

107TH CONGRESS  
2D SESSION

# H. R. 4661

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.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2002

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Government Reform

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## 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. RURAL SERVICE IMPROVEMENT.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Rural Service Improvement Act of 2002”.

6 (b) FINDINGS.—Congress makes the following find-  
7 ings:

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

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

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

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

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

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

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

21          (8) The vast majority of food items and every-  
22          day necessities destined for these isolated commu-  
23          nities and populations can only be transported  
24          through the air.

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

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

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

15                   (C) support affordable and reliable pas-  
16           senger service; and

17                   (D) support affordable and reliable  
18           nonmail freight service.

19           (10) Without the Intra-Alaska Bypass Mail  
20           system—

21                   (A) it would be difficult and more expen-  
22           sive for the Postal Service to meet its obligation  
23           of delivering mail to every house and business  
24           in America; and

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

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

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

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

22 (B) to ensure that residents of rural and  
23 isolated communities in Alaska continue to have  
24 affordable, reliable, and safe passenger service;

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

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

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

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

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

23 (A) by striking subsection (e);

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

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

6           “(a) In this section—

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

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

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

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

21              “(5) the term ‘bush passenger carrier’ means a  
22              passenger carrier that meets the requirements of  
23              subsection (g)(1)(D)(i) and provides passenger serv-  
24              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 the  
17 type of route being served and the size of air-  
18 craft 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”;

17           (B) in subparagraph (C) by striking “to  
18           the best” and all that follows and inserting a  
19           semicolon; and

20           (C) in subparagraph (D) by inserting  
21           “with at least 3 scheduled (non-contract) flights  
22           per week between two points” after “scheduled  
23           service”.

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

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

6                     (B) by striking the period at the end of  
7     subparagraph (B) and inserting a semicolon;  
8     and

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

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

17                     “(i) meets the requirements of paragraph  
18     (1);

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

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

4 “(D) shall offer bush passenger carriers and  
5 nonmail freight carriers the opportunity to receive  
6 equitable tender of nonpriority bypass mail at main-  
7 line service rates from a hub point to a destination  
8 city if the city pair is also being served by a main-  
9 line carrier and—

10 “(i) for a passenger carrier—

11 “(I) the carrier meets the require-  
12 ments of paragraph (1);

13 “(II) the carrier provided at least 20  
14 percent of the passenger service (as cal-  
15 culated in subsection (h)(5)) on the city  
16 pair route for the 6 months immediately  
17 preceding the date on which the carrier  
18 seeks such tender; and

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

22 “(ii) for a nonmail freight carrier—

23 “(I) the carrier meets the require-  
24 ments of paragraph (1); and

1                   “(II) the carrier provided at least 25  
2                   percent of the nonmail freight service (as  
3                   calculated in subsection (i)(6)) on the city  
4                   pair route for the 6 months immediately  
5                   preceding the date on which the carrier  
6                   seeks such tender;

7                   “(E)(i) shall not offer equitable tender of non-  
8                   priority mainline bypass mail at mainline rates to a  
9                   bush carrier operating from an acceptance point to  
10                  a hub point, except as described in subparagraph  
11                  (C); and

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

15                         “(I) the bush carrier meets the require-  
16                         ments of paragraph (1);

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

20                         “(III) tender of mail to such bush carrier  
21                         will not decrease the efficiency of nonpriority  
22                         bypass mail service (in terms of payments to all  
23                         carriers providing service on the city pair route  
24                         and timely delivery) for the route;

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

5           “(i) the carrier provides passenger service  
6 in accordance with the requirements of sub-  
7 section (h)(2);

8           “(ii) the carrier qualifies under subsection  
9 (h) to be tendered nonpriority bypass mail out  
10 of the hub point being bypassed;

11           “(iii) the tender of such mail will not de-  
12 crease efficiency of delivery of nonpriority by-  
13 pass mail service into or out of the hub point  
14 being bypassed; and

15           “(iv) such tender will result in reduced  
16 payments to the carrier by the Postal Service  
17 over flying the entire route; and

18           “(G) notwithstanding subparagraph (F), shall  
19 offer equitable tender of nonpriority bypass mail in  
20 proportion to passenger and non-mail freight mail  
21 pools described in this section between qualified pas-  
22 senger and non-mail freight carriers on a route from  
23 an acceptance point to a bush destination at a com-  
24 posite rate if—

1           “(i)(I) for a passenger carrier, the carrier  
2           receiving the composite rate provided 20 per-  
3           cent of the passenger service on the city pair  
4           route for the 12 months immediately preceding  
5           the date on which the carrier seeks tender of  
6           such mail; or

7           “(II) for a nonmail freight carrier, the car-  
8           rier receiving the composite rate provided at  
9           least 25 percent of the nonmail freight service  
10          for the 12 months immediately preceding the  
11          date on which the carrier seeks tender of such  
12          mail; and

13          “(ii)(I) nonpriority bypass mail was being  
14          tendered to a passenger carrier or a nonmail  
15          freight carrier at a composite rate on such city  
16          pair route on January 1, 2000; or

17          “(II) the hub being bypassed was not  
18          served by a mainline carrier on January 1,  
19          2000.

20   The tender of nonpriority bypass mail under subparagraph  
21   (G) shall be on an equitable basis between the qualified  
22   carriers that provide the direct service on the city pair  
23   route and the qualified carriers that provide service be-  
24   tween the hub point being bypassed and the destination

1 point, based on the volume of nonpriority bypass mail on  
2 both routes.”.

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

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

12 “(B) The Postal Service may select a carrier other  
13 than an existing mainline carrier to provide nonpriority  
14 bypass mail service on a mainline route in the State of  
15 Alaska if—

16 “(i) the Postal Service determines (in accord-  
17 ance with criteria established in advance by the  
18 Postal Service) that the mail service between the ac-  
19 ceptance point and the hub point is deficient and  
20 provides written notice of the determination to exist-  
21 ing mainline carriers to the hub point; and

22 “(ii) after the 30-day period following issuance  
23 of notice under clause (i), including notice of inad-  
24 equate capacity, the Postal Service determines that

1 deficiencies in service to the hub point have not been  
2 eliminated.

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

7 “(i) meets the requirements of subsection  
8 (g)(1)(D)(ii); and

9 “(ii) has provided at least the same number of  
10 insured passenger seats as the number of available  
11 passenger seats being provided by the mainline pas-  
12 senger carrier providing the greatest number of  
13 available passenger seats on that route for the 6  
14 months immediately preceding the date on which  
15 such carrier seeks tender.

16 “(B) A new 121 mainline passenger carrier that is  
17 tendered nonpriority mainline bypass mail under subpara-  
18 graph (A)—

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

22 “(ii) may not count the passenger service pro-  
23 vided under subparagraph (A) toward the carrier  
24 meeting the minimum requirements of this section;  
25 and

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

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

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

13           “(ii) no 121 mainline passenger carrier serves  
14      that city pair route.

15       “(D) A carrier operating under a code share agree-  
16      ment on the date of enactment of the Rural Service Im-  
17      provement Act of 2002 that received tender of nonpriority  
18      mainline bypass mail on a city pair route may count the  
19      passenger service provided under the entire code share ar-  
20      rangement on such route if the code share agreement ter-  
21      minates. That carrier shall continue to provide at least  
22      20 percent of the passenger service (based on T-100 data)  
23      between the city pair as a 121 mainline passenger carrier  
24      while seeking such tender.

1       “(6)(A) Notwithstanding subsection (g)(1)(B), pas-  
 2 senger carriers providing Essential Air Service under a  
 3 Department of Transportation order issued under sub-  
 4 chapter II of chapter 417 of title 49, U.S.C., shall be ten-  
 5 dered all nonpriority mail, in addition to all nonpriority  
 6 bypass mail, by the Postal Service to destination cities  
 7 served by the Essential Air Service flights consistent with  
 8 that order unless the Postal Service finds that the Essen-  
 9 tial Air Service carrier’s service does not meet the needs  
 10 of the Postal Service.

11       “(B) Service provided under this paragraph, includ-  
 12 ing service provided to points served in conjunction with  
 13 service being subsidized under the Essential Air Service  
 14 contract, may not be applied toward any of the minimum  
 15 eligibility requirements of this section.”.

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

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

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

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

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

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

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

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

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

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

1           “(C) insure all available passenger seats on the  
2           city pair route on which the carrier seeks tender of  
3           such mail; and

4           “(D) operate flights under its published sched-  
5           ule.

6           “(3)(A) Except as provided under subparagraph (E),  
7           if a 135 passenger carrier serves a city pair route and  
8           meets the requirements of paragraph (1) or (2) when a  
9           121 passenger carrier becomes qualified to be tendered  
10          nonpriority bypass mail on such route with a 121 pas-  
11          senger aircraft in accordance with paragraphs (1) and (2),  
12          the qualifying 135 passenger carriers on that route shall  
13          convert to operations with a 121 passenger aircraft within  
14          5 years after the 121 passenger aircraft begins receiving  
15          tender on that route in order to remain eligible for equi-  
16          table tender under paragraph (1). The 135 carrier shall—

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

20               “(ii) submit a part 121 compliance statement  
21               not later than 4 years after the 121 passenger air-  
22               craft begins carrying nonpriority bypass mail on that  
23               route.

24           “(B) Completion of conversion under subparagraph  
25          (A) shall not be required if all 121 passenger carriers dis-

1 continue the carriage of nonpriority bypass mail with 121  
2 passenger aircraft on the city pair route.

3 “(C) Any qualified carrier operating in the State of  
4 Alaska under this section may request a waiver from sub-  
5 paragraph (A). Such a request, at the discretion of the  
6 Secretary, may be granted for good cause shown. The re-  
7 questing party shall state the basis for such a waiver.

8 “(D) If 6 years and 3 months after the date of enact-  
9 ment of the Rural Service Improvement Act of 2002, a  
10 135 passenger carrier is providing service on a city pair  
11 route and a 121 passenger aircraft becomes eligible to re-  
12 ceive tender of nonpriority bypass mail on that route, that  
13 135 passenger carrier shall convert to operations under  
14 part 121 within 12 months of the 121 passenger carrier  
15 being tendered nonpriority bypass mail. The Postal Serv-  
16 ice shall not continue the tender of nonpriority bypass mail  
17 to a 135 passenger carrier that fails to convert to part  
18 121 operations within 12 months after the 121 passenger  
19 carrier being tendered such mail under this paragraph.

20 “(E) Notwithstanding the requirements of this sub-  
21 section, if only 1 passenger carrier or aircraft is qualified  
22 to be tendered nonpriority bypass mail as a passenger car-  
23 rier or aircraft on a city pair route, the Postal Service  
24 shall tender 20 percent of the nonpriority bypass mail de-  
25 scribed under paragraph (1) to the passenger carrier or

1 aircraft providing the next highest level of passenger serv-  
2 ice on such route.

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

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

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

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

22 “(II) the amount of half of the passenger excise  
23 tax paid by or on behalf of a carrier, as determined  
24 by reviewing the collected amount of base fares for  
25 passengers actually flown by a carrier on the city

1 pair route, divided by the value of the total pas-  
2 senger excise taxes, as determined by reviewing the  
3 collected amount of base fares paid by or on behalf  
4 of all passenger carriers providing service between  
5 the origination point and the destination point.

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

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

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

1       “(C) The Secretary shall establish a bush rate based  
2 on data collected under subsection (k) from 135 bush pas-  
3 senger carriers. Such rates shall be paid to all bush pas-  
4 senger carriers operating on city pair routes where no 121  
5 bush passenger carrier is tendered nonpriority bypass  
6 mail.

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

13       “(7) The percentage rate in paragraph (1) shall be  
14 75 percent 3 years and 3 months after the date of enact-  
15 ment of the Rural Service Improvement Act of 2002.

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

24       “(2) To remain eligible for equitable tender under  
25 this subsection, a freight carrier shall continue to provide

1 not less than 25 percent of the nonmail freight service on  
2 the city pair route for which the carrier is seeking tender  
3 of such mail.

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

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

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

1       “(6)(A) In this subsection, the percent of nonmail  
2 freight shall be calculated, using the data provided pursu-  
3 ant to subsection (k), by dividing the revenue of, or weight  
4 of, (as determined by the Postal Service) nonmail freight  
5 earned by or carried by a carrier from the transport of  
6 nonmail freight from an origination point to a destination  
7 point by the total amount of revenue earned, or the weight  
8 of, nonmail freight carried (as determined by the Postal  
9 Service) by all carriers from the transport of nonmail  
10 freight from the origination point to the destination point.

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

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

23               “(ii) the amount of half of the nonmail freight  
24 excise tax paid by or on behalf of a carrier, as deter-  
25 mined by reviewing the collected amount of base

1       fares for nonmail freight actually flown by a carrier  
2       on the city pair route, divided by the value of the  
3       total nonmail freight excise taxes, as determined by  
4       reviewing the collected amount of base fares paid by  
5       or on behalf of all nonmail freight carriers providing  
6       service on the city pair route.

7       “(7) The percentage rate in paragraph (1) shall be  
8       25 percent 3 years and 3 months after the date of enact-  
9       ment of the Rural Service Improvement Act of 2002.

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

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

21               “(A) the amount of nonpriority bypass mail  
22       available for tender among qualified carries under  
23       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)(A) Except as provided by subparagraph (B), the  
5           percentage rate under paragraph (1) shall be 0 percent  
6           3 years and 3 months after the date of enactment of the  
7           Rural Service Improvement Act of 2002.

8           “(B) The percentage rate under paragraph (1) shall  
9           remain 10 percent for equitable tender for 6 years and  
10          3 months after the date of enactment of the Rural Service  
11          Improvement Act of 2002 for a nonpriority bypass mail  
12          carrier on bush routes originating from the main hub of  
13          the carrier designated under subparagraph (C), if the car-  
14          rier seeking the tender of such mail—

15               “(i) meets the requirements of subsection  
16               (g)(1);

17               “(ii) is not qualified under subsection (h) or (i);

18               “(iii) operates routes originating from the main  
19          hub of the carrier designated under subparagraph  
20          (C); and

21               “(iv) has invested at least \$500,000 in a phys-  
22          ical hanger facility prior to January 1, 2002 in such  
23          a hub city.

24           “(C) For purposes of subparagraph (B), a carrier  
25          may designate only one hub city as its main hub and once

1 such designation is transmitted to the Postal Service it  
2 may not be changed. Such selection and transmission  
3 must be transmitted to the Postal Service within 6 months  
4 of the date of enactment of the Rural Service Improve-  
5 ment Act of 2002. A carrier attempting to receive tender  
6 of nonpriority bypass mail under this subsection shall not  
7 be eligible for such tender after the carrier becomes quali-  
8 fied for tender of nonpriority bypass mail under subsection  
9 (h) or (i) on any route. The purchase of another carrier's  
10 hanger facility after such date of enactment shall not be  
11 considered sufficient to meet the requirement of subpara-  
12 graph (B)(iv).

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

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

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

5           “(B) the carriers to retain all books, records,  
6           and other source and summary documentation to  
7           support their reports and to preserve and maintain  
8           such documentation in a manner that readily per-  
9           mits the audit and examination by representatives of  
10          the Postal Service or the Secretary.

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

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

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

1       “(l) No qualified carrier may be tendered nonpriority  
2 bypass mail under subsections (h) and (i) simultaneously  
3 on a route unless no other carrier is tendered mail under  
4 either subsection.

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

8       “(2) A carrier shall be tendered nonpriority bypass  
9 mail under subsection (i) if that carrier—

10           “(A) was qualified under both subsections (h)  
11 and (i) simultaneously; and

12           “(B) becomes unqualified under subsection (h)  
13 but remains qualified under subsection (i).

14       “(n)(1) A carrier operation resulting from a merger  
15 or acquisition between any 2 carriers operating between  
16 points in Alaska shall have the passenger and nonmail  
17 freight of all such merged or acquired carriers on the ap-  
18 plicable route counted toward meeting the resulting car-  
19 rier’s minimum requirements to receive equitable tender  
20 of nonpriority bypass mail on such route for the 6-month  
21 period following the merger or acquisition.

22       “(2) After the 6-month period described under para-  
23 graph (1), the carrier resulting from the merger or acqui-  
24 sition shall demonstrate that the carrier meets the min-

1 imum passenger or nonmail freight carriage requirements  
2 of this section to continue receiving tender of such mail.

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

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

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

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

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

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

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

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

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

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

13              “(C) the mail needs of the destination to be  
14 served;

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

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

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

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

23       “(q) The Secretary shall make a regular review of  
24 carriers receiving, or attempting to qualify to receive, equi-  
25 table tender of nonpriority bypass mail. If the Secretary

1 suspends or revokes an operating certificate, the Secretary  
2 shall notify the Postal Service. Upon such notification, the  
3 Postal Service shall cease tender of mail to such carrier  
4 until the Secretary certifies the carrier is operating in a  
5 safe manner. Upon such receipt, the carrier shall dem-  
6 onstrate that it otherwise meets the minimum carriage re-  
7 quirements of this section before being tendered mail  
8 under this section.

9       “(r) The Postal Service shall have the authority to  
10 tender nonpriority bypass mail to any carrier that meets  
11 the requirements of subsection (g)(1) on any route on an  
12 emergency basis. Such emergency tender shall cease when  
13 a carrier qualifies for tender on such route under the  
14 terms of this section.

15       “(s) Notwithstanding any other provision of law, and  
16 except for written contracts authorized under subsections  
17 (b), (c) and (d) of this section, tender by the Postal Serv-  
18 ice of any category of mail to a carrier for transportation  
19 between any two points within the State of Alaska shall  
20 not give rise to any contract between the Postal Service  
21 and a carrier, nor shall any such carrier acquire any right  
22 in continued or future tender of such mail by virtue of  
23 past or present receipt of such mail. This subsection shall  
24 apply to any case commenced before, on, or after the date  
25 of enactment of this subsection.”.

1       (d) ACTIONS OF AIR CARRIERS TO QUALIFY.—Be-  
 2       ginning 6 months after the date of enactment of this Act,  
 3       if the Secretary determines, based on the Secretary’s find-  
 4       ings and recommendations of the Postal Service, that an  
 5       air carrier being tendered nonpriority bush bypass mail  
 6       is not taking actions to attempt to qualify as a bush pas-  
 7       senger or nonmail freight carrier under section 5402 of  
 8       title 39, United States Code, (as amended by this Act)  
 9       the Postal Service shall immediately cease tender of all  
 10      nonpriority bypass mail to such carrier.

11      (e) TECHNICAL AND CONFORMING AMENDMENTS.—

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

14           (A) in subsections (b) through (e) (as re-  
 15           designated by this Act) and subsection (f) by  
 16           striking “Secretary of Transportation” each  
 17           place it appears and inserting “Secretary”; and

18           (B) in subsection (f)—

19           (i) by striking “subsections (a), (b),  
 20           and (c)” and inserting “subsections (b),  
 21           (c), and (d)”; and

22           (ii) by striking “subsection (d)” and  
 23           inserting “subsection (e)”.

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

4       (f) REPORTS TO CONGRESS.—Not later than 12  
5       months after the date of enactment of this Act, the Postal  
6       Service and the Secretary of Transportation shall submit  
7       a report to the Committee on Government Reform of the  
8       House of Representatives and the Committee on Govern-  
9       mental Affairs of the Senate on the progress of imple-  
10      menting this Act.

11      (g) EFFECTIVE DATES.—

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

16           (2) SELECTION OF CARRIERS.—Subsection  
17      (c)(5) shall take effect 15 months after the date of  
18      enactment of this Act.

○