

110TH CONGRESS
2D SESSION

S. 3536

To amend section 5402 of title 39, United States Code, to modify the authority relating to United States Postal Service air transportation contracts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22 (legislative day, SEPTEMBER 17), 2008

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

A BILL

To amend section 5402 of title 39, United States Code, to modify the authority relating to United States Postal Service air transportation contracts, 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 “Air Carriage of Inter-
5 national Mail Act”.

1 **SEC. 2. AIR CARRIAGE OF INTERNATIONAL MAIL.**

2 (a) CONTRACTING AUTHORITY.—Section 5402 of
3 title 39, United States Code, is amended by striking sub-
4 sections (b) and (c) and inserting the following:

5 “(b) INTERNATIONAL MAIL.—

6 “(1) IN GENERAL.—

7 “(A) Except as otherwise provided in this
8 subsection, the Postal Service may contract for
9 the transportation of mail by aircraft between
10 any of the points in foreign air transportation
11 only with certificated air carriers. A contract
12 may be awarded to a certificated air carrier to
13 transport mail by air between any of the points
14 in foreign air transportation that the Secretary
15 of Transportation has authorized the carrier to
16 serve either directly or through a code-share re-
17 lationship with one or more foreign air carriers.

18 “(B) If the Postal Service has sought of-
19 fers or proposals from certificated air carriers
20 to transport mail in foreign air transportation
21 between points, or pairs of points within a geo-
22 graphic region or regions, and has not received
23 offers or proposals that meet Postal Service re-
24 quirements at a fair and reasonable price from
25 at least 2 such carriers, the Postal Service may
26 seek offers or proposals from foreign air car-

1 riers. Where service in foreign air transpor-
2 tation meeting the Postal Service's require-
3 ments is unavailable at a fair and reasonable
4 price from at least 2 certificated air carriers, ei-
5 ther directly or through a code-share relation-
6 ship with one or more foreign air carriers, the
7 Postal Service may contract with foreign air
8 carriers to provide the service sought if, when
9 the Postal Service seeks offers or proposals
10 from foreign air carriers, it also seeks an offer
11 or proposal to provide that service from any
12 certificated air carrier providing service between
13 those points, or pairs of points within a geo-
14 graphic region or regions, on the same terms
15 and conditions that are being sought from for-
16 eign air carriers.

17 “(C) For purposes of this subsection, the
18 Postal Service shall use a methodology for de-
19 termining fair and reasonable prices for the
20 Postal Service designated region or regions de-
21 veloped in consultation with, and with the con-
22 currence of, certificated air carriers rep-
23 resenting at least 51 percent of available ton
24 miles in the markets of interest.

1 “(D) For purposes of this subsection, ceil-
2 ing prices determined pursuant to the method-
3 ology used under subparagraph (C) shall be
4 presumed to be fair and reasonable if they do
5 not exceed the ceiling prices derived from—

6 “(i) a weighted average based on mar-
7 ket rate data furnished by the Inter-
8 national Air Transport Association or a
9 subsidiary unit thereof; or

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

18 “(E) If, for purposes of subparagraph
19 (D)(ii), concurrence cannot be attained, then
20 the most recently available market rate data de-
21 scribed in this subparagraph shall continue to
22 apply for the relevant market or markets.

23 “(2) CONTRACT PROCESS.—The Postal Service
24 shall contract for foreign air transportation as set

1 forth in paragraph (1) through an open procurement
2 process that will provide—

3 “(A) potential offerors with timely notice
4 of business opportunities in sufficient detail to
5 allow them to make a proposal;

6 “(B) requirements, proposed terms and
7 conditions, and evaluation criteria to potential
8 offerors; and

9 “(C) an opportunity for unsuccessful
10 offerors to receive prompt feedback upon re-
11 quest.

12 “(3) EMERGENCY OR UNANTICIPATED CONDI-
13 TIONS; INADEQUATE LIFT SPACE.—The Postal Serv-
14 ice may enter into contracts to transport mail by air
15 in foreign air transportation with a certificated air
16 carrier or a foreign air carrier without complying
17 with the requirements of paragraphs (b)(1) and (2)
18 if—

19 “(A) emergency or unanticipated condi-
20 tions exist that make it impractical for the
21 Postal Service to comply with such require-
22 ments; or

23 “(B) its demand for lift exceeds the space
24 available to it under existing contracts and—

1 “(i) there is insufficient time available
2 to seek additional lift using procedures
3 that comply with those requirements with-
4 out compromising the Postal Service’s
5 service commitments to its own customers;
6 and

7 “(ii) the Postal Service first offers
8 any certificated air carrier holding a con-
9 tract to carry mail between the relevant
10 points the opportunity to carry such excess
11 volumes under the terms of its existing
12 contract.

13 “(c) GOOD FAITH EFFORT REQUIRED.—The Postal
14 Service and potential offerors shall put a good-faith effort
15 into resolving disputes concerning the award of contracts
16 made under subsection (b).”.

17 (b) CONFORMING AMENDMENTS TO TITLE 49.—

18 (1) Section 41901(a) is amended by striking
19 “39.” and inserting “39, and in foreign air trans-
20 portation under section 5402(b) and (c) of title 39.”.

21 (2) Section 41901(b)(1) is amended by striking
22 “in foreign air transportation or”.

23 (3) Section 41902 is amended—

24 (A) by striking “in foreign air transpor-
25 tation or” in subsection (a);

1 (B) by striking subsection (b) and insert-
2 ing the following:

3 “(b) STATEMENTS ON PLACES AND SCHEDULES.—

4 Every air carrier shall file with the United States Postal
5 Service a statement showing—

6 “(1) the places between which the carrier is au-
7 thorized to transport mail in Alaska;

8 “(2) every schedule of aircraft regularly oper-
9 ated by the carrier between places described in para-
10 graph (1) and every change in each schedule; and

11 “(3) for each schedule, the places served by the
12 carrier and the time of arrival at, and departure
13 from, each such place.”;

14 (C) by striking “subsection (b)(3)” each
15 place it appears in subsections (c)(1) and (d)
16 and inserting “subsection (b)(2)”;

17 (D) by striking subsections (e) and (f).

18 (4) Section 41903 is amended by striking “in
19 foreign air transportation or” each place it appears.

20 (5) Section 41904 is amended—

21 (A) by striking “**to or in foreign**
22 **countries**” in the section heading;

23 (B) by striking “to or in a foreign coun-
24 try” and inserting “between two points outside
25 the United States”; and

1 (C) by inserting after “transportation.”
2 the following: “Nothing in this section shall af-
3 fect the authority of the Postal Service to make
4 arrangements with noncitizens for the carriage
5 of mail in foreign air transportation under sub-
6 sections 5402(b) and (c) of title 39.”.

7 (6) Section 41910 is amended by striking the
8 first sentence and inserting “The United States
9 Postal Service may weigh mail transported by air-
10 craft between places in Alaska and make statistical
11 and administrative computations necessary in the in-
12 terest of mail service.”.

13 (7) Chapter 419 is amended—

14 (A) by striking sections 41905, 41907,
15 41908, and 41911; and

16 (B) redesignating sections 41906, 41909,
17 41910, and 49112 as sections 41905, 41906,
18 41907, and 41908, respectively.

19 (8) The chapter analysis for chapter 419 is
20 amended by redesignating the items relating to sec-
21 tions 41906, 41909, 41910, and 49112 as relating
22 to sections 41905, 41906, 41907, and 41908, re-
23 spectively.

24 (9) Section 101(f) of title 39, United States
25 Code, is amended by striking “mail and shall make

1 a fair and equitable distribution of mail business to
2 carriers providing similar modes of transportation
3 services to the Postal Service.” and inserting
4 “mail.”.

5 (10) Subsections (b) and (c) of section 3401 of
6 title 39, United States Code, are amended—

7 (A) by striking “at rates fixed and deter-
8 mined by the Secretary of Transportation in ac-
9 cordance with section 41901 of title 49” and in-
10 serting “or, for carriage of mail in foreign air
11 transportation, other air carriers, air taxi oper-
12 ators or foreign air carriers as permitted by
13 section 5402 of this title”;

14 (B) by striking “at rates not to exceed
15 those so fixed and determined for scheduled
16 United States air carriers”;

17 (C) by striking “scheduled” each place it
18 appears and inserting “certificated”; and

19 (D) by striking the last sentence in each
20 such subsection.

21 (11) Section 5402(a) of title 39, United States
22 Code, is amended—

23 (A) by inserting “‘foreign air carrier’.”
24 after “‘interstate air transportation’,” in para-
25 graph (2);

1 (B) by redesignating paragraphs (7)
2 through (23) as paragraphs (8) through (24)
3 and inserting after paragraph (6) the following:

4 “(7) the term ‘certificated air carrier’ means an
5 air carrier that holds a certificate of public conven-
6 ience and necessity issued under section 41102(a) of
7 title 49;”;

8 (C) by redesignating paragraphs (9)
9 through (24), as redesignated, as paragraphs
10 (10) through (25), respectively, and inserting
11 after paragraph (8) the following:

12 “(9) the term ‘code-share relationship’ means a
13 relationship pursuant to which any certificated air
14 carrier or foreign air carrier’s designation code is
15 used to identify a flight operated by another air car-
16 rier or foreign air carrier;” and

17 (D) by inserting “foreign air carrier,”
18 after “terms” in paragraph (2).

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall take effect on October 1, 2008.

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