

113TH CONGRESS
2D SESSION

H. R. 4174

To amend title 39, United States Code, to modernize and improve Alaska
bypass freight mail transportation.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2014

Mr. ISSA (for himself and Mr. FARENTHOLD) introduced the following bill;
which was referred to the Committee on Oversight and Government Reform

A BILL

To amend title 39, United States Code, to modernize and
improve Alaska bypass freight mail transportation.

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 Mod-
5 ernization Act of 2014”.

6 **SEC. 2. ALASKA BYPASS MAIL TRANSPORTATION.**

7 (a) IN GENERAL.—Section 5402 of title 39, United
8 States Code, is amended—

9 (1) in the section heading by striking “**Con-**
10 **tracts for transportation of mail by air**”

1 and inserting “**Alaska bypass mail transpor-**
2 **tation**”;

3 (2) in subsection (a)—

4 (A) by striking paragraphs (2), (7), and
5 (9); and

6 (B) by redesignating paragraphs (3), (4),
7 (5), (6), (8), (10), (11), (12), (13), (14), (15),
8 (16), (17), (18), (19), (20), (21), (22), (23),
9 (24), and (25) as paragraphs (2) through (22),
10 respectively;

11 (3) by striking subsections (b) through (f);

12 (4) by redesignating subsections (g) through (s)
13 as subsections (c) through (o), respectively;

14 (5) by inserting after subsection (a) the fol-
15 lowing:

16 “(b) EFFICIENT TRANSPORT OF ALASKA BYPASS
17 MAIL.—In selecting a carrier of nonpriority bypass mail
18 to a point in the State of Alaska, the Postal Service
19 shall—

20 “(1) ensure a minimum of 1 scheduled flight
21 per week to each nonpriority bypass mail destination
22 with guaranteed capacity for nonpriority bypass
23 mail, subject to the condition that weather condi-
24 tions, lack of available service, or other extraor-

1 dinary circumstances do not interfere with the ful-
2 fillment of this minimum requirement; and

3 “(2) ensure that any flight that transports non-
4 priority bypass mail to a nonpriority bypass mail
5 destination and is in addition to the minimum
6 flights required under paragraph (1)—

7 “(A) is necessary to the delivery of nonpri-
8 ority bypass mail; and

9 “(B) maximizes the cost efficiency to the
10 Postal Service.”;

11 (6) in subsection (c)(2) (as redesignated by
12 paragraph (4) of this subsection)—

13 (A) in subparagraph (E) by striking
14 “(E)(i)” and all that follows through the end of
15 clause (i) and inserting the following:

16 “(E)(i) may offer tender of nonpriority mainline
17 bypass mail at mainline rates to a bush carrier oper-
18 ating from an acceptance point to a hub point in the
19 State of Alaska, in addition to the terms of subpara-
20 graph (C); and”;

21 (B) by striking subparagraph (F) and in-
22 serting the following:

23 “(F) shall offer equitable tender of nonpriority
24 bypass mail in proportion to passenger and nonmail
25 freight pools described in this section between quali-

1 fied passenger and nonmail freight carriers on a
2 route from an acceptance point to a bush destination
3 in the State of Alaska at a composite rate if—

4 “(i)(I) for a passenger carrier, the carrier
5 receiving the composite rate provided passenger
6 service in accordance with the requirements of
7 subsection (d)(2); or

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

14 “(ii) the carrier qualifies under subsection
15 (d) to be tendered nonpriority bypass mail out
16 of the hub point being bypassed;

17 “(iii) the tender of such mail will not de-
18 crease efficiency of delivery of nonpriority by-
19 pass mail service into or out of the hub point
20 being bypassed; and

21 “(iv) such tender will result in reduced
22 payments to the carrier by the Postal Service
23 over flying the entire route; and”;

24 (C) in subparagraph (G) by striking “not-
25 withstanding subparagraph (F),”; and

1 (D) in the matter following subparagraph
2 (G) by striking “subparagraph (G)” and insert-
3 ing “subparagraphs (F) and (G)”; and
4 (7) in subparagraph (c)(4)(A) (as redesignated
5 by paragraph (4) of this subsection) by striking
6 “subparagraph (B)” and inserting “subparagraph
7 (B), paragraph (2)(E),”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 for chapter 54 of such title is amended by striking the
10 item relating to section 5402 and inserting the following:
“5402. Alaska bypass mail transportation.”.

11 (c) CONFORMING AMENDMENTS.—Section 5402 of
12 such title is amended—

13 (1) in subsection (a)—

14 (A) in paragraph (4) by striking “sub-
15 section (g)(1)(A)(iv)(I)” and inserting “sub-
16 section (c)(1)(A)(iv)(I)”;

17 (B) in paragraph (5) by striking “sub-
18 section (g)(1)(A)(iv)(I)” and inserting “sub-
19 section (c)(1)(A)(iv)(I)”;

20 (C) in paragraph (13) by striking “sub-
21 section (g)(1)(A)(iv)(II)” and inserting “sub-
22 section (c)(1)(A)(iv)(II)”;

23 (D) in paragraph (15)(A) by striking “sub-
24 section (g)(1)(A)(iv)” and inserting “subsection
25 (c)(1)(A)(iv)”;

1 (2) in subsection (e) (as redesignated by sub-
2 section (a)(4) of this section)—

3 (A) in paragraph (2)—

4 (i) in subparagraph (C)(ii) by striking
5 “subsection (h)(5)” and inserting “sub-
6 section (d)(5)”; and

7 (ii) in subparagraph (D)—

8 (I) in clause (i)(II) by striking
9 “subsection (h)(5)” and inserting
10 “subsection (d)(5)”; and

11 (II) in clause (ii)(II) by striking
12 “subsection (i)(6)” and inserting
13 “subsection (e)(6)”; and

14 (B) in paragraph (5)—

15 (i) in subparagraph (A)(i) by striking
16 “subsection (g)(1)(A)(iv)(II)” and insert-
17 ing “paragraph (1)(A)(iv)(II)”;

18 (ii) in subparagraph (B)(iii) by strik-
19 ing “subsection (h)(5)” and inserting
20 “subsection (d)(5)”;

21 (iii) in subparagraph (C) by striking
22 “subsection (h)(2)(B)” and inserting “sub-
23 section (d)(2)(B)”;

1 (iv) in subparagraph (D) by striking
2 “subsection (h)(5)” and inserting “sub-
3 section (d)(5)”;

4 (3) subsection (d) (as redesignated by sub-
5 section (a)(4) of this section)—

6 (A) in paragraph (1)(A) by striking “sub-
7 section (g)(1)” and inserting “subsection
8 (e)(1)”;

9 (B) in paragraph (3)—

10 (i) in subparagraph (A) by striking
11 “subsection (g)(1)” and inserting “sub-
12 section (e)(1)”;

13 (ii) in subparagraph (B)(i)(II) by
14 striking “subsection (i)(1)” and inserting
15 “subsection (e)(1)”;

16 (C) in paragraph (5)(A) by striking “sub-
17 section (k)” and inserting “subsection (g)”;

18 (D) in paragraph (6) by striking “sub-
19 section (k)” each place it appears and inserting
20 “subsection (g)”;

21 (4) in subsection (e) (as redesignated by sub-
22 section (a)(4) of this section)—

23 (A) in paragraph (3) by striking “sub-
24 section (g)(1)” and inserting “subsection
25 (e)(1)”;

1 (B) in paragraph (4) by striking “sub-
2 section (h)” and inserting “subsection (d)”; and

3 (C) in paragraph (6) by striking “sub-
4 section (k)” and inserting “subsection (g)”;

5 (5) in subsection (f) (as redesignated by sub-
6 section (a)(4) of this section)—

7 (A) in paragraph (1)—

8 (i) by striking “subsection (g)(1)” and
9 inserting “subsection (c)(1)”; and

10 (ii) by striking “subsection (h) or (i)”
11 and inserting “subsection (d) or (e)”;

12 (B) in paragraph (2)—

13 (i) in the matter preceding subpara-
14 graph (A) by striking “subsections (h) and
15 (i)” and inserting “subsections (d) and
16 (e)”;

17 (ii) in subparagraph (A) by striking
18 “subsection (h)” and inserting “subsection
19 (d)”;

20 (iii) in subparagraph (B) by striking
21 “subsection (i)” and inserting “subsection
22 (e)”;

23 (C) in paragraph (3)—

24 (i) in subparagraph (B)—

1 (I) in clause (i) by striking “sub-
2 section (g)(1)” and inserting “sub-
3 section (c)(1)”;

4 (II) in clause (ii) by striking
5 “subsection (h) or (i)” and inserting
6 “subsection (d) or (e)”;

7 (ii) in subparagraph (C) by striking
8 “subsection (h) or (i)” and inserting “sub-
9 section (d) or (e)”;

10 (6) in subsection (h) (as redesignated by sub-
11 section (a)(4) of this section) by striking “sub-
12 sections (h) and (i)” and inserting “subsection (d)
13 or (e)”;

14 (7) in subsection (i) (as redesignated by sub-
15 section (a)(4) of this section)—

16 (A) in paragraph (1)—

17 (i) by striking “subsections (h) and
18 (i)” and inserting “subsections (d) and
19 (e)”;

20 (ii) by striking “subsection (h)” and
21 inserting “subsection (d)”;

22 (B) in paragraph (2)—

23 (i) in the matter preceding subpara-
24 graph (A) by striking “subsection (i)” and
25 inserting “subsection (e)”;

1 (ii) in subparagraph (A) by striking
2 “subsections (h) and (i)” and inserting
3 “subsections (d) and (e)”; and

4 (iii) in subparagraph (B)—
5 (I) by striking “subsection (h)”
6 and inserting “subsection (d)”; and
7 (II) by striking “subsection (i)”
8 and inserting “subsection (e)”; and

9 (8) in subsection (l) (as redesignated by sub-
10 section (a)(4) of this section)—

11 (A) in paragraph (1) by striking “sub-
12 section (g)(2), (h), or (i)” and inserting “sub-
13 section (c)(2), (d), or (e)”; and

14 (B) in paragraph (2) by striking “sub-
15 section (h) or (i)” and inserting “subsection (d)
16 or (e)”; and

17 (C) in paragraph (3)—

18 (i) by striking “subsection
19 (g)(1)(A)(iv), (g)(2)(E), (g)(4), or (g)(5)”
20 and inserting “subsection (c)(1)(A)(iv),
21 (c)(2)(E), (c)(4), or (c)(5)”; and

22 (ii) by striking “subsection (h)” and
23 inserting “subsection (d)”; and

1 (9) in subsection (n) (as redesignated by sub-
2 section (a)(4) of this section) by striking “subsection
3 (g)(1)” and inserting “subsection (c)(1)”; and

4 (10) in subsection (o) (as redesignated by sub-
5 section (a)(4) of this section) by striking “sub-
6 sections (b), (c) and (d)” and inserting “subsections
7 (b), (c), and (d) of section 5404”.

8 **SEC. 3. CONTRACTS FOR FOREIGN AND INTERSTATE AIR**
9 **TRANSPORTATION.**

10 (a) IN GENERAL.—At the end of chapter 54 of title
11 39, United States Code, add the following:

12 **“§ 5404. Contracts for foreign and interstate air**
13 **transportation**

14 “(a) DEFINITIONS.—In this section—

15 “(1) the terms ‘air carrier’, ‘foreign air carrier’,
16 ‘foreign air transportation’, and ‘interstate air trans-
17 portation’ have the meanings given such terms in
18 section 40102(a) of title 49;

19 “(2) the term ‘certificated air carrier’ means an
20 air carrier that holds a certificate of public conven-
21 ience and necessity issued under section 41102(a) of
22 title 49;

23 “(3) the term ‘code-share relationship’ means a
24 relationship pursuant to which any certificated air
25 carrier or foreign air carrier’s designation code is

1 used to identify a flight operated by another air car-
2 rier or foreign air carrier; and

3 “(4) the term ‘Secretary’ means the Secretary
4 of Transportation.

5 “(b) INTERNATIONAL MAIL.—

6 “(1) IN GENERAL.—

7 “(A) USE OF CERTIFICATED AIR CAR-
8 RRIERS; CODE-SHARE RELATIONSHIPS.—Except
9 as otherwise provided in this subsection, the
10 Postal Service may contract for the transpor-
11 tation of mail by aircraft between any of the
12 points in foreign air transportation only with
13 certificated air carriers. A contract may be
14 awarded to a certificated air carrier to trans-
15 port mail by air between any of the points in
16 foreign air transportation that the Secretary
17 has authorized the carrier to serve either di-
18 rectly or through a code-share relationship with
19 1 or more foreign air carriers.

20 “(B) USE OF FOREIGN AIR CARRIERS.—If
21 the Postal Service has sought offers or pro-
22 posals from certificated air carriers to transport
23 mail in foreign air transportation between
24 points, or pairs of points within a geographic
25 region or regions, and has not received offers or

1 proposals that meet Postal Service requirements
2 at a fair and reasonable price from at least 2
3 such carriers, the Postal Service may seek of-
4 fers or proposals from foreign air carriers.
5 Where service in foreign air transportation
6 meeting the Postal Service’s requirements is
7 unavailable at a fair and reasonable price from
8 at least 2 certificated air carriers, either di-
9 rectly or through a code-share relationship with
10 1 or more foreign air carriers, the Postal Serv-
11 ice may contract with foreign air carriers to
12 provide the service sought if, when the Postal
13 Service seeks offers or proposals from foreign
14 air carriers, it also seeks an offer or proposal
15 to provide that service from any certificated air
16 carrier providing service between those points,
17 or pairs of points within a geographic region or
18 regions, on the same terms and conditions that
19 are being sought from foreign air carriers.

20 “(C) METHODOLOGY FOR DETERMINING
21 FAIR AND REASONABLE PRICES.—For purposes
22 of this subsection, the Postal Service shall use
23 a methodology for determining fair and reason-
24 able prices for the Postal Service designated re-
25 gion or regions developed in consultation with,

1 and with the concurrence of, certificated air
2 carriers representing at least 51 percent of
3 available ton miles in the markets of interest.

4 “(D) CEILING PRICES.—For purposes of
5 this subsection, ceiling prices determined pursu-
6 ant to the methodology used under subpara-
7 graph (C) shall be presumed to be fair and rea-
8 sonable if they do not exceed the ceiling prices
9 derived from—

10 “(i) a weighted average based on mar-
11 ket rate data furnished by the Inter-
12 national Air Transport Association or a
13 subsidiary unit thereof; or

14 “(ii) if such data are not available
15 from those sources, such other neutral,
16 regularly updated set of weighted average
17 market rates as the Postal Service, with
18 the concurrence of certificated air carriers
19 representing at least 51 percent of avail-
20 able ton miles in the markets of interest,
21 may designate.

22 “(E) SITUATIONS IN WHICH CONCUR-
23 RENCE CANNOT BE ATTAINED.—If, for pur-
24 poses of subparagraph (D)(ii), concurrence can-
25 not be attained, the most recently available

1 market rate data described in this paragraph
2 shall continue to apply for the relevant market
3 or markets.

4 “(2) CONTRACT PROCESS.—The Postal Service
5 shall contract for foreign air transportation as set
6 forth in paragraph (1) through an open procurement
7 process that will provide—

8 “(A) potential offerors with timely notice
9 of business opportunities in sufficient detail to
10 allow them to make a proposal;

11 “(B) requirements, proposed terms and
12 conditions, and evaluation criteria to potential
13 offerors; and

14 “(C) an opportunity for unsuccessful
15 offerors to receive prompt feedback upon re-
16 quest.

17 “(3) EMERGENCY OR UNANTICIPATED CONDI-
18 TIONS; INADEQUATE LIFT SPACE.—The Postal Serv-
19 ice may enter into contracts to transport mail by air
20 in foreign air transportation with a certificated air
21 carrier or a foreign air carrier without complying
22 with the requirements of paragraph (1) or (2) if—

23 “(A) emergency or unanticipated condi-
24 tions exist that make it impractical for the

1 Postal Service to comply with such require-
2 ments; or

3 “(B) the Postal Service’s demand for lift
4 exceeds the space available to the Postal Service
5 under existing contracts and—

6 “(i) there is insufficient time available
7 to seek additional lift using procedures
8 that comply with those requirements with-
9 out compromising the Postal Service’s
10 service commitments to its own customers;
11 and

12 “(ii) the Postal Service first offers
13 any certificated air carrier holding a con-
14 tract to carry mail between the relevant
15 points the opportunity to carry such excess
16 volumes under the terms of its existing
17 contract.

18 “(c) GOOD-FAITH EFFORT REQUIRED.—The Postal
19 Service and potential offerors shall put a good-faith effort
20 into resolving disputes concerning the award of contracts
21 made under subsection (b).

22 “(d) SPECIAL CIRCUMSTANCES.—If the Postal Serv-
23 ice determines that service by certificated air carriers or
24 combination of air carriers between any pair or pairs of
25 points in foreign air transportation is not adequate for its

1 purposes, the Postal Service may contract, without adver-
2 tising for bids, in such manner and under such terms and
3 conditions as the Postal Service may deem appropriate,
4 with any air taxi operator or combination thereof for such
5 air transportation service. Contracts made under this sub-
6 section may be renewed at the existing rate by mutual
7 agreement between the holder and the Postal Service. The
8 Postal Service, with the consent of the air taxi operator,
9 may adjust the compensation under such contracts for in-
10 creased or decreased costs occasioned by changed condi-
11 tions occurring during the contract term. The Postal Serv-
12 ice shall cancel such a contract when the Secretary author-
13 izes an additional certificated carrier or carriers to provide
14 service between any pair or pairs of points covered by the
15 contract, and such carrier or carriers inaugurate schedules
16 adequate for its purposes.

17 “(e) TRANSPORTATION OF MAIL BY AIRCRAFT IN
18 INTERSTATE AIR TRANSPORTATION.—

19 “(1) DETERMINATION OF RATES AND CON-
20 TRACT TERMS.—The Postal Service may determine
21 rates and contract with any air carrier for the trans-
22 portation of mail by aircraft in interstate air trans-
23 portation either through negotiations or competitive
24 bidding.

25 “(2) MAIL SHIPMENTS OF LIVE ANIMALS.—

1 “(A) IN GENERAL.—In the exercise of its
2 authority under paragraph (1), the Postal Serv-
3 ice may require any air carrier to accept mail
4 shipments of day-old poultry, honeybees, and
5 such other live animals as postal regulations
6 allow to be transmitted as mail matter. The au-
7 thority of the Postal Service under this sub-
8 paragraph shall not apply in the case of any air
9 carrier who commonly and regularly refuses to
10 accept any live animals as cargo.

11 “(B) SURCHARGES.—Notwithstanding any
12 other provision of law, the Postal Service is au-
13 thorized to assess, as postage to be paid by the
14 mailers of any shipments covered by subpara-
15 graph (A), a reasonable surcharge that the
16 Postal Service determines in its discretion to be
17 adequate to compensate air carriers for any
18 necessary additional expense incurred in han-
19 dling such shipments.

20 “(f) APPLICABILITY TO POINTS WITHIN ALASKA.—
21 The authority of the Secretary and the Postal Service
22 under subsections (b), (c), and (d), as in effect on Sep-
23 tember 30, 2008, shall also apply, and the authority of
24 the Postal Service under subsection (e) shall not apply,
25 to the transportation of mail by aircraft between any 2

1 points both of which are within the State of Alaska and
 2 between which the air carrier is authorized by the Sec-
 3 retary to engage in the transportation of mail.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
 5 for chapter 54 of such title is amended by adding at the
 6 end the following:

“5404. Contracts for foreign and interstate air transportation.”.

7 **SEC. 4. REDUCTION OF ALASKA BYPASS MAIL SUBSIDY.**

8 (a) IN GENERAL.—Chapter 54 of title 39, United
 9 States Code (as amended by this Act), is further amended
 10 by adding at the end the following:

11 **“§ 5405. Reduction of Alaska bypass mail subsidy**

12 “(a) COMPETITIVE PRODUCT CLASSIFICATION.—

13 “(1) IN GENERAL.—Except as provided in this
 14 section, Alaska bypass mail service under section
 15 5402 shall be treated as a separate competitive
 16 product for all purposes.

17 “(2) TRANSFER PROHIBITED.—No part of
 18 Alaska bypass mail service may be transferred to the
 19 market-dominant category of mail under section
 20 3642.

21 “(3) LIMITATIONS.—Alaska bypass mail service
 22 shall not be treated as a competitive product for
 23 purposes of the implementation of sections 3633(a)
 24 and 3634.

25 “(b) MINIMUM COST COVERAGE.—

1 “(1) IN GENERAL.—The Postal Service shall es-
2 tablish and maintain rates and fees for matter sent
3 by Alaska bypass mail service—

4 “(A) for fiscal year 2015, that cover at
5 least 30 percent of the costs attributable to
6 Alaska bypass mail service in that fiscal year;

7 “(B) for fiscal year 2016, that cover at
8 least 34 percent of the costs attributable to
9 Alaska bypass mail service in that fiscal year;

10 “(C) for fiscal year 2017, that cover at
11 least 38 percent of the costs attributable to
12 Alaska bypass mail service in that fiscal year;

13 “(D) for fiscal year 2018, that cover at
14 least 42 percent of the costs attributable to
15 Alaska bypass mail service in that fiscal year;

16 “(E) for fiscal year 2019, that cover at
17 least 46 percent of the costs attributable to
18 Alaska bypass mail service in that fiscal year;

19 and

20 “(F) for fiscal year 2020, and for each fis-
21 cal year thereafter, that cover at least 50 per-
22 cent of the costs attributable to Alaska bypass
23 mail service in that fiscal year.

24 “(2) COSTS ATTRIBUTABLE.—The costs attrib-
25 utable to Alaska bypass mail service for a fiscal year

1 shall include all the direct and indirect costs of Alas-
2 ka bypass mail service during that fiscal year that
3 are attributable to that service through reliably iden-
4 tified causal relationships.

5 “(3) INSTITUTIONAL COSTS.—Costs that can be
6 attributed to Alaska bypass mail service may not be
7 classified as institutional costs of the Postal Service.

8 “(4) RATE INCREASE LIMITATION.—For fiscal
9 years 2014 through 2020, no rate for any type of
10 Alaska bypass mail service may be increased in a fis-
11 cal year by more than the maximum permitted rate
12 increase for market dominant products plus an addi-
13 tional 1 percent.

14 “(c) COMPLIANCE.—

15 “(1) ANNUAL REVIEW.—At least once each fis-
16 cal year, the Postal Regulatory Commission shall de-
17 termine whether the Postal Service is in compliance
18 with the requirements under subsection (b).

19 “(2) REMEDIAL ACTIONS.—If, under paragraph
20 (1), the Postal Regulatory Commission determines
21 that the Postal Service has not complied with the re-
22 quirements under subsection (b) with respect to a
23 fiscal year, the Commission shall prescribe, not later
24 than 60 days after making such determination, ac-
25 tions to ensure—

1 “(A) the establishment and maintenance of
2 rates and fees for Alaska bypass mail service
3 that recover any costs required to have been
4 covered for such fiscal year under subsection
5 (b), but that were not covered, by the date that
6 is not later than the last day of the fiscal year
7 that follows such fiscal year; and

8 “(B) compliance with the requirements
9 under subsection (b) in subsequent fiscal years.

10 “(3) LIMITATION.—The Postal Regulatory
11 Commission may not order the Postal Service to dis-
12 continue Alaska bypass mail service.

13 “(4) REGULATIONS.—Not later than 90 days
14 after the date of enactment of this subsection, the
15 Postal Regulatory Commission shall issue regula-
16 tions to implement this subsection.”.

17 “(b) CLERICAL AMENDMENT.—The table of sections
18 for chapter 54 of such title (as amended by this Act) is
19 further amended by adding at the end the following:

“5405. Reduction of Alaska bypass mail subsidy.”.

○