandoning our judicial system, which this new bill, new version of the bill we have been handed, would do? That is a sensible approach.

I am going to support the efforts of Senator CORNYN at this moment to resist a motion to table, with the understanding that before I will make any commitment to vote on his final amendment, we will have to sit down and try to work out our differences. It is not too much to ask.

Do you know how long this program is supposed to affect America? For 50 years. Is it worth a few hours, maybe even a day, to get it right? I believe it is.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I believe this is one of those situations where there is broad bipartisan consensus that we need to find a solution to this national crisis which not only affects people who are sick with asbestos-related diseases, including cancers, but also the companies that are in bankruptcy because they have been put underwater by the huge volume of claims from people who are not yet sick but who are worried the statute of limitations will run and bar them from bringing their claims in the future.

I am proud of the work the Judiciary Committee has done under Senator SPECTER's leadership to try to bring us this far. On many of the differences we have had, he has ably negotiated a resolution. Where we are today is much better than where we were a year ago.

There was a strategic decision made, as there had to be, whether to go with the trust fund approach or with a medical criteria approach. Frankly, the trust fund approach left the station, and everyone put their hopes and their work and effort into that approach. I am sorry to say that notwithstanding the hard work and effort which has gone into the bill, I still believe the trust fund is fundamentally flawed for reasons I have already talked about.

There are problems with regard to the allocation; that is, the long arm of Uncle Sam will reach out and send you a bill for a lot of money to pay into this fund. We have been told by a number of companies that in order to pay that bill, they will simply have to shut their doors and go out of business, put their employees on the streets, possibly causing pension funds to be jeopardized. People who have come to rely on the solvency of those companies and their ability to pay their retirees the benefits they have agreed to, we are told they would be seriously jeopardized by this trust fund as currently written.

Then there is the issue of, how do we know how much money should go into the trust fund? That has been a subject of a lot of negotiations, and $140 billion is where we are today. As we have heard before, there is a wild variation on estimates by very smart people as to how much the claims for this fund will total, ranging from $120 billion to $695 billion, which is the high number. Just having a predictable bill we can vote for with some confidence that we believe will actually work as intended is lacking.

Of course, there is the huge bureaucracy that will be created within the Department of Labor to administer this fund. We have no idea what that will look like, but it will be a new addition to the bureaucracy in Washington, DC. I can tell you, the last thing I want to do, coming from my State to the Senate, is to grow the size of the bureaucracy in Washington, DC, unless there is no other option. I do not want to do that.

Then there is the issue of the medical criteria, where here again the chairman had to negotiate carefully in order to keep his votes on the committee. But it is my contention that the medical criteria in the trust fund are way too loose—authorizing the payment of substantial funds under the claim to people who are not demonstrably sick from asbestos-related disease, thus further jeopardizing the solvency of the fund.

In response to my colleague, Senator HATCH of Utah, who expressed concern for the veterans who could benefit

under the fund but who would not directly, anyway, benefit under a medical criteria approach, I think it would be a cruel joke—a cruel joke—for our veterans, if we built their expectations up, that they were going to receive benefits under the trust fund, only to have it explode or go bankrupt in a year or two and dash those hopes to the ground.

So I am as concerned as anyone is about our veterans. But I certainly do not want to give anyone unrealistic hope or expectation that this is going to be a panacea, because of the concerns I have raised.

I would agree with the Democratic whip that we have only today seen a substitute for the underlying bill filed which totals almost 400 pages. While a number of us have been working on asbestos legislation for a long time, neither I nor my staff, I am confident, had a chance to read each and every one of those 393 pages, I believe it was, to determine what is in it and to determine whether there are amendments we need to file in response. Likewise, I would say, as to the 50-page bill we filed this morning, the amendment that contains the medical criteria approach, people are only now beginning to understand what their choices are.

Basically, what this amendment presents is a choice, either for a trust fund or an alternative medical criteria bill or, third, no bill at all, a continuation of the current crisis, about which I think we have a bipartisan consensus that it is a scandal and needs to be addressed.

So I believe the amendment does present a good alternative. But I would like to have a chance for my colleagues to look at it further. We have had a number of good discussions across the aisle. I have talked to a number of colleagues on the other side of the aisle, and they said, well, they would like to keep the amendment alive. They want to vote against the motion to table, but they are not yet ready to vote for the amendment because they may want to try to negotiate and work out some minor differences so they can support it. I would like to have the opportunity to do that with them.

I would, by the way, point out, I guess as further evidence of what I am talking about—Senators reading the bill, coming to understand now they are not left with either the trust fund or nothing at all, that they have a third choice with the medical criteria bill—we have had two additional Senators come forward and ask to cosponsor it.

Mr. President, I ask unanimous consent that Senator SAXBY CHAMBLISS and Senator MIKE ENZI be added as cosponsors to the Cornyn amendment.

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I believe, given adequate time, there will be other Senators who will be interested in this alternative approach. Here again, I believe we are all committed to trying to find a solution. I hope we are because we know the status quo is a scandal. Here again, it is with great respect and admiration for the long and arduous effort put into this by the chairman that I hesitated even to offer this alternative. But I do believe that based on the merits, based on the choice it provides to the Members of the Senate, and based upon the need to have a little bit more time for Members of the Senate to understand what is in the amendment and to negotiate perhaps agreement so we can come back with some modification and an up-or-down vote on that, that I urge my colleagues to vote against the motion to table, both on the merits and based on the need for more time for deliberation and adequate consideration.

I yield the floor and retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, when the Senator from Texas says the status quo is a scandal, he is right. But the medical criteria bill is a ''scandal lite.'' It is a light scandal. You hear about Coke and Coke Lite. Well, this bill is a scandal in its own right, not quite as big a scandal but a scandal nonetheless.

The only change which this medical criteria bill makes that is an improvement over the present system is that it does not allow collection by people who have been exposed but who are not yet sick. But this medical criteria bill does not go to the heart of the problem; that is, the thousands of people suffering deadly and serious injuries who have no one to sue.

This bill is directed to protect the veterans of America who have been exposed to asbestos in a variety of contexts, sometimes during work at shipyards, sometimes during work at other governmental facilities, but they have no one to sue. This bill is directed to provide compensation to employees of some 77 companies which have gone bankrupt, where they have no one to sue because the company is in default and the company is bankrupt.

This bill, similarly, does not answer the grave problem of the economy of the United States, with companies continuing to go bankrupt because litigation continues. You still have the costs of going to court—the costs of filing papers, the costs of depositions, discovery, interrogatories, taking the case to trial.

And then you continue to have the lawyers taking the lion's share of the compensation. The fact is that only 42 cents of every dollar spent on asbestos litigation goes to the victims. The fact is, surprisingly, more money goes to defense costs—31 cents of every dollar—and 27 cents of every dollar goes to plaintiffs' attorneys. That is a statistic compiled by the reliable RAND Corporation.

So the medical criteria bill does nothing at all to deal with the real problems with regard to asbestos litigation but is designed, pure and simple, to defeat the trust fund concept which is on the floor.

When the Senator from Illinois and the Senator from Nevada argue strenuously against the trust fund proposal, they do not want this bill. It is window dressing and a red herring to cite the companies which are going to save money because the thrust of the bill is to make an equitable allocation, which we think we do here. There has never been any real attack on that, except this wild talk about secrecy, which is unfounded. And you continue to have the problem of companies going bankrupt and people not being able to collect because there is no one from whom to collect.

When the Senator from Illinois and the Senator from Texas complain about the new bill, there again, it is something they know better. They have the original bill. We had managers' amendments totaling some 47. And as a tactical matter, the Senator from Illinois and the Senator from Nevada said they would put us through every one of these amendments individually. The procedural way to deal with it was to put them all in another bill called the substitute bill. But they know what is involved. They know what bill is involved. And the substance is before them. So you have one charade after another.

And you have a system which is scandalous. Nobody who has addressed this problem disagrees with the nature of the problem. Scandal is a good characterization for it. Scandal is an equally good characterization for the medical criteria bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I respect my colleague from Texas and those others who believe this amendment will be a preferable way to deal with the asbestos morass we now have. I, however, based on my best judgment, cannot agree. It perhaps will make some businesses happy and some plaintiffs' lawyers happy, but the one group I clearly think will not be as well treated and will not have the same guarantees and protections will be the victims.

We are not here to represent any one group. We are here to look at a litigation problem that has gone wild. It has lost control. It is not operating properly. I think the trust fund concept is the only way to make this thing have any sanity about it.

As I understand it, the medical criteria will help a great deal in making sure that claims by people who are not sick are not maintained in court, that they can be dismissed short of trial. That would be a tremendous benefit. I will not dispute that. It would certainly reduce those kinds of lawsuits.

However, it would have no coherence. It seems to me that two people could file a lawsuit, and one could draw a favorable judge or favorable jury and win

$50 million and the other one, I suppose, could win nothing or $1 million. I do not know that it would represent any predictability for the defendant companies so they could show on their balance sheets precisely what they are going to be looking at in the future as they go forward.

It also would maintain the current litigation method of handling the lawsuits. That, to me, is where we have had the most difficulties because 60 percent of the money that is being paid out is being eaten up by lawyers. So if you have lesser numbers of lawsuits but they are bigger and will be more intensely litigated, the defendant companies have to hire expensive attorneys to defend themselves, and the plaintiffs' attorneys, facing top defense attorneys, will charge their normal high fees, as the case may be, and you end up back where we are, as the RAND Corporation said, with 60 percent—58 percent—of the money being paid out in expenses, which is what I would like to see avoided.

The attractiveness of the legislation that is before us is we take the 60 percent that has been eaten up and we take probably 50 percent of that and allow it to go to the victims. They get it, with certainty, in an equal amount. So if you have mesothelioma, a deadly disease, under this system, you could file your claim, with a doctor's certificate stating you have mesothelioma—a fairly indisputable diagnosis—and you get $1.1 million; half of it within 30 days and I believe the other half within 6 months before you die.

As I noted before, why have we had so many mesothelioma widows here? It is because these lawsuits take years. I am not just saying that. This is a fact. These cases take years, and people die of diseases or become disabled without receiving money.

Under this bill, you will be able to get your money promptly. The proposal, as I understand it, will not necessarily fix that. Maybe the cases could be settled.

Again, I say to my distinguished colleague from Texas, we agree on so much of this. I certainly will say this. His proposal would be far better than the current system.

There is no doubt about that. The current system is absolutely indefensible. It is to the point that it is immoral, and the Congress has no higher responsibility than to make sure our legal system is working effectively. It is not happening that way.

I believe the medical criteria in the base bill before us is not tight enough, that it will still allow a large number of people to maintain lawsuits for diseases they were going to get anyway from other natural causes or misbehavior such as smoking. They were going to get those diseases anyway, and they want the asbestos fund to pay for it. When it is connected to asbestos exposure, and it can be shown scientifically, this bill allows for that. It actually allows for people to draw on the fund who probably shouldn't qualify for it.

I am for tightening up those criteria. I am for eliminating the frivolous, baseless lawsuits where people are not sick, which this Cornyn bill would do. But I do believe it would undermine one of my highest goals in this legislation, and that is that we would be in a position where you make a claim like you would in workers' compensation. You have so much injury, you get so much money, and you get it promptly. And the maximum attorney's fee would be 5 percent.

I don't see how you can limit attorney's fees if you are going to have a long, competitive trial. The victims are going to need top-flight attorneys, and the defendants are going to need top-flight attorneys. The juries are going to be calling these cases. Some of them are going to say big verdicts, and some of them are going to say little verdicts. We will have more inconsistencies, more jackpot justice than I would like to see.

I am reluctantly of the opinion that this would not be the best approach. If this bill gets any worse, I would certainly see that the suggestions of the Senator from Texas would be preferable. If this bill were to flounder and isn't successful, I certainly would agree that his proposal is better than the current law and would support it. Right now, the Specter legislation is preferable.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I find myself in an unusual position of both agreeing and disagreeing with my colleague from Alabama. That probably typifies how most of us feel about the proposed solution in the trust fund. If my colleague from Alabama and I could sit down and hammer out some meaningful tort reform, we would not have any trouble doing it, if it were just he and I. I know he is concerned about the scandal that 58 cents on the dollar for every asbestos recovery there is goes to transaction costs, attorney's fees for the plaintiff, attorney's fees for the defendant, court costs, and the like. And that is not just in asbestos litigation. That is common, unfortunately, in personal injury litigation generally. If we could get 60 votes to get cloture on some meaningful tort reform and have an up-or-down vote, we could be in business and address his concerns, with not only asbestos but with our civil justice system generally. It is out of sync and benefits too few people at the expense of the many.

My colleague from Alabama mentioned our effort to try to reduce attorney's fees because this is, under the trust fund, a system where an individual does not even need a lawyer to make a claim against the fund. So we decided in committee to keep it down to 5 percent. But it is my understanding, and my colleague can check me on this, that in the managers' amendment, that negotiated provision on attorney's fees was changed to further expand the recovery of attorney's fees under the trust fund bill.

My point is that for every time the chairman, Senator SPECTER, tries to address one concern, he has to address another concern that loses or undermines support by someone else. After spending a long time trying to come to terms with this and understand it and be constructive about a solution, I came to the reluctant conclusion that it was futile, that the trust fund was fatally flawed. That is why I have offered my colleagues a choice. In addition to a choice between the trust fund and nothing at all, I have offered them another choice, and I would like to have a chance for more colleagues to think about it, to consider it, and to work with us to try to make it even better. That is why I urge my colleagues to vote no on the motion to table.

Finally, one of the other things we have not spent much time on, there is actually a huge amount of money, hundreds of thousands of dollars, put in the trust fund to look for new claimants. It pays for screening of people who have not voluntarily come forward but basically goes out and looks for more claimants, which further stresses the fund and increases the likelihood that it will go under because of an overwhelming number of claims that have not been taken into account in arriving at the amount of the fund or the medical criteria for which claims would be paid and which would be excluded.

I hope my colleagues, both on the merits and on the basis of process, the need for more time to carefully consider our alternatives and come up with the best possible solution, will vote no on the motion to table.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I rise in support of the Cornyn substitute amendment to S. 852. I thank the Senator from Texas for his work on this issue. He is someone who comes to this debate with great knowledge of the subject matter and has modeled his legislation after what has been a very successful model in the State of Texas.

As the Senator from Texas has noted, this is a problem that needs to be addressed. Out-of-control asbestos litigation has become a disease in our economy. It threatens to drive scores of companies into bankruptcy. It diverts compensation away from legitimate victims of asbestos. It discourages investment in companies under suit and drives stock values down and diverts funds away from expansion and growth and results in job loss. In short, it has become an obstacle to economic recovery.

Few of us in this Chamber can disagree with those very basic facts. However, I am not persuaded that creating

a new Federal program, yet another entitlement program, one more compensation program, is the right solution. We need to seriously assess the wisdom of Congress's growing inclination to create more of what are virtually uncapped entitlement funds. The problem is in the courts. That is where the solution should be. We cannot continue to have the Government take every litigation quagmire out of the court system and put the problem on the back of the Federal Government and ultimately on the backs of the taxpayers. We cannot continue to do so.

I voted to proceed to debate on this bill because this is a problem. It needs to be solved. Indeed, Congress must act. But what is the best solution? Should we create yet another entitlement trust fund or should we reform the tort system by imposing reasonable medical criteria standards in the courts?

We need to find a solution that protects both the economy and the legal rights of those truly injured by asbestos or who will develop asbestos-related injuries in the future. It is my belief that it would be a mistake to establish an asbestos trust fund. I know this fund relies on private financing. Unfortunately, this may turn out to be only the seed money and unable, over time, to sustain the fund for very long, creating a high risk that Congress, at some point in the future may have to step in to keep it operating. The last thing we need is another uncapped Government entitlement, especially with our existing deficits.

The major problem with the trust fund is that the private funding is capped but the potential liability is not. We have to face reality. This fund will go insolvent. I don't believe it is a question of if; it is a question of when. The underlying bill supposedly answered that by putting in a sunset provision that, when the fund goes insolvent, sends all unpaid claimants back to the tort system, the same broken tort system that we have today. Does anybody really believe that will happen? This Senator certainly does not.

With hundreds of thousands, perhaps millions of unpaid claimants, would those claimants be happy about going back into a court system to spend 3 or more years litigating a case for an award that probably would be less than they could have received under this trust fund bill? I don't think they will do that.

Political pressure on Congress from union and victims groups to bail out the trust fund and sustain it would be immense. These liability trust funds typically do not go back to the tort system. Trust funds in general rarely ever go away, not after creating an entirely new class of entitled people. So let's not delude ourselves.

President Reagan once said that the closest thing to immortality on this planet is a government program. Once we create a whole new class of entitled people, it will be very difficult to go back or in any way sunset this program. The result would be the taxpayers being left on the hook. That is why I support the Cornyn substitute amendment.

I ask my colleagues to seriously consider where Congress is going if it creates such a fund. What kind of precedent is this creating and where will this end?

There has been a dangerous inclination by Congress to rescue segments of our economy from out-of-control litigation by simply taking claims out of the courts and creating a Government-administered liability trust fund. The solution should be commonsense tort reform, not to have the Government become some gigantic claims processing and payment agency.

The best solution, one that has no cost to the Treasury, that does not require the creation of new Government agencies or battalions of Government administrators and one that will have immediate positive effect for both business and victims is a simple solution that, one, establishes reliable and verifiable medical criteria standards in the courts; two, tolls the statute of limitations to protect future victims; and, three, prohibits abusive venue shopping. That is it. It is simple. It is not loaded up with tort reform that our friends on the other side of the aisle often object to. And importantly, many trial lawyers who represent malignant claims of asbestos exposure have in the past endorsed this approach.

It is time to consider a more modest solution. It may not provide the grand, comprehensive solution that many have wished for, but it takes a substantial bite out of the problem and is certainly better than nothing, which is what all parties will have if we continue to pursue the impossible.

I ask my colleagues to vote against the motion to table and to support the Cornyn substitute amendment.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I ask unanimous consent that Senator HAGEL be added as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CORNYN. I yield the floor and retain the remainder of my time, if any exists.

The PRESIDING OFFICER. The Senator has no time remaining.

Mr. CORNYN. I thank the Chair.

Mr. SESSIONS. Mr. President, how much time is left?

The PRESIDING OFFICER. There is 15 minutes.

Mr. SESSIONS. Mr. President, I will yield the floor when Senator SPECTER returns. I will say a couple of things. First, under this criteria bill—which has good criteria and some very good provisions in it—veterans are not going to be able to recover. Veterans don't have anybody to sue, and they would be very much disadvantaged. That is why they oppose it.

No. 2, we would still have litigation, and the reason litigation now ceases to be wise is because the defendants are prepared to pay. It is basically not a question so much of how they are responsible—whether anybody is responsible for damages; they are prepared to pay, but they want to know a predictable amount that they are paying, No. 1, and they want to have it paid fairly.

Under this system, if you meet the illness criteria and you are able to proceed with your litigation, one person with asbestosis, who seriously has a disability, maybe is on oxygen—as I have known people to be as a result of breathing asbestos—they might get $100 million, literally. Another person may get zero. So I think we have this aberrational way that a certain limited amount of resources would be utilized to help people who are sick.

We are at a point now where we have created a circumstance that would allow a fairly even workmen's compensation type distribution of it. Secondly, it allows the litigation spasm to continue. Yes, it will take out the bogus claims from people who are not sick and who don't need to be in court. Those claims will be able to be removed. But they will have large numbers of trials of those who actually are injured by asbestos, and the lawyers on both sides have to be compensated. We know today that those compensation arrangements turn out to eat up 58 percent of the cost of what the defendant companies pay out. In other words, many of these companies that are in bankruptcy, and many more on the verge of bankruptcy and could be pushed into bankruptcy, are paying out to victims, but only 42 percent of what they are paying out gets to the victims.

So I was hoping in this legislation—my vision has always been, how can we not fix this system? How hard is it to take this 60 percent, allow the business community some predictability and certainty over 30 years, and get more money to the victims quicker and faster? If, instead of 300,000 pending lawsuits, let's say you have now 150,000 pending lawsuits, that is a lot of lawsuits. That is a lot of lawsuits. And they are pending by the thousands in certain districts in America. People are not going to get trials right away. They are not going to be able to say I want to have my trial today; I have a serious asbestosis; I am on oxygen; I may die soon, or I have mesothelioma, and this is a deadly disease, and the doctors say I only have 9 months to live, and I want to have my case tried. It is not going to happen that way. It is not happening that way now, and it will not under this bill.

Therefore, people are going to die and suffer in poverty for years before they get any payment; whereas, in this bill, we can get the money to the victims promptly and fairly, in an objective way, with plaintiffs similarly injured, similarly situated, getting similar amounts of money—generous amounts

of money. As I noted, a mesothelioma case gets $1.1 million. Half would be paid within 30 days, without any need for an attorney whatsoever. You go in with a medical claim, and if an attorney is involved, the maximum he could get is 5 percent.

My colleague from Texas said we modified the attorney fee rule, and I was at fault for that. Senators SPECTER and LEAHY and others asked we consider the fact that when cases are appealed, they tend to become complex and require quite a bit of lawyer time, and we ought to allow lawyers to have more than that, if the judge approves it. So I thought that was a reasonable request. We have amended it only to that small degree. It is not an opening up of attorneys' fees under this bill.

I am concerned that some of the primary advantages of asbestos reform would not be availed under this amendment. That is why I am reluctantly not able to support it. I hope we can continue with the bill and that other people will bring forth thoughtful amendments, as Senator CORNYN has, and those who joined with him and presented it in a thoughtful way. But as I have stated, I don't believe it is the proper vote.

I yield the floor.

Mr. SPECTER. Mr. President, how much time remains?

The PRESIDING OFFICER. There is 8½ minutes.

Mr. SPECTER. For the opponents of the amendment?

The PRESIDING OFFICER. That is correct.

Mr. SPECTER. Mr. President, as we wind down on this debate, I want to emphasize to my colleagues the importance of this vote because this amendment, essentially, after looking at it in some detail, is a poison pill. If this amendment is not defeated, the whole thrust of the compensation program for victims of asbestos who cannot now collect one penny will be defeated. The whole thrust of this trust fund was to compensate victims whose employers had gone bankrupt, compensate veterans who have served the country, who have no one to sue, and to stop the rush of bankruptcies, now totaling some 77, resulting in a loss to the economy estimated at some $300 billion.

This proposal for a medical criteria bill doesn't even rise to the level of being palliative. It doesn't do anything except defer the claims of people who have been exposed until they become ill. It doesn't do anything about the rash of bankruptcies. It doesn't do anything about the people who suffer from mesothelioma, which is a deadly ailment, where they have no one to sue. So when the sponsor of the bill characterizes the current system as scandalous, that approbation could apply equally well.

This is one of the many votes on the floor of the Senate where the outcome is uncertain. There is a curious alliance here, with some on one side of the aisle and some on the other side of the aisle. Trial lawyers may be for this amendment if it can be modified because they see the medical criteria bill as a way of continuing to bring cases to court, and to continue with the current structure. I don't criticize the trial lawyers. I don't criticize anybody. I don't criticize the trial lawyers for exercising whatever rights the current system allows. But it is up to the Congress of the United States to make the determination as to what is the appropriate public policy. That is a congressional decision to make.

Mr. LEAHY. Will the Senator yield for a moment?

Mr. SPECTER. I am delighted to.

Mr. LEAHY. Mr. President, the Senator from Pennsylvania is absolutely right; it will not be a party-line vote. I hope the Senator from Pennsylvania succeeds. It is interesting, the people who represent victims and people who don't have legal representation support the Senator from Pennsylvania. Just about every labor union supports the Senator from Pennsylvania, as veterans groups do. I will not go through the list again. Just about every veterans group that has spoken on this issue supports the Senator from Pennsylvania. There are a lot of others who support the Senator from Pennsylvania, but I mention veterans and labor as an interesting coalition. They are speaking for people who would not have a voice otherwise. They support what the Senator from Pennsylvania is doing, as do an awful lot of businesses, I might add. I hope he is successful.

Mr. SPECTER. If the Senator will yield for a question, to pinpoint what the Senator said about labor's support. The AFL–CIO, which represents labor, the working men and women of America, has been a party to the discussion for 2½ years, at some 36 meetings, which Judge Becker and I have presided over. When they heard about this medical criteria bill, they were alarmed at the impact it would have on the working men and women and the veterans, their constituency, and they put out an all-points to those people as to what was going on.

I wonder if the Senator from Vermont would care to amplify, as the senior Democrat and principal cosponsor of the Leahy-Specter bill, as to what labor is doing in this area.

Mr. LEAHY. It is interesting. We have a lot of labor unions coming out foursquare for the bill. Some held back and they want a couple of changes they are looking for. It is interesting that all of them are against this amendment—those who haven't yet endorsed the bill and those who have endorsed the bill. It is the same with the veterans groups. I think they know that this amendment, no matter how well intentioned it would be, if it went through, basically kills the chances of people to recover anything. It puts us back into the decades of litigation where, as people across the spectrum were saying, from the late Chief Justice William Rehnquist to Ruth Bader Ginsburg, we need a solution on the floor.

Mr. SPECTER. If the Senator will yield further, as to what happened in today's maneuvering and negotiations on the floor, where we have had initially the trial lawyers being against this amendment. If people were wondering what all the maneuvering and negotiation was about, why we could not have an up-or-down vote, but a tabling motion, that is because the trial lawyers think that the amendment offered by Senator CORNYN may be better for them, but they want to change it around so that if this motion to table is not defeated, they will have time to rework it to their satisfaction.

That is the way the system works, and if that happens—this is now Thursday afternoon at 16 minutes to 5—there will be frantic negotiations between now and Tuesday, when we come back to work on this bill—or perhaps Monday afternoon—to come to an alliance. I won't call it an unholy alliance, but it will be an alliance in very curious ways, where people who oppose the bill do so out of the mistaken notion that it is going to cost the Government money. This bill is ironclad not to cost the Government money. People on my side of the aisle who are opposed to it don't want to have the Government undertake an obligation, and I agree with that. This bill accomplishes that, with no governmental obligations. Now the issue is whether sufficient trial lawyers on your side of the aisle may come to a majority.

Mr. LEAHY. Well, if the Senator will yield, like him, I was a trial lawyer. But I know with all trial lawyers, there are times when you have a superb settlement before you, you take it. The bill the Senator from Pennsylvania and I put together, after countless hours, months, and years of work, is a lot better settlement than going to a jury. I will support the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I move to table the Cornyn amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. ENSIGN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. ENSIGN. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue with the call of the roll.

The assistant legislative clerk continued with the call of the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the motion. The yeas and nays have previously been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Kansas (Mr. BROWNBACK) and the Senator from Arizona (Mr. MCCAIN).

Mr. DURBIN. I announce that the Senator from Colorado (Mr. SALAZAR) is absent due to family illness.

The PRESIDING OFFICER (Mr. CORNYN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 70, nays 27, as follows:

[Rollcall Vote No. 13 Leg.]

YEAS—70

Akaka	Durbin	Nelson (FL)
Alexander	Feingold	Nelson (NE)
Allen	Feinstein	Obama
Baucus	Frist	Pryor
Bayh	Harkin	Reed
Biden	Hatch	Reid
Bingaman	Inouye	Roberts
Bond	Isakson	Rockefeller
Boxer	Jeffords	Santorum
Burns	Johnson	Sarbanes
Burr	Kennedy	Schumer
Byrd	Kerry	Sessions
Cantwell	Kohl	Shelby
Carper	Landrieu	Snowe
Chafee	Lautenberg	Specter
Clinton	Leahy	Stabenow
Cochran	Levin	Stevens
Coleman	Lieberman	Talent
Collins	Lincoln	Vitter
Dayton	Lugar	Voinovich
DeWine	Menendez	Warner
Dodd	Mikulski	Wyden
Domenici	Murkowski	
Dorgan	Murray	

NAYS—27

Allard	DeMint	Inhofe
Bennett	Dole	Kyl
Bunning	Ensign	Lott
Chambliss	Enzi	Martinez
Coburn	Graham	McConnell
Conrad	Grassley	Smith
Cornyn	Gregg	Sununu
Craig	Hagel	Thomas
Crapo	Hutchison	Thune

NOT VOTING—3

Brownback	McCain	Salazar

The motion was agreed to.

Mr. REID. Mr. President, I know the distinguished majority leader filed cloture on Eric S. Edelman to be Under Secretary of Defense for Policy. Senator LEVIN has indicated he is agreeable to letting that go forward on a voice vote. We are ready to do that as soon as necessary when the majority leader believes it is appropriate.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that the pending amendments be set aside so the Senator from Arizona, Mr. KYL, may be recognized to lay down an amendment.

Mr. REID. Reserving the right to object.

Mr. DURBIN. Reserving the right to object.

Mr. REID. Mr. President, I know there is no consent order in effect. We were of the understanding that we were going to go back and forth with amendments—there would be a Republican amendment, a Democratic amendment. If that is not the case, I am certainly willing to live by that, but I thought that was the agreement. I certainly have not spoken to the managers of the bill, Senator SPECTER and Senator LEAHY, nor did I, in fact, speak to Senator DURBIN, but that was my understanding.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, as the Senator from Nevada has said, there has been no understanding. It is agreeable with me to have an understanding as to that effect in the future. I have already talked to Senator KYL, who is poised to offer this amendment. I am glad to enter into such an understanding. There is not one at the present time. I would like to proceed with Senator KYL and alternate.

Mr. REID. Mr. President, if I could, we have no problem with Senator KYL offering the next amendment. The only problem is we have not seen it. Could we have some idea of what it is all about?

I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SPECTER. I yield the floor for the purposes of letting the Senator from Nevada be recognized.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Arizona is recognized.

AMENDMENT NO. 2754 TO AMENDMENT NO. 2746

Mr. KYL. I send an amendment to the desk.

The PRESIDING OFFICER. Is there objection to setting aside the pending first-degree amendment?

Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 2754 to amendment No. 2746.

Mr. KYL. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To reduce the impact of the trust fund on smaller companies and to expand hardship adjustments)

SEC. I. PROPORTIONAL PAYMENTS.

(a) At page 171, after line 5, insert new (c) as follows (the subsection references assume that the required renumbering has occurred):

''(c) LIMITATION.—For any affiliated group, the total payment in any year, including any guaranteed payment surcharge under subsection (m) and any bankruptcy trust guarantee surcharge under section 222(c), shall not exceed the lesser of $16,702,400 or 1.67024 percent of the revenues of the affiliated group for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation is applied, whichever is greater. For purposes of this subsection, the term ''affiliated group'' shall include any defendant participant that is an ultimate parent. The limitation in this subsection shall not apply to defendant participants in Tier I or to any affiliated group whose revenues for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation applied, whichever is greater, exceeds $1,000,000,000. The revenues of the affiliated group shall be determined in accordance with section 203(a)(2), except for the applicable date. An affiliated group that claims a reduction in its payment in any year shall file with the Administrator, in accordance with procedures prescribed by the Administrator, sufficient information to allow the Administrator to determine the amount of any such reduction in that year. If as a result of the application of the limitation provided in this subsection an affiliated group is exempt from paying all or part of a guaranteed payment surcharge or bankruptcy trust surcharge, then the reduction in the affiliated group's payment obligation due to the limitation in this subsection shall be redistributed in accordance with subsection (m). Nothing in this subsection shall be construed as reducing the minimum aggregate annual payment obligation of defendant participants as provided in section 204(i)(1).''

(b) Renumber subsections following new subsection (c).

(c) Subsequent to renumbering the subsections following new subsection 204(c), make the following cross-reference changes:

At page 142, line 7, replace ''204(g)'' with ''204(h)''

At page 151, line 20, replace ''204(i)(6)'' with ''204(j)(6)''

At page 160, line 21, replace ''204(l)'' with ''204(m)''

At page 167, line 24, replace ''204(d)'' with ''204(e)''

At page 170, lines 21 and 22, replace ''(d) and (m)'' with ''(e) and (n)''

At page 171, line 22, replace ''(i)(10)'' with ''(j)(10)''

At page 172, line 3, replace ''(j)'' with ''(k)''

At page 177, line 12, replace ''(j) with ''(k)''

At page 178, line 25, replace ''(j)(3)'' with ''(k)(3)''

At page 179, line 2, replace ''(k)(1)(A)'' with ''(l)(1)(A)''

At page 182, line 16, replace ''(i) with ''(j)''

At page 183, line 6, replace ''(i)'' with ''(j)''

At page 186, lines 7 and 8, replace ''(d), (f), (g), and (m)'' with ''(e), (g), (h) and (n)''

At page 186, line 11, replace ''(d) and (m)'' with ''(e) and ''(n)''

At page 186, line 20, replace ''(d) and (m)'' with ''(e) and ''(n)''

At page 186, line 23, replace ''(l)'' with ''(m)''

At page 187, line 8, replace ''(f)'' with ''(g)''

At page 196, line 20, replace ''(d)'' with ''(e)''

At page 196, line 22, replace ''(m)'' with ''(n)''

At page 197, line 13, replace ''(h)'' with ''(i)''

At page 198, line 11, replace ''(d)'' with ''(e)''

At page 198, line 16, replace ''(h)'' with ''(i)''

At page 198, line 17, replace ''(j)'' with ''(k)''

At page 198, line 23, replace ''(d)'' with ''(e)''

At page 199, line 10, replace ''(h)'' with ''(i)''

At page 199, line 12, replace ''(d) and (m)'' with ''(e) and (n)''

At page 199, line 20, replace ''(k)'' with ''(l)''

At page 199, line 22, replace ''(h)'' with ''(i)''

At page 200, line 3, replace ''(h)'' with ''(i)''

At page 200, line 7, replace ''(d), (f), (g), and (m)'' with ''(e), (g), (h) and (n)''

At page 200, line 22, replace ''(d), (f), and (g)'' with ''(e), (g), and (h)''

At page 201, line 5, replace ''(i)(9)'' with ''(j)(9)''

At page 203, line 6, replace ''204(i)'' with ''204(j)''

At page 204, line 23, replace ''204(d)'' with ''204(e)''

At page 205, line 11, replace ''(i)(10)'' with ''(j)(10)''

At page 205, line 16, replace ''204(h)'' with ''204(i)''

At page 248, line 21, replace ''204(f)(3)'' with ''204(g)(3)''

At page 261, line 14, replace ''204(i)(10)'' with ''204(j)(10)''

At page 266, line 14, replace ''204(f)'' with ''204(g)''

At page 289, line 9, replace ''204(i)'' with ''204(j)''

At page 289, line 11, replace ''204(d)'' with ''204(e)''

At page 289, line 12, replace ''204(m)'' with ''204(n)''

At page 289, line 19, replace ''204(i)'' with ''204(j)''

At page 289, line 20, replace ''204(d)'' with ''204(e)''

At page 289, line 21, replace ''204(m)'' with ''204(n)''

At page 289, line 23, replace ''204(i)(10)'' with ''204(j)(10)''

At page 334, line 8, replace ''204(f)'' with ''204(g)''

SEC. 2. HARDSHIP ADJUSTMENTS.

(a) Strike page 172, line 6, through page 173, line 17, and insert the following:

''(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such an adjustment by demonstrating to the satisfaction of the Administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the Administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.—In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected fmancial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately preceding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101(31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments of extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the Administrator considers relevant.

(B) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the Administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(C) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the Administrator determines at the time of the renewed adjustment that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this sub-paragraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and analyses submitted to the Administrator were made in good faith and are reasonable and attainable.''

(b) Conforming changes.

At page 177, line 10, strike ''hardship and''

At page 178, lines 19–20, strike ''financial hardship adjustments under paragraph (2) and''

At page 178, lines 22–23, strike ''—(A).''

At page 179, line 2, insert a period after ''(k)(1)(A)'' and delete; ''or''

At pages 179—181, strike line 10 on page 179 through line 2 on page 181.

At page 181, at line 3: Insert ''RULEMAKING AND'' before ''ADVISORY''

At page 181, line 5: Strike ''shall'' and insert ''may''

At page 181, following line 14, insert: ''The Administrator may adopt rules consistent with this Act to make the determination of hardship and inequity adjustments more efficient and predictable.''

At page 197, line 8, strike ''HARDSHIP AND''

At page 197, line 15, strike ''hardship and''

At page 197, line 19, strike ''hardship and''

At page 197, lines 24 and 25, strike ''severe financial hardship or''

SEC. 3. STEPDOWNS.AND F.UNDING HOLIDAYS

(a) At page 205, line 20, strike ''The'' and insert: ''Except as otherwise provided in this paragraph, the''

(b) At page 205, lines 22 through 24 strike: '', except with respect to defendant participants in Tier I, Subtiers 2 and 3, and class action trusts'' and insert the following:

''. The reductions under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reduction under this subsection exceeds the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reduction provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reduction provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.''

(c) At page 207, line 10 through 12, strike the text following ''except'' in line 10 and insert ''as otherwise provided under this paragraph. The reductions or waivers provided under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions or waivers under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reductions or waivers under this subsection exceed the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reductions or waivers provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the

amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.''

Mr. KYL. Mr. President, I will be brief.

For those who have been involved in this issue, it has been discussed actually since last August and deals with the small companies or businesses that would be paying into the fund that is the subject of this bill. The amendment is designed to reduce the impact of the trust fund on the small- and medium-sized companies and to ensure that the fund does not drive them into bankruptcy.

It does principally two things.

First, it provides across-the-board relief to small- or midsized companies, those with annual gross revenues of less than $1 billion, by limiting their trust fund contributions to 1.67 percent of their gross revenues. This per se relief should resolve most ability-to-pay problems that are created by the fund with certainty and without administrative burdens.

For those who do not qualify for this across-the-board relief or for whom it is not enough, the amendment provides a second form of hardship relief. It authorizes the administrator to reduce the company's fund assessments if the company otherwise would go out of business and would be unable to pay its bills. To be exact, under the amendment, a company can qualify for an adjustment if it can show that its fund payments ''would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.'' Under this amendment, access to this form of relief would be unlimited.

This amendment does not solve all of the problems with the trust fund allocation of payments. I anticipate there will be other amendments to address some of those issues, and I support some of those amendments, as well. I believe this amendment does go a long way toward solving the problem I identified.

What this amendment does do is shave off some of the roughest edges of this bill. This amendment makes the hardship adjustment a real and predictable guarantee. The way that the bill currently is written, some small- and medium-sized companies will be hit with trust fund payments that will constitute a major portion of their gross revenues. These companies obviously will not be able to make these payments. While the bill currently authorizes an insolvency hardship adjustment, that hardship adjustment is vaguely stated and includes limitations that undercut its usefulness for many companies on the margins. Literally, companies faced with crushing payments under the bill would be forced to tell potential creditors or capital markets, ''yes, we will be required to pay 25 percent of our gross revenues into the trust fund under the FAIR Act, but we might be able to get a hardship adjustment.'' You can see why these companies might have trouble getting a loan. Under my amendment, these same small- and medium-sized companies will be able to tell the banks and potential investors that they will not be forced to pay more than one and two-thirds of a percent of their gross revenues into the fund. By providing guaranteed reasonable limits on assessments, this amendment will make it possible for these companies to continue to engage in normal business transactions.

This amendment does not directly affect the availability of inequity adjustments under the trust fund. The amendment does, however, indirectly expand the availability of inequity adjustments by making hardship adjustments into a separate category that is not drawn from the $300 million that is currently set aside for both kinds of adjustments. That $300 million will now be set aside solely for equity adjustments.

Also, the amendment does not in any way affect the fund's guarantee of producing $3 billion a year for compensating victims. Under the bill as it is currently written, in the event of any shortfall in reaching that $3 billion, a guaranteed payment surcharge is imposed on all defendant participants in order to make up the difference. Thus, to the extent that relief received by any defendant pursuant to this amendment prevents the fund from reaching the $3 billion target, that gap will be filled by the payment surcharge. This amendment, therefore, in no way adversely affects the FAIR Act's funding guarantee.

Allow me to describe in greater detail exactly how this amendment works. Under the amendment, no defendant participant, other than a Tier I participant, with 2002 revenues of less than $1 billion is required to contribute more than the greater of 1.67 percent of its revenues as of December 31, 2002, or 1.67 percent of its revenues for the most recent 12-month fiscal year. The revenue cap employed by this amendment matches the 1.67 percent of gross revenues that is the measure of Tier I contributions. Also, only companies that elect to report on a consolidated basis may take advantage of this revenue cap.

This amendment's revenue cap is only a rough measure of ability to pay. It is, however, easy to administer, and it is less subject to manipulation than other measures, such as net income.

As for the amendment's changes to the hardship adjustment, first, there currently are two hardship provisions in the bill—section 204(d)(2), which provides relief generally for severe financial hardship and which is subject to the $300 million hardship and inequity cap, and section 204(d)(5), which allows the cap to be exceeded if otherwise a company would be forced into insolvency. My amendment would rewrite (d)(2) to provide clearer standards, eliminate (d)(5), and make clear that there is no cap on hardship relief. The result is a simpler proposal more attuned to the needs of potential hardship-adjustment applicants.

Under the amendment, any defendant participant can apply for hardship relief, whether it is in Tier I or not, and whether or not it reports on a consolidated basis. However, in the case of defendant participants that do not file on a consolidated basis, the administrator must examine the real financial situation of the defendant participant by taking into consideration the financial position of the affiliated group.

Again, under the revised hardship adjustment in this amendment, the Administrator may grant an adjustment if he concludes that the amount of a defendant participant's payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. The amount of relief would be limited to the amount necessary to avoid the problem.

In determining whether to grant an adjustment under this revised provision, the administrator will required to consider, among other things: the historical audited financial statements for the defendant participant or affiliated group for the three years immediately prior to the application for relief; projected financial statements for the 3 fiscal years following that application; an analysis of capital spending and fixed charge coverage on a historical basis for the 3 fiscal years preceding and the 3 fiscal years immediately following the application; any payments or transfers of property made, or obligations incurred, by the defendant participant during the 6 fiscal years prior to the application to or for the benefit of any insider; any extraordinary transactions of the defendant participant, including payments of extraordinary salaries, bonuses, or dividends, within the 6 fiscal years prior to the application; the defendant participant's ability to satisfy its payment obligations to the fund by borrowing or financing with equity capital, or through issuance of securities to the fund; and the defendant participant's ability to postpone discretionary capital spending for a reasonable period.

The term of any adjustment under the amendment shall be 5 years, unless the administrator determines that a shorter or longer period is appropriate in light of the financial condition of the defendant participant. Any adjustment under the amendment may be renewed upon a showing that it continues to be justified—and it is automatically terminated if the defendant participant files for bankruptcy protection.

The amendment also eliminates provisions for recapture of hardship adjustments, except in cases of fraud. The current bill's provisions for frequent review of hardship adjustments and potential for giving adjustments back

have significantly reduced the usefulness of these adjustments in addressing the concerns of companies on the margins. If these adjustments aren't reasonably predictable, they are not useful either.

Finally, under the amendment, companies that have received discounts off their tier/subtier allocation because of the cap or hardship adjustments would only get the benefit of cumulative step downs to the extent that the step downs exceeded the amount of the discounts the company already had. The same rule applies for hardship adjustments.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the Senator from Arizona for offering this amendment.

This is a good amendment. There has been a great deal of concern that smaller businesses—although we are talking about businesses which are substantial, but they are smaller than many in the field—should not pay more than they can afford to pay. This amendment achieves that result.

I add that Senator KYL has been an outstanding member of the committee for many years, and in the past year and a half since I have become chairman, he has been a stalwart and has worked tirelessly on this bill. I don't know how many meetings he and I and others, including the presiding Senator, Mr. CORNYN, have had. This has been a matter very much on the Senator's mind and many others who have suggested many other provisions. It is a very good amendment. I thank and compliment the Senator.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I make a point of order that the pending bill violates section 407 of H. Con. Res. 95, the concurrent resolution on the budget for fiscal year 2006.

Mr. SPECTER. I move to waive the point of order under the applicable provisions of the rules and statutes.

The PRESIDING OFFICER. The motion to waive is debatable.

Mr. SPECTER. Mr. President, the essence of this issue is that the point of order should not be sustained because there is no Federal money involved. All of the money involved comes from private sources. This is a make-or-break issue for this bill.

The Federal budget is not involved in this bill. To repeat, which I don't like to do, but for emphasis, the Federal budget is not involved in this bill. The money comes from private sources. It goes through the Department of Labor as a conduit. Technically, there is a Federal expenditure, but it is not the Federal Government's money. Now, the only issue which has been raised is that at some point in the future, the Federal Government might seek to bail out this trust fund. The bill is emphatic in a number of places that the Federal Government has no obligation to pay out any money. If the trust fund runs short, there are provisions to meet that situation. It is a complicated provision, but the administrator makes an analysis, and if he sees the necessity to make some modifications in the trust fund, he can take it to a committee and the committee can then make a recommendation to Congress. The Congress has to act.

The real safety valve is the one provided by the Biden amendment in July of 2003 that if the fund runs out of money, claimants can go back to court. So the claimants are no worse off going back to court if the trust fund runs out of money than they are now. But in the interim, thousands of people who suffer from deadly diseases—mesothelioma and exposure to asbestos—will be paid where they cannot be paid now because their companies are bankrupt or they are veterans and there is no one to sue.

The consideration that some future Congress, decades down the road, in the year 2030, might have a different view is up to the Congress in that year. We cannot bind them as to what they are going to do, nor should we try to bind them. But what we do here does not implicate or involve the Federal Treasury. To say that there may be a temptation in the future for some Congress to spend Federal funds is not something we should do. It is not within our purview. It is not within our responsibility. In fact, we ought to keep our hands off the future Congresses. We should not presume that we know enough in the year 2006 to tell the Congress in the year 2026 what to do. They will be elected. They may well be a lot smarter than this Congress. Perhaps it is hard not to be. But it is up to them at that time.

This is a convenient maneuver to defeat the bill by requiring 60 votes. That is like the motion to proceed, the filibuster, to try to structure a vote for 60 votes, to try to find enough people who do not like the bill; only takes 41 who do not like the bill to defeat the bill on this kind of a maneuver, whereas it takes 51 to defeat this bill otherwise.

The administration is for it. If this bill goes 50–50, the Vice President votes for it. The President issued a statement of support on S. 852. There are caveats in it. He said there are concerns. I don't know of any Member of this Senate who does not have some concerns about this bill. But that is what the debate is for. That is what we are here to consider. We will not be able to consider this if this point of order is sustained.

I yield to the real expert on budgets, a man who was chairman of the Committee on the Budget for 73 years.

Mr. DOMENICI. I am 73 years old, but I didn't chair it all the time.

Mr. SPECTER. I thought he chaired it his entire life. Senator DOMENICI was the chairman of the Committee on the Budget the day I was sworn in. I have great respect for Senator GREGG, chairman of the Committee on the Budget today, but I yield to the chairman of the Committee on the Budget emeritus.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. So that I understand, I am speaking on my own time now; is that correct?

The PRESIDING OFFICER. The Senator is recognized in his own right.

Mr. DOMENICI. Right. First, let me say the Senator who is raising the point of order has every right to raise the point of order. The question is, is this a real point of order? I want to tell the Senate, I am not the Parliamentarian. I am not the Congressional Budget Office. But if I were either, I would say this point of order does not even lie, not that we should defeat it, it just does not lie. It is not a proper interpretation of the existing budget law to say this point of order can be raised and can invalidate this bill because the bill violates the budget.

I want the Senators who are worried about voting to waive this point of order to understand this is not a budgetary issue. This is a technical point of order that got to the Senate because the Congressional Budget Office, I assume, or the Parliamentarian in consultation with the Congressional Budget Office, ruled that any expenditure of money exceeding $5 billion over a baseline in the year 2016 cannot be sustained.

You see, Senator BYRD, this was done by our distinguished new chairman of the Budget Committee because he found that budgets were being broken in future years by putting in a program that ran at $2 or $3 billion a year and increased, way out there in future years, up to $10 or $15 billion.

Now, fellow Senators, what I have described was perfectly valid until the distinguished chairman, within his rights, decided that this was a problem he wanted to solve. Now, you see, the goal is to prevent the bump-up of expenditures in future years that are unexpected by everybody voting today—unexpected because the increase comes along 10 years later and costs much more than what you thought you were voting for.

Now, I cannot explain it any better than that. That is about the best I can do. Somebody must have determined that this budget rule applies because there is no way to disburse this trust fund money without going through the Department of Labor. That must be it. Because some Government agency must take this money—not tax money, not Federal money—and run it through their books and write the checks, somebody has decided that this fear of a bump-up in some future year applies.

My good friend from Nevada is absolutely right to bring up this point of order if what he wants to have happen to this bill is for it to be proven by 60 votes. That is fine. But I want everybody to know, if the point of order is not sustained and this bill goes forward, I don't think the deficit of the United States is going to be affected in 2016 by one dollar if this $5 billion estimate is true because the money is not

really on the Federal books. The trust fund has no real relationship to the expenditure of Federal money.

So in considering this budget rule—I have explained it to you—I ask: how are we going to break the budget when this money is not even part of the budget? It is not on the budget. The money is going to be collected and then go through the Department of Labor, but it is not Federal money.

I say to Senator BYRD, when they send the budget up in 2016, there is not going to be any of this trust fund money. This money might get a footnote. The Department of Labor is going to have to run the trust fund, but it cannot add to or subtract from the deficit because the Government is not spending its money. And it is not tax money.

So let me say, if you want to kill this bill based upon a point of order that is—it is almost not a point of order, it is just a little, tiny technicality—it gets in by the skin of its teeth on an interpretation—then vote for it. If you are worried about saving money, and being a tightfisted budgeteer, then understand that this has nothing to do with being a tightfisted budgeteer because there is no budgeting involved.

So I thank the good chairman who has worked so hard on this bill. I have never sat on the committee that produced this bill in my 34 years here. I never chose to go on the Judiciary Committee, so I am not intimately knowledgeable about this. But I know we better do something about asbestos. We run around talking about fiscal responsibility and helping business and cutting taxes so we will have more business. If we do not do anything about asbestos, and leave it in the courts, it will be the biggest abuse of the court system that we have ever known.

If you want to tell these new countries becoming democracies, ''boy, are we a gifted country, we have this great rule of law, this fantastic court system,'' please, don't let them ask about asbestos because they will laugh: Why should they be like America? Why should they have a legal system that is so messed up that there are hundreds of thousands of claimants running around this country with scores of lawyers who, when we were practicing law, would not even have been lawyers? You could not run around soliciting these cases when I was sworn into the bar. You could not run around hiring these doctors when I was a member of the bar. You could not run around saying: Go get your neighbors and sign them up.

That is American law today. It is business. It is entrepreneurial law. That is what we have. But it is not very orderly and it is not very ''due'' in terms of due process. Nor is it very fair because the claimants do not get very much money. The lawyers get a lot.

I do not know why we would want to kill this bill. Lawyers get less. There is an orderliness involved. There is a way to adjudicate claims instead of waiting around for years. So with this point of order, while I think it is not even a point of order in the sense of what we intended with the 10-year-out rule—let's call it that; the 10-year-out rule—I do not know what we are even trying to protect against. It is not going to affect anything except to possibly kill the bill.

So with that I thank the Senate for yielding me a few minutes. I regret having to intervene before the proponent got to speak. But I thank the Senate nonetheless.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I have listened with great interest to the interpretation of my colleague on the Budget Committee. I must say, I come to a totally different conclusion based on the law and based on the Congressional Budget Office's own reports.

Here is the report from the Congressional Budget Office itself with respect to the issue of whether the point of order raised by the Senator from Nevada has merit or not. The Congressional Budget Office, which is nonpartisan, has said very clearly that this does involve Federal direct spending, does involve deficit spending. A point of order clearly lies.

Mr. ENSIGN. Mr. President, will the Senator yield for a question?

Mr. CONRAD. Yes, I will be happy to yield to the Senator.

Mr. ENSIGN. Is the Senator aware, the ranking member on the Budget Committee, that the current Republican chairman of the Budget Committee has indeed ruled that the point of order I raised today is actually valid?

Mr. CONRAD. Yes. I have talked directly to the chairman of the Budget Committee, and he has said to me he believes that clearly this budget point of order does lie. And he is buttressed, I might say to my colleague, by the Congressional Budget Office itself, which says on page 2 of their report on this legislation called S. 852, the Fairness in Asbestos Injury Resolution Act, in the last paragraph:

Pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting S. 852 would cause an increase in direct spending greater than $5 billion in at least one 10-year period from 2016 to 2055.

That is the point of order raised by the Senator from Nevada. It is absolutely appropriate, and it clearly lies.

People can come out and be unhappy about the result, but the reality is we have a problem. And we have a big problem here. Why? Well, we have done an analysis, my professional staff. Here is what they found. The claims and administrative expenses will likely exceed the contributions to the trust fund. No. 2, that upfront claims will far exceed contributions, so the trust fund will have to borrow substantial amounts. I have heard over and over it stated on the floor that there is no Federal money, there is no Federal money. Really? Why is it, then, that in the legislation they provide for borrowing Federal money? Why is that? Because everybody knows that point No. 2 is true, that the upfront claims are going to greatly exceed the revenue, and the result will be borrowing. And guess who they are going to borrow from. They are going to borrow from the Federal Treasury.

It is also our conclusion that small adjustments in the amount and timing of the assumptions quickly bankrupt the trust fund; and, finally, that it is unrealistic to assume the trust fund will ever terminate. Because the other thing they are saying is: Well, the legislation provides, if they run out of money, we will terminate the trust fund. Let's think about that for a moment. Companies will be on the hook for tens of billions of dollars that they will have to pay back that have been borrowed, and then they are thrown back in the court system too. Can you imagine the outcry that will come from them?

Let me go to the next chart. I had hoped to not be engaged in this debate, frankly, but we were asked to do a report. And we have done that report. Professional staff did it. These are the conclusions. They looked at the CBO estimates, and here is what we found. CBO did not score many items that are likely to increase the costs, including dormant claims. Those are claims that are not currently being pursued but would have a possibility of getting recovery if they went after this pot of money.

No. 2, exceptional medical claims. There are nine categories that people can fit into. But if you do not neatly fit into those, there is an opportunity for the costs to rise.

And third, CBO did not score any claims of family members of workers who were exposed to asbestos.

We also—the professional staff found that CBO's estimate of the number of future cancer claims is likely to be too low. The CBO analysis concluded there would be 78,000 new cancer claims. The Tillinghast study—which we believe is the most objective study out there, which was done by the Johns Manville trust—ran 14 different scenarios. They found, on average, 133,000 new cancer claims is the likely result, not 78,000. By the way, if they are right, if the midpoint of their range is correct, the increase in cost will be very dramatic. Finally, CBO's estimate of the percent of nonmalignant claims that will receive a cash award is likely too conservative.

In this legislation, there are five tiers for non-malignant claims. Tier 1 gets medical monitoring. They do not get money. Tier 2 gets cash awards of $25,000; tier 3, $100,000. CBO has estimated only 15 percent of claimants will get cash awards.

When our people went out and talked to experts, they said the range is 10 to

40 percent. Our people took the midpoint of that range, 25 percent. The Tillinghast study suggests it will be in the range of 23 or 24 percent. That increases the cost over CBO's analysis.

The conclusion of the Budget Committee staff on the minority side is that the shortfall over the period of the fund will be $150 billion, the net present value difference being $50 billion. In other words, the $150 billion shortfall is over the life of the fund. That turns into a net present value of $50 billion. But to show you how sensitive this is, we were very conservative in terms of new cancer claims. CBO said 78,000. Our study said 90,000. Tillinghast, in 14 different scenarios, on average found 133,000 new cancer claims. If they are right, this number is not $150 billion, it is $295 billion, with a net present value of $85 billion.

Let's reality test for one moment. We went out and looked at what has happened in other cases where funds were set up, what the initial estimates were and then what actually happened. In the case of the Manville trust, the original range was that there would be on the low end 50,000 claims and on the high end, they said 200,000 claims. Here is how many there have actually been to date—not 50,000, not 200,000—there have already been 690,000 claims. That is not the end of it. They now estimate there will be another 1.4 million claims on top of that, for a total of over 2 million claims. So what is the result? The result is, people who were promised certain recovery are getting 5 cents on the dollar. That is what they are getting now, 5 cents on the dollar.

We also looked at the black lung fund. In the black lung fund they projected at the beginning, the original estimate, it would cost $3 billion. Here is what it has cost so far—$41 billion. That is through 2004.

The assertion has been made that CBO has said this is paid for. That isn't their conclusion. CBO said this in the letter:

> The proposed trust fund might or might not have adequate resources to pay all valid claims. There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs.

If you look at the numbers behind the numbers, I think it is very hard to conclude anything other than what my professional staff concluded. The strong likelihood is that this fund is way under water. Our conclusion is $150 billion under water. It is entirely possible——

Mr. SPECTER. Will the Senator from North Dakota yield for a question.

Mr. CONRAD. I would be happy to, when I have finished my sentence. It is entirely possible that it is $295 billion under water. I regret to conclude it may be more serious than that.

With that, I am happy to yield.

Mr. SPECTER. Mr. President, I have noted the chart. If you could put the chart back up, please.

Mr. CONRAD. Which one?

Mr. SPECTER. The last one. The one the Senator from North Dakota is talking about, the one that has the letter going to Senator ARLEN SPECTER. I received that letter. You may be surprised to know that I read that letter.

Mr. CONRAD. I am not surprised at all.

Mr. SPECTER. Senators receive lots of letters; relatively few are read.

My question to the Senator from North Dakota is, isn't it true that the two sentences which you left off following the chart you have read:

> There is some likelihood that the fund's revenue would be sufficient to meet those needs.

Isn't it true that that is the next sentence in the letter?

Mr. CONRAD. That is the next sentence in the letter. It is also true that the CBO analysis is very clear. They have not even attempted to put a cost behind a whole series of things that they have told us are very likely to cost money and increase the cost in a way that puts this fund over into insolvency.

I regret being in this situation. I have no desire to be involved in this debate, but we are here.

Mr. SPECTER. If the Senator will yield for another question.

Mr. CONRAD. I am happy to yield.

Mr. SPECTER. Isn't it true that following the sentence I just read, which was ''there is some likelihood that the fund's revenues would be sufficient to meet those needs,'' the next sentence reads:

> The final outcome cannot be predicted with great certainty.

Isn't that pretty much standard CBO, where they are making projections, and the thrust of what CBO has said and the Senator from North Dakota has cited is that you don't know ''with great certainty''? And isn't it true that in any projection of this sort you cannot have ''great certainty,'' that you don't even have that on proof for the death penalty in a first-degree murder case where it is only proof beyond a reasonable doubt? Isn't it true that CBO in the letter which they sent to me, dated August 25, made a projection that the cost would be between $120 and $150 billion, and the final line on page 8 was $132 billion which is well within the $140 billion figure?

Mr. CONRAD. Let me say to my colleague, the problem with that is, it doesn't include debt service. It doesn't include any additional amount for dormant claims. It doesn't include any additional amount for exceptional medical claims. It doesn't include any additional amount for claims of family members. CBO's estimate of the number of future cancer cases, we believe, is likely to be far too low. And CBO's estimate of the percent of nonmalignant claims that will receive a cash award is likely far too low.

I will go further in answering my colleague and say, when you reality test all of these things against what has happened in other funds like this, what we see is a consistent pattern, a very consistent pattern, that the initial estimates of how many claims there will be have been vastly understated.

Mr. SPECTER. Will the Senator yield for another question?

Mr. CONRAD. I am happy to.

Mr. SPECTER. As the Senator from North Dakota outlines the situation, CBO is incompetent, grossly incompetent. When the Senator from North Dakota shows different conclusions which his staff has reached, why wouldn't it be sensible to disband the Congressional Budget Office and just rely on his staff?

Mr. CONRAD. Because first, I say to my colleagues, those are his words and his conclusions. I have great respect for the Congressional Budget Office. I think the Senator knows that is the case.

I say this in seriousness. They have been very clear with us. They have said there are areas that are extremely difficult to predict. I accept that. It is very difficult to know how many dormant claims will come out of the woodwork. But to suggest there are not going to be any is unrealistic. To say that the number of future cancer claims is going to be 78,000, when the Tillinghast study that was paid for—not by the trial bar, not by the labor unions, not by any of the companies who are against this legislation—it was paid for by the Manville trust, they said they ran 14 different scenarios, and on average there were 133,000 new cancer claims. That one change, if they are right, increases this fund from being under water by $150 billion to being under water by almost $300 billion.

Finally, CBO's estimate of the percentage of nonmalignant claims—again, this is a hard thing to know—the Tillinghast study suggests that the range will be 10 to 40 percent. The midpoint of that range is 25 percent. If you think about it, people come in and they go to their doctor and you have a situation in which they might qualify for $25,000 or even $100,000. There is going to be a tremendous tendency to push them into those categories. It is human nature.

Again, if we reality test and go back to what has happened with these other funds, there is a very consistent pattern. Black lung, they said it was going to cost $3 billion. It cost $41 billion, 14 times as much.

I reluctantly come to the conclusion that this is not only under water by the amount my professional staff came to—they came to the conclusion it was $150 billion—I think it is entirely possible, even likely, that it is at least $295 billion under water, and it may be a multiple of that because the history of these things is so clear. When you stack up a bunch of money and you say, come and get it, guess what. People come and get it. All of a sudden there are all kinds of people coming forward and making a case that they are owed money.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I am somewhat querulous at the representation of the reluctance of the Senator from North Dakota to take the position which he has articulated. It is certainly obvious that he wasn't prepared to take the position, certainly obvious that this point of order, which was articulated this afternoon, has taken him by surprise. As I look at his elaborate charts, I think he has been anticipating this moment for some time, which doesn't necessarily impugn his comment that this is with reluctance, but it looks to me as if it is with calculation.

I am not unaware of the obvious facts of life—that colleagues of the Senator from North Dakota on the Democratic side of the aisle are not too fond of this bill. I am not unaware of that. I won't go into the reasons behind it, but it happens to be a fact.

Senator CONRAD is experienced and articulate. He has been chairman of the Budget Committee and ranking member for a long time and a distinguished Senator, after having been elected in 1986. I have served with him in this body for 20 years now. But when he talks about the Tillinghast study and when he projects what his own staff has done, he is undercutting the Congressional Budget Office which puts this $140 billion well within the ballpark. I put these letters in the RECORD—I have already done that today—where there is the comprehensive analysis of the Congressional Budget Office, in a letter to me, dated August 25, 2005, and a letter dated December 19, 2005. The long and short of the Congressional Budget Office analysis is that you are dealing in a range of $120 to $150 billion, and the point they struck on is 132, which is $8 billion under the 140.

When the Senator from North Dakota talks about dormant claims, he doesn't know how many dormant claims there are. Nobody does. You can't sit here in the year 2006 and speculate about how many other claims there are that he has articulated. We are not going to vote on this issue tonight. There aren't enough Senators in the Chamber to vote tonight. We are going to have a battle royal of charts by the time we revisit this issue a few days from now. We are going to have fancier charts than the Senator from North Dakota has. This whole bill may turn on who has the fanciest charts. We have some pretty good chart makers ourselves.

When the Senator from North Dakota says it will be terrible if, after companies have paid money into this trust fund, the trust fund becomes exhausted and they are asked to pay more money going back to court—well, the companies who committed to pay $140 billion understand that. Don't feel sorry for them. They know what they are getting into.

The reality is this: As Mr. Thomas Donahue, head of the U.S. Chamber of Commerce, has estimated, they are dealing with a $500 billion issue here, which can be accommodated with $140 billion because you cut out transaction costs, because when claimants only get 42 cents on the dollar, $140 billion may be enough, when it may cost as much as $500 billion otherwise. The economy has already suffered to the extent of $300 billion. So don't feel sorry for the companies. If the trust is terminated because we believe Senator BIDEN was right when he offered his amendment, which I supported in committee, that the claimant should not bear the risk if the fund was insufficient, that claimants ought to have the right to go back to court, that is the real safety valve if we are wrong.

But I don't think we are wrong, because we are going to have some fancy charts in a few days that will show the decline of asbestos claims. Senator SESSIONS is usually erudite, but he is especially erudite on that subject, as to how the claims have gone down and how the projections show that we will realistically being paying out less, certainly well within $140 billion.

I know Senator ENSIGN and Senator SESSIONS want to speak, so I will reserve some of my time.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. It was with great reluctance that I raised this budget point of order. I have a great deal of respect for Senator SPECTER and believe there is a great need to enact asbestos legal reform. There are companies that are shutting down. Many of the current tort claims are fraudulent. There are victims who are not getting the compensation they need and deserve.

The asbestos crisis is a serious problem that is threatening the economy of the United States. I recognize that. I voted for the Cornyn substitute because I believed it was a better answer to help the United States, our economy, and the victims. The Hippocratic oath, to first do no harm, has been mentioned on this floor before. Unfortunately, this Chamber has, on many occasions, done more harm than good. There is so much unpredictability in this bill that my fear is we are considering doing far more harm than the current system.

In the December 19 letter written to Senator SPECTER from the Congressional Budget Office, that Senator SPECTER and Senator CONRAD were just talking about, it says:

> There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs. There is also some likelihood that the fund's revenues would be sufficient.

So there is a significant likelihood that they won't be enough and some likelihood that they will. CBO's final conclusion is that they cannot predict the Budget impact of this bill with any degree of certainty. We have all seen the Congressional Budget Office or the Joint Tax Committee's work product. It is put together by hard-working folks who do their best to estimate. But I have not seen their estimates turn out to be accurate very often. This is because what they do is an incredibly inexact science. What they are trying to estimate in this bill is even less precise, less exact of a science than what they normally do. Just a given example with respect to JCT, I had a tax provision about a year and a half ago that had to do with bringing money from overseas back into this country. The CBO estimated it would result in $125 billion to $140 billion coming back into this country for investment. We thought that estimate was very low. It turns out we were right. To date over $350 billion has been reinvested in the United States, far in excess of the estimate.

Now if CBO's estimate is off on this particular legislation to the degree that the estimate was on my legislation, we are in serious trouble. That is why the CBO says, and the Democratic ranking member and the Republican Budget Committee chairman say, the point of order is valid and lies on this bill.

I think there are problems with this bill. One problem has to do with the medical criteria. It allows all kinds of people to recover without any degree of certainty as to how many future claimants there will be. The potential is huge. So despite my strong desire to fix this legislation, I believe that it cannot be fixed. I wish Senator CORNYN's substitute would have passed. I thought that was the right place to start working on solving the asbestos crisis. This body could have worked with that legislation. We could have made sensible changes to move that version forward. I don't think that the underlying piece of legislation can be fixed to provide any certainty. I don't see how we can ensure that the taxpayers do not end up with a huge mess that includes a great deal of debt for future generations.

When will the uncertainty occur? Will it be 8, 10, 12, or 15 years from now? I don't know. When the uncertainty comes, the debt that the taxpayers will be asked to shoulder could be enormous. And this bill could come due at exactly the wrong time. When we can least afford it. It will come due when the baby boomers start affecting Medicare, Medicaid, and Social Security. I respect the chairman of the Judiciary Committee a great deal for the work he has done, and I know he has tried to work in a bipartisan fashion and with many industries. They say politics makes strange bedfellows. This legislation proves that to be true. When the positions that we take on this bill or on the point of order do not break down by party lines and when liberals and conservatives are likewise divided, you know that this bill has strange dynamics. Industries that are normally allies are also split on this

bill. Trial lawyers are split on this bill. The reasons for such a split are a result of the uncertainty about this piece of legislation.

I appreciate the indulgence of my colleagues to allow me to speak for a few minutes. I look forward to the debate on this point of order. I am not sure exactly when we will vote on it, but I hope the point of order is sustained.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I serve as a member of the Budget Committee, and I am very pleased that Chairman GREGG put in language that allows for this budget point of order. I think it has a potential in many of our entitlement programs to help rein in abusive spending. But this is quite a different matter, I say to my distinguished colleague, Senator ENSIGN. He is such a terrific asset to this Senate, a great member of the Budget Committee, and is rightly engaged in trying to make sure we don't throw away money. I hope I have been an ally with him in that process.

But this is not Government money. This is money put up by the defendants who are paying out every day in judgments and lawsuits all over America. They have said: We are tired of having 58 percent of the money we pay out not get to the victims. Only 42 percent gets to the victims. We ought to create a system to allow victims to get more money, and we can have a little certainty as to what we pay out. So they agreed to pay into this fund. It is not the Government's money. It simply would be administered by the Department of Labor and, therefore, apparently the experts say it qualifies for this objection.

Let me say what happens if there is a shortage. What happens is the fund fails, the FAIR Act ends, and the plaintiffs get to go back to court, as they are today, and file their lawsuits. And the Government is not on the hook for that money, if there is a shortfall, No. 1.

Senator ENSIGN correctly guesstimated that more money would come back from foreign company profits into the United States with his tax relief bill than CBO did. Well, I would say this. I can guesstimate this. At one point, I represented plaintiffs. I see that the lead plaintiff lawyer in the history of this litigation has made an estimate on it and he has concluded there is plenty of money in this trust fund. Why is it likely, in my opinion, that there is enough money? People say there is not enough money here and it is going to fail. Why would I conclude that may not be so, that probably the fund may survive?

First, those who are putting money into it think it is enough. They would not subject themselves to this if they didn't think it would work. Second, CBO estimates it, and why would they estimate something in this nature? The reason is, somewhere in the 1970s—probably early 1970s—people became sensitized to the dangers of asbestos. They learned about it and crackdowns were undertaken to limit exposure. By the time 1980 got here, very strict rules were imposed—and that was 26 years ago—on how to handle asbestos, and exposure today is nil compared to what it was in the 1940s and 1950s, when people were unknowingly placed in positions where their health was destroyed as a result of massive exposure to asbestos fibers.

So it is obvious we have very little asbestos in our society today. If you even see somebody take asbestos out of a building today, they have masks on. All of this stuff is required by OSHA so that not one fiber will touch them. I think the likelihood is that we are going to see a continued decline in the asbestos claims and, as a result, I think it is possible—although I am certainly not an expert—that CBO, plaintiff lawyer Dicky Scruggs, and others are correct to conclude there is enough money in the fund to make it go.

There are a few things we need to do, however. We need to tighten up several of the medical criteria issues in this legislation so it will be sure to be successful. If we allow people to come into the fund because at one time or another they were exposed to some asbestos and they may contract some cancer or some other disease, and they can then claim they are, therefore, owed payment from the asbestos fund, we will never have enough money. The criteria we have today are far better than exist in the courts of America, but I think there needs to be some further tightening up, so that people who are sick from asbestos get paid and paid generously, but people who contract other diseases are not unjustly enriched by being paid out of a fund that is designated for people who have contracted disabilities and diseases as a result of asbestos. That is what is fair and just. That is what the fund should do. I hope we will be successful in reaching that.

I say again that I respect this point of order and I respect Senator ENSIGN for raising it. I point out this is indeed technical in the sense that the monies in this fund are not Federal Government money, and that if the fund runs out of money, the Government doesn't put in extra funds. It goes back into the litigation system and the plaintiffs continue their lawsuits in that fashion. Therefore, I think it would be wise under these circumstances to waive the Budget Act.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from Alabama for his comments, and I thank him for his extensive work on the committee, especially on this bill and especially for being on the floor so much this week and making such very strong arguments.

Our general counsel said to me in the corridor a few hours ago: JEFF SESSIONS has been around all the time. He is doing the work, and he used a four-letter word, a blank of a good job. I thank Senator SESSIONS for his work.

I wish to make a few comments in closing. We probably lost a few people who watch C–SPAN2, in any event. We certainly lost the Senators.

When the Senator from Nevada, Mr. ENSIGN, made a comment about unpredictability, there is one thing which is not unpredictable, and that is the suffering of the mesothelioma victims and the other victims from asbestos exposure. We talk a lot about mesothelioma—abbreviated to meso but that is a fatal disease which is caused by exposure to asbestos, and there are many gradations.

When we talk about unpredictability, we also ought to talk about predictability, about the tens of thousands of asbestos victims who are not being compensated today because their companies are bankrupt. There are tens of thousands of veterans who are not being compensated because they have no one to sue, even though they contracted illnesses from asbestos in the service of their country. We know of the 77 companies that have gone bankrupt, and more are on the way. We do know that predictability.

When the Senator from Nevada, Mr. ENSIGN, talks about estimates which are inexact, that is true. You can fault the Congressional Budget Office, but they do the best they can. We do know of the exact estimates, exact reality of the people who are suffering.

I believe the conclusion is that we have a duty to do something about that. When private companies are willing to put up $140 billion to compensate those victims of asbestos to save future bankruptcies, to save and eliminate and cure pain and suffering, we ought to take that.

We are not infallible. If we are wrong and we do not have enough money, they understand the consequence of going back to court. But I think it all points to the conclusion that we ought to pass this bill. We ought to consider a number of problems that we have in the floor debate and improve this bill. Then when we have come to the end of the rainbow on improving this bill as much as we can, we have to make a judgment: Is this bill, albeit not perfect, albeit not satisfying everybody's interests, better than the current chaotic system?

It has to be an enormously terrible bill to be worse than what we have today. That we know with certainty.

When you don't meet the Congressional Budget Office test of ''great certainty,'' that is all of life. Again, I analogize the standard for a death penalty in a criminal first-degree murder case is proof beyond a reasonable doubt, and in a civil case is more probable than not. And in our legislative judgment, we have done the most we can do in good faith to craft legislation

to meet a pressing problem, on which everyone agrees—the Senator who is advancing this point of order starts off conceding the terrible problems of asbestos and the pain and suffering to the victims and the terrible blight on the economy.

We will be debating this some more in the days ahead. I urge my colleagues to consider this issue very carefully because this is an issue which will kill the bill if this point of order is not defeated.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I am glad we have finally come to this portion of the argument because it reinforces a lot of things that have been said on this Senate floor over the last several days. It really comes down to a very basic question, the question as to whether this bill has been carefully crafted, whether it contains enough money in the trust fund to compensate the hundreds of thousands of asbestos victims who will have to count on it.

I have raised this issue repeatedly as to the $140 billion figure. There are reliable estimates of the actual cost over a 50-year period of time that almost double the amount of this trust fund, some even higher.

Senator KENT CONRAD on our side of the aisle is well respected as the ranking member of the Senate Budget Committee. His background as the head of taxes in his State of North Dakota, his own personal education and experience give him extraordinary credibility when it comes to issues of cost and issues involving accounting. He has made a convincing case to our caucus and to those who are listening on both sides of the aisle that the $140 billion that is part of this trust fund is not nearly adequate to the task.

Of course, if it isn't, what choices do we have? Senator SPECTER suggested on the floor the other day that if $140 billion wasn't enough to pay the victims, then we will pay the victims less. Today when I asked him a similar question, he said there are other options. You can say to these victims, if you have taken away their lawsuit that they worked on for a year or two, they have to stop their case in court. Then put them into this new trust fund system, and then the trust fund system fails them at some later date and doesn't pay them all they are entitled to, you can say to these victims: You can go back and start over in court now.

That is cold comfort to a family that is doing its best to take care of medical bills and lost wages and burial expenses for someone they love.

They have made a point over and over that under no circumstances will the Federal Government step in and make up the difference. I guess that verbal assurance is good, but we know there is always that possibility at some later date if this program doesn't work, if it fails, that someone will say we can't go back to the companies and ask them to put more money in the trust fund; we can't turn the victims loose; the right, compassionate thing to do is for the Federal taxpayers to step in.

It is not a farfetched argument, and it is one we have to consider as a possibility.

Now a Republican Senator steps forward, Senator ENSIGN of Nevada, raising a valid point of order, a point which goes to the heart of the funding of this bill and how it will pay out any benefits that might accrue in the future.

I would like to note some of the points that have been made during the course of this debate that I think are worthy of repetition and, for those following the debate for the first time, worthy of note.

The Congressional Budget Office has warned us of the significant likelihood that this asbestos trust fund will fail.

In a letter to the chairman, who spoke just before me, they wrote:

> The proposed trust fund might or might not have adequate resources to pay all valid claims. There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs.

So we are saying to hundreds of thousands of victims and their families: Trust us, we have created a trust fund, and with that trust fund, we will take care of your needs in the future. There is enough money, the proponents of this legislation say, but the Congressional Budget Office, looking at the victims, their injuries, and the compensation promised in this bill, came to a different conclusion. They concluded:

> There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims. . . .

As Senator SPECTER said on the floor the other day, one of the options, then, is to pay the victims less.

One of the reasons we need to take a look at this trust fund shortfall is when we look at the elements that are behind it, the claims and administrative expenses are likely to exceed contributions to the asbestos trust fund. The upfront claims will far exceed contributions.

Understand, people who are told they have to leave the courthouse and can no longer pursue a claim in court will have to turn to this trust fund. There is no place else to go. They will come in large numbers, but the amount that is being contributed to the fund by businesses is not going to match the demand. At the outset, claims will far exceed contributions, so the trust fund will have to borrow substantial amounts of money.

How much? The trust fund is supposed to be $140 billion. There are estimates that the interest and administrative costs may reach $52 billion, more than a third.

Small adjustments in amount and timing of assumptions quickly bankrupt the trust fund. If you guess wrong how many people are sick and how often they will file their claims and in what numbers, the estimates of the solvency of the trust fund could fail. It is unrealistic to assume that the trust fund will ever terminate.

The reasons for likely trust fund shortfalls: The Congressional Budget Office didn't count dormant claims that may surface once this trust fund is created, exceptional medical claims, or claims of family members of workers exposed to asbestos.

CBO's estimate of the number of future cancer claims is likely to be too low, according to consulting firms that have taken a look at their formulation.

The CBO's estimate of the percent of nonmalignant claims that will receive a cash award is likely to be very conservative.

Take a look at this chart. This chart tells the story. The red part of the graph is trouble. The red part of the graph reflects the liability, the amount that should be paid out that cannot be covered by the revenues coming into the trust fund.

So we make a promise to people. We say to them: Give up your claim in court, come to this trust fund and trust us. Yet when we project the needs of these victims against the revenues coming into the trust fund, we see a dramatic shortfall.

The fund stops paying claims in 2009. Claims filed in 2009 and all later years will not be paid. Too many claims, not enough revenue into the fund.

Let me indicate what this shortfall can mean. Mr. President, $150 billion—remember, this trust fund is funded at $140 billion—to fall short $150 billion is a substantial miscalculation. In present value terms, it means we would have to put $50 billion into the fund today to cover the $150 billion shortfall over the 30-year life of collections and 50-year life of disbursements under this trust fund. So this is a significant shortfall.

Keep in mind that we are saying to people: You cannot continue to go to court to be compensated; you have to turn to a trust fund with a hole in the pocket.

Let me tell you how badly others have miscalculated the number of asbestos cases that can be filed.

I remember Johns Manville, a big company, based in Colorado. They were one of the first firms hit because they sold a lot of asbestos products. When they went bankrupt, they tried to create a separate fund to pay off all the victims of Johns Manville products, their workers, and others. They set aside money, and in order to set aside a proper amount they had to speculate and give some calculation about how many people would be making claims for asbestos injuries.

The original range of claims went from 50,000 to 200,000. That is what they said they would ultimately have to cover. The claims received through the summer of last year were almost 700,000. They had estimated a high of 200,000. Almost 700,000.

The recent estimate of the total number that could be paid is 2.1 million. So how can those who have written this bill say with any degree of reasonable certainty that we know how many people were exposed to asbestos at some point in their lives and will later come and make a claim? Because for many people, they will live a long time with asbestos fibers in their lungs, ticking timebombs that could go off 10, 20, 30, 40 or 50 years after exposure. There could be anyone on the Senate floor today harboring in their lungs asbestos fibers. Those fibers may or may not cause a problem. We just don't know because for years no one paid close attention.

Many people were told it is safe. Expose yourself to asbestos, it can't be a problem. Some were misled. Some operated out of ignorance. But the fact remains. Johns Manville, in calculating its liability for its own trust fund, blew it. Instead of 200,000, it was 2.1 million.

(Mr. COBURN assumed the Chair.)

Mr. DURBIN. This is not the only case of miscalculation. For coal miners, we created a program called black lung. I know it pretty well because I have met a lot of coal miners suffering from it in my home State of Illinois. Exposure to coal dust, inhalation of coal dust causes lung problems, so we tried to set up a separate fund for these miners to take care of it. We estimated it was going to cost us about $3 billion to compensate all these coal miners. Our actual black lung payments through 2004 are $41 billion.

So if some of us come to this floor skeptical of this trust fund, skeptical of this $140 billion, and wonder if we can say to victims in good conscience, we are going to stop your going into court and force you into a trust fund which will pay you, when we know full well how many times we failed in estimating how much these trust funds need to have banked away, I think that really goes to the heart of this whole issue.

Also, a critical element here is why we are on this bill today. People who are following this Senate debate maybe tune in to watch C–SPAN, follow the debate in other places, and some will say to them: What is the Senate talking about today? They may report: Well, it is about asbestos.

Sure, it is an important issue. But my guess is most families across America would probably step back and say: I sure wish they would talk about the cost of health insurance for families, businesses, and individuals or maybe the cost of this heating bill I have in my hand, where the cost of heating this home has doubled since last year or maybe they ought to talk once in a while about this Medicare prescription Part D Program which has become a mess for seniors across America. Why aren't they talking about pension security when our neighbors next door worked a lifetime at that plant, and then the plant went into bankruptcy and dumped the pension, and now this man and his wife, who thought they had done everything right in life, don't have retiree benefits and don't have health benefits? Why aren't they talking about those things?

No, the Senate is engaged in a debate on the asbestos bill which I have characterized as a clash of the special interest titans—huge companies on both sides, for and against asbestos; insurance companies for and against this bill; trial lawyers opposing the bill; others supporting the bill; labor unions by and large opposing the bill with two or three exceptions. Why are we on this bill today? Because what drives this debate is what is at stake. What is at stake is not just recovery for hundreds of thousands of asbestos victims but a lot of money.

Earlier today, a Republican Senator, Mr. BENNETT of Utah, came to the Chamber with two charts which I thought really told the story. I don't have those charts, but I have summaries here. What Senator BENNETT pointed out is that for about 10 of the largest companies affected by this bill, this bill is a windfall. It is a windfall in this respect: They estimated how much each of these companies would have been required to pay out to asbestos victims if they went through the regular court process, and then they estimated how much the same companies would pay into the trust fund we are talking about today. And the difference is startling. For these 10 companies, the difference is $20 billion. In other words, if they paid the claims of victims in court, they would have paid $20 billion more than the amount they paid into the trust fund.

One of the companies which has been publicized recently is U.S. Gypsum. The reason people talk about it is they recently did a public filing, and here is what they said. They said: If we are held liable in court for all the asbestos claims we think could be filed against us, we believe we would pay out something in the range of $4 billion. But if this bill passes, we will be required to pay into the trust fund $797 million.

What a dramatic difference. So for this company, the passage of this bill is worth more than $3 billion. That is the reason we are here.

We are here because so many of these corporations know that if this bill passes, their exposure to liability is reduced dramatically. The obvious question is, If they don't pay the $20 billion to victims, who will make up the difference? And that is the point made by Senator BENNETT earlier in the day. He gave the names of eight or nine other companies, much smaller, some of which have paid small amounts to asbestos victims in court cases in settlements, some which have paid none. In each case, these companies had to step up and pay substantial amounts of money, ranging from $75 million to $578 million.

So here is one of the largest companies, U.S. Gypsum, with the largest exposure—$4 billion—paying about $800 million into the fund.

And then you take a look at a company named Foster Wheeler, a pretty well-known company. They will pay out $80 million in their experience in asbestos over the next 10 years. That is their estimate, I should say, $80 million. And they are asked to pay $578 million into the fund? Where is the fairness in that, that these companies with little or no exposure have to pay so much money while companies with so much exposure pay dramatically less? That is the fundamental unfairness in what we are discussing in the Senate here this evening.

I might also add, many of us are struggling to try to absorb this bill because this morning, as we had expected, the chairman filed a new version of the bill. We had been debating this for months, maybe years, and this morning comes a new version which, according to the chairman, makes 47 significant changes in the first bill we were handed.

Think about that for a moment. When you consider how many lives and how many families are dependent on our doing the right thing in the passage of this legislation, we are rushing to pass a trust fund that will take these families and individuals out of the courthouse into a trust fund.

The Presiding Officer is a medical doctor from the State of Oklahoma. We may not see eye to eye on a lot of things, but I listened as he speculated on what the exposure might be on this trust fund. He has made some statements as to whether something should be covered or should not be covered. But what he said, at least in the course of the Judiciary Committee hearing, is that there is some real uncertainty about how many people will be filing claims and what those claims will be worth.

That is what troubles me. I think there is more we can do to make this system more fair. First don't abandon America's court system. Don't abandon our system of justice. Don't conclude that 200 years of a court system in America is not proof positive that it is a valuable part of our American heritage and a valuable part of America's life. Start with our court system.

If there are abuses, and I will concede there are abuses, let's deal with them. I will tell you point blank, based on my legal education of long ago, if you want to recover for injury in court, you must have injuries or damages. Simple exposure to asbestos, which could include all of us, is not enough. You have to show some injuries or damages before you recover. That is why, in our State of Illinois, we set up what we call the pleural registry, and that says if you have been exposed but you are not sick, no symptoms, come in and sign up. If you don't contract an illness or something that is fatal, then you will have escaped any problem related to asbestos. If you do, you can come through the court system and you will

not be held back by any statute of limitations.

Some have argued about where lawsuits should be brought. That is a valid issue. We should debate it. Some have argued about what attorney's fees should be. That is a valid issue. But there have been some misstatements on the floor about attorney's fees, and I wish to clarify them. Some have said on the floor that 58 percent of all the money generated in these asbestos verdicts and settlements goes to lawyers. Technically, that is true, but look more closely: 31 percent is legal fees claimed by the victims' attorneys; 28 percent or 27 percent is from defense attorneys.

I practiced law for a number of years, and it was not uncommon for a person of modest means to come in my office and say: I have been injured, I need to file a lawsuit. And you would say to them: I know you can't put up thousands of dollars to pay for all the time I have to put in as a lawyer to get ready to go to court, argue the case, do everything lawyers do, so I will take it on a contingent fee basis. If you win, I win. If you lose, I lose.

For many people, that is the only way they can come to a courtroom. They can't put up $10,000, $20,000, $30,000 to pay for a team of lawyers to prepare a case. They just don't have it. So contingent fee cases are all across America.

If you file a case in Workers' Compensation in Illinois, you may pay, I guess—it has been a few years since I have done it—around 20 percent in attorney's fees. An ordinary case for personal injury might be a third. That is usually what the lawyer's fees are when it is a contingent fee basis. To say that asbestos victims are paying 31 percent in attorney's fees doesn't suggest to me that there is a built-in scandal here; it suggests that is fairly ordinary and routine in the legal practice.

It is interesting to note that for every dollar paid out, the defense—companies that are hiring defense attorneys—is receiving 28 cents on the dollar. That is an indication to me, with 30 cents and 28 cents, the victims' attorneys and the defense attorneys are comparable amounts. But having said that, if there is a discussion about how to make those attorney's fees more fair, I am willing to sit down and work on it.

I also believe we ought to look at the States that have already stepped forward and said: We are not going to abandon our courts, we are not going to abandon our system of justice, we will make changes so it works better—States such as Florida, Texas, Ohio. They give us good guidance. Senator CORNYN of Texas gave us an amendment—and may come back with another version of it soon—which addresses that particular approach. I would feel a lot more confident in making certain that our court system worked a little better than abandoning our court system to set up a trust fund that is not paid for.

I hope my colleagues in the Senate on both sides of the aisle will seriously consider the point of order raised today by my Republican colleague, Senator ENSIGN of Nevada. It is a valid point of order. It goes to the issue as to whether $140 billion is adequate, whether the payout of this money is consistent with the budget rules of the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I think the first time I heard the figure 31 to 27 was by Senator DURBIN. It didn't surprise me, really. The asbestos defendant companies are hiring some of the best lawyers in America, and they charge them big fees. It is part of what they cost. If it is 31 percent for the defendants' attorneys and 27 percent for the plaintiffs' attorneys, I am not really surprised. I had no idea precisely how it would come out, but I am not surprised at that.

What I would say to my colleagues here in the Senate, however, is that it is not disputed that 58 percent of the money paid out by the defendants is going to lawyers and not to the victims. It goes to the plaintiff, and the plaintiff has to pay almost half of the judgment to his lawyer, so he or she doesn't get to keep all the money. He has to pay this big lawyer fee. Plus the corporation is being sued and has 31 percent of what he is paying out going to his own lawyers. So who is winning here? This is really indisputable. Who is winning here? The legal system is grinding up people and companies in an extraordinary way which just has to be ended. We have to work our way through this.

It is so great to have a Presiding Officer, a medical doctor, try to help us deal with some of the medical criteria.

There still remains a great weakness in this bill in a number of things.

My colleagues present the most contradictory arguments. One time they are in here saying we have to have it in the Department of Labor, or we have to pay more and more and more, and then they come in and make the argument that these funds traditionally get out of control.

When Senator COBURN and Senator CORNYN propose an amendment that tightens the medical criteria a little bit, they object and vote against them.

This would be sort of amusing if it wasn't such a serious thing.

Some of my colleagues have been saying that the fund is clearly going to fail because we underestimate the number of claims. Claims are not the real problem. This bill is going to help with the claims. I don't know how many claims this bill will reduce—not quite as much as the Cornyn bill did because it was better criteria, in my view; more realistic, according to medical data and science.

But under this bill, I would guess that 40 percent to 50 percent of the current claims are not legitimate.

It prohibits and bars claims when a person is not sick. The latest estimates are that half the claims being filed today are by people who are not sick.

If you have asbestos exposure and you can see some scarring in a person's lungs, the chance of that person getting sick are enhanced. And under this legislation they don't get paid right then. But if they are monitored medically, and if they become sick, they will get compensation.

That is the best way to handle that, for sure.

If you get sick, you simply walk in with your doctor and with a report that says what the degree of illness is, another doctor will probably check that, and if it is verified, they will write you a check. You do not have to give a third, a fourth, or 40 percent to a plaintiffs' lawyer, and a defendant corporation isn't having to hire lawyers to defend against the lawsuit.

My colleague, Senator DURBIN, is so eloquent and is a skilled lawyer. He made an argument that I suppose people listening probably took a bit of an interest in and wondered about. He declared that the 10 companies with the most exposure would pay substantially less under this trust fund than under a court process—$20 billion less.

Let me say two things about that.

It is not a question of how much they pay out, it is how much gets to the victims, people who are sick. That is the most important question. How do we get more money to people who are sick without having to have the whole business collapse?

Second, he did not point out the fact about these tier I companies. These are the companies that are in bankruptcy. They are in bankruptcy already as a result of this litigation. There is only so much a company can carry. If you kill off the company, what do you do then? How can anybody be paid?

You can't destroy the companies totally and take them out of business if you expect them to continue to pay, for 25 years, people who become sick.

That is why they already have protections in bankruptcy, and they are paying through the bankruptcy court less than they would be otherwise. To keep these companies in the game, keep them alive, we give them a certain amount they have to pay depending on how big the companies are. And some are big and can pay a sizable amount—and they will pay a substantial amount of money, but they won't be going bankrupt.

A lot of people do not understand this. If the company that is responsible for exposing you to asbestos no longer exists, whom do you sue? If there are two people who have been exposed to asbestos, both of them have serious lung damage and it reduces their capacity to function, let us say both of them are entitled to a $200,000 judgment. One of them wants to sue a company that is gone, no longer exists, the company that is responsible, you would say: Well, they will be able to recover somewhere. No. If the company no longer exists that exposed him, that

person won't collect $200,000; he won't collect a dime. But the other one happens to have been exposed by a company that is still in existence and has money, or insurance, they can collect the full $200,000.

That is happening today.

To make it crystal clear, I will ask you about an automobile accident. Have you ever heard of people who have been run into, have an automobile accident as a result of a drunk driver who is uninsured and somebody is injured, they say, I am going to sue them and I am going to get a $1 million verdict. You know what the lawyer says? Does the defendant have any money? Well, no. Does he have any insurance? No. What does he have? He has a rental, that is the only car he had, it is a piece of junk, and it is not worth anything. The lawyer says: If you get a $50 million verdict, you will not collect one dime. It is not worth the trouble to go to court over.

This happens in America. It is the way the law is.

But this trust fund says whether the company that exposed them and injured them is in existence or is not, they will be able to recover too out of a uniform trust fund. And companies that are bankrupt will be able to pay at a level that allows them to stay in business and continue to pay into the trust fund.

Seventy-seven companies are already bankrupt. They say: Well, we are going to make more companies pay. We are going to make more companies pay than are supposed to pay—somehow make them pay more than they are supposed to pay. But let me say this to my colleagues or anyone who may be listening. Now there are 8,400 companies being sued, being dragged in, and many of them have the most tenuous exposure.

I remember very vividly a man coming into my office. He bought a company that at one time sold asbestos and had not sold asbestos for many years before he bought it. He buys it and makes it a part of his company. The next thing he knows, all of them are beginning to go at that little company as a defendant which he bought, and he is liable for it. Money is being sucked out of his whole, big company and going into this fund.

These companies realize that. They may not be the main target today, but the clever and sophisticated and determined plaintiff lawyers have demonstrated a capacity to add on companies and make them liable more than they were before. Many companies are willingly prepared to pay into this fund so they won't be sued for the rest of their existence; so when they go to a stockholders' meeting and write a prospectus which shows what their liabilities are, they can say exactly what their asbestos liability is rather than being required to list 5,000 asbestos cases filed against them.

Somebody may say: How much is that going to cost? Well, we don't know. Well, could it be $1 million each? Well, we do not know. We don't think so. I may not want to invest in your company. I may not want to buy stock in your company. I have to have some more certainty about how much you are going to pay.

That is one of reasons we are trying to pass this trust fund, so the defendant companies can say to their stockholders and would-be investors and those who would contract with them what their future financial prospects are.

Isn't that a good public policy thing to try to do?

Veterans, if we don't pass this bill, you are not going to be able to recover. Most of them have nobody to sue. You can't sue the Federal Government for this. A lot of other people already have found that the people they are entitled to sue by law either have no money or no longer exist.

I will say this: I think the legislation is headed in the right direction. I believe that Senator COBURN is correct. We need to watch this criteria. If we get that wrong, it can take this bill down. A doctor knows that thousands of Americans every day who are not exposed to asbestos get colorectal cancer or get throat cancer or get prostate cancer.

If somehow anybody who had any exposure to asbestos is not going to be able to come into the fund and demand that the fund pay them for cancer which they may have been genetically predisposed to, whether or not they have been exposed to asbestos, we have done something that is dangerous and the fund may not be able to survive.

The Congressional Budget Office says this fund, as rewritten, will survive. But I believe it could be tightened up to make it better. I believe that the fund has a chance to be viable throughout its entire life and fulfill its promise because we have done a better job in recent years in dealing with exposure to asbestos.

There has been a sea of change in what has happened. In earlier days, the companies did not warn the people who would be using their product about how dangerous it was. Even after they knew it was dangerous, they didn't warn them. Now everybody is warned. For 30 years, maybe 35 years, there has been exceedingly great care utilized when asbestos is about. You see people with masks on and all of that.

I think it is logical to assume that we will continue to see a decline in the claims and also this bill will take out the unjustified claims. Claims of people who have not been given any disability or sickness, even though they have been exposed and they get sick, they will be paid. If they don't get sick, they won't be paid.

That will reduce a lot of the claims. It will come down to people with legitimate illness. If a person comes in with that most grievous disease, mesothelioma, which is generally a fatal disease, this would entitle them to claim $1.1 million dollars, be able to have half of it paid in 30 days and the other half in 6 months.

Today, they do not know what they will get, and most of the claimants are deceased before money is recovered.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2747, AS MODIFIED

Mr. FRIST. Mr. President, I ask unanimous consent that amendment No. 2747 be modified with the change at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2747), as modified, is as follows:

On the appropriate page, insert the following and number accordingly:

GUIDELINES.—In determining which defendant participants may receive inequity adjustments the Administrator shall give preference in the following order:

(A) Defendant participants that have significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80 percent or more of their available primary insurance limits for asbestos claims remains available.

(B) Defendant participants where, pursuant to the guidance set forth in section 404(a)(2)(E), 75% of its prior asbestos expenditures were caused by or arose from premise liability claims.

(C) Defendant participants who can demonstrate that their prior asbestos expenditures is inflated due to an unusually large, anomalous verdict and that such verdict has caused the defendant to be in a higher tier.

(D) Any other factor deemed reasonable by the Administrator to have caused a serious inequity.

In determining whether a company has significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80% or more of their available primary insurance limits for asbestos claims remains available, the Administrator shall inquire and duly consider:

(1) The defendant participant's expected future liability in the tort system and accordingly the adequacy of insurance available measured against future liability.

(2) Whether the insurance coverage is uncontested, or based on a final judgment or settlement.

MORNING BUSINESS

Mr. FRIST. I ask unanimous consent there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR SALAZAR'S MOTHER

Mr. REID. Mr. President, this afternoon, I rise to extend the thoughts and prayers of the entire Senate to Senator KEN SALAZAR who left the Capitol last night to be with his mother, Emma.