

107TH CONGRESS
1ST SESSION

H. R. 3444

To amend title 39, United States Code, to direct the Postal Service to adhere to an equitable tender policy in selecting air carriers of nonpriority bypass mail to certain points in the State of Alaska, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 11, 2001

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 39, United States Code, to direct the Postal Service to adhere to an equitable tender policy in selecting air carriers of nonpriority bypass mail to certain points in the State of Alaska, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ALASKAN BYPASS MAIL.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Alaska Bypass Mail, Passenger and Freight Stability Act
6 of 2001”.

1 (b) FINDINGS.—Congress makes the following find-
2 ings:

3 (1) The State of Alaska is the largest State in
4 the Union and has a very limited system of roads
5 connecting communities.

6 (2) Alaska has more pilots per capita than any
7 other State in the Union.

8 (3) Pilots flying in Alaska are often the most
9 skilled and best-prepared pilots in the world.

10 (4) Air travel within the State of Alaska is
11 often hampered by severe weather conditions and
12 treacherous terrain.

13 (5) The United States Government owns nearly
14 $\frac{2}{3}$ of Alaska's landmass, including large tracts of
15 land separating isolated communities within the
16 State.

17 (6) Such Federal ownership has inhibited the
18 ability of Alaskans to build roads connecting isolated
19 communities.

20 (7) Most communities and a large portion of
21 the population within the State can only be reached
22 by air.

23 (8) The vast majority of food items and every-
24 day necessities destined for these isolated commu-

1 nities and populations can only be transported
2 through the air.

3 (9) The Intra-Alaska Bypass Mail system, cre-
4 ated by Congress and operated by the United States
5 Postal Service under section 5402 of title 39,
6 U.S.C., with input from the Department of Trans-
7 portation, connecting hundreds of rural and isolated
8 communities within the State, is a critical piece of
9 the Alaska and the national transportation system.
10 The system is like a 4-legged stool, designed to—

11 (A) provide the most affordable means of
12 delivering food and everyday necessities to these
13 rural and isolated communities;

14 (B) establish a system whereby the Postal
15 Service can meet its obligations to deliver mail
16 to every house and business in America;

17 (C) support affordable and reliable pas-
18 senger service; and

19 (D) support affordable and reliable
20 nonmail freight service.

21 (10) Without the Intra-Alaska Bypass Mail
22 system—

23 (A) it would be difficult and more expen-
24 sive for the Postal Service to meet its obligation

1 of delivering mail to every house and business
2 in America; and

3 (B) food, medicine, freight, and everyday
4 necessities and passenger service for these rural
5 and isolated communities would cost several
6 times the current level.

7 (11) Attempts by Congress to support pas-
8 senger and nonmail freight service in Alaska using
9 the Intra-Alaska Bypass Mail system have yielded
10 some positive results, but some carriers have been
11 manipulating the system by carrying few, if any,
12 passengers and little nonmail freight while earning
13 most of their revenues from the carriage of nonpri-
14 ority bypass mail.

15 (12) As long as the Federal Government con-
16 tinues to own large tracts of land within the State
17 of Alaska and forbids the building of roads across
18 these lands to connect isolated communities, it is in
19 the best interest of the Postal Service, the residents
20 of Alaska and the United States—

21 (A) to ensure that the Intra-Alaska Bypass
22 Mail system remains strong, viable, and afford-
23 able for the Postal Service;

1 (B) to ensure that residents of rural and
2 isolated communities in Alaska continue to have
3 affordable, reliable, and safe passenger service;

4 (C) to ensure that residents of rural and
5 isolated communities in Alaska continue to have
6 affordable, reliable, and safe nonmail freight
7 service;

8 (D) to encourage that intra-Alaska air car-
9 riers move toward safer, more secure, and more
10 reliable air transportation under the Federal
11 Aviation Administration's guidelines and in ac-
12 cordance with part 121 of title 14, Code of
13 Federal Regulations, where such operations are
14 supported by the needs of the community; and

15 (E) that Congress make changes to the
16 Intra-Alaska Bypass Mail system to encourage
17 intra-Alaska air carriers to begin operating
18 under part 121, where applicable, and to ensure
19 that the Intra-Alaska Bypass Mail system con-
20 tinues to be used to support substantial pas-
21 senger and nonmail freight service.

22 (c) SELECTION OF CARRIERS OF NONPRIORITY BY-
23 PASS MAIL TO CERTAIN POINTS IN ALASKA.—

24 (1) DEFINITIONS.—Section 5402 of title 39,
25 United States Code, is amended—

1 (A) by striking subsection (e);

2 (B) by redesignating subsections (a)
3 through (d) as subsections (b) through (e), re-
4 spectively; and

5 (C) by inserting before subsection (b), as
6 redesignated, the following:

7 “(a) In this section—

8 “(1) the term ‘acceptance point’ means the
9 point at which nonpriority bypass mail originates;

10 “(2) the terms ‘air carrier’, ‘interstate air
11 transportation’, and ‘foreign air transportation’ have
12 the meanings given such terms in section 40102(a)
13 of title 49, U.S.C.;

14 “(3) the term ‘base fare’ is the fare paid to the
15 carrier issuing the passenger ticket or carrying
16 nonmail freight which may entail service being pro-
17 vided by more than 1 carrier;

18 “(4) the term ‘bush carrier’ means a carrier op-
19 erating aircraft certificated within the payload ca-
20 pacity requirements of subsection (g)(1)(D)(i) on a
21 city pair route;

22 “(5) the term ‘bush passenger carrier’ means a
23 passenger carrier that meets the requirements of
24 subsection (g)(1)(D)(i) and provides passenger serv-
25 ice on a city pair route;

1 “(6) the term ‘bush route’ means an air route
2 in which only a bush carrier is tendered nonpriority
3 bypass mail between the origination point, being ei-
4 ther an acceptance point or a hub, as determined by
5 the Postal Service, and the destination city;

6 “(7) the term ‘city pair’ means service between
7 an origin and destination city pair;

8 “(8) the term ‘composite rate’—

9 “(A) means a combination of mainline and
10 bush rates paid to a bush carrier for a direct
11 flight from an acceptance point to a bush des-
12 tination beyond a hub point; and

13 “(B) shall be based on the mainline rate
14 paid to the hub, plus the lowest bush rate paid
15 to bush carriers in the State of Alaska;

16 “(9) the term ‘equitable tender’ means the
17 practice of the Postal Service of equitably distrib-
18 uting mail on a fair and reasonable basis between
19 those air carriers that offer equivalent services and
20 costs between 2 communities in accordance with the
21 regulations of the Postal Service;

22 “(10) the term ‘existing mainline carrier’ means
23 a mainline carrier (as defined in this section) that
24 on January 1, 2001, was—

25 “(A) certified under part 121;

1 “(B) qualified to provide mainline nonpri-
2 ority bypass mail service; and

3 “(C) actually engaged in the carriage of
4 mainline nonpriority bypass mail through
5 scheduled service within the State of Alaska;

6 “(11) the term ‘mainline carrier’ means a car-
7 rier operating aircraft under part 121 and certifi-
8 cated within the payload capacity requirements of
9 subsection (g)(1)(D)(ii) on a given city pair route;

10 “(12) the term ‘mainline route’ means a city
11 pair in which a mainline carrier is tendered nonpri-
12 ority bypass mail;

13 “(13) the term ‘new’, when referencing a car-
14 rier, means a carrier that—

15 “(A) meets the respective requirements of
16 subsection (g)(1)(D) (i) or (ii), depending on
17 the type of route being served and the size of
18 aircraft being used to provide service; and

19 “(B) began providing nonpriority bypass
20 mail service on a city pair route within the
21 State of Alaska after January 1, 2001;

22 “(14) the term ‘part 121’ means part 121 of
23 title 14, Code of Federal Regulations;

24 “(15) the term ‘part 135’ means part 135 of
25 title 14, Code of Federal Regulations;

1 “(16) the term ‘scheduled service’ means—

2 “(A) flights are operated in common car-
3 riage available to the general public under a
4 published schedule;

5 “(B) flight schedules are announced in ad-
6 vance in systems specified by the Postal Serv-
7 ice, in addition to the Official Airline Guide or
8 the air cargo equivalent of that Guide;

9 “(C) flights depart whether full or not; and

10 “(D) customers contract for carriage sepa-
11 rately on a regular basis;

12 “(17) the term ‘Secretary’ means the Secretary
13 of Transportation;

14 “(18) the term ‘121 bush passenger carrier’
15 means a bush passenger carrier providing passenger
16 service on bush routes under part 121;

17 “(19) the term ‘121 mainline passenger carrier’
18 means a mainline carrier providing passenger service
19 through scheduled service on routes under part 121;

20 “(20) the term ‘121 passenger aircraft’ means
21 an aircraft flying passengers on a city pair route
22 that is operated under part 121;

23 “(21) the term ‘121 passenger carrier’ means a
24 passenger carrier that provides scheduled service
25 under part 121;

1 “(22) the term ‘135 bush passenger carrier’
2 means a bush passenger carrier providing passenger
3 service through scheduled service on bush routes
4 under part 135; and

5 “(23) the term ‘135 passenger carrier’ means a
6 passenger carrier that provides scheduled service
7 under part 135.”.

8 (2) REQUIREMENTS FOR SELECTION.—Section
9 5402(g)(1) of title 39, United States Code, is
10 amended—

11 (A) in the matter preceding subparagraph
12 (A), by inserting after “in the State of Alaska,”
13 the following: “shall adhere to an equitable ten-
14 der policy within a qualified group of carriers,
15 in accordance with the regulations of the Postal
16 Service, and”; and

17 (B) by striking subparagraph (C) and in-
18 serting the following:

19 “(C) exhibit substantial adherence to such
20 scheduled flights; and”.

21 (3) APPLICATION OF RATES.—Section
22 5402(g)(2) of title 39, United States Code, is
23 amended—

24 (A) by striking “and” at the end of sub-
25 paragraph (A);

1 (B) by striking the period at the end of
2 subparagraph (B) and inserting a semicolon;
3 and

4 (C) by adding at the end the following:

5 “(C) shall offer a bush passenger carrier pro-
6 viding service on a route between an acceptance
7 point and a hub not served by a mainline carrier the
8 opportunity to receive equitable tender of nonpriority
9 bypass mail at mainline service rates when a main-
10 line carrier begins serving that route if the bush pas-
11 senger carrier—

12 “(i) meets the requirements of paragraph
13 (1);

14 “(ii) provided at least 20 percent of the
15 passenger service (as calculated in subsection
16 (h)(5)) between such city pair for the 6 months
17 immediately preceding the date on which the
18 bush carrier seeks such tender; and

19 “(iii) continues to provide not less than 20
20 percent of the passenger service on the city pair
21 while seeking such tender;

22 “(D) shall offer bush passenger carriers and
23 nonmail freight carriers the opportunity to receive
24 equitable tender of nonpriority bypass mail at main-
25 line service rates from a hub point to a destination

1 city if the city pair is also being served by a main-
2 line carrier and—

3 “(i) for a passenger carrier—

4 “(I) the carrier meets the require-
5 ments of paragraph (1);

6 “(II) the carrier provided at least 20
7 percent of the passenger service (as cal-
8 culated in subsection (h)(5)) on the city
9 pair route for the 6 months immediately
10 preceding the date on which the carrier
11 seeks such tender; and

12 “(III) the carrier continues to provide
13 not less than 20 percent of the passenger
14 service on the route; or

15 “(ii) for a nonmail freight carrier—

16 “(I) the carrier meets the require-
17 ments of paragraph (1); and

18 “(II) the carrier provided at least 25
19 percent of the nonmail freight service (as
20 calculated in subsection (i)(6)) on the city
21 pair route for the 6 months immediately
22 preceding the date on which the carrier
23 seeks such tender;

24 “(E)(i) shall not offer equitable tender of non-
25 priority mainline bypass mail at mainline rates to a

1 bush carrier operating from an acceptance point to
2 a hub point, except as described in subparagraph
3 (C); and

4 “(ii) may tender nonpriority bypass mail at
5 bush rates to a bush carrier if the Postal Service de-
6 termines that—

7 “(I) the bush carrier meets the require-
8 ments of paragraph (1);

9 “(II) the service to be provided on such
10 route by the bush carrier is not otherwise avail-
11 able through direct mainline service; and

12 “(III) tender of mail to such bush carrier
13 will not decrease the efficiency of nonpriority
14 bypass mail service (in terms of payments to all
15 carriers providing service on the city pair route
16 and timely delivery) for the route;

17 “(F) may offer tender of nonpriority bypass
18 mail to a passenger carrier from an acceptance point
19 to a destination city beyond a hub point at a com-
20 posite rate if the Postal Service determines that—

21 “(i) the carrier provides passenger service
22 in accordance with the requirements of sub-
23 section (h)(2);

1 “(ii) the carrier qualifies under subsection
2 (h) to be tendered nonpriority bypass mail out
3 of the hub point being bypassed;

4 “(iii) the tender of such mail will not de-
5 crease efficiency of delivery of nonpriority by-
6 pass mail service into or out of the hub point
7 being bypassed; and

8 “(iv) such tender will result in reduced
9 payments to the carrier by the Postal Service
10 over flying the entire route; and

11 “(G) notwithstanding subparagraph (F), shall
12 offer equitable tender of nonpriority bypass mail to
13 a bush carrier on a route from an acceptance point
14 to a bush destination at a composite rate if—

15 “(i)(I) for a passenger carrier, the carrier
16 receiving the composite rate provided 20 per-
17 cent of the passenger service on the city pair
18 route for the 12 months immediately preceding
19 the date on which the carrier seeks tender of
20 such mail; or

21 “(II) for a nonmail freight carrier, the car-
22 rier receiving the composite rate provided at
23 least 25 percent of the nonmail freight service
24 for the 12 months immediately preceding the

1 date on which the carrier seeks tender of such
2 mail; and

3 “(ii)(I) nonpriority bypass mail was being
4 tendered to a passenger carrier or a nonmail
5 freight carrier at a composite rate on such city
6 pair route on January 1, 2000; or

7 “(II) the hub being bypassed was not
8 served by a mainline carrier on January 1,
9 2000.

10 The tender of nonpriority bypass mail under subparagraph
11 (G) shall be on an equitable basis between the qualified
12 carriers that provide the direct service on the city pair
13 route, based on the volume of nonpriority bypass mail on
14 such route.”.

15 (4) SELECTION OF CARRIERS TO HUB
16 POINTS.—Section 5402(g) of title 39, United States
17 Code, is amended by adding at the end the fol-
18 lowing:

19 “(4)(A) Except as provided under subparagraph (B)
20 and paragraph (5), the Postal Service shall select only ex-
21 isting mainline carriers to provide nonpriority bypass mail
22 service between an acceptance point and a hub point in
23 the State of Alaska.

24 “(B) The Postal Service may select a carrier other
25 than an existing mainline carrier to provide nonpriority

1 bypass mail service on a mainline route in the State of
2 Alaska if—

3 “(i) the Postal Service determines (in accord-
4 ance with criteria established in advance by the
5 Postal Service concerning schedule completion,
6 schedule adherence, and complaints related to mail
7 shipment damage, delay, or loss) that the mail serv-
8 ice between the acceptance point and the hub point
9 is deficient and provides written notice of the deter-
10 mination to existing mainline carriers to the hub
11 point; and

12 “(ii) after the 30-day period following issuance
13 of notice under clause (i), the Postal Service deter-
14 mines that deficiencies in service to the hub point
15 have not been eliminated.

16 “(5)(A) The Postal Service shall offer equitable ten-
17 der of nonpriority bypass mail to a new 121 mainline pas-
18 senger carrier entering a mainline route in the State of
19 Alaska, if that carrier—

20 “(i) meets the requirements of subsection
21 (g)(1)(D)(ii); and

22 “(ii) has provided at least the same number of
23 insured passenger seats as the number of available
24 passenger seats being provided by the mainline pas-
25 senger carrier providing the greatest number of

1 available passenger seats on that route for the 6
2 months immediately preceding the date on which
3 such carrier seeks tender.

4 “(B) A new 121 mainline passenger carrier that is
5 tendered nonpriority mainline bypass mail under subpara-
6 graph (A)—

7 “(i) shall be eligible for equitable tender of such
8 mail only on city pair routes where the carrier meets
9 the conditions of subparagraph (A);

10 “(ii) may not count the passenger service pro-
11 vided under subparagraph (A) toward the carrier
12 meeting the minimum requirements of this section;
13 and

14 “(iii) shall provide at least 20 percent of the
15 passenger service (based on T-100 data) on such
16 route to remain eligible to be tendered nonpriority
17 mainline bypass mail.

18 “(C) Notwithstanding paragraphs (1)(B) and (5)(A),
19 a new 121 mainline passenger carrier, otherwise qualified
20 under this subsection, may immediately receive equitable
21 tender of nonpriority mainline bypass mail to a hub point
22 if it meets the requirements of subsections (g)(1) (A), (C),
23 and (D) and (h)(2)(B) and—

24 “(i) all qualified 121 mainline passenger car-
25 riers discontinue service on that city pair route; or

1 “(ii) no 121 mainline passenger carrier serves
2 that city pair route.

3 “(D) A carrier operating under a code share agree-
4 ment on the date of enactment of the Alaska Bypass Mail,
5 Passenger and Freight Stability Act of 2001 that received
6 tender of nonpriority mainline bypass mail on a city pair
7 route may count the passenger service provided under the
8 entire code share arrangement on such route if the code
9 share agreement terminates. That carrier shall continue
10 to provide at least 20 percent of the passenger service
11 (based on T-100 data) between the city pair as a 121
12 mainline passenger carrier while seeking such tender.

13 “(6)(A) Notwithstanding subsection (g)(1)(B), pas-
14 senger carriers providing Essential Air Service under a
15 Department of Transportation order issued under sub-
16 chapter II of chapter 417 of title 49, U.S.C., shall be ten-
17 dered all nonpriority mail, in addition to all nonpriority
18 bypass mail, by the Postal Service to destination cities
19 served by the Essential Air Service flights consistent with
20 that order unless—

21 “(i) the Postal Service finds that the Essential
22 Air Service carrier’s service does not meet the needs
23 of the Postal Service; and

24 “(ii) the Department of Transportation finds
25 that the tender of such mail to another carrier would

1 not substantially increase its Essential Air Service
2 payments to the Essential Air Service carrier.

3 “(B) Service provided under this paragraph, includ-
4 ing service provided to points served in conjunction with
5 service being subsidized under the Essential Air Service
6 contract, may not be applied toward any of the minimum
7 eligibility requirements of this section.”.

8 (5) SELECTION OF CARRIERS TO BUSH
9 POINTS.—Section 5402 of title 39, United States
10 Code, is amended by adding at the end the fol-
11 lowing:

12 “(h)(1) Except as provided under paragraph (7), on
13 a given city pair route, the Postal Service shall offer equi-
14 table tender of 70 percent of the nonpriority bypass mail
15 on that route to all carriers providing scheduled passenger
16 service in accordance with part 121 or part 135 that—

17 “(A) meet the requirements of subsection
18 (g)(1);

19 “(B) provided 20 percent or more of the pas-
20 senger service (as calculated in paragraph (5)) be-
21 tween the city pair for the 12 months preceding the
22 date on which the 121 passenger aircraft or the 135
23 passenger carrier seek tender of nonpriority bypass
24 mail; and

25 “(C) meet the requirements of paragraph (2).

1 “(2) To remain eligible for equitable tender under
2 this subsection, the carrier or aircraft shall—

3 “(A) continue to provide not less than 20 per-
4 cent of the passenger service on the city pair route
5 for which the carrier is seeking the tender of such
6 nonpriority bypass mail;

7 “(B)(i) for operations under part 121, operate
8 aircraft type certificated to carry at least 19 pas-
9 sengers;

10 “(ii) for operations under part 135, operate air-
11 craft type certificated to carry at least 5 passengers;
12 or

13 “(iii) for operations under part 135 where only
14 a water landing is available, operate aircraft type
15 certificated to carry at least 3 passengers;

16 “(C) insure all available passenger seats on the
17 city pair route on which the carrier seeks tender of
18 such mail; and

19 “(D) operate flights under its published sched-
20 ule.

21 “(3)(A) Except as provided under subparagraph (E),
22 if a 135 passenger carrier serves a city pair route and
23 meets the requirements of paragraph (1) or (2) when a
24 121 passenger carrier becomes qualified to be tendered
25 nonpriority bypass mail on such route with a 121 pas-

1 senger aircraft in accordance with paragraphs (1) and (2),
2 the qualifying 135 passenger carriers on that route shall
3 convert to operations with a 121 passenger aircraft within
4 5 years after the 121 passenger aircraft begins receiving
5 tender on that route in order to remain eligible for equi-
6 table tender under paragraph (1). The 135 carrier shall—

7 “(i) begin the process of conversion not later
8 than 2 years after the 121 passenger aircraft begins
9 carrying nonpriority bypass mail on that route; and

10 “(ii) submit a part 121 compliance statement
11 not later than 4 years after the 121 passenger air-
12 craft begins carrying nonpriority bypass mail on that
13 route.

14 “(B) Completion of conversion under subparagraph
15 (A) shall not be required if all 121 passenger carriers dis-
16 continue the carriage of nonpriority bypass mail with 121
17 passenger aircraft on the city pair route.

18 “(C)(i) Any qualified carrier operating in the State
19 of Alaska under this section may request a waiver from
20 subparagraph (A). Such a request, at the discretion of the
21 Secretary, may be granted for good cause shown. The re-
22 questing party shall state the basis for such a waiver.

23 “(ii) The regional administrator of the Federal Avia-
24 tion Administration for the Alaska Region shall grant de-
25 viations to part 135 passenger carriers transitioning to

1 part 121, for good cause shown, to accommodate individ-
2 uals who do not meet the part 121 recency of experience
3 requirements of part 119.67 of title 14, Code of Federal
4 Regulations. With regard to meeting the requirements of
5 that part, the regional administrator of the Federal Avia-
6 tion Administration for the Alaska Region, for good cause
7 shown, shall allow initial cadre status of existing manage-
8 ment personnel as afforded carriers in the implementation
9 of part 119 of title 14, Code of Federal Regulations, if
10 the aircrafts being transitioned are certificated to carry
11 no more than 19 passengers.

12 “(iii) The Secretary may allow carriers performing
13 the activities described under subparagraph (A) to con-
14 tract for internal management services and shared per-
15 sonnel responsibilities with carriers already certificated
16 under part 121 if the certificated 121 passenger carrier
17 also qualifies for tender of nonpriority bypass mail (as de-
18 scribed in this subsection) in the hub in which the 135
19 carrier operates.

20 “(D) The Secretary may charge only nominal fees as-
21 sociated with a carrier performing the activities described
22 under subparagraph (A). The Federal Aviation Adminis-
23 tration shall reimburse any carrier for fees paid to the Ad-
24 ministrator to perform the activities described under sub-
25 paragraph (A) during the period beginning on January 1,

1 1997, through 15 months after the date of enactment of
2 the Alaska Bypass Mail, Passenger and Freight Stability
3 Act of 2001.

4 “(E) If 6 years and 3 months after the date of enact-
5 ment of the Alaska Bypass Mail, Passenger and Freight
6 Stability Act of 2001, a 135 passenger carrier is providing
7 service on a city pair route and a 121 passenger aircraft
8 becomes eligible to receive tender of nonpriority bypass
9 mail on that route, that 135 passenger carrier shall con-
10 vert to operations under part 121 within 12 months of
11 the 121 passenger carrier being tendered nonpriority by-
12 pass mail. The Postal Service shall not continue the tender
13 of nonpriority bypass mail to a 135 passenger carrier that
14 fails to convert to part 121 operations within 12 months
15 after the 121 passenger carrier being tendered such mail
16 under this paragraph.

17 “(F) Notwithstanding the requirements of this sub-
18 section, if only 1 passenger carrier or aircraft is qualified
19 to be tendered nonpriority bypass mail as a passenger car-
20 rier or aircraft on a city pair route, the Postal Service
21 shall tender 20 percent of the nonpriority bypass mail de-
22 scribed under paragraph (1) to the passenger carrier or
23 aircraft providing the next highest level of passenger serv-
24 ice on such route.

1 “(4) Qualification for the tender of mail under this
2 subsection shall not be counted toward the minimum
3 qualifications necessary to be tendered nonpriority bypass
4 mail on any other route.

5 “(5)(A)(i) In this section, the percent of the pas-
6 senger service shall be calculated using the data provided
7 as described under subsection (k).

8 “(ii) The Postal Service shall compare the resulting
9 percentage under clause (i) to the lesser of—

10 “(I) the amount of the passenger excise tax
11 paid by or on behalf of a carrier, as determined by
12 reviewing the collected amount of base fares for pas-
13 sengers actually flown by a carrier from the origina-
14 tion point to the destination point, divided by the
15 value of the total passenger excise taxes, as deter-
16 mined by reviewing the collected amount of base
17 fares paid by or on behalf of all passenger carriers
18 providing service from the hub point to the bush
19 destination point; or

20 “(II) the amount of half of the passenger excise
21 tax paid by or on behalf of a carrier, as determined
22 by reviewing the collected amount of base fares for
23 passengers actually flown by a carrier on the city
24 pair route, divided by the value of the total pas-
25 senger excise taxes, as determined by reviewing the

1 collected amount of base fares paid by or on behalf
2 of all passenger carriers providing service between
3 the origination point and the destination point.

4 “(B) For the purposes of calculating passenger serv-
5 ice as described under subparagraph (A), a bush pas-
6 senger carrier providing inter-village bush passenger serv-
7 ice may include the carriage of passengers carried along
8 any point of the route between the route’s origination
9 point and the final destination point. Such calculation
10 shall be based only on the carriage of passengers on regu-
11 larly scheduled flights and only on flights being flown in
12 a direction away from the hub point. Passenger service
13 provided on chartered flights shall not be included in the
14 carrier’s calculation of passenger service.

15 “(6)(A) The Secretary shall establish new bush rates
16 for passenger carriers receiving tender of nonpriority by-
17 pass mail under this subsection.

18 “(B) The Secretary shall establish a bush rate based
19 on data collected under subsection (k) from 121 bush pas-
20 senger carriers. Such rates shall be paid to all bush pas-
21 senger carriers operating on city pair routes where a 121
22 bush passenger carrier is tendered nonpriority bypass
23 mail.

24 “(C) The Secretary shall establish a bush rate based
25 on data collected under subsection (k) from 135 bush pas-

1 senger carriers. Such rates shall be paid to all bush pas-
2 senger carriers operating on city pair routes where no 121
3 bush passenger carrier is tendered nonpriority bypass
4 mail.

5 “(D) The Secretary shall establish a bush rate based
6 on data collected under subsection (k) from bush pas-
7 senger carriers operating aircraft on city pair routes where
8 only water landings are available. Such rates shall be paid
9 to all bush passenger carriers operating on the city pair
10 routes where only water landings are available.

11 “(7) The percentage rate in paragraph (1) shall be
12 75 percent 3 years and 3 months after the date of enact-
13 ment of the Alaska Bypass Mail, Passenger and Freight
14 Stability Act of 2001.

15 “(i)(1) Except as provided under paragraph (7), on
16 a given city pair route, the Postal Service shall offer equi-
17 table tender of 20 percent of the nonpriority bypass mail
18 on such route to those carriers transporting 25 percent
19 or more of the total nonmail freight (in revenue or weight
20 as determined by the Postal Service), for the 12 months
21 immediately preceding the date on which the freight car-
22 rier seeks tender of nonpriority bypass mail.

23 “(2) To remain eligible for equitable tender under
24 this subsection, a freight carrier shall continue to provide
25 not less than 25 percent of the nonmail freight service on

1 the city pair route for which the carrier is seeking tender
2 of such mail.

3 “(3) If a new freight carrier enters a market, that
4 freight carrier shall meet the minimum requirements of
5 subsection (g)(1) and shall operate for 12 months on a
6 given city pair route before being eligible for equitable ten-
7 der of nonpriority bypass mail on that route.

8 “(4) If no carrier qualifies for tender of nonpriority
9 bypass mail under this subsection, such mail to be divided
10 under this subsection, as described in paragraph (1), shall
11 be tendered to the nonmail freight carrier providing the
12 highest percentage of nonmail freight service (in terms of
13 revenue or weight as determined by the Postal Service as
14 calculated under paragraph (6)) on the city pair route. If
15 no nonmail freight carrier is present on a route to receive
16 tender of nonpriority bypass mail under this paragraph,
17 the nonpriority bypass mail to be divided under paragraph
18 (1) shall be divided equitably among carriers qualified
19 under subsection (h).

20 “(5) Qualification for the tender of mail under this
21 subsection shall not be counted toward the minimum
22 qualifications necessary to be tendered nonpriority bypass
23 mail on any other route.

24 “(6)(A) In this subsection, the percent of nonmail
25 freight is calculated by dividing the revenue of, or weight

1 of, (as determined by the Postal Service) nonmail freight
2 earned by or carried by a carrier from the transport of
3 nonmail freight from an origination point to a destination
4 point by the total amount of revenue earned, or the weight
5 of, nonmail freight carried (as determined by the Postal
6 Service) by all carriers from the transport of nonmail
7 freight from the origination point to the destination point.

8 “(B) The Postal Service shall compare the resulting
9 percentage under subparagraph (A) to the lesser of—

10 “(i) the amount of the freight excise tax paid
11 by or on behalf of a carrier, as determined by re-
12 viewing the collected amount of base fares for
13 nonmail freight actually flown by a carrier from the
14 origination point to the destination point, divided by
15 the value of the total nonmail freight excise taxes,
16 as determined by reviewing the collected amount of
17 base fares paid by or on behalf of all nonmail freight
18 carriers providing service from the origination point
19 to the destination point; or

20 “(ii) the amount of half of the nonmail freight
21 excise tax paid by or on behalf of a carrier, as deter-
22 mined by reviewing the collected amount of base
23 fares for nonmail freight actually flown by a carrier
24 on the city pair route, divided by the value of the
25 total nonmail freight excise taxes, as determined by

1 reviewing the collected amount of base fares paid by
2 or on behalf of all nonmail freight carriers providing
3 service on the city pair route.

4 “(7) The percentage rate in paragraph (1) shall be
5 25 percent 3 years and 3 months after the date of enact-
6 ment of the Alaska Bypass Mail, Passenger and Freight
7 Stability Act of 2001.

8 “(8) The Secretary shall establish a bush nonmail
9 freight rate based on data collected under subsection (k)
10 from bush nonmail freight carriers. Such rates shall be
11 paid to all bush nonmail freight carriers.

12 “(j)(1) Except as provided under paragraph (3),
13 there shall be equitable tender of 10 percent of the nonpri-
14 ority bypass mail to all carriers on each city pair route
15 meeting the requirements of subsection (g)(1) that do not
16 otherwise qualify for tender under subsection (h) or (i).

17 “(2) If no carrier qualifies under this subsection with
18 respect to a city pair route, the 10 percent of nonpriority
19 bypass mail allocated under paragraph (1) shall be divided
20 evenly between the pools described under subsections (h)
21 and (i) to be equitably tendered among qualified carriers
22 under such subsections, such that—

23 “(A) the amount of nonpriority bypass mail
24 available for tender among qualified carries under
25 subsection (h) shall be 75 percent; and

1 “(B) the amount of nonpriority bypass mail
2 available for tender among qualified carries under
3 subsection (i) shall be 25 percent.

4 “(3) The percentage rate under paragraph (1) shall
5 be 0 percent 3 years and 3 months after the date of enact-
6 ment of the Alaska Bypass Mail, Passenger and Freight
7 Stability Act of 2001.

8 “(k)(1) Not less than every 2 years, in conjunction
9 with annual updates, the Secretary shall review the need
10 for a bush mail rate investigation. The Secretary shall use
11 show cause procedures to speedily and more accurately de-
12 termine the cost of providing bush mail service. In deter-
13 mining such rates, the Secretary shall not take into ac-
14 count the cost of passenger insurance rates or premiums
15 paid by the passenger carriers.

16 “(2) In order to assure sufficient, reliable, and timely
17 traffic data to meet the requirements of this subsection,
18 the Secretary shall require—

19 “(A) the monthly submission of the bush car-
20 rier’s data on T-100 diskettes, or any other suitable
21 form of data collection, as determined by the Sec-
22 retary; and

23 “(B) the carriers to retain all books, records,
24 and other source and summary documentation to
25 support their reports and to preserve and maintain

1 such documentation in a manner that readily per-
2 mits the audit and examination by representatives of
3 the Postal Service or the Secretary.

4 “(3) Documentation under paragraph (2) shall be re-
5 tained for 7 years or until the Secretary indicates that
6 the records may be destroyed. Copies of flight logs for air-
7 craft sold or disposed of shall be retained.

8 “(4) Carriers qualified to be tendered nonpriority by-
9 pass mail shall submit to the Secretary the number and
10 type of aircraft in the carrier’s fleet, the level of passenger
11 insurance covering its fleet, and the name of the insurance
12 company providing such coverage.

13 “(5) Not later than 30 days after the last day of each
14 calendar month, carriers shall report to the Secretary the
15 excise taxes paid by city pair to the Department of the
16 Treasury and the weight of and revenue earned by the
17 carriage of nonmail freight. Final compiled data shall be
18 made available to carriers providing service in the hub.

19 “(l) No qualified carrier may be tendered nonpriority
20 bypass mail under subsections (h) and (i) simultaneously
21 on a route unless no other carrier is tendered mail under
22 either subsection.

23 “(m)(1) Carriers qualifying for tender under sub-
24 sections (h) and (i) simultaneously shall be tendered non-
25 priority bypass mail under subsection (h).

1 “(2) A carrier shall be tendered non-priority bypass
2 mail under subsection (i) if that carrier—

3 “(A) was qualified under both subsections (h)
4 and (i) simultaneously; and

5 “(B) becomes unqualified under subsection (h)
6 but remains qualified under subsection (i).

7 “(n)(1) A carrier operation resulting from a merger
8 or acquisition shall have the passenger and nonmail
9 freight of all such merged or acquired carriers on the ap-
10 plicable route counted toward meeting the resulting car-
11 rier’s minimum requirements to receive equitable tender
12 of nonpriority bypass mail on such route for the 6-month
13 period following the merger or acquisition, if—

14 “(A)(i) 2 or more mainline passenger carriers
15 operating under part 121 merge; or

16 “(ii) 2 or more bush passenger or bush nonmail
17 freight carriers merge; or

18 “(B)(i) a mainline passenger carrier operating
19 under part 121 purchases the operating certificate of
20 another mainline passenger carrier operating under
21 part 121; or

22 “(ii) a bush passenger or nonmail freight car-
23 rier purchases the operating certificate of another
24 bush passenger or nonmail carrier.

1 “(2) After the 6-month period described under para-
2 graph (1), the carrier resulting from the merger or acqui-
3 sition shall demonstrate that the carrier meets the min-
4 imum passenger or nonmail freight carriage requirements
5 of this section to continue receiving tender of such mail.
6 An operating certificate transferred to a carrier receiving
7 tender of nonpriority bypass mail under this section shall
8 retain the status of the certificate as of the date of trans-
9 fer. An operating certificate purchased or acquired by an-
10 other carrier shall merge with the acquiring carrier’s cer-
11 tificate and shall not be available for further sale or trans-
12 fer as a separate certificate.

13 “(o) In addition to any penalties applied to a carrier
14 by the Federal Aviation Administration or the Secretary,
15 any carrier that significantly misstates passenger or
16 nonmail freight data required to be reported under this
17 section on any route, in an attempt to qualify for tender
18 of nonpriority bypass mail, shall receive—

19 “(1) a 1-month suspension of tender of nonpri-
20 ority bypass mail on the route where the data was
21 misstated for the first offense;

22 “(2) a 6-month suspension of tender of nonpri-
23 ority bypass mail on the route where the data was
24 misstated for the second offense;

1 “(3) a 1-year suspension of tender of all nonpri-
2 ority bypass mail in the entire State of Alaska for
3 the third offense in the State; and

4 “(4) a permanent suspension of tender of all
5 nonpriority bypass mail in the entire State of Alaska
6 for the fourth offense in the State.

7 “(p)(1) The Postal Service or the Secretary, in car-
8 rying out subsection (g)(2), (h), or (i), may deny equitable
9 tender to an otherwise qualified carrier who does not oper-
10 ate under this section in good faith.

11 “(2) The Postal Service or the Secretary may waive
12 any provision of subsection (h) or (i), if the carrier pro-
13 vides substantial passenger or nonmail freight service on
14 the route where the carrier seeks tender of nonpriority by-
15 pass mail.

16 “(3) In granting waivers for or denying tender to car-
17 riers under this subsection, the Postal Service or the Sec-
18 retary shall consider—

19 “(A) the passenger needs of the destination to
20 be served (including amount and level);

21 “(B) the nonmail freight needs of the destina-
22 tion to be served;

23 “(C) the mail needs of the destination to be
24 served;

1 “(D) the amount or level of passenger service
2 already available to the destination;

3 “(E) the amount of nonmail freight service al-
4 ready available to the destination;

5 “(F) the amount of nonpriority bypass mail
6 service already available to the destination; and

7 “(G) the savings to the Postal Service in terms
8 of payments made to carriers.

9 “(q) The Secretary shall make a regular review of
10 carriers receiving, or attempting to qualify to receive, equi-
11 table tender of nonpriority bypass mail. If the Secretary
12 finds a carrier is operating in an unsafe manner, including
13 evidence that the carrier is repeatedly flying in unsafe con-
14 ditions to the detriment of itself, its passengers, or the
15 general public, in order to qualify to receive equitable ten-
16 der under this section, the Secretary shall notify the Post-
17 al Service. Upon such notification, the Postal Service shall
18 cease tender of mail to such carrier until the Secretary
19 certifies the carrier is operating in a safe manner. Upon
20 such receipt, the carrier shall demonstrate that it other-
21 wise meets the minimum carriage requirements of this sec-
22 tion before being tendered mail under this section.

23 “(r) The United States Postal Service shall have the
24 authority to tender nonpriority bypass mail to any carrier
25 that meets the requirements of subsection (g)(1) on any

1 route on an emergency basis. Such emergency tender shall
2 cease when a carrier qualifies for tender on such route
3 under the terms of this section.”.

4 (d) ALASKAN INTRASTATE AIR TRANSPORTATION
5 PILOT AGE LIMITATIONS.—With respect to air transpor-
6 tation between any 2 points within the State of Alaska—

7 (1) an air carrier certificated under chapter 411
8 of title 49, United States Code, may use the services
9 of any person as a pilot on an airplane engaged in
10 operations under part 121 of title 14, Code of Fed-
11 eral Regulations, if that person—

12 (A) is more than 60 years of age; and

13 (B) is less than 66 years of age; and

14 (2) a person may serve as a pilot on an airplane
15 engaged in operations under part 121 of title 14,
16 Code of Federal Regulations, if that person—

17 (A) is more than 60 years of age; and

18 (B) is less than 66 years of age.

19 (e) ACTIONS OF AIR CARRIERS TO QUALIFY.—Be-
20 ginning 6 months after the date of enactment of this Act,
21 if the Postal Service or the Secretary determines that an
22 air carrier being tendered nonpriority bush bypass mail
23 is not taking actions to attempt to qualify as a bush pas-
24 senger or nonmail freight carrier under section 5402 of
25 title 39, United States Code, (as amended by this Act)

1 the Postal Service shall immediately cease tender of all
2 nonpriority bypass mail to such carrier.

3 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

4 (1) TITLE 39.—Section 5402 of title 39, United
5 States Code, is amended—

6 (A) in subsections (b) through (e) (as re-
7 designated by this Act) and subsection (f) by
8 striking “Secretary of Transportation” each
9 place it appears and inserting “Secretary”; and

10 (B) in subsection (f)—

11 (i) by striking “subsections (a), (b),
12 and (c)” and inserting “subsections (b),
13 (c), and (d)”; and

14 (ii) by striking “subsection (d)” and
15 inserting “subsection (e)”.

16 (2) TITLE 49.—Section 41901 of title 49,
17 United States Code, is amended in subsection (a), by
18 striking “5402(d)” and inserting “5402(e)”.

19 (g) REPORTS TO CONGRESS.—Not later than 12
20 months after the date of enactment of this Act, the Postal
21 Service and the Secretary of Transportation shall submit
22 a report to the Committee on Government Reform of the
23 House of Representatives and the Committee on Govern-
24 mental Affairs of the Senate on the progress of imple-
25 menting this Act.

1 (h) EFFECTIVE DATES.—

2 (1) IN GENERAL.—Except as provided under
3 paragraphs (2) and (3), this Act (including the
4 amendments made by this Act) shall take effect on
5 the date of enactment of this Act.

6 (2) SELECTION OF CARRIERS.—Subsection
7 (c)(5) shall take effect 15 months after the date of
8 enactment of this Act.

9 (3) ALASKAN INTRASTATE AIR TRANSPOR-
10 TATION PILOT AGE LIMITATION.—Subsection (d)
11 shall take effect 30 days after the date of enactment
12 of this Act.

○