EP–15B) or with the Global Priority Mail sticker (DEC–10) provided by the Postal Service. (These supplies may be obtained by calling 800–222–1811.) Unmarked pieces are subject to the applicable LC/AO airmail regular rates and treatment. Pieces paid at the Global Priority Mail sticker rate must have the DEC–10 sticker affixed to the address side of the package.

226.63 Customs

A green customs label must be affixed if the package is 16 ounces or more, regardless of its contents. Only documents and correspondence under 16 ounces do not require a customs form.

226.7 Size and Weight Limits

226.71 Size Limits

226.711 Flat-Rate Envelope Sizes

a. Small Size—6 x 10 inches.

b. Large Size—9½ x 12½ inches.

226.712 Package Sizes for Variable Weight Option

a. Minimum length and height: 5½ x 3½ inches.

b. Minimum depth (thickness): .007 inches.

c. Maximum length: 24 inches.

d. Maximum length, height, depth (thickness) combined: 36 inches.

226.713 Rolls

a. Minimum length: 4 inches.

b. Minimum length plus twice the diameter combined: 6¾ inches.

c. Maximum length: 36 inches.

d. Maximum length plus twice the diameter combined: 42 inches.

226.72 Weight Limit

Items sent as Global Priority Mail in envelopes and the variable weight option must not exceed 4 pounds.

226.73 Special Services

Mailers may obtain certificates of mailing (see NO TAG). No other special services such as registry, insurance, restricted delivery, return receipt, or recorded delivery are available.

226.8 Mailer Preparation

226.81 Mailer Requirement

Global Priority Mail claimed at the volume rate must be separated by geographic rate zone (Western Europe, Pacific Rim, and Canada) when presented to the business mail entry unit unless otherwise authorized by the USPS. All pieces in a permit imprint mailing and metered mail must be facing the same direction.

226.82 Deposit of Mail

Global Priority Mail pieces paid by permit imprint and pieces claimed at the Global Priority Mail volume rates must be deposited at a business mail acceptance unit as authorized by the postmaster in the designated Global Priority Mail sites for weighing. Single piece variable weight option may be deposited in the normal manner of deposit for Global Priority Mail. Flat-rate envelopes with postage affixed may be deposited in any Express Mail Street collection box or other such place where Express Mail is accepted. Metered mail must be deposited in locations under the jurisdiction of the licensing post office except as permitted under DMM P030.

226.83 Pickup Service

On call and scheduled pickup service are available for Global Priority Mail from the designated Global Priority Mail acceptance cities. There is a charge of $4.95 for each pickup stop, regardless of the number of pieces picked up. (See DMM D010 for standards of pickup service.) Pickup is not available for Global Priority Mail pieces if paid by permit imprint or claimed at the volume rate.

Stanley F. Mires,

Chief Counsel, Legislative.

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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: Final rule.

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 is issuing this rule to prescribe cost averaging as the methodology used for determining rates and to implement conforming procedural changes. MARAD is also reducing information collection under these regulations.

DATES: This final rule is effective January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Michael P. Ferris, Director, Office of Costs and Rates, Maritime Administration, Washington, DC 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.

Under the 1990 Rule, MARAD established fair and reasonable rates, so-called guideline rates, based on each individual vessel's costs which applied to the ocean borne portion of cargo transportation. The guideline rate consisted 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 vessel reflected actual historical vessel operating costs escalated to the current period by utilizing 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.

Each vessel's actual reported fuel consumption at sea and in port forms the basis of the guideline rate's fuel cost segment. 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 vessel 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 then divided by cargo tons (which cannot be less than 70 percent of the vessel's cargo deadweight) to determine the guideline rate.

Under the 1990 rule, 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 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 revising the Rule could encourage development of a modern and efficient merchant marine and reduce government-wide cargo preference shipping 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. In the ANPRM, MARAD identified three alternative methodologies, in addition to the existing rate methodology, that it was considering. The three alternatives were: Foreign Market, Cost Averaging, and Market Based.

Seven sets of comments were received in response to the ANPRM. Commenters represented U.S. shipper agencies, vessel operators and industry associations. Comments were offered in support of, and in opposition to all four alternatives, with no clear consensus. Commenters generally supported the need for guideline rate reform and were unanimous that any methodology must encourage investment in efficient vessels.

Public Meetings

After an initial review of the comments received on the ANPRM, MARAD believed it would be beneficial to meet with interested parties. MARAD held two meetings. On July 12, 1995, members of the shipping community and other interested parties met with MARAD. 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 (AID), the major government shipper agencies.

As a result of MARAD's experience in determining guideline rates and the information received from the ANPRM and meetings with interested parties, on February 28, 1997, MARAD published a Notice of Proposed Rulemaking (NPRM) 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 and the comments that were received during the comment period.

Comments

Eight groups submitted comments in response to the NPRM of February 28, 1997. The respondents were the American Institute of Certified Public Accountants (AICPA), four U.S.-flag operators that frequently carry preference cargoes, a U.S. liner operator, the U.S. Agency for International Development (AID), and United States Department of Agriculture's Foreign Agricultural Service (USDA). To facilitate discussion of the comments, they will be discussed by subject matter.

General

General comments ran the gamut from supporting most of the proposals in the NPRM to urging MARAD not to adopt the rule. Some questioned the need for guideline rates or changes to the current procedures and their legality. One operator contended that when at least three bids are received for a preference cargo the lowest should be assumed to be fair and reasonable. Another operator conjectured that averaging will introduce arbitrary biases and that it is unfair for operators to be expected to accept low rates when the market is poor but still be held to ceiling rates if the market improves. The same operator postulated that some operators would not be able to recover costs at the averaging rate. In addition, several operators were concerned that their knowledge of their competitors' cost structure was insufficient for them to know how the averaging system would affect their rates.

The averaging methodology for calculating fair and reasonable guideline rates is supported by the legislative history of Section 901(b)(1) of the Act (Pub. L. 83–664 or the Cargo Preference Act of 1954).

The Cargo Preference Act of 1954 requires government agencies to take such steps as may be necessary and practicable to assure that at least 50 percent (75 percent for specified bulk agricultural products) of the gross tonnage of certain government-sponsored cargoes, ''which may be transported on ocean vessels shall be transported on privately-owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.''

House Report No. 80, 84th Cong., 1st Sess. 3 (1955) sets out the reasons for passage of the Cargo Preference Act of 1954, as follows:

> Without some form of assurance of participation by United States-flag vessels in the transportation of relief and aid cargoes, it became clear that the shipping of the recipient and other maritime nations with lower operating costs would be able to underbid American-flag vessels and eventually transport much, if not all, of these cargoes to the irreparable detriment of the American merchant marine.

H.R. Rep. No. 80 also addressed administration of the Cargo Preference Act of 1954 and, as relevant here, discussed the meaning of ''fair and reasonable rates.'' The question of how ''fair and reasonable rates for United States-flag commercial vessels'' should be calculated was referred to the Comptroller General of the United States by the House Merchant Marine and Fisheries Committee. The Comptroller General advised the Committee in a letter dated February 17, 1955, (B–95832), that—

> ''fair and reasonable rates'' as used in Pub. L. 664 * * * would appear to call for reasonable compensation to the operator, including a fair profit. However, it seems apparent that the statute contemplates *average* ''fair and reasonable rates,'' which may or may not be profitable, or even compensatory, to a high-cost operator.

Quoted in H. Rep. No. 80, *supra,* p. 18 (Emphasis in original).

The Committee agreed with the Comptroller General's construction of the law and added,

> * * * it should be understood that at any one particular time market rates may be considerably less than [the fair and reasonable rate ceiling], in which event the chartering agency should feel free to exercise sound business judgment to secure the lowest rates possible for the Government.

H. Rep. No. 80, *Supra* p. 18.

MARAD has sought to develop a cost-based system which rewards efficiency while holding rates in check during peak periods. Guideline rate procedures have never guaranteed profitability and the Agency believes that the Comptroller's opinion means that full cost (plus profit) recovery in the guideline rate is not required for all vessels. MARAD also believes that the averaging methodology is fully consistent with the Act and that it will be rare that an operator does not recover its costs after efficiently executing a preference voyage at the full guideline rate.

MARAD's goal in revising the Rule is to encourage a modern and efficient merchant marine while reducing government-wide cargo preference costs. A United States General Accounting Office (GAO) report entitled *CARGO PREFERENCE REQUIREMENTS—Objectives Not Significantly Advanced When Used in the U.S. Food Aid Programs,* published in September 1994, concluded that food aid programs were paying higher shipping rates because guideline rate procedures allowed less efficient operators to charge higher rates. The report hypothesized that using average operating costs for similar sized ships instead of an individual ship's operating costs ''should reduce food aid transportation costs.'' MARAD believes that changing the Rule to use average costs will be effective in encouraging efficient operation. In addition, administrative and technical changes made to the rule will help reduce time spent on the program by all parties in a period of scarce resources.

Finally, comments were received that relate to how the averaging system will affect each individual operator. One operator requested that MARAD consider providing operators with hypothetical rates based on recent cost information and also allow an additional comment period. Another requested that MARAD undertake a thorough effort to educate operators on the averaging process and its likely impact on guideline rates.

MARAD does not believe that an additional comment period will provide any significant benefit. However, before the final rule becomes effective, MARAD will contact each operator with current costs on file to explain the cost averaging system and discuss how it might affect rates. MARAD will also provide additional instructions and explanations in a brochure explaining guideline rate procedures to the general shipping community. In addition, MARAD will also provide the average category costs to operators and updates on an ongoing basis.

Averaging

MARAD proposed that the operating costs (including fuel consumption, capital costs and vessel 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, or 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. Although commenters generally supported the principle of averaging, it was unclear to one commenter whether capital costs would be averaged. Another believed that the rule should specify how MARAD will decide which vessels' costs will be averaged and develop a method to prevent use of irrelevant cost data. A third opposed averaging stating that it would be unpredictable and inefficient, penalizing newer vessels, capital improvements and steam-turbine driven vessels.

Under the averaging system, both vessel operating and capital costs will be averaged as will fuel consumption rates and vessel speed. Some wording changes have been made in the capital cost sections of the final rule to clarify that capital costs are averaged. In regard to steam-turbine vessels, it is true that any cost that is greater than the average creates a disadvantage to the operator of the higher cost vessel. MARAD shared the commenter's concern about impact on newer vessels that might enter the fleet and has provided a separate new vessel allowance. Because capital improvements are generally undertaken to create efficiencies in other cost areas, effective capital improvements should yield a long-term advantage to the operator.

Regarding the use of inappropriate data that could cause the average to be somehow distorted, MARAD will pay close attention to data provided to assure that it yields a meaningful average. Clearly, if a vessel carried preference cargo in this program during the prior year, it will be included in the average. For other vessels, an operator's program participation will be a factor in determining inclusion in the average. However, other factors such as the individual vessel's program participation and cost structure will also be considered.

Vessel Categories

MARAD proposed a four-category system based on cargo deadweight

capacity (CDWT) with the cargo capacity determining which category of costs were to be used. Six commenters raised issues concerning categories. The comments concerning categories fall into three basic areas: Mixing vessel types within a category, how and why the categories were selected, and alternative category suggestions.

Two commenters opposed assigning vessels to categories without regard to vessel type. One commenter stated that the cost structure of a LASH liner operation bears no resemblance to the cost structure of bulk operators. The other commenter argued that tug and barges are inappropriate for transoceanic voyages and should therefor not be included with vessels which are fully capable.

It is true that LASH liner operations have cost structures which are not comparable to bulk operations. However, from time to time LASH vessels have competed for and carried bulk and bagged commodities outside of liner operations. To the extent that LASH vessels are used outside of liner operations and subject to this rule, MARAD finds no reason to exclude this vessel type from the cost discipline that averaging by categories provides.

In regard to the appropriateness of transoceanic tug and barge movements, tugs and barges have regularly competed for transoceanic cargoes during the last several years. MARAD sees no reason why two vessel types competing for the same cargoes should not be subject to the same guideline rate methodology.

With respect to how size categories were selected, 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. The analysis placed vessels in size categories where they compete primarily with each other and have similar aggregate cost structures.

MARAD's proposal to use cargo capacity rather than vessel size to determine which category of costs to use was not generally well received. Two commenters argued that the approach was less efficient and could result in inequities for cargoes just above and below the category break. After reviewing the comments and doing further analysis, MARAD has reconsidered this approach and now believes that categories based on vessel size would be the most effective and fair to all concerned because costs are more closely related to vessel deadweight than cargo deadweight.

One set of comments from industry and one from government proposed vessel category sizes different from MARAD's. Both proposed five different category sizes and one proposed categories broken down by vessel deadweight (DWT) in lieu of CDWT. MARAD's original proposal and the two alternatives are:

Category	MARAD (CDWT)	(CDWT) Alternative #1	(DWT) Alternative #2
I	<8,000 CDWT	<12,000 CDWT	<10,000 DWT.
II	8,000–19,999	12,000–24,999	10,000–19,999.
III	20,000–34,999	25,000–37,999	20,000–29,999.
IV	>35,000	38,000–50,000	30,000–49,999.
V	None	>50,000	=>50,000.

In response to the proposals, MARAD constructed guideline rates using the averaging method with all three different category size methods. The analysis showed a more even progression of rates from one cargo size to another using the MARAD categories and that there is little difference resulting from using CDWT instead of DWT to establish the MARAD categories. However, the review resulted in a modest shift in the break point between Category I and Category II from 8,000 CDWT to 10,000 DWT. Also, costs for vessels in the greater than 35,000 DWT category did not display major variations due to vessel size. Consequently, the final rule will have four categories based on vessel size.

Voyage Parameters

The parameters of the pro forma voyage used in the construction of the fair and reasonable guideline rate were addressed by five commenters. Three comments were received concerning MARAD's proposal for constructing voyages based upon MARAD selecting the most appropriate port range for the return leg of the preference voyage, rather than a return to the load port in all instances. Although one commenter objected to the change without stating a specific reason, two generally supported the change, as being in keeping with commercial practices. One suggested that the return leg always terminate in the U.S. Gulf, as that is where most cargo originates. The other suggested that the language in the rule be expanded to include specific reference to the practices of the owner and the prospects for subsequent employment.

MARAD believes that the method of voyage construction published in the NPRM can adequately address these concerns. Regarding always terminating in the U.S. Gulf, in certain circumstances, e.g., consecutive voyages from the U.S. West Coast, the U.S. Gulf would not be the appropriate termination area. The rule already authorizes MARAD to select ''the most appropriate'' port range, so expanding the language is not necessary.

Since speed would be averaged across vessel types, MARAD proposed that the separate weather delay factors in § 382.3(e)(6) be eliminated. However, one commenter pointed out that tug/barge units will still encounter greater weather delays than self propelled ships. As a result of comments received, MARAD reconsidered this item and the 10% delay factor for computing average speed for tugs has been retained in the final rule.

One commenter asserted that a critical problem with the transportation of bulk preference cargo is that the risk shifted to carriers by the use of ''full berth terms'' and other land-based transportation requirements in preference charter parties. In the NPRM, MARAD noted the differences in risk between load and discharge terms and indicated its intention to use delay factors which reflect the inherent risks, therefore no change has been made to the final rule.

Finally, a government commenter requested that MARAD continue to calculate one-way rates at the time of booking for vessels sold or scrapped prior to their return to the United States. The final rule continues to provide for a one-way rate, but with a more precise definition of the circumstances when it applies. The one-way rate will continue to be calculated at the same time as the full round-trip guideline rate.

Guideline Rate Adjustments

MARAD's proposal to eliminate backhaul adjustments elicited comments from three operators and two government shippers. The comments from the operators strongly favor MARAD's proposal, while the government shippers opposed it. MARAD believes the proposal to eliminate the backhaul adjustment provides the operator with a greater ability to increase its commercial carriage and U.S.-flag participation in the U.S. foreign trade. Further, MARAD believes that increased commercial carriage could help lower overall program costs, and therefore the proposal is unchanged in the final rule.

As a result of substitutions, voyage variations, add-on cargoes, and similar recalculations, MARAD averages two guideline rate calculations for each cargo actually fixed. MARAD intends to substantially reduce these recalculations and generally determine only one guideline rate for each preference cargo. The guideline rate based on the initially requested vessel and cargo will also be applicable to all other vessels in the same tonnage category that might actually carry the cargo and for cargo amounts plus or minus five percent of the original request. An exception would be made when a vessel eligible to receive the ''new vessel allowance'' is substituted for an older vessel, or vice versa.

Two government commenters and one operator also raised the issue of whether rates would be recalculated when an outbound commercial cargo is added on to a preference cargo. The government commenters argued that additional revenue sources should always trigger a recalculation. The other commenter noted that add-on commercial cargo is similar to the backhaul adjustment and its elimination from the guideline process would provide an incentive to bid on commercial cargo. MARAD will recalculate rates, if requested, for any add-on cargo which increases cargo size by more than five percent.

Cargo Size (Seventy Percent Limitation)

Three commenters provided views regarding MARAD's proposal to eliminate the seventy percent limitation in the current rule. This provision currently 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. All commenters agreed with MARAD's proposal noting that the seventy percent rule has limited competition. Therefore, § 382.3(f) of the final rule will provide that the determination of cargo tonnage in the guideline rate shall be based on the actual cargo tonnage booked or considered for booking on the voyage.

Capital Costs

Five changes designed to simplify or clarify rate calculations were proposed within this cost category. Comments pertaining to these changes and other issues related to capital cost were received from six of the eight commenters.

The first change adds a clarifying cross reference in § 382.3(b)(2)(ii). In the final rule the paragraph explicitly references paragraph (b)(2)(i) for the periods of depreciation to be used in determining interest expense in the guideline rate.

Three commenters expressed views on MARAD's second proposal, elimination of the 2.5 percent residual value in the calculation of depreciation. Although two commenters supported elimination, the third had a conceptional problem with the elimination of residual value in the depreciation calculation. Because MARAD believes that eliminating residual value simplifies the guideline rate process while conforming to industry practice, residual value is eliminated from the depreciation calculation in § 382.3(b)(2)(i) of the final rule.

The third proposed change to the capital cost calculation concerns situations where interest rates are not available for certain capitalized items. MARAD proposed the ten-year Treasury-bill (T-bill) rate plus one percent as an appropriate and readily available substitute. One commenter supported the change while a second contended that a change would probably result in a reduction for some operators. This concern is unfounded; the rate will not be substituted when the operator provides an interest rate. Accordingly, § 382.3(b)(2)(ii) is amended in the final rule 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, which was supported by the commenters who voiced a view, related to the interest rate used to calculate capital costs when an owner has a variable interest rate. In the final rule § 382.3(b)(2)(ii) has been amended to specify January 1 and July 1 as the dates on which the interest rates in effect would be used for the calculation of fair and reasonable rates.

The final proposed change to capital costs was the addition of a statement in the new § 382.3(b)(3) noting that the return on working capital is a voyage related capital cost element and thus not part of the averaged costs. This proposed change elicited comments from two persons. One agreed with the change. The second commenter appeared to misunderstand the proposal. The final rule includes the proposed change in new § 382.3(b)(3).

The rate of return used in the calculation of capital costs also elicited extensive responses from four commenters, even though no change was proposed. A government commenter objected to the ''policy of guaranteeing'' a return on investment, suggesting that if the ''guarantee'' cannot be eliminated, it be based on a rate of return for maritime companies only. The first part of this comment misinterprets the function of the fair and reasonable guideline rates in the preference market. Guideline rates provide a ceiling on market rates charged for the carriage of preference cargoes on U.S.-flag vessels. Far from ''guaranteeing'' a rate of return, a guideline rate limits the shipowner's profitability. In addition, the Comptroller's opinion specifically states that a reasonable profit should be included in the rate. Regarding the suggestion to base the rate of return on maritime companies only, MARAD believes that a maritime profitability index would be too narrow to assure a reasonable return during all periods.

In general, the three operator commenters expressed the opposite point of view from the above. They generally expressed the belief that a higher rate of return is necessary to compensate for a high risk investment in ocean shipping. One commenter suggested that the rate of return for working capital should be based on short term business loan rates such as prime plus a spread.

Although these comments have an element of truth, they also illustrate the dilemma of choosing an appropriate rate of return. MARAD believes that the suggestion to use a short term loan rate for the return on working capital is a reasonable suggestion. However, short-term loan rates are volatile and the suggestion ignores the question of a specific spread to use. In the end, the Agency believes the current procedures have worked well in the past and should continue to do so in the future. The final rule stipulates a rate of return on working capital and equity based on the five-year average of return on stockholders' equity for a cross section of transportation companies.

New Vessel Allowance

One goal of revising Part 382 has been to encourage newer and more efficient vessels to enter the cargo preference market. To this end, MARAD proposed including an allowance for acquisition capital in the guideline rates for both newly constructed vessels and vessels acquired prior to the fifth anniversary of their construction. The proposal provided that the allowance be included for a period of five years after acquisition by the owner. Comments were received from four persons on this provision. Commenters believed that the provision was insufficient and that a strong market would be necessary for the operator to benefit from the allowance. One commenter asserted that the allowance would only be received if MARAD paid it directly, while another supported the concept but only for newly constructed vessels. As a result of the comments, MARAD modified the new vessel allowance to provide a longer allowance period for newer vessel owners. In the final rule, the annual new vessel allowance will equal ten percent of the vessel's capitalized costs during the first year following construction or acquisition, and will decline by one percentage point each of the subsequent years until the vessel is ten years old. No allowance will be included for vessels more than ten years of age.

Information Collection Requirements

MARAD proposed reducing reporting and auditing requirements while continuing to recognize the agency's need for accurate cost and financial information. Two favorable comments were received on MARAD's proposals to reduce the amount and frequency of data reporting. To implement these two concepts, the final rule amends § 382.2(b)(8) to authorize aggregate schedule filings, and § 382.2(c) to change post-voyage filing to a semiannual requirement.

Two changes in reporting requirements were proposed to reduce the audit burden on operators, the Department of Transportation's Office of the Inspector General (OIG), and MARAD. The first change, intended to alleviate the need for auditing by the OIG, allowed an operator to have its submissions certified by an independent certified public accountant (CPA). One operator and the AICPA pointed out a problem with the specific phrase used by MARAD. The AICPA recommended replacement language specifying a report based on the independent CPA's performing an engagement consistent with professional standards, i.e., an attestation engagement. In addition, there was strong sentiment from three commenters for MARAD retaining the right to audit. It was never MARAD's intent to relinquish the right to request audits, but to alleviate some of the need for audit. However, it is MARAD's intention in deciding which operator's data to audit in any given year to factor the level of CPA review into its considerations. In consideration of the comments, the wording in § 382.2 of the final rule has been changed to include the language suggested by the AICPA.

The second proposed change in reporting requirements was to require the operator to use the accounting treatment it already uses for its own records and audited financial statements for its cost submissions to MARAD. One commenter believed that drydocking accruals should still be allowed even if a company expenses its drydocking costs. Another remarked that reporting consistency is critical when using averaging and MARAD should review the reported data and provide guidance to ensure consistent cost data. While it would be advantageous if all operators reported in the same manner and all operators accrued for drydocking costs, the Agency believes that the averaging process itself will even out the drydocking costs in much the same way as the accrual process.

MARAD also proposed three minor reporting changes. First, reporting the Official Coast Guard Identification Number (official number) would be required; second, the DWT requirement would be amended to require only summer DWT in metric tons and eliminate the requirement for Suez and Panama Canal net register tons; and, finally, the definition of "operating day" would be clarified. Only positive comments were received on these proposed changes and the proposals are included in the final rule.

Brokerage and Overhead

Part 382.3(b)(5)(d) specifies that "allowance for broker's commission and overhead 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." Two comments were received on this component of the rate. The first questioned whether 8.5% is an appropriate allowance. The second was whether brokerage and overhead could be allowed on pass through items. MARAD believes that the 6% allowance for overhead costs that is added to the 2.5% brokerage included in guideline rates is still appropriate. Regarding brokerage and overhead on pass through items, fair and reasonable guideline rates are for ocean transportation only and an allowance in the guideline rate for inland transportation items is outside the scope of this rulemaking.

Total Revenue Rates

When more than one cargo has been booked on a vessel subject to the guideline rate regulations or when there are multiple load and/or discharge ports, calculating individual rates for particular parcels and/or destinations, as currently required by § 382.3(f) and (g), is impossible. Accordingly, MARAD proposed calculating a "Total Revenue Rate" when this occurs. 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. If 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.

A shipper agency expressed concern that total revenue rates could result in inequities to recipients or shipper agencies if a high fixture and a low fixture combine to result in an acceptable total revenue. One operator expressed the belief that using a total revenue rate for combined parcels penalizes the operator for initiative in combining parcels and another asked that the calculation method be specified and shown by example. Responses to these concerns are drawn from experience with the total revenue concept, which has been used under waiver authority.

Experience to date has not shown operators frequently blending a high fixture rate with a low one. Typically, combining cargoes allows an operator to spread fixed costs more widely and bid a highly competitive rate for each cargo. Using the total revenue approach allows MARAD to combine the fixed costs for the whole voyage with the variable costs for the individual parcels. But because the voyage's fixed costs and the parcels' variable costs are not derived from the same tonnage, a rate per ton is not meaningful.

MARAD does not believe that total revenue rates penalize operators for combining cargoes. Total revenue rates actually reflect the practices of the operators when they combine cargoes. Using a total revenue approach simply requires comparing all the costs for all parcels to be carried on the voyage to the total revenue proposed in the operator's bids, thereby obviating the need to artificially allocate fixed costs to one cargo or the other.

As requested, an example of a total revenue rate follows:

CARGO

Cargo	Amount metric tons	Type	Terms	Load port	Discharge port
Rice	10,000	Bagged	FBT	Galveston, TX	Durban, South Africa.
Wheat	10,000	Bulk	VLFO (4000/1000) SHEX	New Orleans, LA	Beira, Mozambique.
Corn	10,000	Bulk	FBT	New Orleans, LA	Mombassa, Kenya.

VOYAGE

Port	Activity	Port time	Distance	Sea time	Port costs	Cargo costs
New Orleans, LA	Load wheat and corn	8.38			$35,000	$25,000
	Bunker	1.00				
Galveston, TX	Load rice	8.49	390	1.25	35,000	180,000
Durban, South Africa	Discharge rice	10.18	8234	28.32	25,000	100,000
Beira, Mozambique	Discharge wheat	12.73	702	2.24	25,000	0
Mombassa, Kenya	Discharge corn	8.49	1149	3.67	25,000	60,000
	Bunker	1.00		0.00		
U.S. Gulf	Return	0.00	9986	31.92	0	0
Total Days		48.25		85.40	145,000	385,000

FAIR AND REASONABLE RATE CALCULATION

Fuel Costs	$415,000
Vessel Operating Costs	$1,500,000
Port Costs	$145,000
Cargo Costs	$365,000
Other Cargo Costs	$20,000
Capital Costs	$740,000
Brokerage & Overhead	$270,725
Total	$3,455,725,000
Total Revenue Rate	$3,455,725
Average Rate per ton	$115.19

FIXTURE AND FAIR AND REASONABLE RATE COMPARISON

Cargo	Rate bid	Amount	Revenue	Fair and reasonable rate
Rice	$125.00	10,000	$1,250,000	
Wheat	90.00	10,000	900,000	
Corn	95.00	10,000	950,000	
Total		30,000	3,100,000	[1] $3,455,725
Average	103.33			

[1] Since voyage revenue is less than total revenue from the fair and reasonable rate, the individual bids are considered fair and reasonable.

The preceding example details the areas where costs vary and overlap. In order to provide individual rates, both direct and overall voyage costs must be allocated to each cargo. This is very difficult to accomplish fairly. Also, as this example illustrates, individual fixture rates can be higher or lower than the average rate, and yet the operator's total effort yields revenue that is fair and reasonable. The only unique aspect of the total revenue rate is the elimination of the step which divides the total allowable costs by the cargo tons to derive a rate per ton.

MARAD believes that the total revenue approach represents the best method for protecting the interests of all parties when cargoes are combined. Furthermore, combining cargoes has become increasingly common in the past two years. Consequently, in the final rule, § 382.3 (f) and (g) will allow the use of either a cost per ton or other measure that MARAD determines appropriate.

Revised Rate Methodology

The guideline or fair and reasonable rate established by MARAD, which applies only to the ocean borne portion of cargo transportation, consists 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 will reflect average vessel operating costs for vessels within the specified size categories based on the historical data submitted in accordance with § 382.2 of this rule. MARAD will update the operating costs to the current period, utilizing escalation factors for wage and non-wage costs. The averages for each category of vessels will be calculated at least twice per year. To the extent vessels are time chartered or leased,

operators will submit both operating and capital costs, including all capitalized costs and interest rates for vessels subject to capital leases.

Vessel costs will be placed in categories based on the vessel's summer deadweight tons (DWT). The categories will be as follows:

Category I—Less than 10,000 DWT
Category II—10,000—19,999 DWT
Category III—20,000—34,999 DWT
Category IV—Greater than 35,000 DWT

All eligible annual operating costs for vessels within a category will be added together and divided by the total number of operating days for those vessels to yield a daily operating cost. The cost will be indexed to the current year and multiplied by estimated total voyage days to yield the operating cost segment for the voyage.

Fuel consumption will be determined 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 will be multiplied by the projected number of voyage days at sea and in port to yield total fuel consumed. MARAD will obtain current spot market fuel prices from published sources 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 will be added together to yield the operating cost component for the voyage.

The capital cost component will be an average based on vessels in the applicable size category. It will consist of an allowance for depreciation and interest and a reasonable return on investment. Depreciation for vessels in a category will be straight-line based on a 20-year economic life. However, if the owner acquired an existing vessel, the vessel will 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 will 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 will assume that original vessel indebtedness is 75 percent of the owner's capitalized vessel costs and that principal payments are made in equal annual installments over the economic life of the vessel. To compute the interest cost, the owner's actual interest rates will 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 when the average capital cost component is calculated will be used. In cases where there is no interest rate available, and for operators without vessel debt, MARAD will use the ten-year T-bill rate plus one percent.

Return on investment will have two components, return on equity and return on working capital. The rate of return will 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 used will be the vessels' constructed net book values less constructed principal amounts. Working capital will be voyage based and be the dollar amount necessary to cover operating and voyage expenses.

A new vessel allowance will be included in the capital component of newly built vessels and vessels acquired when five years of age or less. This allowance, which will be paid until the vessel is ten years old, will equal ten percent of the vessel's capitalized costs during the first year following construction or acquisition, and will decline by one percentage point each of the subsequent years. The voyage allowance will be the annual amount 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 will be divided by 300 operating days to determine a daily amount. The total of these elements will 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 will 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 will 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 will 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 will 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, will 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 will 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 may 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, provided 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; Pub. L. 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 Pub. L. 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.

When the NPRM was published, MARAD estimated the potential savings to the Government from this rulemaking by recalculating 167 rates for the years 1992 through 1995 using the revised methodology. This sample reflected the operators and countries in the complete data base. Extrapolating from the sample showed that averaging could have saved three million dollars in ocean freight for preference cargoes during the period. The comments received on the NPRM expressed concern that this analysis was flawed because it contained vessels which have since been either scrapped or withdrawn from the preference trade.

In response, MARAD recomputed the average costs for 1993 and 1994 using only vessels that are currently available for the preference trade. Table I shows the costs derived for each category from the reduced sample which were then used to calculate guideline rates using the averaging method. Table II summarizes the results of these calculations and shows the percentage savings that would have been realized using averaging.

TABLE I.—DAILY COSTS USED IN GUIDELINE RATE AVERAGES FOR CY 1993 AND 1994

Categories	Year	Operating costs	Capital costs	Fuel (at sea)*	Fuel (import)*	Speed (knots)	Sample size
Category I	1993	$4,087	$1,224	$1,600	$222	6.25	8
(<10,000 vdwt)	1994	3,321	1,294	1,600	195	6.25	8
Category II	1993	6,077	3,337	3,468	275	8.25	15
(10–19,999 vdwt)	1994	6,207	3,543	3,137	260	8.37	15
Category III	1993	11,447	5,435	3,270	443	12.66	4
(20–35,000 vdwt)	1994	10,686	4,604	4,366	674	13.79	6
Category IV	1993	11,943	6,355	4,963	526	13.54	13
(>35,000 vdwt)	1994	12,757	6,138	4,492	680	13.36	14

Extrapolating the estimated 1.05% savings based on actual fixtures during 1993 and 1994 to the period 1993 to August 1997, yields a savings of nearly one million dollars as a result of averaging. This savings estimate is approximately one-third the savings estimated with the ship mix used in the initial analysis. The reason for this is that declining levels of cargoes since 1994 have forced operators to bid very low rates to obtain cargoes, thus forcing many inefficient vessels out of the trade. Nevertheless, a million dollar savings is significant.

TABLE II.—SAVINGS IN SAMPLE RATES FROM USING AVERAGING SYSTEM FOR RATE CALCULATION

	Sample size	Fixture revenue	Averaging savings	Averaging vs guideline	Metric tons
Category I	18	6,098,662	($96,481)	($692,251)	91,956
Category II	22	20,953,285	0	($1,017,582)	296,068
Category III	10	20,155,736	($611,594)	($835,651)	224,247
Category IV	26	59,655,091	($416,255)	($429,445)	1,003,997
Sample total	76	106,862,774	($1,124,330)	($2,974,929)	1,616,268
	....	....	−1.05%	−2.32%	....

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 final rule has no environmental impact and an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This 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.*). Public comments were requested in the NPRM at 62 FR 9150, published February 28, 1997. Closing date for comments was April 29, 1997. No comments were received regarding this information collection. A subsequent 30-day notice was published July 21, 1997 by the Office of the Secretary of Transportation at 62 FR 39046. Comments were due on or before August 20, 1997. No comments were received as a result of this notice.

In accordance with the Paperwork Reduction Act of 1995, MARAD received an extension from OMB of approval for three years for this information collection.

Unfunded Mandates

Under the Unfunded Mandate Reform Act (Pub.L. 104–4) the Maritime Administration must consider whether this rule will result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). The Act also requires that the Maritime Administration identify and consider a reasonable number of regulatory alternatives and, from those alternatives, select the least costly, most cost-effective, or least burdensome alternative that will achieve the objectives of the rule. As stated above, by this rule the Maritime Administration is reducing regulatory burden, i.e., collection of information, on the public. This final rule does not result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and is the least burdensome alternative that will achieve the objective of the rule.

List of Subjects in 46 CFR Part 382

Agricultural commodities, Government procurement, Loan programs—foreign relations, Maritime carriers, Reporting and record keeping requirements.

Accordingly, 46 CFR Chapter II is hereby 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.

Sec.
382.1 Scope.
382.2 Data submission.
382.3 Determination of fair and reasonable rates.
382.4 Waivers.

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, which is defined as service provided on an advertised schedule, giving relatively frequent sailings between specific U.S. ports or ranges and designated foreign ports or ranges.

§ 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 based on the independent CPA performing an engagement consistent with professional standards, i.e., an attestation engagement, is recommended. Submissions 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) and 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 310. 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 means 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 shall be provided semiannually 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 semiannual periods and the information to be submitted 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 MARAD's regulations at 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 assertions of exemption from disclosure. 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 vessel 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 specified in 46 CFR 232.5, Form MA–172, Schedule 310, 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 non-wage 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.* Vessels shall be placed in categories by deadweight capacities (DWT), as follows:

Group I—under 10,000 DWT
Group II—10,000—19,999 DWT
Group III—20,000—34,999 DWT
Group IV—35,000 DWT and over.

(b) *Capital Component*—(1) *General.* An average capital cost component for each category 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 owners' capitalized vessel costs, including capitalized improvements, shall be depreciated on a straight-line basis over a 20-year economic life, except vessels purchased or reconstructed when their age was greater than 10 years old. To the extent vessels are chartered or leased, the operator shall submit the capitalized cost of the vessel owner and imputed interest rate. If 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 each vessel owner's actual interest rates to the outstanding vessel indebtedness. MARAD shall assume that original vessel indebtedness is 75 percent of the owners' capitalized vessel costs, including capitalized improvements, and that annual principal payments are made in equal installments over the economic life of the vessels 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 values shall equal the owners' capitalized cost minus accumulated straight-line depreciation.

(3) *Return on working capital.* For each voyage a return on working capital shall be included as a voyage related capital cost element, and thus not part of the averaged costs. 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 tenth year following construction.

(5) *Voyage component.* The annual average depreciation, interest, and return on equity for vessels in each category 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. When calculating the vessels' average speed, individual vessel speeds will be

reduced by five percent for self-propelled vessels and ten percent for tugs/barges to account for weather conditions.

(f) *Determination of cargo carried.* The amount of cargo tonnage 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 Waivers.

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: January 21, 1998.

Joel C. Richard,

Secretary.

[FR Doc. 98–1786 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 97–411]

Universal Service Support Mechanisms

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission authorized the Administrator of the universal service support mechanisms to require payment of quarterly contributions to universal service in equal monthly installments. This action was intended to ease contributor's cash flow problems.

EFFECTIVE DATE: February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Law, (202) 418–7400.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this Third Order on Reconsideration (Order), we reconsider, on our own motion, the Commission's decisions governing the amount of money that may be collected during the first six months of 1998 for the federal universal service support mechanisms for schools and libraries and rural health care providers. We direct the administrator to collect only as much as required by demand, but in no event more than $25 million per quarter for the first and second quarters of 1998 to support the rural health care universal service support mechanism. We direct the administrator to collect only as much as required by demand, but in no event more than $625 million for the first six months of 1998, to support the schools and libraries universal service support mechanism. These actions will reduce the financial burdens on universal service contributors without jeopardizing the sufficiency of the support mechanisms. The Commission may revise the collection caps if we receive evidence of additional demand for services. The rules adopted in this Order will become effective February 26, 1998.

II. Background

1. In the *NECA Report and Order* (62 FR 41294 (Aug. 1, 1997)), the Commission established the administrative structure of the federal universal service support mechanisms. The Commission directed the National Exchange Carrier Association (NECA) to create an independent subsidiary, the Universal Service Administrative Company (USAC), to administer temporarily portions of the support mechanisms. The Commission also directed NECA to create two independent corporations, Schools and Libraries Corporation and Rural Health Care Corporation, to administer portions of the schools and libraries and rural health support mechanisms. USAC, Schools and Libraries Corporation, and Rural Health Care Corporation are required to submit to the Commission quarterly projections of demand and administrative expenses for their respective support mechanisms.

2. The schools and libraries and rural health care support mechanisms are newly created and have no historical data upon which to estimate accurately the demand for services in the initial months of the support mechanisms. The Commission specified that the administrator should collect $100 million per month for the first three months of 1998 for the schools and libraries support mechanism and ''adjust future contribution assessments quarterly based on its evaluation of schools and library demand for funds, within the limits of the spending caps. . . .'' The Commission further held that, between January 1, 1998 and June 30, 1998, the administrator ''will only collect as much as required by demand, but in no case more than $1 billion.'' For the rural health care support mechanism, the Commission directed the administrator to collect $100 million for the first three months of 1998. In addition, the Commission instituted annual caps on both support mechanisms, $2.25 billion for the schools and libraries support mechanism and $400 million for the rural health care support mechanism. In setting forth a collection schedule, the Commission sought to ensure that ''funds will be available as needed while avoiding the potential problems arising from the accumulation of large amounts of funds in a federal universal service fund.''

III. Discussion

3. We conclude that we should adjust downward the rate of collections for the schools and libraries and rural health care support mechanisms during the first six months of 1998. We anticipate that this action will not jeopardize the sufficiency of the support mechanisms. The annual caps were designed to estimate the maximum, rather than the actual, amount of demand for the schools and libraries and rural health care universal service support mechanisms. Based on what we have learned about the status of preparatory arrangements being made by schools, libraries, and rural health care providers to obtain the benefit of the universal service support mechanisms, we have no reason to believe that demand will reach the maximum projection levels in the initial implementation stages of these new support mechanisms. We do not want to impose unnecessary financial burdens on service provider contributors to universal service by requiring the administrator to collect funds that exceed demand. We also wish to ensure the successful implementation of the schools and libraries and rural health care support mechanisms. Accordingly, we find that it better serves the public interest to reduce the collection amounts specified in the Order (62 FR 32862 (June 17, 1997)) for the first six months of 1998, as described below.

4. *Rural Health Care.* The rural health care support mechanism supports the