Prevention and Toxics (OPPT), Document Control Office (7407), Rm. G–099, 401 M St., SW., Washington, DC 20460.

A public version of the official rulemaking record supporting this action, excluding confidential business information (CBI), is available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460, from 12 noon to 4 p.m., Monday through Friday, except on legal holidays.

All comments that contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information that they believe is entitled to treatment as CBI must assert a business confidentiality claim in accordance with 40 CFR part 2. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will treat the information as non-confidential and may make it available to the public without further notice to the submitter.

Comments and data may also be submitted in electronic form by sending electronic mail (e-mail) to: oppt-ncic@epamail.epa.gov. Such comments and data must be submitted in an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by (OPPTS–42187A)(FRL–4869–1). No information claimed as CBI should be submitted through e-mail. Comments in electronic form may be filed online at many federal depository libraries.

The official record of this action, as well as the public version, will be maintained in paper form. EPA will transfer all comments received electronically into paper form and will place the paper copies in the official record. The official record is the paper record maintained at the address listed at the beginning of the ‘‘ADDRESSES’’ section of this notice.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

For technical information contact: Richard Leukroth, Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC, 20460; telephone: (202) 260–0321; fax: (202) 260–8850; e-mail: leukroth.rich@epamail.epa.gov.; or Gary Timm, Senior Technical Advisor, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–1859; fax: (202) 260–8168; e-mail: timm.gary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The HAPs rule proposed testing, under section 4(a) of the Toxic Substances Control Act (TSCA), of: 1,1’-biphenyl, carbonyl sulfide, chlorine, chlorobenzene, chloroprene, cresols [3 isomers], diethanolamine, ethylbenzene, ethylene dichloride, ethylene glycol, hydrochloric acid, hydrogen fluoride, maleic anhydride, methyl isobutyl ketone, methyl methacrylate, naphthalene, phenol, phthalic anhydride, 1,2,4-trichlorobenzene, 1,1,2-trichloroethane, and vinylidene chloride. EPA would use the data generated under the rule to implement several provisions of section 112 of the Clean Air Act and to meet other EPA data needs and those of other Federal agencies. In the HAPs proposal, EPA solicited proposals for enforceable consent agreements (ECAs) regarding the performance of pharmacokinetics (PK) studies which would permit extrapolation from data developed from oral exposure studies to predict effects from inhalation exposure.

On October 18, 1996, EPA extended the public comment period on the proposed rule from December 23, 1996 to January 31, 1997 (61 FR 54383)(FRL–5571–3). This extension was to allow more time for the submission of proposals for ECAs on PK and adequate time for comments on the proposed rule to be submitted after the Agency has considered the ECA proposals. EPA has received several proposals for ECAs on PK. Due to the complexity of the issues raised by these proposals, the Agency extended the public comment period to March 31, 1997 (61 FR 67516, December 23, 1996) to allow more time to consider the ECAs and to finalize the test guidelines to be referenced in the proposed HAPs test rule.

In the HAPs proposed rule published on June 26, 1996 (61 FR 33178), testing would be conducted using the OPPTS harmonized guidelines that were proposed on June 20, 1996 (61 FR 31522)(FRL–5367–7). The process of developing these guidelines is proceeding at the same time as the development of the HAPs test rule. As stated in the original proposal, the OPPTS harmonization process may result in the finalization of the guidelines prior to the end of the comment period for the proposed rule. If so, EPA will publish the final guidelines used in the HAPs rule in order to allow for public comment on the applicability of the finalized guidelines to the HAPs rule.

There has been an additional delay in finalizing the guidelines. The Agency has decided to extend the comment period on the HAPs test rule to allow for the publication of the final guidelines.

In addition, the Agency anticipates responding to the submitters of proposals for ECAs on PK by no later than March 31, 1997.

Accordingly, EPA is extending the comment period on the proposed rule to April 30, 1997.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 25, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 382

[Docket No. R–158]

RIN 2133–AB19

Determination of Fair and Reasonable Guideline Rates for the Carriage of Bulk and Packaged Preference Cargoes on U.S.-Flag Commercial Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The regulations at 46 CFR part 382 prescribe the administrative procedures and methodology for determining fair and reasonable rates for the carriage of dry and liquid bulk and packaged preference cargoes on United States commercial cargo vessels. MARAD proposes to amend those regulations to prescribe cost averaging as the methodology used for

determining rates and to implement conforming procedural changes. MARAD also intends to request approval of a reduced information collection under these regulations.

DATES: Written comments on this rule, including information collection requirements, are requested, and must be received on or before April 29, 1997.

ADDRESSES: Comments may be mailed or otherwise delivered to the Secretary, Maritime Administration, Room 7210, Department of Transportation, 400 Seventh Street S.W., Washington, D.C. 20590. All comments will be made available for inspection during normal business hours at the address above. Commenters wishing MARAD to acknowledge receipt of comments should enclose a stamped, self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Michael P. Ferris, Director, Office of Costs and Rates, Maritime Administration, Washington, D.C. 20590, Tel. (202) 366–2324.

SUPPLEMENTARY INFORMATION: Section 901(b)(1) of the Merchant Marine Act of 1936 (the Act), as amended (46 App. U.S.C. 1241(b)), cited as the Cargo Preference Act of 1954, requires that at least 50 percent of any equipment, materials or commodities purchased by the United States or for the account of any foreign nation without provision for reimbursement, or acquired as the result of funds or credits from the United States, shall be transported on privately owned U.S.-flag commercial vessels, to the extent that such vessels are available at fair and reasonable rates. In 1985, section 901 was amended to exclude certain programs from the application of cargo preference and to raise the U.S.-flag share to 75 percent on certain others. Upon request, MARAD provides fair and reasonable rates (also referred to as guideline rates) to U.S. shipper agencies. Section 901(b)(2) of the Act provides the authority for MARAD (by delegation from the Secretary of Transportation) to issue regulations governing the administration of section 901(b)(1). In 1989, MARAD issued regulations at 46 CFR Part 382 (''Rule''), that initially became effective on January 1, 1990. The Rule contains regulations that govern the calculation of fair and reasonable rates.

Under the current Rule, MARAD establishes fair and reasonable rates, so-called guideline rates, which apply to the waterborne portion of cargo transportation and consist of four components: (1) Operating costs; (2) capital costs; (3) port and cargo handling costs; and (4) brokerage and overhead. The operating cost component of the guideline rate for each participating bulk vessel reflects actual vessel operating costs that are based on historical data modified to the current period by utilizing escalation factors for wage and non-wage costs. All eligible annual operating costs are added together for each vessel and divided by the total number of operating days for that vessel to yield a daily operating cost. The cost is escalated to the current year and multiplied by estimated total voyage days to provide the operating cost segment for the voyage.

There is a fuel cost segment of the operating costs that MARAD calculates for each vessel on the basis of actual reported fuel consumption at sea and in port. The actual fuel consumption of each vessel is multiplied by the corresponding projected number of voyage days at sea and in port to calculate total units of fuel consumed. Current fuel prices are applied to fuel consumed to produce the fuel segment of the operating cost component. MARAD then adds the totals of the fuel and non-fuel operating cost segments to produce the operating cost component for the voyage.

The capital cost component is presently calculated individually for each participating bulk vessel and consists of an allowance for depreciation and interest, plus a reasonable return on investment. Depreciation is calculated by the straight-line method, based on a 20-year economic life and utilizing a residual value of 2.5 percent. However, if the owner acquired an existing vessel, the vessel is depreciated by the straight-line method over the remaining period of its 20-year economic life, but not fewer than 10 years. Capitalized improvements are depreciated straight-line over the remainder of the 20-year period, but not fewer than 10 years.

For the purpose of calculating interest expense, MARAD assumes that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost and that principal payments are made in equal annual installments over a 20-year period. To compute the interest cost, the owner's actual interest rate is applied to the constructed outstanding debt on the vessel. Where the owner has a variable interest rate, MARAD uses the owner's rate prevailing at the time of calculation, and if there is no interest rate available, MARAD selects an appropriate interest rate.

MARAD allows a return on capital cost (investment), with two components, return on equity and return on working capital. The rate of return is based upon a five-year average of the most recent rates of return for a cross section of transportation industry companies, including maritime companies. Equity in the vessel is assumed to be the vessel's constructed net book value less constructed indebtedness. Working capital is the dollar amount necessary to cover operating and voyage expenses. The annual depreciation, interest, return on equity and return on working capital are divided by 300 operating days to determine a daily amount. The total of these elements is multiplied by estimated voyage days to determine the capital cost component used in the fair and reasonable rate calculation.

The port and cargo handling cost component of the guideline rate is determined for each voyage on the basis of the actual cargo tender terms for the commodity, load and discharge ports, and lot size. Costs used to determine the port and cargo cost component are based on the most current data from all available sources and verified from data received on completed cargo preference voyages. The brokerage and overhead component of the guideline rate is the aggregate of the cost components for operating, capital and port and cargo handling, multiplied by an 8.5 percent allowance for broker's commissions and overhead. The total of these four components is now divided by cargo tons (which cannot be less than 70 percent of the vessel's cargo deadweight) to determine the guideline rate.

Under existing regulations, whenever a vessel carries preference cargo and subsequently transports additional cargo prior to its return to the United States, MARAD reexamines the guideline rate that it calculated for the preference voyage. This reexamination may result in the recalculation of the original guideline rate, incorporating the additional voyage itinerary, costs and revenues which occurred as a result of the carriage of the additional cargo. If a vessel is scrapped or sold after discharging a preference cargo, MARAD now adjusts the guideline rate to reflect the termination of the voyage after discharge. If the rate received by the operator for the preference cargo exceeds the adjusted guideline rate for the one-way voyage, MARAD informs the shipper agency who may then require the operator to repay the difference in the ocean freight.

Advance Notice of Proposed Rulemaking

MARAD decided that revisions to the Rule may be necessary to encourage development of a modern and efficient merchant marine and to reduce government-wide cargo preference costs. As a result, on April 19, 1995, MARAD issued an Advance Notice of Proposed Rulemaking (ANPRM) (60 FR 19559), soliciting comments from the public. MARAD identified three alternative methodologies in the ANPRM, in addition to the current guideline rate methodology described above, that it is considering to reduce cargo preference costs. The three alternatives were:

Foreign Market Differential—Under this methodology, MARAD would calculate the added costs associated with owning and operating a vessel under the U.S.-flag resulting from U.S. laws and regulations and the U.S. standard of living. This procedure would identify a modern and efficient target vessel or vessels available worldwide and estimate costs under foreign ownership and under U.S. ownership, if operated in the most efficient manner practical. The resulting cost differential would be prorated over specific voyages, as cargoes are tendered, and added to the foreign bids for such voyages to determine the fair and reasonable rate for U.S.-flag operators.

Significant problems exist with this method, both in terms of economic impact on U.S.-flag ship owners and the legislative history of the Cargo Preference Act. First and foremost of these problems is the difficulty of identifying and quantifying all of the additional costs of U.S.-flag ownership. While some of these costs, including wages and benefits, are easily identified, such costs as the additional cost of meeting U.S. labor standards, safety and environmental requirements are not subject to quantification that would be undisputed. Secondly, since preference cargoes historically move between different geographic areas than commercial cargoes, a direct comparison with the ''foreign market'' may not be possible. Finally, the Cargo Preference Act of 1954 intended that only rates for U.S.-flag commercial vessels are to be considered in the determination of what is fair and reasonable. See Comp. Gen. B–95832 (Feb. 17, 1955) (unpublished), cited in *H.R. Rep. No. 80,* 84th Cong., 1st. Sess., 18 (1955). Accordingly, MARAD cannot employ a foreign market-based system.

Cost Averaging—A methodology utilizing vessel cost averaging would be constructed in much the same manner as the current Rule methodology, except that average vessel costs would replace individual vessel costs in the calculation of the fair and reasonable rate. There are three basic cost areas which would be the most likely candidates for averaging: Vessel operating costs, vessel capital costs, and fuel. Any one, or a combination of any of the three cost areas could be included in a cost averaging methodology.

Market Based—Under a market based methodology, a vessel operator's bid would be considered fair and reasonable if it were submitted in a competitive environment. A competitive environment would be established if there were a required number of qualified bids made by independent and non-affiliated U.S.-flag vessel operators. A market-based methodology would actually be a combination of methodologies because a cost-based determination would be made in instances where an insufficient number of independent bids were received. The cost-based rate could be determined as prescribed in the existing Rule or by use of some other methodology like those described above. A review of the legislative history of the Cargo Preference Act of 1954, indicates that adoption by MARAD of a market based methodology may require additional enabling legislation.

Comments to ANPRM

Seven sets of comments were received in response to the ANPRM. Commenters represented U.S. shipper agencies, operators and industry associations. Comments were offered in support of, and in opposition to all four alternatives, with no clear consensus. The U.S. Agency for International Development (USAID) also offered an alternative similar to *Worldscale* for use in determining guideline rates. Commenters generally supported the need for guideline rate reform and were unanimous that any methodology must encourage investment in efficient vessels.

One commenter proposed an alternative method whereby rates for U.S.-flag operators would be capped at defined comparable foreign rates plus a fixed percentage premium. Theoretically, this would be a ceiling rate, and anything less than the ceiling would be fair and reasonable by definition. The foreign rates would be based on averaged foreign rates for comparable cargoes and cargo lots for any preceding calendar year. The basis for any premium would still be the additional costs of U.S.-flag ownership and operation.

Public Meetings

After an initial review of the comments received on the ANPRM, MARAD believed it would be beneficial to meet with interested parties to explore further the need for change and potential methodologies. MARAD held two meetings. On July 12, 1995, members of the shipping community and other interested parties met with MARAD. The meeting generated considerable discussion on the topics of guideline rate alternatives and the added costs associated with owning and operating U.S.-flag vessels. Most persons present considered that an enumeration of the legal and regulatory costs imposed on U.S.-flag vessels would be very valuable. However, it was generally believed that it would be too difficult to construct a methodology accurately comparing the cost of operating under the U.S.-flag to the cost of operating under appropriate competitive foreign flags. With respect to a market based system, several attendees noted that the market should be left alone to regulate supply and demand. At the conclusion of the July 12 meeting, there was a consensus that what was needed were changes to (1) prevent abnormally high rate fixtures and (2) encourage efficiency. The averaging methodology was considered the best means to accomplish these goals.

On July 14, 1995, MARAD met on the same subject with representatives of the United States Department of Agriculture (USDA) and the United States Agency for International Development (USAID), the major government shipper agencies. Many of the same issues which arose at the July 12, 1995 meeting were discussed at this meeting. The discussion centered on the foreign market differential and cost averaging methodologies. There appeared to be support for both of these methodologies, although the shipper agencies expressed some reservations concerning specific items, e.g., are there sufficient vessels available in each category to make averaging possible and whether or not a new vessel should serve as the target vessel of a market based evaluation.

A question also arose regarding the effect that the proposed changes would have on the ability of the U.S.-flag commercial fleet to meet the preference reservations established by the cargo preference laws. Those laws currently require that 75 percent of specified preference cargoes be reserved for U.S.-flag participation. There is concern that the proposed changes would make it impossible for the commercial fleet to provide adequate availability to meet the statutory cargo reservation requirements. Although some high cost operators may be adversely affected, given current and foreseeable market conditions, sufficient U.S.-flag tonnage should be available to attain the 75 percent participation level.

As a result of MARAD's experience in determining guideline rates and the information received from the ANPRM and meetings with interested parties, MARAD is proposing to amend the Rule in order to improve the fair and reasonable rate-making process. The following is a discussion of proposed changes to 46 CFR Part 382.

Averaging

One of the principal criticisms of the existing Rule, which is based on individual vessel costs, is that it fails to provide sufficient incentives for efficient vessels to operate in the cargo preference trade. Conversely, the current methodology has not adequately controlled the rates provided to the less efficient operators. Averaging costs would provide the same operating and capital cost allowances for all vessels competing for the carriage of a specific preference cargo, creating an incentive for vessels to operate more efficiently. The resulting lower guideline rates would prevent the government from paying excessive rates for the use of less efficient (more costly) vessels, especially in times of high market rates for vessels in the trade. Accordingly, MARAD proposes that the operating costs, including fuel consumption, capital costs and speed, used in the construction of the guideline rate be averaged for all vessels within specific size categories. The averages would be computed twice a year. MARAD would calculate the averages more frequently, if necessary. The impact of the change to averaging would be a reduction in the guideline rate levels calculated for less efficient vessels and an increase in the guideline rate levels of the more efficient vessels.

Vessel Categories

In order to administer a guideline rate system based on average costs effectively and fairly, MARAD would place vessels in categories where a minimal amount of distortion is evident from cost variations that are solely based on vessel size. For example, the maintenance costs for a 15,000 DWT vessel are less than the maintenance cost of an 80,000 DWT vessel because, among other items, the 80,000 DWT vessel has more surface area to paint. In choosing size categories, MARAD examined the sizes and costs of vessels that have carried preference cargo, the number of vessels of similar size, and the cargo amounts carried on individual voyages in the preference trade. MARAD also considered the difference between vessel types (i.e., bulk carriers, tankers, tug/barges, and general cargo), and trading patterns in arriving at the proposed vessel categories. As a result, MARAD proposes that vessels be placed in four categories on the basis of CDWT. The NPRM defines CDWT as Summer DWT less a five percent allowance for fuel, stores and other capacity reductions. MARAD proposes to specify the following vessel categories:

Category I—Less than 8,000 CDWT
Category II—8,000—19,999 CDWT
Category III—20,000—34,999 CDWT
Category IV—35,000 CDWT and over

Tug/barge combinations would be included with other vessels of similar size in computing the average. Tug/barge combinations are often slower with lower per diem costs than self-propelled vessels. Vessel speed will also be averaged to place vessels and tug/barge units on a comparable basis. Since tug/barge combinations sometimes vary and costs for more tugs than barges are reported, MARAD proposes to match the costs of a single tug with a single barge based on the barge's operating history. To the extent tugs or barges are grouped in the data submission, MARAD would match classes of vessels. Cost categories would include an equal number of tugs and barges. As tug DWT is minimal and does not factor into cargo capacities, only the barge Cargo Deadweight Capacity (CDWT) would be used in determining the placement of tug/barge combinations in size categories. In the unusual case where more than one barge is towed by the same tug, the guideline would be based on the total tonnage carried.

Since speed would be averaged across vessel types, the separate weather delay factors in § 382.3(e)(6) would no longer be necessary. After reviewing actual vessel speeds on preference voyages, MARAD believes that a five percent delay factor is sufficient for all vessel types. With the weather delay factor being equalized, specific definitions to distinguish tug/barge units from other bulk vessels, including integrated tug/barge units, would no longer be necessary. Based on the above discussions, MARAD proposes to amend § 382.3(a),(b) and (e)(6) to implement cost averaging as the new guideline rate methodology.

Although other categories were suggested by commenters, MARAD believes the categories chosen best reflect the vessel size and cargo distributions of the existing U.S.-fleet serving the preference trade. Further, MARAD believes that the proposed categories better accommodate small cargo size shipments. In calculating guideline rates, MARAD will use costs from the vessel size category best suited for the size of the cargo.

Information Collection Requirements

MARAD is proposing to reduce reporting and auditing requirements to the maximum extent possible while continuing to recognize the agency's need for accurate cost and financial information. MARAD is proposing two changes to reduce the amount of data reported or the frequency of reporting. This NPRM proposes that annual operating cost data for similar vessels within a category could be provided in the aggregate on a single schedule rather than individually for each vessel. Should the operators take advantage of this option, a substantial reduction in the time and cost of operator preparation is expected to occur. This proposal would also change the filing of post voyage reports from a voyage based requirement (60 days after each voyage) to a semi-annual requirement. Semi-annual reporting with a ninety day lag time (versus 60 days) will reduce the paperwork burden on the operators. To implement these concepts, the agency proposes to amend § 382.2(b)(8) to authorize aggregate schedule filings, and amend § 382.2(c) to change post-voyage filing to a semi-annual requirement.

Two changes are also proposed to reduce the audit burden on operators, the Department of Transportation, Office of the Inspector General (OIG), and MARAD. The first proposed change would allow an operator to have its submissions certified by an independent certified public accountant (CPA). This would alleviate the need for audit by the OIG. Audits of cargo preference submissions have proven to be a significant cost both to the operators and the government. Since many operators have other ongoing audit requirements, MARAD believes that the certification of the cost submissions would reduce the burden on most operators. The second change would provide a more exact requirement for the preparation of the accounting data used for cost submissions. Currently, submissions must be prepared in accordance with Uniform Financial Reporting Requirements (46 CFR Part 232), using generally accepted accounting principles (GAAP). Part 232 allows the operator to report to MARAD using an accounting basis that is different from the one it normally uses for financial reporting, so long as GAAP is used. Since GAAP allows different accounting treatments for certain types of expense, some operators are reporting costs to MARAD in the manner most advantageous to them. The choice can have a major impact on an individual vessel's guideline rate. For example, drydocking costs, which occur on a multi-year cycle, can be accrued over the cycle (which includes more than one rate year) or expensed in the current reporting period. This interpretation has caused some problems with auditing the data, increasing costs to the operators and the government. MARAD proposes to require the operator to use the accounting treatment it already uses for its own records and audited financial statements. Accordingly, MARAD proposes to amend § 382.2(a) to provide the alternative of certification by a CPA and to amend § 382.2(d) to require the use of consistent accounting practices under GAAP.

MARAD is also proposing to make three minor reporting changes: First, the Official Coast Guard Identification Number (official number) would be used to identify a vessel. Since vessels change names but the official number always stays with the vessel, it is a better identifier. Secondly, § 382.2(b)(2) would be amended to clarify the DWT requirement as summer DWT in metric tons and eliminate the requirement for Suez and Panama Canal net register tons. The requirements for canal net register tons (CNRT) is not necessary. The original intent was to use CNRT to estimate canal tolls when calculating guideline rates, but to date no practical system has been developed for those estimations. Finally, § 382.2(b)(9) would be amended to clarify the definition of ''operating day''. Days spent waiting, even when the vessel is seaworthy and fully manned, in anticipation of booking a cargo or waiting for laydays to begin, have never been considered operating days for the purpose of calculating guideline rates.

Overall, MARAD estimates changes in information collection burden as follows:

Current		Proposed	
Responses	Hours	Responses	Hours
250	1,000	125	500

New Vessel Allowance

One goal of this rulemaking is to encourage newer and more efficient vessels to enter the cargo preference market. There are certain conditions which this regulation cannot affect, such as the three year waiting period before foreign-built vessels are eligible to carry preference cargo, irregular amount of cargoes available throughout the year, and depressed market conditions, which are primarily responsible for the lack of newer U.S.-flag vessels in the preference market. MARAD is proposing that newly constructed vessels, and vessels acquired prior to the fifth anniversary of their construction, receive an additional allowance for acquisition capital in the guideline rate that will continue for a period of five years after acquisition by the owner. The new vessel allowance would total ten percent of capitalized acquisition costs (reduced to a daily basis for use in the guideline rate based on a 300 day operating year) for the first year after acquisition. The amount would decline by one percentage point each subsequent year. No allowance will be included in the guideline rate after the fifth year following acquisition. MARAD believes this would offset any disincentives for newer vessel entrants in the proposed rule. Therefore, it is proposed that a new § 382.3(b)(4) be added to the rule which provides a new vessel allowance.

Seventy Percent Limitation

The current Rule provides that, for the purposes of calculating guideline rates, calculated cargo tonnage shall not be less than 70 percent of the vessel's cargo capacity. This provision was intended to protect the Government from excessive rates in cases where a lone bidder with a large vessel bids on a small cargo lot. Experience has shown, however, that the actual result has been to limit competition. The proposed system is cargo size driven in that the category of costs used in determining the guideline rate will be based on the total amount of cargo carried. For example, if 30,000 tons of cargo is booked for carriage, costs from Category III will be used to calculate the guideline rate. As such, the guideline rate for the carriage of that cargo for a 30,000 CDWT vessel would be the same as a 50,000 CDWT vessel. In such a system, the 70 percent rule is not necessary, and MARAD proposes to eliminate that restriction.

Determination of Voyage Length

One concern of the bulk operators has been the method for determining voyage length in § 382.3(e)(1). One provision requires that a voyage be calculated on a round voyage basis. Another requires adjustment of the guideline rate to reduce allowable voyage days for purposes of rate calculation if a backhaul cargo is obtained. It has been MARAD's experience that, together, these requirements discourage full participation in the bulk preference cargo trades and do not consistently provide equitable treatment in the guideline rate procedures. These requirements do not reflect how bulk operations are conducted.

In the U.S. preference trades, the majority of cargoes originate in the U.S. Gulf. As a result, vessels generally return to Gulf ports after completion of a voyage to await the next cargo opportunity. If that opportunity originates from a point of origin outside the Gulf, the vessel (1) must position for the cargo, and (2) will most likely return to the Gulf. In some instances a succeeding U.S. load opportunity will arise before the vessel returns to its original preference load port and it will divert directly to the load point for the successive cargo. In either event, a point-to-point round voyage does not occur.

Bulk operators, particularly tankers, frequently bid on a preference cargo in consideration of obtaining a backhaul cargo. If there is a realistic prospect of carrying a backhaul cargo, the operator will likely bid lower than where there is no backhaul cargo. The prospect of profitable backhauls would also encourage the participation of more U.S.-flag vessels in the preference trades, resulting in more competition and lower fixture rates. However, with the backhaul disincentive in the existing rule, the Government could lose the benefit of the operator's incentive to bid low.

Between May 1, 1990 and June 30, 1995, MARAD calculated 1,029 guideline rates. Of these, only 30 resulted in recalculations because of backhauls. Because most backhauls are marginal in nature, they usually contribute very little revenue above their costs. As a result, only five of the 30 recalculated rates resulted in calculated recapture, i.e., a reduction in payments to the operator. Compared to the total revenue generated by the voyages for which backhauls were calculated, the total recapture has amounted only to four-tenths of one percent of total gross revenue. The expected benefits of recapture are outweighed by the administrative expense, higher fixture rates, and lost competitive opportunities. For these reasons, MARAD is proposing elimination of the backhaul adjustment provision.

MARAD is proposing two changes to § 382.3(e)(1) to conform the existing method of determining voyage length with the realities of bulk preference operations. First, instead of requiring that the rate be based on a round-trip voyage, MARAD would choose the most appropriate port range for the return leg based on the practices of the owner and the prospects for subsequent employment at the load port. The second change would be to eliminate the requirement for a rate adjustment when the operator obtains a backhaul cargo.

Capital Cost Component

Five changes are being proposed within this cost category. The purpose of the proposed changes is to simplify or clarify rate calculations.

Section 382.3(b)(2)(ii) refers only to vessels with a 20-year economic life in determining the interest amount in the capital cost component of a guideline rate. In practice, many vessels have been sold, reconstructed and/or improved, and periods of economic life vary from vessel to vessel. In these instances, the various depreciation periods used to determine the guideline rate were defined in paragraph (b)(2)(I) of that section, but were not explicitly mentioned in paragraph (b)(2)(ii), Interest. To clarify paragraph (b)(2)(ii), MARAD proposes to include therein a cross reference to paragraph (b)(2)(I) with respect to the periods of depreciation to be used in determining interest expense in the guideline rate.

The second proposed change affects the method of determining depreciation. The current Rule uses a residual value of 2.5 percent of a vessel's initial book value as part of the depreciation calculation. For purposes of simplification and to conform to existing conditions for vessel scrapping, MARAD is proposing to eliminate use of the residual value in the calculation of depreciation.

The third proposed change to the capital cost calculation concerns situations where interest rates are not available for certain capitalized items. When this occurs, the rule now specifies that a ''current long term rate, the Title XI [Vessel Financing] rate if available,'' be used in the guideline rate for determining the capital component. MARAD has found that the ten-year Treasury-bill (T-bill) rate plus one percent is an appropriate and readily available substitute. Accordingly, MARAD proposes to amend § 382.3(b)(2)(ii) to specify the ten-year T-bill rate plus one percent as the rate used in the fair and reasonable rate calculation when no interest rate is available or for vessels without mortgage debt.

The fourth proposed change also relates to the interest rate used to calculate capital costs. Section 382.3(b)(2)(ii) specifies that, when variable interest rates are part of the mortgage, the rate ''at the time of the calculation * * * shall be used.'' To assist in the computation of more flexible guideline rates, MARAD proposes to use the interest rate in effect on the first business day of the year or the first business day on or after July 1, whichever is appropriate. Therefore, MARAD proposes to amend § 382.3(b)(2)(ii) to specify January 1 and July 1 as the dates on which the interest rates in effect would be used in lieu of variable interest rates for the calculation of fair and reasonable rates.

The final proposed change to capital costs is the provision pertaining to the return on working capital. A statement would be added to new § 382.3(b)(3) noting that the return on working capital is a voyage related capital cost element.

Port and Cargo Handling Cost Component

To conform to the proposed new averaging system, MARAD would amend § 382.3(c) to specify that port and cargo costs will be determined by vessel category.

One-Way Rates

Section 382.3(e)(1) provides for a one-way rate when a vessel is scrapped or immediately sold after discharge of the preference cargo. The term ''immediately'' has created some confusion. MARAD proposes to amend this paragraph by striking ''immediately'' and adding ''and does not return to the United States as a U.S.-flag vessel.'' This language specifies the conditions under which MARAD considers a voyage to be one-way, will assure that an operator selling or transferring a vessel foreign is not compensated by a cargo preference program intended to promote U.S.-flag vessels.

Total Revenue Rates

On numerous occasions more than one cargo has been booked on a vessel subject to the guideline rate regulations. Also, there have been occasions when there have been multiple load and/or discharge ports. These situations often make the calculation of individual rates for particular parcels and/or destinations, as required by § 382.3(f) and (g), impossible. Accordingly, when this occurs, MARAD proposes to calculate a ''Total Revenue Rate''. The guideline rate would be calculated normally, but the final rate would be expressed as gross revenue for the total voyage, rather than as a rate per ton. So long as the revenue from the sum of the individual parcels does not exceed the total revenue calculated in the guideline, the individual rates would be considered fair and reasonable. Section 382.3(f) would be modified to remove the references to individual rates for separate parcels carried on the same voyage. Paragraph (g) of that section would also be modified by including language to allow the use of either a cost per ton or other measure that MARAD determines appropriate.

Administrative Practices

MARAD is also proposing to change certain of its administrative practices for prescribing guideline rates. While these changes do not necessitate actual changes in the regulations, MARAD is seeking comments with respect to its proposals. These changes will (1) allow differentiation between cargo tender terms when determining delay factors (for delays in port and days not worked) to more appropriately reflect the risk of delay inherent in the terms; (2) expand the applicability of an initial guideline rate calculation to cover most substitute vessels.

Delay Factors

Section 382.3(e)(3) includes in the calculation of voyage days in port a factor to account for delays and days not worked. It has been MARAD's practice not to differentiate between cargo tender terms in arriving at an appropriate delay factor. In reality, different cargo terms have different levels of risk of delay associated with them. For example, Free In and Out (FIO) terms have defined load and discharge rates, generally with payment of demurrage and despatch by the charterer and vessel owner, respectively, while FBT (Full Berth Terms) carry unlimited risk of delay without compensation. MARAD proposes to change its practices to provide delay factors which more appropriately reflect the risk of delay inherent in the cargo tender terms. For example, a guideline rate calculated for an FIO cargo where the tender included demurrage and despatch premiums could use the load and discharge guarantee rates included in the tender; for an FBT voyage, historical experience or current conditions may require using delay factors in the load or discharge ports.

Guideline Rate Requests

On average, MARAD calculates two guideline rates for each cargo actually fixed. This is generally the result of substitutions, voyage variations, add-on cargoes, audits and similar recalculations. It is currently MARAD's practice to provide a guideline rate when requested by a shipper agency. MARAD intends to substantially reduce the incidence of these calculations and determine only one guideline rate for each preference cargo which is based on the initially requested vessel and cargo. That guideline rate would also be applicable to all other vessels that might actually carry the cargo and for amounts plus or minus five percent of the original request, except in the case where there is a substitution of a vessel eligible to receive the ''new vessel allowance'' for an older vessel, or vice versa. Rates would also be recalculated, if requested, for add-on preference cargoes which increase cargo size by more than five percent. MARAD will not recalculate a rate for add-on commercial cargo.

Revised Rate Methodology

The guideline or fair and reasonable rates proposed to be established by MARAD would apply only to the waterborne portion of cargo transportation, to consist of four components: (1) Operating costs; (2) capital costs; (3) port and cargo handling costs; and (4) brokerage and overhead. The operating cost component of the fair and reasonable rate would reflect average vessel operating costs for vessels within the specified size categories previously discussed, based on the historical data submitted in accordance with § 382.2 of this rule. MARAD would modify the operating costs to the current period, utilizing escalation factors for wage and non-wage costs. To the extent vessels are time chartered or leased, operators would submit both operating and capital costs, including all capitalized costs and interest rates for vessels subject to capital leases.

All eligible annual operating costs for vessels within a category would be added together and divided by the total number of operating days for those vessels to yield a daily operating cost. The cost would be indexed to the current year and multiplied by estimated total voyage days to yield the operating cost segment for the voyage. The amount of cargo fixed would be the basis for selecting which vessel category of cost averages would be used in calculating a guideline rate.

Fuel consumption would be figured on the basis of actual reported fuel consumption at sea and in port for vessels within the same category. The average fuel consumptions of vessels in the category would be multiplied by the corresponding projected number of voyage days at sea and in port to yield total fuel consumed. MARAD would obtain from published sources current spot market fuel prices, at bunkering ports consistent with sound commercial practice, and apply them to fuel consumed to produce the fuel segment of the operating cost component. The total of the fuel and non-fuel operating cost segments would be added together to yield the operating cost component for the voyage.

The capital cost component would be based on participating vessels in the applicable size category. It would consist of an allowance for depreciation and interest and a reasonable return on investment. Depreciation would be straight-line based on a 20-year economic life. However, if the owner acquired an existing vessel, the vessel would be depreciated on a straight-line basis over the remaining period of its 20-year economic life, but not fewer than 10 years. Capitalized improvements would be depreciated straight-line over the remainder of the 20-year period, but not fewer than 10 years, commencing with the capitalization date for those improvements.

For the purpose of calculating interest expense, MARAD would assume that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost and that principal payments are made in equal annual installments over the economic life of the vessel. To compute the interest cost, the owners' actual interest rates would be applied to the vessel's outstanding constructed debt, using the depreciation schedule in § 382.3(b)(2)(ii). Where the owner has a variable interest rate, the owner's rate prevailing at the time of calculation of the average capital cost component would be used. In cases where there is no interest rate available, and for operators without vessel debt, MARAD would use the ten-year T-bill rate plus one percent.

As in the existing Rule, return on investment would have two components, return on equity and return on working capital. The rate of return would be based upon a five-year average of the most recent rates of return for a cross section of transportation industry companies, including maritime companies. Equity would be assumed to be a vessel's constructed net book value less constructed principal amounts. Working capital would be voyage based and is the dollar amount necessary to cover operating and voyage expenses.

A new vessel allowance would be included in the capital component of newly built vessels and vessels acquired when five years of age or less. The new vessel allowance would be paid for the first five years following construction or acquisition. This allowance would equal ten percent of the vessel's capitalized costs during the first year following construction or acquisition, and would decline by one percentage point each of the subsequent four years. To arrive at the voyage allowance, the annual amount would be divided by 300 operating days and multiplied by estimated voyage days.

The average annual depreciation, interest, and return on equity for vessels in the category would be divided by 300 operating days to determine a daily amount. The total of these elements would be multiplied by estimated voyage days and added to the return on working capital and the new vessel allowance to determine the capital cost component used in the fair and reasonable rate calculation.

The port and cargo handling cost component would be determined for each voyage on the basis of vessels in the category and the actual cargo tender terms for the commodity, load and discharge ports, and lot size. The costs would include applicable fees for wharfage and dockage of the vessel, canal tolls, cargo loading and discharging, and all other voyage costs associated with the transportation of preference cargo. Costs used to determine the port and cargo cost component would be based on the most current data from all available sources and verified from data received on completed cargo preference or commercial voyages.

To determine the brokerage and overhead component of the fair and reasonable rate, MARAD would add the cost components for operating, capital, and port and cargo handling and multiply that sum by an 8.5 percent allowance for broker's commissions and overhead. The total of these four components, expressed as total revenue or as a rate per ton, whichever is most applicable, would be the fair and reasonable rate.

If a vessel is scrapped or sold after discharging a preference cargo, and the vessel does not return to the United States as a U.S.-flag vessel, the guideline rate would be adjusted to reflect the termination of the voyage after cargo discharge. If the rate received by the operator for the preference cargo exceeds the adjusted guideline rate for the one-way voyage, the operator would be required to repay the difference in ocean freight to the shipper agency.

In special circumstances, certain procedures prescribed in this rule may be waived, so long as the procedures adopted are consistent with the Act and with the intent of these regulations.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review); DOT Regulatory Policies and Procedures; Public Law 104–121.

This rulemaking is not considered an economically significant regulatory action under Section 3(f) of E.O. 12866. It is not considered to be a major rule for purposes of Congressional review under Public Law 104–121. It is anticipated that savings to the Government of less than $1 million per year will result. Accordingly, the program will not have an annual effect on the economy of $100 million or more. While this rule does not involve any change in important Departmental policies, it is considered significant under DOT Regulatory Policies and Procedures and E.O. 12866 because it addresses a matter of considerable importance to the maritime industry and may be expected to generate significant public interest. Accordingly, the Office of Management and Budget has reviewed this rule.

MARAD has estimated the potential economic impact of this rulemaking. To determine what effect the proposed changes would have had on guideline rates, 167 rates were recalculated for the years 1992 through 1995 using the revised methodology. This sample represented 25% to 30% of the total fixtures for each of the four years. The rate sample chosen was reflective of the operators and countries in the complete data base. For 1992 and 1993, the recalculated rates were below the original guideline rates 54% of the time. In 1994 and 1995, the ratio of recalculated rates falling below original guideline calculations rose to 60%.

The rates calculated for the sample were compared to actual cargo fixture rates to evaluate the ability of averaging to reduce program costs. The chart included below summarizes the results of the sample data. Using averaging, twelve percent of the rates in the sample were lower, while only 10 percent rose. The dollar cost reduction for the rates compared equates to about one million dollars over the period. Assuming the relationship holds constant over the remainder of the rates calculated in the period, a savings of $3.3 million could have been realized.

GUIDELINE RATE CHANGES UNDER AVERAGING METHOD COMPARISON OF HISTORICAL GUIDELINE RATES TO PROPOSAL

Year	Sample size	Preference revenue		Net savings	Direction of change	
		Original	Revised		Down	Up
1992	53	$82,929,000	$82,434,000	$495,000	5	4
1993	67	137,344,000	136,812,000	532,000	14	13
1994	36	50,607,000	50,607,000	0	0	0
1995	11	15,985,000	15,982,000	3,000	1	0
Total	167	286,865,000	285,835,000	1,030,000	20	17
Total percentage of change					12	10

The data for 1994 and 1995 also demonstrate how a bad market depresses the rates offered for preference cargoes. Even though rates calculated using the averaging method fell below the original guideline rate 60% of the time, actual fixture rates during that period were still below recalculated guidelines. This result is neither unexpected nor undesirable. In fact, it validates the category cost averaging method as being able to hold rates down in a very good market while not being responsible for pushing the rates to the level of a bad market. Even though reducing program costs is a goal of this proposed new method, it is important that rates still be fair to an efficient operator.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this regulation would not have a significant economic impact on a substantial number of small entities. There are approximately twenty-five vessel operators that participate in this program, none of which are small entities.

Environmental Assessment

This regulation does not significantly affect the environment. Accordingly, an Environmental Impact Statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This proposed rulemaking reduces the current requirement for the collection of information. The Office of Management and Budget (OMB) has reviewed and approved the information collection and record keeping requirements (approval number 2133–0514) in the current rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection. Copies of this request can be obtained from the Office of Costs and Rates.

Title of Collection: Determination of Fair and Reasonable Rates for the Carriage of Bulk Preference Cargoes (46 CFR Part 382).

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0514.

Form Number: None.

Expiration Date of Approval: 9/30/97.

Summary of Collection of Information: Two different types of data are required: Vessel Operating Costs and Capital Costs—Part 382 requires U.S.-flag vessel Operators to submit this data to MARAD on an annual basis. The costs are used by MARAD in determining fair and reasonable guideline rates for the carriage of preference cargoes on U.S.-flag vessels. Voyage costs and voyage days—(Post Voyage Report)—This information is required to be filed by a U.S.-flag operator after the completion of a cargo preference voyage.

Need and Use of the Information: The information collected is used by MARAD to calculate fair and reasonable rates for U.S.-flag vessels engaged in the carriage of preference cargoes. If the information is not collected, the fair and reasonable rates could be inaccurate thus leading to a lack of adequate protection of the government's financial interest in obtaining the lowest possible U.S.-flag cost for shipping government cargoes.

Description of Respondents: U.S.-flag vessels are owned and operated by U.S. citizens under the U.S.-flag. The vessels consist of tug/barges, dry bulk vessels, break bulk liner vessels, LASH, and tankers.

Annual Responses: 125 (total)—50 filings of vessel operating costs and capital costs from U.S. operators; 75 filings of Post Voyage Reports.

Annual Burden: 500 hours—This rule would not impose any unfunded mandates.

List of Subjects in 46 CFR Part 382

Agricultural commodities, Confidential business information, Government procurement, Loan programs—foreign relations, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, 46 CFR Chapter II is hereby proposed to be amended by revising Part 382, to read as follows:

PART 382—DETERMINATION OF FAIR AND REASONABLE RATES FOR THE CARRIAGE OF BULK AND PACKAGED PREFERENCE CARGOES ON U.S.-FLAG COMMERCIAL VESSELS

Authority: 46 App. U.S.C. 1114, 1241(b); 49 CFR 1.66.

§ 382.1 Scope.

The regulations in this part prescribe the type of information that shall be submitted to the Maritime Administration (MARAD) by operators interested in carrying bulk and packaged preference cargoes, and the method for calculating fair and reasonable rates for the carriage of dry (including packaged) and liquid bulk preference cargoes on U.S.-flag commercial vessels, except vessels engaged in liner trades, as defined in 46 CFR 383.1, pursuant to section 901(b) of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1214(b).

§ 382.2 Data submission.

(a) *General.* The operators shall submit information, described in paragraphs (b) and (c) of this section, to the Director, Office of Costs and Rates, Maritime Administration, Washington, D.C. 20590. To the extent a vessel is time chartered, the operator shall also submit operating expenses for that vessel. All submissions shall be certified by the operators. A further review and certification by an independent Certified Public Accountant (CPA) is recommended. Submissions not certified by an independent CPA are subject to verification, at MARAD's discretion, by the Office of the Inspector General, Department of Transportation. MARAD's calculations of the fair and reasonable rates for U.S.-flag vessels shall be performed on the basis of cost data provided by the U.S.-flag vessel operator as specified herein. If a vessel operator fails to submit the required cost data, MARAD will not construct the guideline rate for the affected vessel, which may result in such vessel not being approved by the sponsoring Federal agency.

(b) *Required vessel information.* The following information shall be submitted not later than April 30, 1998, for calendar year 1997 and shall be updated not later than April 30 for each subsequent calendar year. In instances where a vessel has not previously participated in the carriage of cargoes described in § 382.1, the information shall be submitted not later than the same date as the offer for carriage of such cargoes is submitted to the sponsoring Federal agency, and/or its program participant, and/or its agent and/or program's agent, or freight forwarder.

(1) Vessel name and official number.

(2) Vessel DWT (summer) in metric tons.

(3) Date built, rebuilt and/or purchased.

(4) Normal operating speed.

(5) Daily fuel consumption at normal operating speed, in metric tons (U.S. gallons for tugs) and by type of fuel.

(6) Daily fuel consumption in port while pumping and standing, in metric tons (U.S. gallons for tugs), by type of fuel.

(7) Total capitalized vessel costs (list and date capitalized improvements separately), and applicable interest rates for indebtedness (where capital leases are involved, the operator shall report the imputed capitalized cost and imputed interest rate).

(8) Operating cost information, to be submitted in the format stipulated in 46 CFR 232.1, on Form MA–172, Schedule 301. Operators are encouraged to provide operating cost information for similar vessels that the operator considers substitutable within a category, as defined in § 382.3(a)(1), in the aggregate on a single schedule. Information shall be applicable to the most recently completed calendar year.

(9) Number of vessel operating days pertaining to data reported in paragraph (b)(8) of this section for the year ending December 31. For purposes of this part, an operating day is defined as any day on which a vessel or tug/barge unit is in a seaworthy condition, fully manned, and either in operation or standing ready to begin pending operations.

(c) *Required port and cargo handling information.* The port and cargo handling costs listed in this paragraph (c) shall be provided semi-annually for each cargo preference voyage terminated during the period. The report shall identify the vessel, cargo and tonnage, and round-trip voyage itinerary including dates of arrival and departure at port or ports of loading and discharge. The semi-annual periods are as follows:

Period/Due date

April 1–September 30—January 1
October 1–March 31—July 1

(1) *Port expenses.* Total expenses or fees, by port, for pilots, tugs, line handlers, wharfage, port charges, fresh water, lighthouse dues, quarantine service, customs charges, shifting expenses, and any other appropriate port expense.

(2) *Cargo expense.* Separately list expenses or fees for stevedores, elevators, equipment, and any other appropriate expenses.

(3) *Extra cargo expenses.* Separately list expenses or fees for vacuvators and/or cranes, lightering (indicate tons moved and cost per ton), grain-to-grain cleaning of holds or tanks, and any other appropriate expenses.

(4) *Canal expenses.* Total expenses or fees for agents, tolls (light or loaded), tugs, pilots, lock tenders and boats, and any other appropriate expenses. Indicate waiting time and time of passage.

(d) *Other requirements.* Unless otherwise provided, operators shall use generally accepted accounting principles and 46 CFR Part 232, Uniform Financial Reporting Requirements, for guidance in submitting cost data. Notwithstanding the general provisions in 46 CFR 232.2(c) for MARAD program participants, each operator shall submit cost data in the format that conforms with the accounting practices reflected in the operator's trial balance and, if audited statements are prepared, the audited financial statements. Data requirements stipulated in paragraph (b) of this section that are not included under those reporting instructions shall be submitted in a similar format. If the operator has already submitted to MARAD, for other purposes, any data required under paragraph (b) of this section, its submission need not be duplicated to satisfy the requirements of this part.

(e) *Presumption of confidentiality.* MARAD will initially presume that the material submitted in accordance with the requirements of this part is privileged or confidential within the meaning of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). In the event of a subsequent request for any portion of that data under the FOIA, MARAD will inform the submitter of such request and allow the submitter the opportunity to comment. The submitter shall claim or reiterate its claim of confidentiality at that time by memorandum or letter, stating the basis for such assertion of exemption from disclosure, including, but not limited to, statutory and decisional authorities. The Freedom of Information Act Officer, or the Chief Counsel of MARAD, will inform the submitter of the intention to disclose any information claimed to be confidential, after the initial FOIA request, or after any appeal of MARAD's initial decision, respectively.

(Approved by the Office of Management and Budget under control number 2133–0514)

§ 382.3 Determination of fair and reasonable rate.

Fair and reasonable rates for the carriage of preference cargoes on U.S.-flag commercial vessels shall be determined as follows:

(a) *Operating cost component*—(1) *General.* An operating cost component for each category, based on average operating costs of participating vessels within a cargo size category, shall be determined, at least twice yearly, on the basis of operating cost data for the calendar year immediately preceding the current year that has been submitted in accordance with § 382.2. The operating cost component shall include all operating cost categories, as defined in 46 CFR 232.5, Form MA–172, Schedule 301, Operating Expenses. For purposes of these regulations, charter hire expenses are not considered operating costs. MARAD shall index such data yearly to the current period, utilizing the escalation factors for wage and nonwage costs used in escalating operating subsidy costs for the same period.

(2) *Fuel.* Fuel costs within each category shall be determined based on the average actual fuel consumptions, at sea and in port, and current fuel prices in effect at the time of the preference cargo voyage(s).

(3) *Vessel categories.* (i) Vessels shall be placed in categories by cargo deadweight capacities (CDWT), as follows:

Group I—under 8,000 CDWT
Group II—8,000—19,999 CDWT
Group III—20,000—34,999 CDWT
Group IV—35,000 CDWT and over

(ii) For purposes of paragraph (a)(3)(i) of this section, CDWT is defined as Summer DWT less five percent.

(b) *Capital component*—(1) *General.* An average capital cost component shall be constructed, at least twice yearly, consisting of vessel depreciation, interest, and return on equity.

(2) *Items included.* The capital cost component shall include:

(i) *Depreciation.* The owner's capitalized vessel costs, including capitalized improvements, shall be depreciated on a straight-line basis over a 20-year economic life, unless an owner purchased or reconstructed the vessel when its age was greater than 10 years old. To the extent a vessel is chartered or leased, the operator shall submit the capitalized cost and imputed interest rate. In the event these items are not furnished, MARAD will construct these amounts. When vessels more than 10 years old are acquired, a depreciation period of 10 years shall be used. Capitalized improvements made to vessels more than 10 years old shall be depreciated over a 10-year period. When vessels more than 10 years old are reconstructed, MARAD will determine the depreciation period.

(ii) *Interest.* The cost of debt shall be determined by applying the vessel owner's actual interest rate to the outstanding vessel indebtedness. MARAD shall assume that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost, including capitalized improvements, and that annual principal payments are made in equal installments over the economic life of the vessel as determined in accordance with paragraph (b)(2)(i) of this section. Where an operator uses a variable interest rate, the operator's actual interest rate at the time of calculation of the average capital cost component shall be used. The ten-year Treasury bill (T-bill) rate plus one percent on the first business day of the year or the first business day on or after July 1 shall be used for operators without vessel debt and when the actual rate is unavailable.

(iii) *Return on equity.* The rate of return on equity shall be computed in the same manner as described in paragraph b)(3) of this section. For the purpose of determining equity, it shall be assumed that the vessel's constructed net book value, less outstanding constructed principal, is equity. The constructed net book value shall equal the owner's capitalized cost minus accumulated straight-line depreciation.

(3) *Return on working capital.* For each voyage a return on working capital shall be included as part of the capital cost element. Working capital shall equal the dollar amount necessary to cover 100 percent of the averaged operating costs and estimated voyage costs for the voyage. The rate of return shall be based on an average of the most recent return of stockholders' equity for a cross section of transportation companies, including maritime companies.

(4) *New vessel allowance.* Newly constructed vessels and vessels acquired during or before their fifth year of age will receive an additional allowance for acquisition capital as part of the capital cost element. For the first year following construction or acquisition by the operator, a daily amount equal to ten percent of capitalized acquisition costs, divided by 300 operating days, shall be included. This amount shall be reduced by one percent of capitalized acquisition costs each subsequent year. No allowance shall be included after the fifth year following construction or acquisition.

(5) *Voyage component.* The annual depreciation, interest, and return on equity shall be divided by 300 vessel operating days to yield the daily cost factors. Total voyage days shall be applied to the daily cost factors and totaled with the return on working capital and new vessel allowance for the voyage to determine the daily capital cost component.

(c) *Port and cargo handling cost component.* MARAD shall calculate an estimate of all port and cargo handling costs on the basis of the reported cargo tender terms. The port and cargo handling cost component shall be based on vessels in the category and the most current information available verified by information submitted in accordance with § 382.2(c), or as otherwise determined by MARAD, such as by analysis of independent data obtained from chartering agencies.

(d) *Brokerage and overhead component.* An allowance for broker's commission and overhead expenses of 8.5 percent shall be added to the sum of the operating cost component, the capital cost component, and the port and cargo handling cost component.

(e) *Determination of voyage days.* The following assumptions shall be made in determining the number of preference cargo voyage days:

(1) The voyage shall be round-trip with the return in ballast to a port or port range selected by MARAD as the most appropriate, unless the vessel is scrapped or sold after discharge of the preference cargo and does not return to the United States as a U.S.-flag vessel. In this event, only voyage days from the load port to the discharge port, including time allowed to discharge, shall be included.

(2) Cargo is loaded and discharged as per cargo tender terms interpreted in accordance with the ''International Rules For the Interpretation of Trade

Terms'' (INCOTERMS) published by the International Chamber of Commerce.

(3) Total loading and discharge time includes the addition of a factor to account for delays and days not worked.

(4) One extra port day is included at each anticipated bunkering port.

(5) An allowance shall be included for canal transits, when appropriate.

(6) Transit time shall be based on the average speed of vessels in the category plus an additional five percent to account for weather conditions.

(f) *Determination of cargo carried.* The amount of cargo tonnage and the category of costs used to calculate the rate shall be based on the tender offer or charter party terms. In instances when separate parcels of preference cargo are booked or considered for booking on the same vessel, whether under a single program or different programs, a guideline rate shall be provided based on the combined voyage.

(g) *Total rate.* The guideline rate shall be the total of the operating cost component, the capital cost component, the port and cargo handling cost component, and the broker's commission and overhead component. The fair and reasonable rate can be expressed as total voyage revenue or be divided by the amount of cargo to be carried, as prescribed in paragraph (f) of this section, and expressed as cost per ton, whichever MARAD deems most appropriate.

§ 382.4 Waiver.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived in keeping with the circumstances of the present, so long as the procedures adopted are consistent with the Act and with the intent of this part.

By Order of the Maritime Administrator.

Dated: February 24, 1997.

Joel C. Richard,

Secretary.

[FR Doc. 97–5017 Filed 2–27–97; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 93–25] [FCC 97–24]

DBS Public Interest Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; additional comments sought.

SUMMARY: The Commission solicits updated comments in this proceeding to reflect changed circumstances in the DBS industry since the release in 1993 of the Notice of Proposed Rule Making to implement section 25 of the 1992 Cable Act. Among the issues on which the Commission seeks revised public comment are how sections 312(a)(7) and 315 of the Communications Act should be applied to DBS providers, how the requirement to reserve 4–7 percent of channel capacity for non-commercial programming should be implemented, and what public interest or other requirements, if any, should be imposed on DBS providers in addition to the minimum specified requirements.

DATES: Comments must be submitted on or before March 31, 1997. Replies must be submitted on or before April 30, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Stern, International Bureau, (202) 418–0746 or Brian Carter, International Bureau, (202) 418–2119.

SUPPLEMENTARY INFORMATION:

1. Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 (''1992 Cable Act'') added a new Section 335 to the Communications Act of 1934 that directed the Commission to initiate a rulemaking to impose public interest or other requirements for providing video programming on direct broadcast satellite (''DBS'') service providers. On March 2, 1993, the Commission released a Notice of Proposed Rule Making seeking comment on its proposals to implement the different provisions of section 25 (''DBS Public Interest NPRM'').[1] On September 16, 1993, after the Commission had received comments and reply comments in this proceeding, the United States District Court for the District of Columbia held that section 25 of the 1992 Cable Act was unconstitutional.[2] This ruling effectively froze the DBS Public Interest NPRM pending the Commission's appeal of the decision. Nearly three years later, on August 30, 1996, the United States Court of Appeals for the District of Columbia Circuit reversed the District Court and held that section 25 was constitutional.[3]

2. In light of the relatively long interval between release of the DBS Public Interest NPRM and the Court's recent decision upholding section 25, the Commission, by this public notice, seeks to update and refresh the record in this proceeding. The DBS industry has grown and changed dramatically over the last four years. Accordingly, the Commission requests new and revised comments on each of the issues raised in the DBS Public Interest Rulemaking and on any other issues relevant to implementation of section 25.

Section 25(a) of the 1992 Cable Act (47 U.S.C. 335(a)) states:

> The Commission shall, within 180 days after the date of enactment of this section, initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming. Any regulations prescribed pursuant to such rulemaking shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to providers of direct broadcast satellite service providing video programming. Such proceeding also shall examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this Act, and the methods by which such principle may be served through technological and other developments in, or regulation of, such service.

3. With respect to this section of the statute we seek updated comments on issues that include but are not limited to the following: How should the requirements of sections 312(a)(7) and 315 of the Communications Act be applied to DBS providers?[4] What ''public interest or other requirements'', if any, should be imposed on DBS providers in addition to the minimum requirements described above? In the 1993 DBS Public Interest NPRM we tentatively proposed not to adopt additional public service requirements, based on ''the flexible regulatory approach taken for DBS and its early stage of development.''[5] Should the rapid deployment of the DBS industry over the last several years, including technological advances that may in the near future allow DBS providers to offer some local programming alter this conclusion? If so, how?

4. We also seek updated comments on how we should apply the separate requirements imposed by section 25(b) of the 1992 Cable Act. Section 25(b)(1) mandates that a DBS provider ''reserve a portion of its channel capacity, equal to not less than 4 percent nor more than

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1 58 FR 12917 (Mar. 8, 1993); 8 FCC Rcd 1589 (1993).

2 *Daniels Cablevision, Inc.* v. *United States,* 835 F. Supp. 1 (D.D.C. 1993).

3 *Time Warner Entertainment Co., L.P.* v. *FCC,* 93 F.3d 957 (D.C. Cir. 1996); *petition for rehearing pending.*

4 See *DBS Public Interest NPRM,* 8 FCC Rcd 1589 at ¶¶ 21–28.

5 *Id.* at ¶ 29.