

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.

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## 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

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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 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 Representatives 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:

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

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.

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

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);

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

(3) by inserting before subsection (b), as redesignated, 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 subparagraph  
8 (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

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:

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 qual-  
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 qual-  
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 carriers under subsection (h) shall be  
22 75 percent and the amount of non-priority bypass mail  
23 available for tender among qualified carriers 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)”;  
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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