

107TH CONGRESS
1ST SESSION

S. 1713

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2001

Mr. STEVENS introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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 non-priority 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. SHORT TITLE.**

4 This Act may be cited as the “Alaska Bypass Mail,
5 Passenger and Freight Stability Act of 2001”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

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 Federal Government
12 owns nearly two-thirds of Alaska's landmass, includ-
13 ing large tracts of land separating isolated commu-
14 nities within the 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, with
4 input from the Department of Transportation, con-
5 necting hundreds of rural and isolated communities
6 within the State, is a critical piece of the Alaska and
7 the national transportation system. The system is
8 like a four-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 non-
18 mail 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 meets its obliga-
23 tion of delivering mail to every house and busi-
24 ness 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) Congress' attempts to support passenger
6 and non-mail freight service in Alaska using the
7 Intra-Alaska Bypass Mail system have yielded some
8 positive results, but some carriers have been manip-
9 ulating the system by carrying few, if any, pas-
10 sengers and little non-mail freight while earning
11 most of their revenues from the carriage of non-pri-
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 the Intra-Alaska Bypass
20 Mail system remains strong, viable and afford-
21 able for the Postal Service;

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

1 (C) to ensure residents of rural and iso-
 2 lated communities in Alaska continue to have
 3 affordable, reliable and safe non-mail freight
 4 service;

5 (D) to encourage intra-Alaska air carriers
 6 to move towards 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 (FAR Part 121), where
 11 such operations are supported by the needs of
 12 the community; and

13 (E) that Congress make changes to the
 14 Intra-Alaska Bypass Mail system to encourage
 15 intra-Alaska air carriers to begin operating
 16 under FAR Part 121, where applicable, and to
 17 ensure the Intra-Alaska Bypass Mail system
 18 continues to be used to support substantial pas-
 19 senger and non-mail freight service.

20 **SEC. 3. SELECTION OF CARRIERS OF NON-PRIORITY BY-**
 21 **PASS MAIL TO CERTAIN POINTS IN ALASKA.**

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

24 (1) by striking subsection (e);

1 (2) by redesignating subsections (a) through (d)
2 as subsection (b) through (e), respectively; and

3 (3) by inserting before subsection (b), as redesi-
4 gnated, the following:

5 “(a) In this section—

6 “(1) the term ‘Secretary’ means the Secretary
7 of Transportation;

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

12 “(3) the term ‘equitable tender’ means the
13 practice of the Postal Service of equitably distrib-
14 uting mail on a fair and reasonable basis between
15 those air carriers that offer equivalent services be-
16 tween two communities in accordance with the regu-
17 lations of the Postal Service;

18 “(4) the term ‘mainline carrier’ means a carrier
19 operating aircraft in accordance with part 121 and
20 certificated within the payload capacity requirements
21 of subsection (g)(1)(D)(ii) on a given city pair route;

22 “(5) the term ‘bush carrier’ means a carrier op-
23 erating aircraft certificated within the payload ca-
24 pacity requirements of subsection (g)(1)(D)(i) on a
25 city pair route;

1 “(6) the term ‘existing mainline carrier’ means
2 a mainline carrier, as defined in this section, that
3 was certified under part 121, that was qualified to
4 provide mainline non-priority bypass mail service,
5 and was actually engaged in the carriage of mainline
6 non-priority bypass mail service within the State of
7 Alaska as of the date of enactment of this Act;

8 “(7) the term ‘new’, when referencing a carrier,
9 means a carrier that meets the respective require-
10 ments of subsection (g)(1)(D) (i) or (ii), depending
11 on the type of route being served and the size of air-
12 craft being used to provide service, and began pro-
13 viding non-priority bypass mail service on a city pair
14 route within the State of Alaska after January 1,
15 2001;

16 “(8) the term ‘scheduled service’ means:

17 “(A) flights are operated in common car-
18 riage available to the general public pursuant to
19 a published schedule;

20 “(B) flight schedules are announced in ad-
21 vance in systems specified by the Postal Serv-
22 ice, in addition to the Official Airline Guide or
23 the air cargo equivalent thereof;

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

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

3 “(9) the term ‘part 121’ means part 121 of
4 title 14, Code of Federal Regulations (FAR Part
5 121);

6 “(10) the term ‘part 135’ means part 135 of
7 title 14, Code of Federal Regulations (FAR Part
8 135);

9 “(11) the term ‘121 passenger aircraft’ means
10 an aircraft flying passengers on a city pair route
11 that is operated in accordance with part 121;

12 “(12) the term ‘121 passenger carrier’ means a
13 passenger carrier that provides scheduled service
14 under part 121;

15 “(13) the term ‘135 passenger carrier’ means a
16 passenger carrier that provides scheduled service
17 under part 135;

18 “(14) the term ‘bush passenger carrier’ means
19 a passenger carrier that meets the requirements of
20 subsection (g)(1)(D)(i) and provides passenger serv-
21 ice on a city pair route;

22 “(15) the term ‘city pair’ means service be-
23 tween an origin and destination city pair;

1 “(16) the term ‘mainline route’ means a city
2 pair in which a mainline carrier is tendered non-pri-
3 ority bypass mail;

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

9 “(18) the term ‘composite rate’ means a com-
10 bination of mainline and bush rates paid to a bush
11 carrier for a direct flight from an acceptance point
12 to a bush destination beyond a hub point. Such rate
13 shall be based on the mainline rate paid to the hub,
14 plus the lowest bush rate paid to bush carriers in
15 the State of Alaska.;

16 “(19) the term ‘acceptance point’ means the
17 point at which non-priority bypass mail originates;
18 and

19 “(20) the term ‘base fare’ is the fare paid by
20 the passenger to the carrier issuing the ticket which
21 may entail service being provided by more than one
22 carrier.”.

23 (b) REQUIREMENTS FOR SELECTION.—Section
24 5402(g)(1) of title 39, United States Code, is amended
25 in the matter preceding subparagraph (A) by inserting

1 after “in the State of Alaska,” the following: “shall adhere
 2 to an equitable tender policy within a qualified group of
 3 carriers, in accordance with the regulations of the Postal
 4 Service, and”.

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

7 (1) by striking “and” at the end of subpara-
 8 graph (A);

9 (2) by striking the period at the end of sub-
 10 paragraph (B) and inserting a semicolon; and

11 (3) by adding at the end the following:

12 “(C) shall offer a bush passenger carrier
 13 providing service on a route between an accept-
 14 ance point and a hub not served by a mainline
 15 carrier the opportunity to receive equitable ten-
 16 der of non-priority bypass mail at mainline
 17 service rates when a mainline carrier begins
 18 serving that route if the bush passenger carrier:

19 “(i) meets the requirements of sub-
 20 section (g)(1);

21 “(ii) provided at least 20 percent of
 22 the passenger service (as calculated in sub-
 23 section (h)(6)) between such city pair for
 24 the 6 months immediately preceding the

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

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

6 “(D) shall offer bush passenger carriers
7 and non-mail freight carriers the opportunity to
8 receive equitable tender of non-priority bypass
9 mail at mainline service rates from a hub point
10 to a destination city if the city pair is also being
11 served by a mainline carrier and:

12 “(i) (I) the passenger carrier meets
13 the requirements of subsection (g)(1);

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

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

23 “(ii) (I) the non-mail freight carrier
24 meets the requirements of subsection
25 (g)(1); and

1 “(II) the non-mail freight carrier pro-
2 vided at least 25 percent of the non-mail
3 freight service (as calculated in subsection
4 (i)(7)) on the city pair route for the 6
5 months immediately preceding the date on
6 which the carrier seeks such tender.

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

12 “(ii) the Postal Service may tender non-
13 priority bypass mail at bush rates to a bush
14 carrier if the Postal Service determines:

15 “(I) that the bush carrier meets the
16 requirements of subsection (g)(1);

17 “(II) that the service to be provided
18 on such route by the bush carrier is not
19 otherwise available via direct mainline
20 service; and

21 “(III) that tender of mail to such
22 bush carrier will not decrease the efficiency
23 of non-priority bypass mail service (in
24 terms of payments to all carriers providing

1 service on the city pair route and timely
2 delivery) for the route;

3 “(F) may offer tender of non-priority by-
4 pass mail to a passenger carrier from an ac-
5 ceptance point to a destination city beyond a
6 hub point at a composite rate if the Postal
7 Service determines:

8 “(i) the carrier provides passenger
9 service in accordance with the require-
10 ments of subsection (h)(2);

11 “(ii) the carrier qualifies under sub-
12 section (h) to be tendered non-priority by-
13 pass mail out of the hub point being by-
14 passed;

15 “(iii) the tender of such mail will not
16 decrease efficiency of delivery of non-pri-
17 ority bypass mail service in to or out of the
18 hub point being bypassed; and

19 “(iv) such tender will result in re-
20 duced payments to the carrier by the Post-
21 al Service over flying the entire route; and

22 “(G) notwithstanding subparagraph (F),
23 the Postal Service shall offer equitable tender of
24 non-priority bypass mail to a bush carrier from

1 an acceptance point to a bush destination at a
2 composite rate if:

3 “(i) (I) the passenger carrier receiving
4 the composite rate provided 20 percent of
5 the passenger service on the city pair route
6 for the 12 months immediately preceding
7 the date on which the carrier seeks tender
8 of such mail; or

9 “(II) the non-mail freight carrier re-
10 ceiving the composite rate provided at least
11 25 percent of the non-mail freight service
12 for the 12 months immediately preceding
13 the date on which the carrier seeks tender
14 of such mail; and

15 “(ii) (I) non-priority bypass mail was
16 being tendered to a passenger carrier or a
17 non-mail freight carrier at a composite
18 rate on a city pair route on January 1,
19 2000; or

20 “(II) the hub being bypassed was not
21 served by a mainline carrier on January 1,
22 2000.

23 The tender of non-priority bypass mail under
24 subsection (G) shall be on an equitable basis
25 between the qualified carriers that provide the

1 direct service on the city pair route, based on
2 the volume of non-priority bypass mail on such
3 route.”.

4 (d) SELECTION OF CARRIERS TO HUB POINTS.—Sec-
5 tion 5402(g) of title 39, United States Code, is amended
6 by adding at the end the following:

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

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

16 “(i) the Postal Service determines (in ac-
17 cordance with criteria established in advance by
18 the Postal Service concerning schedule comple-
19 tion, schedule adherence and complaints related
20 to mail shipment damage, delay or loss, and
21 any other criteria dealing with the quality of
22 service being provided by existing carriers) the
23 mail service between the acceptance point and
24 the hub point is deficient and provides written

1 notice of the determination to existing mainline
2 carriers to the hub point; and

3 “(ii) after the 30-day period following
4 issuance of notice under clause (i), the Postal
5 Service determines that deficiencies in service to
6 the hub point have not been eliminated.

7 “(5)(A) The Postal Service shall offer equitable
8 tender of non-priority bypass mail to a new 121
9 mainline passenger carrier entering a mainline route
10 in the State of Alaska, if that carrier—

11 “(i) meets the requirements of paragraph
12 (g)(1)(D)(ii); and

13 “(ii) has provided at least the same num-
14 ber of insured passenger seats as the number of
15 available passenger seats being provided by the
16 mainline passenger carrier providing the great-
17 est number of available passenger seats on that
18 route for the 6 months immediately preceding
19 the date on which such carrier seeks tender.

20 “(B) A new 121 mainline passenger carrier that
21 is tendered non-priority mainline bypass mail under
22 subparagraph (A)—

23 “(i) shall be eligible for equitable tender of
24 such mail only on city pair routes where the

1 carrier meets the conditions of subparagraph
2 (A); and

3 “(ii) such service may not be counted to-
4 wards the carrier meeting the minimum re-
5 quirements of any other part of this section.

6 “(C) Notwithstanding subparagraphs (g)(1)(B)
7 and (5)(A), a new 121 mainline passenger carrier,
8 otherwise qualified under this subsection, may imme-
9 diately be tendered non-priority mainline bypass
10 mail to a hub point if it meets the requirements of
11 (g)(1)(A), (C) and (D) and (h)(2)(B); and

12 “(i) all qualified 121 mainline passenger
13 carrier(s) discontinue service on that city pair
14 route; or

15 “(ii) no 121 mainline passenger carrier
16 serves that city pair route.

17 “(D) A carrier operating under a code share
18 agreement as of the date of enactment of this Act
19 that received tender of non-priority mainline bypass
20 mail on a city pair route may count the passenger
21 service provided under the entire code share ar-
22 rangement on such route if the code-share agree-
23 ment terminates, provided that the carrier must con-
24 tinue to provide at least 20 percent of the passenger
25 service (as determined under subsection (h)(6)) be-

1 tween the city pair on a 121 mainline aircraft while
2 seeking such tender.

3 “(6) Bush and mainline carriers providing Es-
4 sential Air Service pursuant to a Department of
5 Transportation order issued under subchapter II of
6 chapter 417 of title 49, United States Code and
7 meeting the requirements of subsection (g)(2)(B)
8 shall be tendered all priority and non-priority mail,
9 in addition to non-priority bypass mail, by the Post-
10 al Service to destination cities served by the Essen-
11 tial Air Service flights consistent with that order,

12 “(A) unless the Postal Services finds that
13 the Essential Air Service carrier’s service does
14 not meet the needs of the Postal Service; and

15 “(B) the Department of Transportation
16 finds that the tender of such mail to another
17 carrier would not substantially increase its Es-
18 sential Air Service payments to the Essential
19 Air Service carrier.

20 “Service provided under this paragraph, including
21 service provided to points served in conjunction with
22 service being subsidized under the Essential Air
23 Service contract, may not be applied toward any of
24 the minimum eligibility requirements of this sec-
25 tion.”.

1 (e) SELECTION OF CARRIERS TO BUSH POINTS.—
 2 Section 5402(g) of title 39, United States Code, is amend-
 3 ed by adding at the end the following:

4 “(h)(1) Except as provided in paragraph (8), in a
 5 given city pair route, the Postal Service shall offer equi-
 6 table tender of 70 percent of the non-priority bypass mail
 7 on that route to all carriers providing scheduled passenger
 8 service in accordance with FAR Parts 121 or 135 that:

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

11 “(B) provided 20 percent or more of the pas-
 12 senger service (as calculated in paragraph (7)(A) of
 13 this subsection) between the city pair for the 12
 14 months preceding the date on which the 121 pas-
 15 senger aircraft or the 135 passenger carrier seek
 16 tender of non-priority bypass mail; and

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

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

20 “(A) continue to provide not less than 20 per-
 21 cent of the passenger service on the city pair route
 22 for which the carrier is seeking the tender of such
 23 non-priority bypass mail;

1 “(B) (i) have the ability to have at least 9 seats
2 available on the 121 passenger aircraft actually car-
3 rying the non-priority bypass mail;

4 “(ii) have the ability to have at least 5 seats
5 available on the passenger aircraft operated under
6 part 135 actually carrying the non-priority bypass
7 mail; or

8 “(iii) have the ability to have at least 3 seats
9 available on the passenger aircraft operated under
10 part 135 actually carrying the non-priority bypass
11 mail for bush destinations where only a water land-
12 ing is available;

13 “(C) insure all available passenger seats on the
14 city pair route on which the carrier seeks tender of
15 such mail; and

16 “(D) operate flights pursuant to its published
17 schedule.

18 “(3) Notwithstanding the minimum requirements of
19 paragraphs (1) and (2) of this subsection, a 121 passenger
20 carrier shall immediately qualify for equitable tender of
21 the non-priority bypass mail described in paragraph (1)
22 on a given city pair route in which the carrier provided
23 at least 20 percent of the passenger service for any con-
24 secutive 12 month period during the 24 month period im-
25 mediately preceding the effective date of this Act. Upon

1 receiving such tender of non-priority bypass mail for 12
2 months, such 121 passenger carrier shall demonstrate it
3 then meets the requirements of paragraph (2) to continue
4 being eligible for the tender of such mail on the given city
5 pair route. For purposes of this paragraph only, the term
6 ‘percent of passenger service’ shall be calculated using the
7 121 passenger carrier’s passenger data for the 24 months
8 preceding the effective date of this Act on the city pair
9 route in which the 121 passenger carrier is seeking tender
10 of non-priority bypass mail.”.

11 “(4)(A) If a 135 passenger carrier serves a city pair
12 route and meets the requirements of paragraph (h)(1)
13 when a 121 passenger carrier begins serving such route
14 with a 121 passenger aircraft in accordance with para-
15 graphs (1) and (2) of this subsection, the qualifying 135
16 passenger carriers on that route shall convert to a 121
17 passenger aircraft within 5 years of the 121 passenger air-
18 craft commencing service on that route in order to remain
19 eligible for equitable tender under paragraph (1). The 135
20 carrier must:

21 “(i) begin the process of conversion not later
22 than 2 years after the 121 passenger aircraft begins
23 offering service on that route; and

1 “(ii) submit a Part 121 compliance statement
2 not later than 4 years after the 121 passenger air-
3 craft begins offering service on that route.

4 “(B) Completion of conversion under subparagraph
5 (A) shall not be required if all 121 passenger carriers dis-
6 continue scheduled service with 121 passenger aircraft on
7 the city pair route.

8 “(C) Any qualified carrier operating in the State of
9 Alaska under this section may request a waiver from para-
10 graph (A). Such a request, at the discretion of the Sec-
11 retary, may be granted for good cause shown. The request-
12 ing party shall state the basis for such a waiver. The Sec-
13 retary may allow carriers performing the activities de-
14 scribed in paragraph (A) to contract for internal manage-
15 ment services and shared personnel responsibilities with
16 carriers already certified under part 121 if the certified
17 121 passenger carrier also qualifies for tender of non-pri-
18 ority bypass mail (as described in subsection (h)) in the
19 hub in which the 135 carrier operates.”

20 “(D) The Secretary may charge only nominal fees as-
21 sociated with a carrier performing the activities described
22 in paragraph (A). The Federal Aviation Administration
23 shall reimburse any carrier for fees paid to the Adminis-
24 trator to perform the activities described in paragraph (A)

1 between January 1, 1997, and the effective date of this
2 Act.

3 “(E) Five years after the effective date of this Act,
4 if a 135 passenger carrier is providing service on a city
5 pair route and a 121 passenger aircraft begins providing
6 passenger service on said route, such 135 passenger car-
7 rier shall convert to operations under part 121 within 12
8 months of the 121 passenger carrier being tendered non-
9 priority bypass mail. The Postal Service shall not continue
10 the tender of non-priority bypass mail to a 135 passenger
11 carrier that fails to convert to part 121 operations within
12 12 months of being tendered such mail under this para-
13 graph.”.

14 “(F) Notwithstanding the requirements of this sub-
15 section, if only one passenger carrier or aircraft is quali-
16 fied to be tendered non-priority bypass mail as a passenger
17 carrier or aircraft on a city pair route, as described in
18 this subsection, the Postal Service shall tender 20 percent
19 of the non-priority bypass mail described in paragraph (1)
20 to the passenger carrier or aircraft providing the next
21 highest level of passenger service on such route.

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

1 “(6) No less than every two years, in conjunction
2 with annual updates, the Secretary shall review the need
3 for a bush mail rate investigation. The Secretary shall use
4 show cause procedures to speedily and more accurately de-
5 termine the cost of providing bush mail service. In order
6 to assure sufficient, reliable, and timely traffic data to
7 meet the requirements of this law, the Secretary shall re-
8 quire the monthly submission of the bush carrier’s data
9 on T-100 diskettes, or any other suitable form of data
10 collection, as determined by the Secretary. In addition, the
11 Secretary shall require the carriers to retain all books,
12 records, and other source and summary documentation to
13 support their reports and to preserve and maintain such
14 documentation in a manner that readily permits the audit
15 and examination by representatives of the Secretary or the
16 Postal Service. Such documentation shall be retained for
17 seven years or until the Secretary indicates that the
18 records may be destroyed. Copies of flight logs for aircraft
19 sold or disposed of must be retained. Carriers qualified
20 to be tendered non-priority bypass mail must submit to
21 the Secretary the number and type of aircraft in the car-
22 rier’s fleet, the level of passenger insurance covering its
23 fleet and the name of the insurance company providing
24 such coverage. Carriers qualified to be tendered non-pri-
25 ority bypass mail must submit additional traffic or finan-

1 cial reports as requested by the Postal Service or the State
2 of Alaska’s Department of Transportation and Public Fa-
3 cilities unless the Secretary finds such reports to be un-
4 duly burdensome.

5 “(7)(A) In this section, excluding paragraph (3), the
6 ‘percent of the passenger service’ shall be calculated using
7 the data provided as described in paragraph (6) and the
8 lesser of

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

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

1 of all passenger carriers providing service between
2 the origination point and the destination point.

3 “(B) Not later than 30 days after the last day of each
4 calendar month, carriers shall report to the Postal Service
5 the excise taxes paid by city pair to the Department of
6 the Treasury. Final compiled data shall be made available
7 to carriers providing service in the hub.

8 “(8) The percentage rate in paragraph (1) shall be
9 75 percent 5 years after the date of enactment of the Alas-
10 ka Bypass Mail, Passenger and Freight Stability Act of
11 2001.”.

12 “(i)(1) Except as provided in paragraph (i)(7), on a
13 given city pair route, the Postal Service shall offer equi-
14 table tender of 20 percent of the non-priority bypass mail
15 on such route to those carriers transporting 25 percent
16 or more of the total non-mail freight (in revenue), for the
17 12 months immediately preceding the date on which the
18 freight carrier seeks tender of non-priority bypass mail.

19 “(2) To remain eligible for equitable tender under
20 this subsection, a freight carrier shall continue to provide
21 not less than 25 percent of the non-mail freight service
22 on the city pair route for which the carrier is seeking ten-
23 der of such mail.

24 “(3) If a new freight carrier enters a market, that
25 freight carrier shall meet the minimum requirements of

1 subsection (g)(1) and shall operate for 12 months on a
2 given city pair route before being eligible for equitable ten-
3 der of non-priority bypass mail on that route.

4 “(4) If no carrier qualifies for tender of non-priority
5 bypass mail under this subsection, such mail to be divided
6 under this subsection, as described in subparagraph (1),
7 shall be tendered to the non-mail freight carrier providing
8 the highest percentage of non-mail freight service (in
9 terms of revenue, as calculated in paragraph (i)(7)) on the
10 city pair route. In the event no non-mail freight carrier
11 is qualified to receive tender of non-priority bypass mail
12 under this paragraph, the non-priority bypass mail to be
13 divided under this subsection, as described in subpara-
14 graph (1) shall be divided equitably among carriers quali-
15 fied under subsection (h).

16 “(5) Qualification for the tender of mail under this
17 subsection shall not be counted toward the minimum
18 qualifications necessary to be tendered non-priority bypass
19 mail on any other route.

20 “(6) No less than every two years, in conjunction
21 with annual updates, the Secretary shall review the need
22 for a bush mail rate investigation. The Secretary shall use
23 show cause procedures to speedily and more accurately de-
24 termine the cost of providing bush mail service. In order
25 to assure sufficient, reliable, and timely traffic data to

1 meet the requirements of this law, the Secretary shall re-
2 quire the monthly submission of the bush carrier's data
3 on T-100 diskettes, or any other suitable form of data
4 collection, as determined by the Secretary. In addition, the
5 Secretary shall require the carriers to retain all books,
6 records, and other source and summary documentation to
7 support their reports and to preserve and maintain such
8 documentation in a manner that readily permits the audit
9 and examination by representatives of the Secretary or the
10 Postal Service. Such documentation shall be retained for
11 seven years or until the Secretary indicates that the
12 records may be destroyed. Copies of flight logs for aircraft
13 sold or disposed of must be retained. Carriers qualified
14 to be tendered non-priority bypass mail must submit to
15 the Secretary the number and type of aircraft in the car-
16 rier's fleet, the level of passenger insurance covering its
17 fleet and the name of the insurance company providing
18 such coverage. Carriers qualified to be tendered non-pri-
19 ority bypass mail must submit additional traffic or finan-
20 cial reports as requested by the Postal Service or the State
21 of Alaska's Department of Transportation and Public Fa-
22 cilities unless the Secretary finds such reports to be un-
23 duly burdensome.

24 “(7)(A) In this subsection the ‘percent of non-mail
25 freight’ is calculated by dividing the revenue earned by a

1 carrier from the transport of non-mail freight from an
 2 origination point to a destination point divided by the total
 3 amount of revenue earned by all carriers from the trans-
 4 port of non-mail freight from the origination point to the
 5 destination point and the lesser of:

6 “(i) the value of the freight excise tax paid by
 7 or on behalf of a carrier, as determined by reviewing
 8 the collected amount of base fares for non-mail
 9 freight actually flown by a carrier from the origina-
 10 tion point to the destination point, divided by the
 11 value of the total non-mail freight excise taxes, as
 12 determined by reviewing the collected amount of
 13 base fares paid by or on behalf of all non-mail
 14 freight carriers providing service from the origina-
 15 tion point to the destination point; and

16 “(ii) the value of half of the non-mail freight
 17 excise tax paid by or on behalf of a carrier, as deter-
 18 mined by reviewing the collected amount of base
 19 fares for non-mail freight actually flown by a carrier
 20 on the city pair route, divided by the value of the
 21 total non-mail freight excise taxes, as determined by
 22 reviewing the collected amount of base fares paid by
 23 or on behalf of all non-mail freight carriers pro-
 24 viding service on the city pair route.

1 “(B) Not later than 30 days after the last day of each
2 calendar month, carriers shall report to the Postal Service
3 the revenue earned from the transport of non-mail freight.
4 Final compiled data shall be made available to carriers
5 providing service in the hub.

6 “(8) The percentage rate in paragraph (1) shall be
7 25 percent 5 years after the date of enactment of the Alas-
8 ka Bypass Mail, Passenger and Freight Stability Act of
9 2001.

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

15 “(2) If no carrier qualifies under this subsection, the
16 10 percent of non-priority bypass mail allocated in sub-
17 section (j)(1) shall be divided evenly between the pools de-
18 scribed in subsections (h) and (i) to be equitably tendered
19 among qualified carriers under such subsections, such that
20 the amount of non-priority bypass mail available for ten-
21 der among qualified carries under subsection (h) shall be
22 75 percent and the amount of non-priority bypass mail
23 available for tender among qualified carries under sub-
24 section (i) shall be 25 percent.

1 “(3) The percentage rate in paragraph (1) shall be
2 0 percent 5 years after the date of enactment of the Alas-
3 ka Bypass Mail, Passenger and Freight Stability Act of
4 2001.

5 “(k) No qualified carrier may be tendered non-pri-
6 ority bypass mail under subsections (h) and (i) simulta-
7 neously on a route unless no other carrier qualifies or
8 elects to be tendered mail under either subsection.

9 “(l) Carriers qualifying under subsections (h) and (i)
10 simultaneously may not change the pool from which they
11 elect to be tendered mail on a city pair route more than
12 once per quarter.

13 “(m) If—

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

16 “(ii) 2 or more bush passenger or bush non-
17 mail freight carriers merge; or

18 “(2)(i) if 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) if a bush passenger or non-mail freight
23 carrier purchases the operating certificate of another
24 bush passenger or non-mail carrier, the resulting
25 carrier operation shall have the passenger and non-

1 mail freight of all such merged or acquired carriers
2 on that route counted towards meeting the resulting
3 carrier's minimum requirements to receive equitable
4 tender of non-priority bypass mail on such route for
5 the following 6 months. After this 6 month period
6 the carrier must demonstrate that they meet the
7 minimum passenger or non-mail freight carriage re-
8 quirements of this section to continue receiving ten-
9 der of such mail. An operating certificate transferred
10 to a carrier receiving tender of non-priority bypass
11 mail under this section shall retain the status of the
12 certificate as of the date of transfer.

13 “(n) In addition to any penalties applied to a carrier
14 by the Federal Aviation Administration or the Secretary,
15 any carrier that significantly mis-states passenger or non-
16 mail freight data required to be reported under this sec-
17 tion on any route, in an attempt to qualify for tender of
18 non-priority bypass mail, shall receive—

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

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

1 “(3) a 1-year suspension of tender of all non-
2 priority 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 non-priority bypass mail in the entire State of Alas-
6 ka for the fourth offense in the State.”.

7 “(o)(1) The Postal Service or the Secretary, in car-
8 rying out or enforcing the intent and provisions of sub-
9 sections (g)(2), (h) or (i), may deny equitable tender to
10 an otherwise technically qualified carrier who does not op-
11 erate within the system in good faith and the intent of
12 this Act.

13 “(2) The Secretary and the Postal Service are au-
14 thorized to issue waivers for a carrier operating in the
15 State of Alaska not technically meeting the requirements
16 of this section, except the requirements of subsection
17 (g)(1), if the carrier fulfills the intent of providing pas-
18 senger and non-mail freight service to rural communities.
19 The assumption of fulfilling the intent of this Act shall
20 lie against the carrier.

21 “(3) Consistent with the intent of supporting im-
22 proved passenger and non-mail freight service to destina-
23 tion communities, in granting waivers for or denying ten-
24 der to carriers under this paragraph, the Postal Service
25 and the Secretary shall consider:

1 “(A) the passenger needs of the destination to
2 be served;

3 “(B) the non-mail freight needs of the destina-
4 tion to be served;

5 “(C) the mail needs of the destination to be
6 served;

7 “(D) the amount of passenger service already
8 available to the destination;

9 “(E) the amount of non-mail freight service al-
10 ready available to the destination; and

11 “(F) the amount of non-priority bypass mail
12 service already available to the destination.

13 “(p) The Secretary shall make a regular review of
14 carriers receiving equitable tender of non-priority bypass
15 mail. If the Secretary finds a carrier is operating in an
16 unsafe manner, including evidence that the carrier is re-
17 peatedly flying in unsafe conditions to the detriment of
18 itself, its passengers or the general public, in order to be
19 qualified to receive equitable tender under this section, the
20 Secretary shall notify the Postal Service. Upon such notifi-
21 cation, the Postal Service shall cease tender of mail to
22 such carrier until the Secretary certifies the carrier is op-
23 erating in a safe manner. Upon such receipt the carrier
24 must demonstrate that it otherwise meets the minimum

1 carriage requirements of this section before being tendered
 2 mail under this section.

3 “(q) The United States Postal Service shall have the
 4 authority to tender non-priority bypass mail to any carrier
 5 that meets the requirements of subsection (g)(1) on any
 6 route on an emergency basis. Such emergency tender shall
 7 cease when a carrier qualifies for tender on such route
 8 under the terms of this section.”.

9 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

10 (1) TITLE 39.—Sections 5402 (b)(3) and (c) of
 11 title 39, United States Code, are amended by replac-
 12 ing the term “Secretary of Transportation” with the
 13 word “Secretary”;

14 (2) TITLE 39.—Section 5402(f) of title 39,
 15 United States Code, is amended—

16 (A) by striking “subsections (a), (b), and
 17 (c)” and inserting “subsection (b), (c), and
 18 (d)”; and

19 (B) by striking “subsection (d)” and in-
 20 serting “subsection (e)”.

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

24 (g) EFFECTIVE DATES.—Subsections (a) through (d)
 25 and (f) shall be effective upon the date of enactment of

1 this Act. All remaining subsections shall be effective upon
2 an implementation date within 12 months of the date of
3 enactment of this Act established by the Postal Service
4 and announced by publication in the Federal Register not
5 less than 60 days before the implementation date.

6 (h) The Postal Service and the Secretary shall report
7 to the House Committee on Government Reform and the
8 Senate Committee on Governmental Affairs on the
9 progress of implementing this Act no later than 12 months
10 after the date of enactment.

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