

110TH CONGRESS  
2D SESSION

# S. 3536

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2008

Referred to the Committee on Oversight and Government Reform

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Air Carriage of Inter-  
3 national Mail Act”.

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

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

8       “(b) **INTERNATIONAL MAIL.**—

9               “(1) **IN GENERAL.**—

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

21                       “(B) If the Postal Service has sought of-  
22 fers or proposals from certificated air carriers  
23 to transport mail in foreign air transportation  
24 between points, or pairs of points within a geo-  
25 graphic region or regions, and has not received  
26 offers or proposals that meet Postal Service re-

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

20                “(C) For purposes of this subsection, the  
21          Postal Service shall use a methodology for de-  
22          termining fair and reasonable prices for the  
23          Postal Service designated region or regions de-  
24          veloped in consultation with, and with the con-  
25          currence of, certificated air carriers rep-

1           representing at least 51 percent of available ton  
2           miles in the markets of interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19       (b) CONFORMING AMENDMENTS TO TITLE 49.—

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

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

25           (3) Section 41902 is amended—

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

3 (B) by striking subsection (b) and insert-  
4 ing the following:

5 “(b) STATEMENTS ON PLACES AND SCHEDULES.—  
6 Every air carrier shall file with the United States Postal  
7 Service a statement showing—

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

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

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

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

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

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

22 (5) Section 41904 is amended—

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

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

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

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

16 (7) Chapter 419 is amended—

17 (A) by striking sections 41905, 41907,  
18 41908, and 41911; and

19 (B) redesignating sections 41906, 41909,  
20 41910, and 49112 as sections 41905, 41906,  
21 41907, and 41908, respectively.

22 (8) The chapter analysis for chapter 419 is  
23 amended by redesignating the items relating to sec-  
24 tions 41906, 41909, 41910, and 49112 as relating

1 to sections 41905, 41906, 41907, and 41908, re-  
2 spectively.

3 (9) Section 101(f) of title 39, United States  
4 Code, is amended by striking “mail and shall make  
5 a fair and equitable distribution of mail business to  
6 carriers providing similar modes of transportation  
7 services to the Postal Service.” and inserting  
8 “mail.”.

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

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

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

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

23 (D) by striking the last sentence in each  
24 such subsection.

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

3           (A) by inserting “‘foreign air carrier’.”  
4 after “‘interstate air transportation’,” in para-  
5 graph (2);

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

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

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

17           “(9) the term ‘code-share relationship’ means a  
18 relationship pursuant to which any certificated air  
19 carrier or foreign air carrier’s designation code is  
20 used to identify a flight operated by another air car-  
21 rier or foreign air carrier;” and

22           (D) by inserting “‘foreign air carrier,’”  
23 after “‘terms’” in paragraph (2).

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

Passed the Senate September 26, 2008 (legislative  
day, September 17), 2008.

Attest:

NANCY ERICKSON,  
*Secretary.*