# Rules and Regulations

## Title 14—AERONAUTICS AND SPACE

### Chapter I—Federal Aviation Agency

[Airspace Docket No. 66–CE–22]

### PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

#### Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Minneapolis, Minn., transition area.

The following controlled airspace is presently designated in the Minneapolis, Minn., terminal area:

The Minneapolis, Minn., transition area is designated as that airspace extending upward from 700 feet above the surface within a 23-mile radius of Minneapolis-St. Paul International Airport (latitude 44°53'08" N., longitude 93°13'11" W.), and within 5 miles N and 8 miles S of the Flying Cloud, Minn., VOR 292° radial, extending from the 23-mile radius area to 12 miles W of the VOR; and that airspace extending upward from 1,200 feet above the surface within a 36-mile radius of Minneapolis-St. Paul International Airport, within 9 miles N and 6 miles S of the Minneapolis, Minn., VOR 100° radial extending from the 36-mile radius area to 57 miles E of the VOR, and within 9 miles SW and 6 miles NE of the Farmington, Minn., VOR 297° radial, extending from the 36-mile radius area to 48 miles NW of the VOR, and that airspace W of Farmington, Minn., bounded on the S by V–26, on the NW by V–148 and on the NE by V–171; and that airspace W of Minneapolis bounded on the N by V–78, on the S by V–148 and on the SW by V–171; and that airspace extending upward from 5,000 feet MSL E of Minneapolis, bounded on the SE by V–26, on the SW by V–2N, and on the N by V–78.

The holding pattern at the Boardman, Wis., intersection is no longer required for air traffic control purposes and is being canceled. There is no longer any requirement for that portion of the Minneapolis, Minn., transition area which was designated to provide controlled airspace for the holding pattern. Therefore, that portion of the transition area is herein released.

Since this amendment is less restrictive in nature and imposes no additional burden on any person, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective 0001 e.s.t., May 26, 1966, as hereinafter set forth:

In 71.181 (31 F.R. 2149) the Minneapolis, Minn., transition area is amended to read:

MINNEAPOLIS, MINN.

That airspace extending upward from 700 feet above the surface within a 23-mile radius of Minneapolis-St. Paul International Airport (latitude 44°53'08" N., longitude 93°13'11" W.), and within 5 miles N and 8 miles S of the Flying Cloud, Minn., VOR 292° radial, extending from the 23-mile radius area to 12 miles W of the VOR; and that airspace extending upward from 1,200 feet above the surface within a 36-mile radius of Minneapolis-St. Paul International Airport, and within 9 miles SW and 6 miles NE of the Farmington, Minn., VOR 297° radial, extending from the 36-mile radius area to 48 miles NW of the VOR, and that airspace W of Farmington, Minn., bounded on the S by V–26, on the NW by V–148 and on the NE by V–171; and that airspace W of Minneapolis bounded on the N by V–78, on the S by V–148 and on the SW by V–171; and that airspace extending upward from 5,000 feet MSL E of Minneapolis, bounded on the SE by V–26, on the SW by V–2N, and on the N by V–78.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on March 22, 1966.

DONALD S. KING,
*Acting Director, Central Region.*

[F.R. Doc. 66–3640; Filed, Apr. 5, 1966; 8:45 a.m.]

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[Airspace Docket No. 66–CE–23]

### PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

#### Alteration of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to designate the correct coordinates for the Alexandria Airport, Alexandria, Minn.

By reason of certain construction work performed on the Alexandria Airport, the referencing point for the airport has been changed. Therefore, the coordinates of the airport, as they are set forth in the designation of the control zone and transition area situated there, are incorrect.

Since the change is minor in nature and imposes no additional burden on any person, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective 0001 e.s.t., May 26, 1966, as follows:

(1) In § 71.171 (31 F.R. 2065) the Alexandria, Minn., control zone is amended as follows:

"Alexandria Municipal Airport (latitude 45°52'15" N., longitude 95°24'00" W.)" is deleted and "Alexandria Municipal Airport (latitude 45°52'02" N., longitude 95°23'39" W.)" is substituted therefor.

(2) In § 71.181 (31 F.R. 2149) the Alexandria, Minn., transition area is amended as follows:

"Alexandria Airport (latitude 45°52'05" N., longitude 95°23'45" W.)" is deleted and "Alexandria Airport (latitude 45°52'02" N., longitude 95°23'39" W.)" is substituted therefor.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on March 22, 1966.

DONALD S. KING,
*Acting Director, Central Region.*

[F.R. Doc. 66–3641; Filed, Apr. 5, 1966; 8:45 a.m.]

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[Airspace Docket No. 66–CE–4]

### PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

#### Alteration of Transition Area

On February 8, 1966, a notice of proposed rule making was published in the FEDERAL REGISTER (31 F.R. 2488) stating that the Federal Aviation Agency proposed to alter the controlled airspace in the Billings, Mont., terminal area.

Interested parties were afforded an opportunity to participate in the rule making through the submission of comments. The one comment received was favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., May 26, 1966, as hereinafter set forth:

In § 71.181 (31 F.R. 2149) the Billings, Mont., transition area is amended to read:

BILLINGS, MONT.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Logan Field, Billings, Mont. (latitude 45°48'23" N., longitude 108°31'54" W.); and within 2 miles each side of the 071° bearings from the Billings RBN extending from the 8-mile radius area to 8 miles E of the RBN; and within 5 miles N and 8 miles S of the Billings VORTAC 267° radial extending from the 8-mile radius area to 12 miles W of the VORTAC; and within 5 miles N and 8 miles S of the Billings ILS localizer W course extending from the 8-mile radius area to 12 miles W of the OM; and that airspace extending upward from 1,200 feet above the surface within a 21-mile radius of the Billings VORTAC extending clockwise from V–2 W of Billings to V–19 SE of Billings; and within 10 miles SW and 7 miles NE of the Billings VORTAC 301° radial extending from 20 miles NW of the VORTAC to 49 miles NW of the VORTAC; and within 10 miles SW and 7 miles NE of the Billings VORTAC 317° radial extending from the 21-mile radius area to 45 miles NW of the VORTAC; and within 10 miles W and 7 miles E of the Billings VORTAC 347° radial extending from the 21-mile radius area to 42 miles N of the VORTAC; and within 5 miles each side of the Billings VORTAC 96° radial extending from the 21-mile radius area to 36 miles E of the VORTAC, and that airspace extending upward from 7,700 feet MSL within 8 miles each side of the Billings

VORTAC 96° radial extending from 36 miles to 99 miles E of the VORTAC.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on March 24, 1966.

EDWARD C. MARSH,
*Director, Central Region.*

[F.R. Doc. 66-3642; Filed, Apr. 5, 1966; 8:45 a.m.]

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[Airspace Docket No. 65-EA-69]

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

### Realignment of VOR Federal Airways, Revocation and Designation of Low Altitude Reporting Points

On December 9, 1965 a notice of proposed rule making was published in the FEDERAL REGISTER (30 F.R. 15234) which would alter Federal airways in the vicinity of Cooksburg, Pa.

Interested persons were afforded the opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective 0001 e.s.t., May 26, 1966 as hereinafter set forth.

a. Section 71.123 (31 F.R. 2009) is amended as follows:

1. In V-119 "Fitzgerald, Pa.;" is deleted.

2. In V-184 "Fitzgerald, Pa.; to Philipsburg, Pa." is deleted and "INT of Tidioute 154° and Philipsburg, Pa., 296° radials; to Philipsburg." is substituted therefor.

3. In V-232 "Fitzgerald, Pa.;" is deleted and "Franklin, Pa.;" is substituted therefor.

b. Section 71.203 (31 F.R. 2277) is amended as follows:

1. "Fitzgerald, Pa." is deleted.

2. "Cooksburg, Pa., INT: INT Clarion, Pa., 044° and Franklin, Pa. 099° radials." is added.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Washington, D.C., on March 30, 1966.

T. MCCORMACK,
*Acting Chief, Airspace and Air Traffic Rules Division.*

[F.R. Doc. 66-3643; Filed, Apr. 5, 1966; 8:45 a.m.]

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[Docket No. 6966; Amdt. 171-2]

## PART 171—NON-FEDERAL NAVIGATION FACILITIES

### Scope of Applicability of the Regulation of Non-Federal Navigation Facilities

On October 15, 1965, a notice of proposed rule making was published in the FEDERAL REGISTER (30 F.R. 13169) stating that the Federal Aviation Agency proposed to broaden the applicability of Part 171.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. Due consideration was given to all relevant matter presented.

The purpose of this amendment is to broaden the applicability of Part 171 to include all non-Federal navigation facilities for which IFR procedures are requested or established.

Under the present rule, the term "public use facility" is generally interpreted as meaning those facilities which are available to the public and have standard instrument approach procedures contained in the Federal Aviation Regulations, Part 97. The Agency believes that its responsibility to the general public goes beyond the present limited scope of Part 171. By expanding the applicability of Part 171, the new rule sets forth one standard for all non-Federal facilities that are to be used for IFR operations. This rule establishes standards that assure reliability and thereby provides for safer operations at all of these facilities. The Agency believes this amendment to be of special importance since these non-Federal facilities may be used for the transportation of passengers for hire.

Comments received on the notice of proposed rule making (30 F.R. 13169) raised three issues with respect to this amendment. One comment stated that it will be overly burdensome on maintenance personnel to accompany the FAA inspector on each inspection trip, especially where an operator may own several facilities. The Agency does not, however, feel that it should conduct these inspections on the private property of the facility owner without the owner being represented in some way. The rule has been relaxed so that any representative of the owner will be acceptable after the initial inspection.

Secondly, it was suggested that the rule be written so that maintenance personnel maintaining several similar or identical facilities need not repetitiously their "proficiency in maintenance procedures and the use of specialized test equipment." The Agency does not intend that there be any needless repetitious demonstrations of maintenance proficiency. In light of this comment, the amendment has been clarified.

The third comment questions the need for a maintenance manual at each facility. It appears, however, that if only one manual is available for several facilities, the information necessary to the efficient operation, maintenance, and inspection of the facility would not be immediately available. The Agency, accordingly, will not delete the requirement that a maintenance manual be kept at each facility.

In consideration of the foregoing, effective May 30, 1966, Part 171 is amended as follows:

1. Sections 171.1, 171.21, and 171.41 are amended by striking out the words "public use."

2. Sections 171.11(b)(13), 171.31(b)(13), and 171.51(b)(13) are amended by adding the words "(Private use facilities may omit the 'Notices to Airmen')" before the period at the end thereof.

3. The second sentence of §§ 171.11(a), 171.31(a), and 171.51(a) is amended to read as follows: "Each person who maintains a facility must meet at least the Federal Communications Commission's licensing requirements and show that he has the special knowledge and skills needed to maintain the facility including proficiency in maintenance procedures and the use of specialized test equipment."

4. Sections 171.11(e), 171.31(d), and 171.51(e) are amended to read as follows:

"The owner's maintenance personnel must participate in initial inspections made by the FAA. In the case of subsequent inspections, the owner or his representative shall participate."

(Secs. 305, 307, 313(a), 601, and 606 of the Federal Aviation Act of 1958, 49 U.S.C. 1346, 1348, 1354(a), 1421 and 1426)

Issued in Washington, D.C., on March 31, 1966.

WILLIAM F. MCKEE,
*Administrator.*

[F.R. Doc. 66-3683; Filed, Apr. 5, 1966; 8:49 a.m.]

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## Chapter II—Civil Aeronautics Board

### SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. No. ER-456]

## PART 288—EXEMPTION OF AIR CARRIERS FOR SHORT-NOTICE MILITARY CONTRACTS AND SUBSTITUTE SERVICE

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 29th day of March 1966.

On January 13, 1966, by notice of proposed rule making EDR-96/PSDR-15 (31 F.R. 565), the Board proposed to amend Part 288 of the regulations by changing minimum rates for military charters for periods beginning February 1, 1966. Written data, views, and arguments have been filed in response to the notice by 13 carriers individually,[1] by 11 carriers jointly,[2] and by the Department of Defense (DOD). In addition, the Board heard the views of several carriers at an oral presentation that was open to all interested parties. All written and oral comments and supporting materials before the Board have been carefully considered, and all contentions not otherwise disposed of hereinafter are rejected. Final amendments to Part 399, Statements of General Policy, are

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[1] Six combination route carriers (Alaska Airlines, Inc., Braniff Airways, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans Caribbean Airways, Inc., and Trans World Airlines, Inc.); three all-cargo carriers (Airlift International, Inc., The Flying Tiger Line Inc., and Seaboard World Airlines, Inc.); and four supplemental carriers (Capitol Airways, Inc., Southern Air Transport, Inc., Trans International Airlines, Inc., and World Airways, Inc.)

[2] Airlift, Capitol, Continental Air Lines, Inc., Flying Tiger, Northwest, Seaboard, The Slick Corp., TCA, TIA, TWA, and World.

being adopted concurrently herewith (PS-30).

Upon consideration of the comments received and adjusted cost data,[3] the Board has adopted revised minimum fair and reasonable rates. The existing minimum rates, those proposed in the notice, and those adopted herein for turbine-powered aircraft (other than B-727 and CV-880 aircraft) are as follows:

*Rates for charters performed with turbine-powered aircraft—Rates adopted.*

| | Present | Proposed | Adopted |
|---|---|---|---|
| | *Cents* | *Cents* | *Cents* |
| Passenger, per passenger mile: | | | |
| Round trip | 2.20 | 2.00 | 2.00 |
| One way | 3.96 | 3.36 | 3.60 |
| Cargo, per ton-mile: | | | |
| Round trip: | | | |
| Regular | 9.50 | 8.50 | 9.00 |
| North Pacific | 9.75 | 8.75 | 9.25 |
| One way: | | | |
| Regular | 17.63 | 15.37 | 16.95 |
| North Pacific | 18.13 | 15.87 | 17.45 |
| Convertible: | | | |
| Passenger leg, per passenger-mile | 2.35 | 2.15 | 2.15 |
| Cargo leg, per ton-mile: | | | |
| Regular | 11.00 | 9.87 | 10.46 |
| North Pacific | 11.25 | 10.12 | 10.71 |
| Mixed passenger-cargo, scale per plane-mile; variable: | | | |
| Round trip: | *Dollars* | *Dollars* | *Dollars* |
| Regular | 3.88-3.71 | 3.55-3.33 | 3.55-3.53 |
| North Pacific | 3.88-3.79 | 3.55-3.41 | 3.55-3.61 |
| One way: | | | |
| Regular | | | 6.19-6.41 |
| North Pacific | | | 6.19-6.59 |

The revised minimum rates are predicated upon estimates of carrier unit costs of operation plus a 9-percent return on investment after taxes. The unit costs were derived from carrier forecasts of charter operations to be performed for the Military Airlift Command (MAC) in fiscal year 1967 adjusted by the Board to the extent deemed appropriate for ratemaking purposes. The rate and cost bases are discussed in the following paragraphs.

*Utilization.* In forecasting aircraft utilization, the notice proposed use of 11 hours per day for all carriers, based upon utilization achieved in recent months. This proposal was a departure from the policy in past rate reviews, in which utilization forecasts were generally based on each carrier's experienced systemwide average during the most recent 12-month period for which data were available.

The carriers and DOD object to the proposed 11-hour uniform utilization. The carriers contend that an 11-hour rate is excessive and will not over a reasonable period permit the carriers to recover their costs under the proposed rates. They point out that the high utilization referred to in the notice was achieved during the first quarter of fiscal year 1966, a seasonal peak commercial period, and that such utilization is not representative of a full year and cannot be expected to continue. The carriers maintain that use of utilization for this period increases the burden that commercial services must bear, since such high utilization cannot be attained in MAC charter service because of the nature of the service. They also note that revenues from MAC contracts are not uniform throughout the year and that MAC spending is governed by appropriations. For these reasons, future utilization is uncertain. The carriers also question the application of utilization achieved during fiscal 1966 to costs projected from those experienced in fiscal 1965 when utilization was lower. In addition, the carriers argue that, although increased utilization lowers certain unit costs, it is improper to suggest that higher utilization generates no additional unit costs at all. In any event, they object to the use of increased utilization as a basis for changing minimum rates, because the rates would then be subject to change on short-term swings in utilization, which would eliminate rate stability. The carriers fear that the Board could not cope with such changes in a timely manner.

DOD is concerned that adjustment of rates based on increased utilization would tend to discourage the efforts of carriers to improve utilization and might lead to actual losses for carriers that could not reach the high rate. DOD contends that new rates should not be established on the basis of increased utilization unless the Board concludes that the carriers should be able to continue such high utilization even if the volume of MAC business returns to a more normal level.

In view of the comments, we have concluded that use of a uniform utilization based on the utilization achieved during the first quarter of fiscal year 1966 would not be appropriate in establishing minimum rates at this time. Instead, we shall revert to our past policy of using individual system average utilization rates for each carrier.

Following are utilization rates as forecast by the carriers and DOD for fiscal year 1967 and as experienced by the carriers in fiscal year 1965 and in calendar year 1965:

| Carrier | Aircraft | Carrier forecast fiscal year 1967 | DOD forecast fiscal year 1967 | Experienced utilization: Fiscal year 1965 | Experienced utilization: Calendar 1965 |
|---|---|---|---|---|---|
| Airlift | DC-8F | 8.20 | 8.48 | 8.08 | 9.10 |
| Continental | B-707-320C | 9.35 | 11.98 | 11.98 | 14.05 |
| Northwest | B-707-320C | 10.00 | 10.79 | 10.55 | 10.72 |
| Pan American | B-707-300 | 11.50 | 11.50 | 10.02 | 9.79 |
| | B-707-321B/C | 11.50 | 11.50 | 10.13 | 10.77 |
| Seaboard | DC-8F | 9.10 | 9.16 | 9.10 | 11.00 |
| TCA | DC-8F | 9.50 | 10.04 | 9.50 | 10.70 |
| TWA | B-707-300 | 9.38 | 10.16 | 10.45 | 10.77 |
| Capitol | DC-8F | 5.70 | 7.35 | 6.49 | 8.84 |
| TIA | DC-8F | 5.74 | 9.44 | 8.15 | 10.55 |
| World | B-707-320C | 8.40 | 9.60 | 9.37 | 10.94 |
| Cargo only: | | | | | |
| Flying Tiger | CL-44 | 9.60 | 9.63 | 9.60 | 9.50 |
| Pan American | B-707-321C | 9.83 | 9.83 | 9.83 | 10.54 |
| Seaboard | CL-44 | 9.80 | 9.82 | 9.80 | 11.00 |
| Slick | CL-44 | 7.10 | 8.40 | 8.40 | 8.80 |

Except in three instances, the carriers' fiscal year 1967 forecasts are approximately the same as or lower than the utilization reported for fiscal year 1965. Further, the fiscal year 1965 figures are generally low compared with the more recent utilization in calendar year 1965. In passenger service, the carriers' weighted average utilization forecast of about 9.5 hours per day is lower than the group's weighted average for both fiscal 1965 (9.9 hours) and calendar year 1965 (10.8 hours).[4] In the case of the CL-44 cargo charters, the same is true. The carriers forecast 9.2 hours as against fiscal 1965 experience of 9.4 hours and 1965 experience of 9.6 hours. The DOD forecasts, however, are more reasonable, amounting to 10.3 hours on a weighted average basis for the passenger services and 9.4 hours for CL-44 cargo. In view of the increasing utilization being achieved by the carriers, it is our opinion that neither the carrier forecasts nor the fiscal 1965 level would be appropriate for forecasting utilization for the purpose of establishing these minimum rates. It seems clear that aircraft utilization in fiscal year 1967 is likely to be higher than fiscal 1965 experience would indicate. While this is in part due to a higher level of activity in MAC charters, it is also a reflection of the rapid growth of the carriers' commercial business. By the same token, it would be unsound to give undue weight to the recent peak utilizations experienced in view of the fact that significant changes in utilization can occur quickly and exert very substantial leverage on the carriers' fi-

[3] As in past Part 288 rate reviews, the carriers were informally requested to submit cost data, and the proposed new minimum rates were based upon these data as adjusted by the Board. The cost data have been further adjusted in light of comments received, and revised appendix pages are attached hereto.

[4] Individual carrier utilization data are weighted by number of aircraft committed to MAC.

nancial position. The DOD estimate for passenger charters reflects an average 5-percent increase over fiscal 1965 experience but does not fully reach the calendar year experience. In cargo, the DOD forecast is closer to the fiscal 1965 experience and again is moderately below the 1965 actual utilization. We believe the DOD estimates[5] strike a reasonable balance for purposes of this proceeding, and we have used them in developing the carrier unit costs recognized and relied on herein.

*Rate of return.* A number of carriers again object to the Board's proposal to continue use of a 9-percent rate of return on investment in establishing the minimum rates, contending that the 9-percent rate has not been quantitatively justified on the basis of cost of captial or risk.

The contentions raised are substantially similar to those raised, considered, and rejected in earlier MAC minimum-rate proceedings. The 9-percent rate of return on investment is fully commensurate with the risks inherent in the MAC charter services, and such risks are less than those of normal commercial operations. In MAC services, carriers operate pursuant to annual contracts with a guaranteed minimum volume of traffic and revenue. Each flight is guaranteed a full load at the standard price, which is certainly not the case in normal scheduled operations. Finally, the rate level itself is protected from competitive reductions by the minimum rates fixed by the Board. While there is the risk that the overall military requirement for civil airlift may decrease with a resulting adverse effect on aircraft utilization and profits, the Board expects to respond to major shifts of such nature by modifying the minimum rates. In this proceeding we have deliberately based the new rate levels on utilization short of recent peak levels to allow a reasonable margin for shifts of that sort. In these circumstances, we conclude that 9 percent is a fair rate of return for these services.

Flying Tiger and TIA also object to use of investment as of January 1967 for rates proposed to be effective before the beginning of the fiscal year. Although the January 1967 date was selected as the investment midpoint for fiscal year 1967, there is no indication that the carriers will not receive a fair return on investment if the new minimum rates are made effective before July 1, 1966, especially in light of the fact that utilization for the remainder of fiscal 1966 is likely to be in excess of that used in computing the minimum rates.

Flying Tiger also recommends that, in calculating return on investment, the Board permit the capitalization of leased facilities having a term in excess of 10 years. Since the carrier's rental expenses are included in its costs and it has made no showing that its total costs of service would be increased over the rental expense by capitalization of leased facilities, the recommendation is denied.

Northwest and Flying Tiger also contend that the Board failed to allow for State income taxes in computing the tax portion of the return element. Appropriate modification of these carriers' unit costs will be made to include this item.

*Depreciation.* As in the rate review conducted last year, the Board proposed to base depreciation for turbojet aircraft on a service life of 12 years and 15-percent residual value. Northwest and TIA maintain that the 12-year life is no longer warranted in view of current developments in production of more advanced turbojet aircraft types. The carriers mention several aircraft that will be coming into use within the next few years, such as DC-8-61, -62, and -80, B-747, and C-5A, which they claim represent radical changes in the nature and capability of subsonic turbojet aircraft.

In response to carrier contentions last year that present turbojets would be obsolete within a few years, we stated that we were not aware of any contemplated radically different aircraft that would have that effect. However, we noted that, if future developments should justify a change in outlook, depreciation could be accelerated in a later rate review. (ER-432, effective July 1, 1965.) In our opinion, the situation has not changed appreciably in the last year. We do not consider the stretched DC-8's such a radically different aircraft as to render present turbojets obsolete, particularly in view of the growing demand for airlift. With respect to the other aircraft mentioned by the carriers, their introduction into commercial use would appear to be a number of years away. In the circumstances, we believe the 12-year life continues to be a reasonable assumption.

*Miscellaneous cost adjustments.* Several carriers have commented on the cost data relied upon in the notice, asserting that the Board erred in various respects in adjusting carrier forecasts, and have submitted additional data in support of these contentions. The Board has considered all of these matters and has made revisions to the data used in the notice as deemed appropriate and as discussed below. The details are set forth in the appendixes. In addition, the Board has revised the cost and investment data developed in the notice to reflect the modified aircraft utilization forecasts as previously discussed. These revisions principally affect the aircraft depreciation and hull insurance categories of operating expenses and also affect the investment in flight equipment recognized in the rate base.

Pan American contends that it is inappropriate to base fuel costs for its MAC services on systemwide fuel costs, because fuel prices are much higher than average at Saigon, Wake, and Honolulu. The data presented by the carrier indicate that the effect of those higher fuel prices is relatively greater in MAC services than in its commercial services, and therefore the fuel cost per mile for MAC charters is slightly higher than its overall system average. Accordingly, the adjustment of the carrier's estimate shown in the notice has been reversed. With respect to maintenance expense, the carrier contends that its projected increase in experienced cost per mile to cover anticipated overhaul expenses should be allowed because its experienced costs do not reflect a normal volume of overhauls.[6] We are not prepared to depart from the carrier's experienced maintenance cost levels on the basis of the data available to us. We are not convinced that Pan American's total maintenance cost per mile including overhauls for these aircraft in fiscal 1967 will in fact be higher than the amount previously recognized. We note that the carrier's actual costs per mile through September 1965 are actually lower than the level recognized in the notice.

Pan American further contends that the Board should have allowed provision for consumption of rotatable spare parts and that we failed to make provision for crew salaries in the passenger-service expense category. The carrier's contentions are correct, and appropriate revisions will be made to the previously adjusted cost data. However, the resulting passenger service cost per mile is substantially higher than the corresponding costs of the other jet operators. The Pan American unit cost at 64.7 cents per mile is more than 14 percent above the next highest of the carriers' costs, which range from 29 to 56.5 cents per mile. In prior military rate proceedings, the Board has encountered a similar situation and has refused to recognize the full amount of the carrier's forecast. No justification of the level here projected by Pan American is readily apparent; and, accordingly, we will reduce the recognized level of passenger service expense to 56.5 cents per mile. This amount is approximately 4 cents per mile higher than that included in the notice.

Consistent with our treatment of general burden expenses in relation to other cash expenses, appropriate revisions will be made to reflect the modifications made herein to recognized cash expenses. As regards the investment base, Pan American states that an error was made in effecting the adjustment for aircraft utilization. This is correct; but, since we are now accepting the carrier's forecast utilization, our earlier adjustment related thereto will be reversed in its entirety.

Northwest Airlines points out that the Board was incorrect in assuming that the carrier's forecast was predicated on 9.28 hours' utilization while in fact it reflected 10 hours. We will reflect this correction in developing revised costs for depreciation, hull insurance, and amortization of preoperating expenses, as well as the recognized investment base. Northwest also proposes that the investment base herein reflect flight equipment investment on a constructive basis assuming a 12-year depreciation period from the out-

[5] In addition, since the actual utilization rates for fiscal and calendar 1965 are uncorrected figures, some of which may not include return ferry hours or may include nonrevenue hours, these two columns could not be used without further adjustment. DOD states that its forecasts were obtained in the same manner as were utilization figures for the rate review conducted last year.

[6] The carrier also points out an arithmetic error which will be corrected.

set, although the carrier actually employed a more accelerated depreciation policy. We do not accept this approach for ratemaking purposes. On the contrary, we have normally taken a carrier's flight equipment at net book value, adjusted for depreciation adjustments within the period for which rates are being established. Accordingly, we will here base Northwest's investment in flight equipment on net book value at December 31, 1966, adjusted to reflect the depreciation adjustment from July 1, 1966, to that date.

TWA states that the Board overstated the adjustment of TWA's depreciation expense and submitted an estimate based on a 12-year service life and 15-percent residual. We will accept the TWA figure but will adjust that amount to reflect the higher daily utilization of flight equipment previously discussed. With respect to the allowance for general burden expense, TWA contends we incorrectly computed the percentage used, based on other cash costs. There appears to have been no error in our methodology, but we relied on an erroneous figure shown by TWA in its original submission. The revised costs developed herein will reflect general burden based on 6.8 percent of other cash costs.

TWA also contends that the recognized investment in flight equipment should be constructed as if the reserve for depreciation reflected a 12-year service life and 15-percent residual from the beginning. This contention is similar to Northwest's and is rejected for the same reasons. We will, however, adjust the actual reserve for depreciation as of December 31, 1966, to reflect the depreciation adjustment from July 1, 1966, to that date. TWA again contends that its investment in construction work in progress, purchase deposits, and other items should be recognized herein. This contention was made in the previous rate review and rejected there. No showing has yet been made that these items relate directly to the MAC services for which rates are here being established. The carrier also opposes the downward adjustment of investment in ground property to reflect a higher level of aircraft utilization, contending that with higher utilization more not less such equipment would be required. However, adjustments of this nature have been made in this and prior minimum-rate determinations without objection. And, while it may be true that as a technical matter increases in aircraft utilization do not per se give rise to increased utilization of ground property, it is apparent that increases in airlift procurement of the magnitude currently being experienced should give rise to greater utilization of existing ground facilities. Under these circumstances, therefore, and in the absence of any indication by TWA that would warrant a change in the proposed adjustment, we adhere to the proposal in the notice.

Flying Tiger objects to the notice insofar as recognized maintenance costs were based on the carrier's systemwide costs per mile. The carrier contends that various factors result in somewhat higher maintenance costs in its MAC charter services to overseas and foreign points, and that its regular financial reports to the Board reflect such differences. Tiger also contends that we should recognize the effect of a 4-percent wage increase effective in May 1965. The carrier's contentions have merit, we believe, and we will base the revised costs on Tiger's reported international costs per mile adjusted to annualize the wage increases. Other comments by Tiger relate to adjustments based on higher aircraft utilization. We will modify these adjustments to reflect the lower utilization rate recognized herein. Thus, we will accept Tiger's estimate of depreciation expense per revenue mile and will allow investment in flight equipment on the basis of the rate per mile ($2.40) for Tiger's entire system. Finally, Tiger contends that we should allow various items of investment in the rate base that were excluded in the notice. We will allow an appropriate portion of its investment in its new main base, since all segments of its operation will benefit from the new facilities. However, we find no basis to reverse our disallowance of the other miscellaneous items of investment, since no showing has been made of their relationship to the MAC operations.

Capitol points out that we incorrectly computed allowable passenger service expense per mile on the basis of certain miles flown in cargo service. Appropriate correction will be made to the Capitol cost figures. Revisions of other unit costs will be made to reflect the revised aircraft utilization levels recognized.

Seaboard also contends that various elements of its cost forecast were erroneously adjusted for increased aircraft utilization. These expenses will be revised to reflect the revised utilization level recognized. In addition, the carrier asserts that we should not have disallowed a projected increase in aircraft maintenance expense over its experienced level per mile. The amount disallowed is said to be an accounting adjustment in the fourth quarter of 1964 to adjust a negative balance in an overhaul reserve and to reflect the true engine overhaul costs. However, review of the Form 41 reports fails to reveal the nature of this adjustment. While engine overhaul costs are in principle properly recognizable for ratemaking purposes, the difficulty here lies in ascertaining what those costs are likely to amount to in fiscal 1967. Under the terms of the carrier's lease on its DC-8F aircraft, it is not clear to what extent the carrier will in fact incur engine overhaul costs in fiscal 1967. In these circumstances, there is no basis for modifying the estimate relied on in the notice.

*Round-trip passenger charters.* The following table gives the total cost of service for round-trip passenger charters performed with turbojet aircraft as developed in EDR-96 and as revised herein. Details of the revisions are set forth in the appendices.[6a]

[6a] Filed as part of the original document.

| Carrier | Total cost per passenger-mile | |
|---|---|---|
| | EDR-96 | Revised |
| | *Cents* | *Cents* |
| Airlift | 1.89 | 2.05 |
| Continental | 1.84 | 1.80 |
| Northwest | 1.99 | 2.02 |
| Pan American: | | |
| B-707-300 | 2.17 | 2.23 |
| B-707-321B/C | 2.17 | 2.21 |
| Seaboard | 2.14 | 2.23 |
| Trans Caribbean | 2.04 | 2.07 |
| TWA | 1.83 | 1.87 |
| Capitol | 1.93 | 2.24 |
| Trans International | 1.72 | 1.79 |
| World | 1.65 | 1.73 |
| Averages: | | |
| Simple [7] | 1.92 | 2.00 |
| Weighted [8] | 1.96 | 2.02 |
| Weighted [9] | 1.93 | 2.01 |

[7] In computing the simple average, only one of the two Pan American costs is included.

[8] Individual carrier costs weighted by number of aircraft committed to MAC.

[9] Individual carrier costs weighted by number of round-trip and one-way Category B passengers carried from July 1, 1965, through Jan. 31, 1966.

The foregoing data reflect the corrections and revisions of the unit cost data developed in the notice, including the moderately lower level of aircraft utilization, as earlier discussed. These data clearly demonstrate, and support our earlier tentative conclusion, that a reduction of the current round-trip minimum passenger rate is warranted. While the individual carrier data and averages are slightly higher than those relied on in the notice, principally because of the lower level of aircraft utilization, nevertheless the data center around and tend to confirm the 2.0-cent rate proposed.[10] A simple average of the revised unit costs is exactly 2.0 cents. An average in which each unit cost is weighted by the number of aircraft committed to MAC is only slightly higher at 2.02 cents. If the individual carrier data are weighted by the volume of Category B passenger traffic carried by each carrier, the average is 2.01 cents. Although a 2.0-cent rate is below some carriers' indicated unit costs and is above others, the range is not so extreme as to be unreasonable. In no instance would the 2.0-cent rate be below a carrier's operating costs. In every instance a margin above operating cost would be provided. Accordingly, we conclude that the reasonable minimum rate for round-trip MAC passenger charters is 2.0 cents per passenger-mile.

Airlift, in support of its contention that the current minimum rates should be left undisturbed or raised, argues that the MAC rates should provide the same incentive to sell to the military as to others and that the rates should compensate for the commercial revenue that could have been earned with the aircraft used in MAC operations. While these standards are too intangible to be practicable, we are satisfied that they are substantially met by the proposed rates.

[10] As set forth hereinafter, we have decided to establish a separate minimum rate for the smaller jet aircraft; i.e., the B-727 and CV-880; and therefore we will no longer average in the CV-880 costs in determining the minimum rate for the large jets.

The carriers have typically earned returns on investment at or above the intended return in performing MAC charters at the minimum rates.[11] These profits have compared favorably with earnings from other segments of the MAC contractors' operations. The MAC earnings have been especially favorable in relation to commercial all-cargo services. That the earnings potential from MAC charters is favorable is evidenced by the ever-increasing supply of airlift offered to MAC by the civil air carriers.

Trans Caribbean and Capitol advance an argument in opposition to the proposed rate reductions to the effect that, while the carriers' rates are determined on the basis of actual miles flown, they are paid on the basis of standard mileages and this results in dilution of their MAC revenues. It is not clear from the carriers' comments what the source or the extent of the asserted mileage differences may be. The MAC mileages normally reflect nonstop mileages within the capability of the aircraft and should not differ materially from the mileages flown. In these circumstances, we have no basis on this score to modify the rates determined herein.

*Round-trip cargo charters.* The total costs of service for round-trip cargo charters performed with turbojet and turboprop aircraft, as developed in EDR–96 and revised herein, are as follows:

| | Total Cost per Ton-Mile | |
|---|---|---|
| | EDR-96 | Revised |
| Turbojet: | *Cents* | *Cents* |
| Airlift | 7.3 | 8.03 |
| Continental | 7.0 | 6.77 |
| Northwest | 7.5 | 7.73 |
| Pan American | 8.3 | 8.78 |
| Seaboard | 7.9 | 8.39 |
| TCA | 8.1 | 8.22 |
| Capitol | 7.4 | 8.60 |
| TIA | 6.9 | 7.18 |
| World | 6.4 | 6.77 |
| Averages: | | |
| Simple | 7.4 | 7.83 |
| Weighted [12] | 7.6 | 7.94 |
| Weighted [13] | 7.4 | 7.74 |
| Turboprop: | | |
| Flying Tiger | 8.9 | 9.43 |
| Seaborad | 9.9 | 10.18 |
| Slick | 8.2 | 8.92 |
| Averages: | | |
| Simple | 9.0 | 9.51 |
| Weighted [12] | 8.9 | 9.44 |
| Weighted [13] | 8.9 | 9.45 |
| Overall averages: | | |
| Simple | 7.8 | 8.25 |
| Weighted [14] | 8.5 | 8.94 |

[12] Individual carrier costs weighted by number of aircraft committed to MAC.

[13] Individual carrier costs weighted by tons of Category B cargo carried.

[14] The overall weighted averages are computed from the weighted averages shown for the two basic aircraft types; with double weight given the CL–44 average.

The proposed round-trip cargo minimum rate of 8.5 cents per ton-mile was based principally on an average of jet and CL–44 unit costs, as shown above, weighted by number of aircraft committed to MAC, and also by giving double weight to the CL–44 costs.

Flying Tiger objects to basing cargo costs on round-trip passenger costs, since it maintains that 99 percent of MAC cargo is one-way, a good share of passenger traffic is one-way, the cost of operating cargo aircraft at heavier weights is more expensive than operating passenger aircraft, and cargo operations have lower utilization than passenger. Thus, the carrier contends that use of total costs overstates passenger costs and understates cargo costs. DOD, on the other hand, contend that the proposed minimum cargo rates were unduly influenced by the CL–44 costs.

In establishing minimum rates for military charters from the outset, the Board has given substantial, though not sole, weight to the average costs of the carriers performing a preponderance of the service. We have consistently refused to base the rate on the highest- or lowest-cost carriers or on types of aircraft not in fact used in the service under consideration. We are not prepared to depart from that policy here. DOD appears to contend that the cargo rate minimum should be based principally on jet aircraft costs, although the greatest share of Category B cargo is being carried in the CL–44. So long as the capacity represented by the CL–44 is needed, and there is no indication that it will not continue to be required, no good purpose would be served by ignoring or failing to weight its costs of operation in rough proportion to its relative participation.[15]

However, the determination of the exact level at which to set a reasonable minimum rate for cargo charters is complicated by the relatively large disparity between the unit costs of the turbojet and turboprop aircraft. The recognized unit costs of the jet aircraft average about 7.8 cents per ton-mile, while the average of the CL–44 costs is close to 9.5 cents per ton-mile.

Moreover, Flying Tiger's contention that the jet costs used in developing the proposed rates reflect primarily passenger services, and as such tend to understate the true costs of jet cargo charters and unduly depress the overall average unit cost, has some merit. From the data submitted it is not feasible to separate the unit costs for the jet aircraft shown into their all-passenger and all-cargo components. But we note in this regard that the Pan American cost of 8.78 cents per ton-mile, which relates to all-cargo operations only, is the highest of the jet group and is significantly higher than the average cost for the group. On this basis, we deem it appropriate to give less weight to the group average jet unit costs because many of the individual costs as well as the group average are in some degree understated because of the influence of the passenger charter service on unit costs.

On the basis of the revised individual carrier costs, the overall weighted average of 8.5 cents in the notice becomes 8.94 cents per ton-mile. If each carrier's unit cost is weighted by Category B cargo traffic carried, the overall average would be 8.72 cents. As noted, however, the CL–44 costs average close to 9.5 cents, and Pan American's all-cargo jet costs are 8.78 cents per ton-mile. The CL–44 unit costs together with Pan American's 8.78 cents average 9.3 cents (simple) and 9.4 cents (weighted by Category B cargo). On the basis of these data we believe that a rate of 9 cents per ton-mile would strike a reasonable balance among the various indicated cost levels, and we conclude that such rate is a reasonable minimum rate for round-trip cargo charters.[16]

*North Pacific rates.* DOD opposes continuation of the slightly higher rates per ton-mile for cargo charters operated via North Pacific routings. The Department submits that the latest experienced cost data support its contention that there is in fact no appreciable increase in operating costs as a result of North Pacific operations. DOD recommends that the Board give proper weight to the fact that only one carrier supports the North Pacific differential and also notes that it has difficulty understanding how the differential can be necessary for cargo services if it is not appropriate for passenger services.

We are not persuaded that the North Pacific rate differential should be abandoned at this time. The extent to which differences in carrier costs are attributable to North Pacific operations or to other factors cannot be ascertained from the data presented by DOD. It may be noted, however, that the data show higher costs for the North Pacific carrier for fuel and for aircraft and traffic servicing, which may be attributed to the North Pacific routing. On the other hand, higher depreciation expense for the other carriers would appear to have no relation to routing. As to passenger services, we have considered application of a North Pacific differential inappropriate because most passenger charters are operated nonstop and do not incur the higher unit costs associated with cargo flights.

*One-way passenger and cargo charters.* In computing one-way charter rates, the notice proposed that savings attributable to flying one-way passenger charter backhauls empty be increased from 11 to 15 percent but that savings on empty cargo backhauls remain at the 5 percent previously applied. It was further proposed to increase the proportion of commercial revenue use of backhauls from 10 percent to 20 and 15 percent for passenger and cargo charters, respectively.

DOD agrees with the method used to develop one-way charter rates and specifically supports the proposed factors for economic savings on empty backhauls. A number of the carriers, on the other hand, contend that the differential between round-trip and one-way serv-

[11] We are constrained to note that most carriers have vigorously resisted each proposed rate reduction but nevertheless have achieved highly satisfactory profits each year.

[15] The double weight given to the CL–44 costs in relation to the jet costs was intended to reflect the CL–44's relative participation in the MAC cargo charters.

[16] DOD requested the establishment of minimum rates for two particular aircraft, the L–382 and the B–720. It suggested minimum ACL's of 20.75 tons and 133 passengers for the two aircraft, respectively, and a minimum rate of 2.24 cents per passenger-mile for the B–720. We will defer taking action on this request until more data are supplied.

ices should be eliminated. With respect to empty backhauls, the carriers argue that their costs already reflect whatever economies are achieved, especially since during the past year MAC cargo charters have been almost exclusively one way. Airlift states that there are no additional savings on one-way cargo trips and that the maximum saving on one-way passenger trips is 7.5 percent on the return ferry. Capitol suggests that, if the Board adheres to its finding that round-trip cargo flights are more expensive than one way, the round-trip costs should be increased 2½ percent rather than reducing one-way costs.

With respect to revenue use of backhauls, DOD advocates that a more conservative estimate be used. At the high level of DOD demand anticipated for fiscal year 1967, the Department points out that the carriers will not have as much opportunity to seek commercial backhauls. DOD recommends use of 10- and 7-percent factors for passenger and cargo, respectively. The carriers generally propose that no deduction be made for revenue backhauls or that the percentage reduction be considerably decreased. They assert variously that return loads are not available coincident with return-leg availability, that no commercial traffic is available for backhauls, that increased activity in the Pacific makes the chance of obtaining return commercial cargo far smaller than it has been, that there are no one-way passenger backhauls, and that the carriers already operating in the area enjoy an advantage in procuring commercial business. They maintain that the bulk of the MAC data on revenue backhauls reflects westbound Atlantic operations under Category X options for passenger charters rather than commercial charters. In any event, the carriers claim that return commercial charters may generate additional revenues but often at the expense of utilization. They also contend that return legs actually belong to MAC, inhibiting sales of commercial charters that may have to be canceled. In addition, Seaboard states that some carriers could not exercise off-route authority because of the limitations of Part 207 of the Economic Regulations. Seaboard proposes that, in lieu of deducting a percentage for commercial flights in the one-way rate, any revenue received for backhauls be turned over to MAC.

On the basis of the comments and additional data submitted by the carriers after the notice was issued, the Board has decided to modify the bases for determining the one-way minimum rates. On the subject of cost savings on backhaul ferry flights, the carriers argue generally that such savings are very small and in any event are reflected in the carriers' basic costs. It is noted, however, that the one-way passenger charter flights have been most infrequent in the past. Therefore, the backhaul cost savings, principally passenger food, supplies, and insurance, would have extremely little effect on the overall costs of MAC passenger charter services. These cost savings are real and measurable on any given flight, however; and it would be unfair to require MAC to pay the full round-trip rate for one-way traffic. We will, however, modify the 15-percent factor used in the notice for one-way passenger operations to the 11-percent factor relied upon in the prior rate proceeding.

With respect to one-way cargo charters, we used a 5-percent cost-saving factor in the notice in recognition of the fact that there are lesser opportunities for cost savings on the backhauls of outbound cargo flights. It appears from data available to the Board that the cargo backhaul ferry flights frequently are flown over shorter routings than the outbound flights. This factor would clearly produce some cost savings. While it is probably true that such savings are reflected in the cost data submitted in this proceeding, it must be recognized that the costs per mile are computed by using the shorter return mileage. The resulting costs per mile would not be lower than would be the case if all cargo services were round-trip; if anything, they would be higher. Moreover, the rate herein determined, including both the "live" and "ferry" portions, is applied to the "live" or longer miles only. Accordingly, the carriers' contentions do not persuade us to modify the 5-percent savings factor used in the notice.

With respect to the possibility for revenue usage of the backhaul of a MAC one-way charter, the data submitted by the carriers operating one-way passenger and cargo charters show a wide range of experience among the group. Some carriers have found a revenue use for a fairly significant percentage of their backhaul flights. The certificated route carriers sometimes employ the backhaul flight in scheduled service. Other carriers obtained few or no revenue backhaul trips. The DOD has modified its earlier views in this regard and now recommends that 10-percent revenue backhaul be assumed for one-way passenger charters and 7-percent for one-way cargo flights. These factors are reasonable on the basis of backhaul data covering calendar year 1965 and will be adopted herein. These percentages are somewhat below the carriers' average experience, but we have taken into consideration that some revenue return flights entail extra costs for positioning the aircraft and/or substandard revenues. In addition, it is recognized that as the volume of one-way MAC charters increases it will be difficult to maintain the same percentage of revenue return flights.

Accordingly, on the basis of the foregoing considerations, we conclude that the reasonable minimum rates for one-way passenger and cargo Category B charter services are 3.6 cents per passenger-mile and 16.95 cents per ton-mile, respectively.[17]

[17] Computed as follows:

| | |
|---|---|
| 2.0¢ × 189% = 3.78¢ × 90% = | 3.40¢ |
| 2.00¢ × 10% = | .20¢ |
| Total | 3.60¢ |
| 9.0¢ × 195% = 17.55¢ × 93% = | 16.32¢ |
| 9.00¢ × 7% = | .63¢ |
| Total | 16.95¢ |

*Convertible and mixed charters.* In the notice the Board proposed minimum rates for convertible charters (passengers in one direction, cargo in the other) and for mixed charters (passengers and cargo on the same flight). These minimums were developed on the basis of the proposed passenger and cargo round-trip and one-way minimum rates and reflected the methodology employed in prior MAC rate proceedings. No comments were received on these matters. Therefore, the Board will revise the proposed convertible and mixed minimum rates only to the extent necessary to reflect the basic passenger and cargo rates adopted herein. We are also adding a scale of minimum rates for one-way mixed charters, in recognition of the fact that DOD is now contracting for such services (see e.g., Order E-23181, Feb. 2, 1966).

Trans International requests that a minimum-rate scale for mixed charters with the DC-8-61 be established. This will be done in the same fashion as for the other jet aircraft, reflecting, however, the greater capacity of the DC-8-61.

We have also revised the rule to include minimum rates for variable and fixed mixed round-trip and one-way charters for the DC-8-61 and other large turbine aircraft, as well as for the B-727, which is discussed in the following paragraphs.

*Minimum rates for smaller jet aircraft.* For the first time the Board in EDR-96 proposed a different level of minimum rates for one type of jet aircraft (B-727QC) as compared with the rates proposed for all the other jets, based upon its substantially smaller capacity, higher unit costs, and the expectation that this type of aircraft would normally be used in areas where the larger jets would not be employed. Only Southern Air Transport objected to this basic approach, but other comments were submitted going to the level of the rates. Southern contends that the minimum rate level fixed for the smaller jets should apply to all jets whenever the latter are operated in short-haul, multistop service so that the various types of jets would be on a par in terms of price. It seems highly unlikely that the large intercontinental jet aircraft would be diverted to the short-haul type of service now operated by Southern and other carriers, although if it should happen the rate levels fixed herein would probably require adjustment. We do not deem it necessary at this time to set new and different minimum rates for services unlikely to be performed. However, we have decided to expand the application of the minimum rate for smaller jets to include both the B-727 and CV-880 aircraft. The latter is similar in size, operating capability, and cost characteristics to the B-727. From the data before us, it appears that the CV-880, now operated only to and from Alaska by Alaska Airlines, cannot be operated economically at the minimum rates found reasonable for the larger jet services.

Braniff and Southern contend that the B-727 rates should be higher than those proposed. Braniff would increase the rates by 15 cents per plane-mile to account for conversion costs; and Southern would eliminate the factors for one-way revenue backhauls, which it claims have no application to the type of service to be performed with the B–727. The two carriers also object to the 10-hour utilization used in computing B–727QC costs. According to the carriers, the areas in which the aircraft will be used and the short-haul type of service contemplated will not sustain such high utilization, nor does the experienced domestic use support the 10-hour rate. Braniff suggests 8 hours, and Southern suggests 7.

Braniff requests that the cargo ACL be reduced from the proposed 8 to 7 pallets and from 18 to 16.5 tons, since cabin loading of galley equipment will preclude the 8-pallet/18-ton load in convertible or mixed services. These revisions will be adopted.

DOD states that the rates for the B–727QC should also apply to the B–727C and that the passenger rates should be applicable to any model of this aircraft configured for passengers. DOD also states that, since it would use the B–727 for fixed mixed rather than convertible operations, an additional set of rates for mixed operations should be provided without the convertible additive. These modifications will be made in the final rule.

We have further reviewed the cost data submitted by Braniff for the B–727 and by Alaska for the CV–880, in the light of the comments submitted. We will accept Braniff's proposed aircraft utilization of 8 hours per day and Alaska's utilization of 8.78 hours as reasonable for the types of operations in which these aircraft will be used. The other elements of Braniff's forecast appear reasonable except for the 15 cents per mile to cover the cost of changing configurations. This element will be excluded for purposes of establishing the basic round-trip and one-way rates, and will be included to develop the rates for convertible and mixed services. On this basis, the B–727 cost including return is 2.40 cents per passenger-mile and 12.1 cents per cargo ton-mile. With respect to Alaska's CV–880, we have modified the recognized costs set forth in the notice to reflect the 8.78-hour utilization in lieu of the 11 hours used in the notice. This adjustment results in total costs of 2.47 cents per passenger-mile and 11.7 cents per ton-mile for the CV–880. On the basis of these unit costs, the minimum rates for round-trip passenger and cargo services with the B–727 and CV–880 aircraft are determined to be 2.45 cents per passenger-mile and 11.9 cents per ton-mile respectively. Minimum rates for one-way passenger and cargo charters and for convertible and mixed [18] services have been developed in accordance with the approach followed for the larger jet aircraft.

[18] Minimum rates for both variable and fixed mixed charters will be set in accordance with DOD's request. The variable mixed service is one in which a configuration change is required to be made after departure from point of origin.

Accordingly, the following rates are adopted for charters performed with B–727 and CV–880 aircraft:

| | Rate proposed | Rate adopted |
|---|---|---|
| Passenger, per passenger-mile: | *Cents* | *Cents* |
| Round trip | 2.36 | 2.45 |
| One way | 3.97 | 4.41 |
| Cargo, per ton-mile: | | |
| Round trip | 11.9 | 11.9 |
| One way | 20.9 | 22.4 |
| Convertible: | | |
| Passenger leg, per passenger-mile | 2.51 | 2.60 |
| Cargo leg, per ton-mile | 12.60 | 13.70 |
| Mixed, round trip, per plane-mile, sliding scale: | *Dollars* | *Dollars* |
| Variable | 2.64–2.27 | 2.73–2.26 |
| Fixed | | 2.57–2.14 |

*Rates for charters performed with piston aircraft.* The notice proposed no change in minimum rates for charters performed with piston aircraft in most geographical areas, where turbine operations predominate. Increases were proposed for piston charters in the specific geographical areas where turbine aircraft have not generally been used.

Airlift, TIA, and DOD advocate increases in the regular piston charter rates, which they maintain are presently below cost. Airlift recommends that uniform rates be established for piston charters in all areas.

With respect to piston charters in specific geographical areas, Alaska and TIA support the proposed increases as justified by experienced costs. On the other hand, DOD objects to the proposed increases, which it asserts are justified primarily by inclusion of the higher costs of intra-Alaska operations. DOD recommends reduced rates for DC–6 charters, no change in present rates for other piston aircraft, and separate rates for intra-Alaska operations.

DOD also recommends that the minimum ACL for the DC–6 be maintained at 83 passengers, rather than increased to 88 as proposed in the notice. DOD points out that a carrier other than Southern, who suggested the 88-passenger ACL, is offering the DC–6 configured at 83 seats.

The Board has decided to revise the current minimum-rate structure applying to piston-powered aircraft and to establish a uniform scale of minimum rates for services performed with such aircraft to be applicable in all areas except within the State of Alaska. These minimum rates will be at the same level as those applying now to piston operations in special geographical areas where operations with turbine-powered aircraft have not been economically or operationally feasible, except that the rates for one-way passenger and cargo charters will be twice the respective minimums for the round-trip services. For piston services within the State of Alaska a somewhat higher scale of rates is established in recognition of the special operating characteristics and costs that attend such services.

Following are the rates adopted for piston charters:

| | Regular rates | Intra-Alaska rates |
|---|---|---|
| Passengers, per passenger mile: | *Cents* | *Cents* |
| Round trip | 2.75 | 2.89 |
| One way | 5.20 | 5.46 |
| Cargo, per ton-mile: | | |
| Round trip | 12.50 | 13.10 |
| North Pacific | 13.00 | |
| One way | 25.00 | 26.20 |
| North Pacific | 26.00 | |
| Convertible: | | |
| Passenger leg, per passenger-mile | 2.75 | 2.89 |
| Cargo leg, per ton-mile | 15.00 | 15.80 |
| Mixed, round trip, per plane-mile, sliding scale: | *Dollars* | *Dollars* |
| DC–6 | 1.625–2.42 | |
| DC–7, L–1049, L–1649 | 2.25–2.6125 | 2.36–2.74 |

The scale of minimum rates currently applying to the noncompetitive piston services (i.e., those conducted in specific geographic areas where turbine services are not feasible) is the same as that which resulted from the first review of Part 288 minimum rates. When Part 288 was first issued in July of 1961 (ER–335, 26 F.R. 6763), the minimum-rate scale was based on a rate of 2.9 cents per round-trip passenger-mile. This was the only scale developed primarily with reference to piston costs. In September of 1961 (EDR–35, 26 F.R. 8815), the first review of Part 288 was undertaken principally for the purpose of considering the cost of implications of the participation of turbine aircraft, a substantial number of which had by then been introduced into the MAC program. This review resulted in a reduction from a scale based on 2.9 cents per round-trip passenger-mile to one based on 2.75 cents per round-trip passenger-mile, which applied uniformly to all international MAC charters regardless of whether they were performed with piston or turbine aircraft (ER–347, 27 F.R. 689). The new minimum-rate scale based on 2.75 cents per round-trip passenger mile was, therefore, one reflecting an averaging of turbine unit costs with piston unit costs. However, at that time the difference between reported piston and turbine unit costs was not so great as it has become recently. With one atypical exception, unit costs per carrier, including carriers using piston aircraft and others using both types, were computed to fall within a range of 5 percent above the round-trip passenger rate or 4 percent below. This range is not substantially different from that obtaining among the exclusively turbine costs of today's contractors.

Following this review, based on a mix of piston and turbine costs, DOD announced that it would in the future procure only turbine services except in areas where such services would not be operationally or economically feasible. It requested another review of the minimum rates based only on turbine costs, which the Board promptly undertook (EDR–60, 28 F.R. 9989). This review resulted in a further reduction in the turbine rates from a scale based on 2.75 cents per round-trip passenger-mile to a scale based on 2.55 cents per round-trip passenger-mile (ER–401, 29 F.R. 2938).

However, the Board retained the old scale for application to the noncompetitive piston services, but did not require competitive piston services (i.e., those operated in areas where competitive turbine services were also performed) to observe such higher minimums. It was concluded that the Board should not foreclose any possible use of piston services by higher minimum rates, even though, in view of the DOD announcement, it appeared that there would be little or no use of such competitive piston services.

The third general review of MAC minimum rates was conducted last year and resulted in a further reduction in the turbine minimum rates from a scale based on 2.55 cents per round-trip passenger-mile to the current scale based on 2.2 cents per round-trip passenger-mile (ER–432, 30 F.R. 3861). The scale applicable to competitive piston services was not reduced, and neither was that applying to the noncompetitive piston services. Thus, three separate scales of minimum rates were stated: one for turbine services based on 2.2 cents per round-trip passenger-mile, one for competitive piston services based on 2.55 cents per round-trip passenger-mile, and one for noncompetitive piston services based on 2.75 cents per round-trip passenger-mile. The decision not to maintain the minimum rates applicable to competitive piston services at the same level as the turbine rates was based largely on carrier contentions that any MAC procurement of competitive services would not depend on their being offered at a rate competitive with the turbines. It was also contended that no carrier would be willing to offer piston aircraft to MAC at the new low turbine rates. Despite the fact that the 2.55-cent scale was implicitly considered to be below the costs of providing piston services, no efforts were made to obtain an increase.

In this review, both the carriers and DOD contend that the minimum rates for competitive piston services should be increased. Moreover, it appears that the MAC traffic requirements in the Pacific are such that piston charters are now being procured. The carriers have, however, been unwilling to offer such service at rates equal to the current minimums, and contract rates have been negotiated that generally approximate the minimum rates applied to noncompetitive piston services.

There is no doubt that the minimum rates now applicable to competitive piston services are well below the costs of operating such services. They were never related to piston costs but were only made applicable to such services for competitive reasons. In view of recent events, however, it does not appear necessary to maintain minimums at below cost levels for competitive reasons.

Predicting the costs of future piston operations for MAC presents difficult problems. The investment in particular piston aircraft varies widely depending on the extent to which they have been depreciated, and return requirements thus vary similarly. Moreover, a large number, but by no means all, piston aircraft are now fully depreciated. Without forecasts of what the MAC piston requirements will be and how they will be met, it is practically impossible to predict the return requirements and depreciation expenses to be included in the underlying cost projections on which minimum rates are based.

The only operations for which the Board has experienced results are those conducted in the noncompetitive areas. There are five such services performed by five different carriers. Excluding the intra-Alaska service performed by Alaska Airlines, which, as previously indicated, will be treated separately, there are four services which are largely performed in mixed configuration by Airlift, Capitol, Northwest, and Southern. As shown in Appendix C, Southern's DC–6 costs approximate $2.08 per aircraft-mile, which is quite close to its yield of $2.05 under the current minimum rates. Airlift, Capitol, and Northwest, operating the larger piston aircraft show recognized costs of $2.56, $2.14, and $2.42 per mile, respectively. Capitol's and Northwest's revenues per mile are only slightly above their indicated costs, while Airlift's yield per mile is somewhat below its cost per mile. These yields per aircraft-mile reflect in large measure the scale of minimum rates now in effect for the noncompetitive areas, e.g., 2.75 cents for round-trip passengers, 12.50 cents for round-trip cargo, etc. These data and comparisons indicate that minimum rates based on 2.75 cents per passenger-mile and 12.5 cents per cargo ton-mile would be reasonable.

However, the existing scale of minimums for the noncompetitive areas also contains rates for one-way passenger and cargo services reflecting very substantial reductions from the round-trip rates referred to. These reductions from the round-trip rate are much greater than exist in the current or reduced minimum rates for turbine aircraft. These one-way minimums produce yields below $2.00 per aircraft-mile for the DC–7 and L–1049 aircraft and as low as $1.40 per mile for the DC–6. On the basis of the cost data referred to above, such rate yields would be unreasonably low. This is due in part to the fact that the basic rate scale reflects not only piston aircraft costs but also, as noted, turbine costs. In addition, the reduction of the one-way rates from the corresponding round-trip rates is not justified by current facts and circumstances.

Accordingly, we have decided to establish the scale of minimum rates now applying to the specific noncompetitive areas to all piston aircraft charters (except within Alaska) with the exception of the one-way passenger and cargo rates. For the one-way passenger minimum we will fix 5.2 cents per passenger-mile. This rate is the round-trip rate less the 11 percent for cost savings on the backhaul ferry used in connection with other one-way rates. For the one-way cargo rate, we will establish 25.00 cents per ton-mile, which is the equivalent of the round-trip rate. We believe that the opportunities for cost savings on backhauls from one-way piston cargo flights is de minimis and warrants no adjustment of the one-way minimum rate. Similarly, it appears extremely unlikely that backhaul revenue flights could be developed in connection with the one-way piston charters, especially in view of the large volume of one-way jet flights now being operated. Therefore, no adjustment of either one-way rate is warranted on this score.

The new minimum rates herein established for piston aircraft in all areas except within Alaska will not change the rates now applicable to round-trip passenger and cargo charters and to mixed charters being performed in the noncompetitive areas. The one-way rates in those areas would be increased to a level more in line with costs. In the competitive areas, the new minimum piston rates will permit economical operations of piston aircraft when and if needed by MAC to fulfill its transportation requirements.[19]

In view of the DOD allegation that it will continue to pay Southern for 88 passengers on its DC–6's where that number of passengers is carried regardless of the fact that Part 288 states only an 83-passenger ACL for the DC–6, we will retain the 83-passenger ACL for the DC–6. This appears necessary, since DOD alleges that other DC–6 contractors do not carry more than 83 passengers.

With respect to rates for intra-Alaska piston services, we will finalize the rates proposed in the Notice, which reflect a 5-percent increase over the current rates, except for the one-way passenger and cargo minimums. Even with the 5-percent increase, these rates would produce unreasonably low revenues per mile in relation to the costs of intra-Alaska services with piston aircraft. This results from essentially the same factors as discussed in connection with the other piston rates. Similar treatment of the intra-Alaska one-way minimum rates produces a rate of 5.46 cents per passenger-mile and 26.20 cents per cargo ton-mile. By the same token, these rates are also 5 percent above the corresponding minimum piston rates for all other areas.

*Standard mileage.* Subsequent to the inception of this proceeding, MAC informally requested the Board to establish standard mileages for services in or through Japan and thereby obviate the three sets of mileages now required depending on whether a flight stops at Tokyo International, Tachikawa, or Yokota. MAC states that minor mileage differences create very small price differences depending on the airport served and that keeping track of these differences creates an administrative burden on both MAC and the carriers out of proportion to the amounts involved. MAC's proposal appears to be reasonable, but the necessary proposed amendment of Part 288 was inadvertently omitted from the Notice. We will proceed now to

[19] We note that several carriers have recently contracted to operate transpacific piston charters at rates close to the minimum rates herein established.

so modify Part 288, subject to petition for reconsideration by any person. We note, however, that Part 288 as now written provides that transpacific mileages to and from points beyond Tokyo are to be computed via only Tachikawa Air Base irrespective of the airport actually transited. We see no need to change this, and consistent therewith we will modify § 228.7(d)(2) to provide that mileages to and from Japan will be computed to and from Tachikawa Air Base.

*Effective date.* Because of the high level of aircraft utilization achieved by the MAC carriers in the first four months of fiscal year 1966, it appeared that the carriers would earn excessive returns on their MAC services under the minimum rates established by the Board in March 1965. The Notice therefore proposed that the revised rates be made effective February 1, 1966. While we recognize the value of rate stability, in our opinion the effect on unit costs of the increased utilization and the resulting high profits are developments materially affecting the nature and costs of the contract services that necessitate a reduction of minimum rates before the end of the fiscal year. While an early reduction in rates was proposed in this instance because it would be inequitable to require DOD to continue to pay at a rate that produced excessive earnings for the carriers, it was pointed out that the principle of effecting rate changes within a contract year to reflect unforeseen changes in circumstances would, in the long run, protect the interests of both the carriers and the Government.

DOD states that it would concur in a decision by the Board to make the new rates effective before July 1, provided that the Board makes the findings required by its contracts with the carriers.[20] However, the Department notes that the intent of its present policy of three-year contract cycles with annual rate reviews is to introduce stability into its airlift contract program and that midyear rate changes detract from this stability without adding to the long-run savings or reducing the expense to the Government. DOD does not believe that the current rates should be changed prior to July 1 on the basis of increased utilization rates unless the Board concludes that the carriers should be able to continue such high utilization even if the volume of DOD business returns to a more normal level.

A number of carriers who oppose the February 1 effective date base their objections principally on three factors: The MAC contract provisions, the need for rate stability, and practical considerations inhibiting any prompt establishment of a later necessary rate increase. The carriers argue that no "new facts" within the meaning of the contract provision have developed and that there is no showing of any "inequity" resulting from the current rates. They contend that the proposal to change the minimum rates during the contract year creates accounting problems, hinders financial planning, and jeopardizes market stability. The carriers also maintain that a later increase would not be a meaningful offset to the presently proposed rate reductions, because in the time required to effect such an increase the carriers, particularly the supplementals, might suffer serious consequences. The carriers also point out that MAC's dependence on annual Congressional appropriations might force it to reduce the volume of traffic or to expand operations within its own fleet if rates were increased during the fiscal year.

Upon full consideration of the matter, we have determined to adhere to our proposal in the notice to provide for an early effective date for the revised minimum rates. Although the Board believes that rate stability is desirable, it must reserve the right to continue surveillance of the minimum rates and to effect changes up or down when such revisions are required on the basis of unforeseen changes in facts not before the Board at the time the rates were set. In this case, it has become apparent that, for the bulk of the services subject to the provisions of Part 288, the sharply increased requirements of the military, combined with increased commercial traffic, have resulted in significant and unforeseen increases in aircraft utilization and lower unit costs. The carriers do not contest the fact that their earnings have become excessive in relation to established rate-of-return standards. Under these circumstances, a prompt reduction in the minimum rates is required.

We also find that unusual circumstances justify an early effective date for those minimum rates which we are increasing. Thus, at the time of our last rate review, the Defense Department had been making no use of piston aircraft for services in areas served by jets. The Department is now utilizing such equipment; and since the minimum rates are substantially below cost, it is appropriate to establish revised minimums promptly. Rates for the CV-880 and the intra-Alaska operations primarily affect Alaska Airlines, a heavily subsidized carrier that has suffered system net operating losses in the past two years and whose balance sheet reflects a negative equity. A prompt effectuation of revised minima is necessary in order to avoid a further drain on this carrier's resources.[21]

The objections based on the MAC contract provision are without merit. The carriers opposing the proposed early effective date appear to interpret the contract provision as limiting the Board's authority and duty to make changes in the minimum-rate conditions as changing facts and circumstances may warrant. We do not believe that such a result was intended or can be supported. In November 1964, before the contracts including the cited provision were entered into, we informed DOD that the minimum rates established in the proceeding then in progress would be reconsidered only on the basis of new facts not available or before the Board at the time. We reiterated our intention in setting the minimum rates in March 1965 that those rates would remain in effect throughout fiscal year 1966 absent some development that would materially affect the nature and costs of the contract services. Such a development has occurred, and it would be inequitable to leave the minimum rates at their present level for the remainder of the fiscal year. This inequity results from new facts that were not available for submission to the Board a year ago, primarily the greatly increased aircraft utilization, both military and commercial, that occurred in the latter half of calendar year 1965. In our opinion, no further findings are necessary to justify establishing an early effective date. Indeed, we believe that we would not otherwise fulfill our statutory duty. We will adhere to the policy announced last year that the minimum rates established herein will remain in effect throughout fiscal year 1967 absent some development that would materially affect the nature and costs of the services.[22]

We have determined that the new minimum charter rates shall become effective April 1, 1966. Although the notice proposed an effective date of February 1, 1966, we believe it is desirable as a general rule that adjustments of minimum rates not be made effective retroactively except in the most unusual circumstances. We have also taken into consideration the fact that those carriers which do not require exemptions to perform MAC contracts have tariff rates on file with the Board that cover the period since February 1, and reducing the minimum rates for that period would

[20] The contract provision referred to by DOD and the carriers reads as follows: "Except as otherwise provided in this contract, the prices set forth in this contract shall remain in effect throughout the period of performance of this contract (July 1, 1965, through June 30, 1966) unless the Civil Aeronautics Board determines that inequities would result to either the Department of Defense or the domestic or international industry under contract to MAC and then only provided that the inequity results from new facts not available for submission to the Board when it established the rate levels for this contract year."

[21] Seaboard contends that there is a question of law as to whether the Board can make the new minimum rates effective at an early date, because section 4(c) of the Administrative Procedure Act requires publication or service of a substantive rule thirty days before its effective date. It should be noted that section 4(c) also states that an agency may provide a lesser notice upon good cause found and published with the rule. We have found good cause for setting an early effective date, and the notice of rulemaking gave notice to all parties that we proposed to do so. As a technical matter it should also be noted that we are not as a matter of law depriving the carriers of any benefits; we are establishing minimum reasonable rates.

[22] World Airways argues that there will be no automatic rate reduction unless the Board modifies its exemption orders or DOD modifies its contracts. We see no necessity to modify the exemption orders, which are conditioned upon the observance of the contract terms and the minimum rates specified in Parts 288 and 399. We are in this proceeding changing some of these minimums. The implementation of the revised minimums is a matter solely between the carriers and DOD.

be inequitable to the other carriers. The considerations that led to the proposal to make these rates effective early still exist, however, and constitute good cause for making these changes effective on less than 30 days' notice. Therefore, we conclude that the new minimum rates adopted should go into effect at the earliest prospective date. We will allow the carriers operating under tariff rates to file immediate tariff changes.

*Reissuance.* Since it is also necessary to amend Part 288 at this time to reflect the redesignation of the Military Air Transport Service as the Military Airlift Command, we shall reissue the part and incorporate all amendments made since the last reissuance in 1965.

Pursuant to § 302.38(d) of the procedural regulations, express provision is hereby made for the filing of petitions for reconsideration with respect to those changes adopted herein that were not proposed in the notice; i.e., minimum rates for the CV-880, for DC-8F-61 mixed charters, for B-727 fixed mixed and one-way variable mixed charters, for fixed mixed and one-way variable mixed charters with other turbine-powered aircraft, and for piston charters in areas competitive with turbine charters, and the standard mileage applicable to Japan. Petitions for reconsideration and answers thereto shall be governed by the provisions of § 302.37 and shall be served upon the Department of Defense and all carriers who have filed comments in this proceeding. Petitions must be filed on or before April 11, 1966, and answers thereto before April 18, 1966.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends and reissues Part 288 of the economic regulations (14 CFR Part 288), effective April 1, 1966, as set forth below.



AUTHORITY: The Provisions of this Part 288 issued under secs. 204 and 416 of the Federal Aviation Act of 1958, 72 Stat. 743 and 771; 49 U.S.C. 1324 and 1386.

## Subpart A—General

### § 288.1 Definitions.

As used in this part:

"Act" means the Federal Aviation Act of 1958, as amended.

"Air carrier" means a citizen of the United States holding economic operating authority to engage in air transportation as a direct air carrier with large aircraft, other than the authority conferred by this part.

"Large aircraft" means an aircraft of more than 12,500 pounds certificated maximum takeoff weight.

"MAC" means the Military Airlift Command.

"North Pacific routing" means a route between a point in the 48 contiguous States and Japan via Alaska.

"Short-notice MAC charter service" means foreign and overseas air transportation, and air transportation between the 48 contiguous States on the one hand and the States of Hawaii or Alaska on the other hand, in planeload lots of persons and/or property pursuant to civil augmentation contracts with MAC whereunder the first flight under an award occurs not more than 3 weeks after the date established by MAC for the submission of proposals by the air carriers and all flights are to be performed within 30 days of the first flight: *Provided*, That MAC traffic only is carried on such flights.

"Substitute service" means the performance by an air carrier of foreign or overseas air transportation, or air transportation between the 48 contiguous States, on the one hand, and the States of Alaska or Hawaii, on the other hand, in planeload lots pursuant to an agreement with another air carrier to fulfill such other air carrier's contractual obligation to perform such air transportation for MAC and when the performance of such air transportation is not to take place during a period longer than 3 weeks.

"Supplemental air carrier" means an air carrier deriving its operating authority from either an interim certificate or interim authority issued pursuant to Section 7 of Public Law 87-528 or a certificate of public convenience and necessity for supplemental air transportation issued pursuant to section 401(d)(3) of the Act.

All terms defined in the Act and not otherwise defined in this part are used in the sense of their statutory definitions.

### § 288.2 Applicability.

This part applies to substitute service and short-notice MAC charter service by air carriers holding economic authority from the Board to provide air transportation of persons and/or property by the use of large aircraft and which have contractually committed their CRAF aircraft to the Department of Defense: *Provided*, That, in the case of short-notice MAC charter service, the award contains or is accompanied by a written statement of the military establishment that such award is for transportation necessary to fulfill unforeseen military requirements as to which time is of the essence.

## Subpart B—Exemption, Conditions, and Requirements

### § 288.5 Exemption.

(a) Subject to the provisions of this part and the conditions imposed, air carriers holding authority from the Board to engage in air transportation of persons and/or property by the use of large aircraft and which have contractually committed their CRAF aircraft to the Department of Defense are hereby exempted from the following provisions of Title IV of the Federal Aviation Act of 1958, as amended, and the Board's economic regulations: section 403 of the Act; Part 221 of this chapter.

(b) Subject to the provisions of this part and the conditions imposed, air carriers, other than supplemental air carriers, holding authority from the Board to engage in air transportation of persons and/or property by the use of large aircraft and which have contractually committed their CRAF aircraft to the Department of Defense, are hereby exempted from the following provisions of Title IV of the Federal Aviation Act of 1958, as amended, and the Board's economic regulations: section 401(a) of the Act; Part 202 of this chapter; Part 207 of this chapter.

### § 288.6 Scope of exemption.

The exemptions granted in §288.5 extend only to transportation of persons and/or property under agreements for short-notice MAC charter service as defined herein, where the award contains, or is accompanied by, the written statement set forth in the proviso to § 288.2, and to substitute service as defined herein. This authority is in addition to all other authority to engage in air transportation issued by the Board to any air carrier and will not be construed as in any manner limiting such other authority.

### § 288.7 Reasonable level of compensation.

It shall be a condition on the exemptions granted by this part that the level of compensation for transportation provided for short-notice MAC charter service and substitute service shall not be uneconomically low.

(a) *Minimum charges.* In the absence of specific Board approval, the compensation for such services shall not be less than the following:

(1) For services other than those specified in subparagraph (2) of this paragraph:

(i) Performed with turbine-powered aircraft:

| Type of service | Rates for B-727 and CV-880 aircraft | Turbine aircraft other than B-727 and CV-880: Regular rates | Turbine aircraft other than B-727 and CV-880: Rates for North Pacific routing |
|---|---|---|---|
| Passenger, per passenger-mile: | *Cents* | *Cents* | *Cents* |
| Round trip | 2.45 | 2.00 | 2.00 |
| One way | 4.41 | 3.60 | 3.60 |
| Cargo, per ton-mile: | | | |
| Round trip | 11.9 | 9.00 | 9.25 |
| One way | 22.4 | 16.95 | 17.45 |
| Convertible: | | | |
| Passenger leg, per passenger-mile | 2.60 | 2.15 | 2.15 |
| Cargo leg, per ton-mile | 13.70 | 10.46 | 10.71 |

| Type of service | Rates for B-727 and CV-880 aircraft | Turbine aircraft other than B-727 and CV-880 | |
|---|---|---|---|
| | | Regular rates | Rates for North Pacific routing |
| Mixed passenger-cargo, per revenue plane-mile for following number of passengers and pallets: | | | |
| Round trip, variable: | Dollars | Dollars | Dollars |
| 165 and 0 | | 3.55 | 3.55 |
| 117 and 3 | | 3.54 | 3.57 |
| 105 and 4 | | 3.54 | 3.57 |
| 93 and 5 | | 3.54 | 3.57 |
| 81 and 6 | | 3.54 | 3.58 |
| 63 and 7 | | 3.53 | 3.59 |
| 51 and 8 | | 3.53 | 3.59 |
| 0 and 12 | | 3.53 | 3.61 |
| Round trip, fixed: | | | |
| 165 and 0 | | 3.30 | 3.30 |
| 117 and 3 | | 3.30 | 3.32 |
| 105 and 4 | | 3.29 | 3.33 |
| 93 and 5 | | 3.29 | 3.33 |
| 81 and 6 | | 3.29 | 3.34 |
| 63 and 7 | | 3.29 | 3.35 |
| 51 and 8 | | 3.29 | 3.35 |
| 0 and 12 | | 3.28 | 3.38 |
| One way, variable: | Dollars | Dollars | Dollars |
| 165 and 0 | | 6.19 | 6.19 |
| 117 and 3 | | 6.25 | 6.30 |
| 105 and 4 | | 6.27 | 6.33 |
| 93 and 5 | | 6.28 | 6.36 |
| 81 and 6 | | 6.30 | 6.39 |
| 63 and 7 | | 6.32 | 6.44 |
| 51 and 8 | | 6.34 | 6.47 |
| 0 and 12 | | 6.41 | 6.59 |
| One way, fixed: | | | |
| 165 and 0 | | 5.94 | 5.94 |
| 117 and 3 | | 6.01 | 6.06 |
| 105 and 4 | | 6.03 | 6.10 |
| 93 and 5 | | 6.05 | 6.13 |
| 81 and 6 | | 6.07 | 6.16 |
| 63 and 7 | | 6.09 | 6.20 |
| 51 and 8 | | 6.11 | 6.24 |
| 0 and 12 | | 6.19 | 6.37 |
| B-727, round trip, variable: | | | |
| 105 and 0 | 2.73 | | |
| 63 and 2 | 2.54 | | |
| 52 and 3 | 2.49 | | |
| 45 and 4 | 2.46 | | |
| 0 and 7 | 2.26 | | |
| B-727, round trip, fixed: | | | |
| 105 and 0 | 2.57 | | |
| 63 and 2 | 2.40 | | |
| 52 and 3 | 2.36 | | |
| 45 and 4 | 2.33 | | |
| 0 and 7 | 2.14 | | |
| B-727, one way, variable: | | | |
| 105 and 0 | 4.79 | | |
| 63 and 2 | 4.53 | | |
| 52 and 3 | 4.46 | | |
| 45 and 4 | 4.42 | | |
| 0 and 7 | 4.14 | | |
| B-727, one way, fixed: | | | |
| 105 and 0 | 4.63 | | |
| 63 and 2 | 4.39 | | |
| 52 and 3 | 4.33 | | |
| 45 and 4 | 4.29 | | |
| 0 and 7 | 4.03 | | |
| DC-8F-61, round trip, variable: | | | |
| 219 and 0 | | 4.71 | |
| 159 and 5 | | 4.61 | |
| 65 and 12 | | 4.45 | |
| 47 and 13 | | 4.42 | |
| 0 and 18 | | 4.35 | |
| DC-8F-61, round trip, fixed: | | | |
| 219 and 0 | | 4.38 | |
| 159 and 5 | | 4.29 | |
| 65 and 12 | | 4.15 | |
| 47 and 13 | | 4.12 | |
| 0 and 18 | | 4.05 | |
| DC-8F-61, one way, variable: | | | |
| 219 and 0 | | 8.21 | |
| 159 and 5 | | 8.13 | |
| 65 and 12 | | 8.01 | |
| 47 and 13 | | 7.99 | |
| 0 and 18 | | 7.92 | |
| DC-8F-61, one way, fixed: | | | |
| 219 and 0 | | 7.88 | |
| 159 and 5 | | 7.81 | |
| 65 and 12 | | 7.70 | |
| 47 and 13 | | 7.68 | |
| 0 and 18 | | 7.63 | |

(ii) Performed with piston aircraft:

| Type of service | Operations in all areas except within Alaska | | Rates within Alaska |
|---|---|---|---|
| | Regular rates | Rates for North Pacific routing | |
| Passenger, per passenger-mile: | Cents | Cents | Cents |
| Round trip | 2.75 | 2.75 | 2.89 |
| One way | 5.20 | 5.20 | 5.46 |
| Cargo, per ton-mile: | | | |
| Round trip | 12.50 | 13.00 | 13.10 |
| One way | 25.00 | 26.00 | 26.20 |
| Convertible: | | | |
| Passenger leg, per passenger-mile | 2.75 | 2.75 | 2.89 |
| Cargo leg, per ton-mile | 15.00 | 16.00 | 15.80 |
| Mixed passenger-cargo: | | | |
| Round trip, per revenue plane-mile, for following aircraft and number of seats installed at request of MAC: | | | |
| DC-6A/B: | Dollars | Dollars | Dollars |
| 0-2 | [1] 1.625 | | |
| 1-44 | [2] 1.96 | | |
| 45-54 | 2.01 | | |
| 55-64 | 2.11 | | |
| 65-74 | 2.22 | | |
| 75-87 | 2.35 | | |
| 88 | 2.42 | | |
| DC-7CF, L-1049/C/E/G/H, L-1649 A/F: | | | |
| 0-2 | [1] 2.25 | | [1] 2.36 |
| 1-47 | [2] 2.43 | | [2] 2.55 |
| 48-59 | 2.45 | | 2.57 |
| 60-71 | 2.50 | | 2.63 |
| 72-85 | 2.55 | | 2.68 |
| 86-92 | 2.59 | | 2.72 |
| 93 and over | 2.6125 | | 2.74 |

[1] All-cargo rate applicable on flights designated as all-cargo where limited services for the personnel who may be carried are required under the MAC contract.

[2] Rate applicable on flights designated as mixed where full passenger services are required under the MAC contract.

*Provided*, That, subject to the provisions of paragraph (b) of this section, the minimum rates specified in subdivisions (i) and (ii) of this subparagraph shall not be applicable to passengers or cargo carried on a particular trip in excess of the amount that the contract calls for MAC to supply and the carrier to provide space.

(2) The compensation for substitute service shall not be less than that which the prime contractor would have received under his contract with MAC.

(b) *Minimum aircraft loads.* The minimum charges established by paragraph (a) of this section shall be deemed economic only when the resulting revenues are at least the equivalent of such charges applied to the following minimum loads:

| Aircraft type | Number of passengers (all-passenger and convertible flights) | Tons of cargo | |
|---|---|---|---|
| | | All-cargo flights | Convertible flights |
| B-707-320-B/C | 165 | 36.5 | 33.7 |
| B-707-300 series | 159 | | |
| B-707-100 series | 149 | | |
| DC-8F-61 | 219 | 45 | |
| DC-8F | 165 | 36.5 | 33.7 |
| DC-8 (50 series) | 149 | | |
| DC-8 (other) | 147 | | |
| B-727 | 105 | 18 | 16.5 |
| CV-880 | 110 | 18 | 16.5 |
| CL-44 | 148 | 29.35 | 28 |
| L-1649A | 95 | 18 | 15 |
| L-1049-C/E/G/H | 95 | 18 | 15 |
| DC-7-B/C/CF/F | 95 | 18 | 15 |
| L-1049A | 88 | 15 | 12 |
| DC-7 | 88 | 15 | 12 |
| DC-6-A/B/C | 83 | 13 | 12 |
| DC-4 | 60 | 8 | 6 |

*Provided*, That, for the purpose of this paragraph (b), compensation equal to the minimum rate applied to the load that actually can be accommodated shall be considered economic whenever a carrier is prevented from accommodating a load equal to the minimum specified above, for reasons other than adverse weather, off-loading by MAC, or the bulk of the cargo supplied by MAC, but in no event less than 90 percent of the above minimum loads. For purposes of this proviso, failure by the carrier to accommodate more than 12 loaded pallets on the B-707-320B/C and DC-8F aircraft, or 10 loaded pallets on the CL-44 aircraft, irrespective of the total weight thereof, on the all-cargo segment of any convertible charter flight, due to the presence of galley equipment and/or crew facilities on the main deck of the aircraft for use on that convertible charter flight, is deemed to be due to the bulk of the cargo supplied by MAC.

(c) *Round-trip services defined.* For purposes of this section, round-trip services mean short-notice MAC charter service where (1) passengers and/or cargo are transported on two or more successive revenue flights and the last revenue flight terminates within 250 statute miles of the point of origin of the first revenue flight or, by mutual consent of MAC and the carrier, at a point within 250 statute miles of the carrier's principal operating base; (2) the scheduling permits departure within 4 hours after arrival at each point to be served except at one point where the aircraft may be scheduled for departure within 72 hours after arrival; *Provided*, That, on flights serving more than one U.S. departure point, by mutual consent, MAC and the carrier may agree on not more than three points where the aircraft may be scheduled for departure within 72 hours after arrival; and (3) the air carrier operates en route not more than one ferry flight not exceeding 50 statute miles without compensation and not more than one ferry flight not exceeding 1,500 statute miles for compensation equal to not less than 75 percent of the round-trip cargo rate specified in paragraphs (a) and (b) of this section where only cargo is carried on the other portions of the whole trip and for compensation equal to not less than 75 percent of the round-trip all-passenger rate specified in paragraphs (a) and (b) of this section in all cases where passengers are carried on any other part of the whole trip.

(d) *Computation of passenger-miles and cargo ton-miles*—(1) *General rule.* For the purpose of this section, the computation of passenger-miles and cargo ton-miles shall be based on no lesser mileage than the nonstop airport-to-airport distance, in terms of statute miles from the point of origin of the revenue flight to the point of destination of such flight, via such intermediate points as are required to be served by the terms of the MAC contract.

(2) *Transpacific services.* In the case of transpacific services between the 48 contiguous States and points beyond Alaska or Hawaii, the general rule shall not apply but the mileage shall be computed as prescribed in Schedule A incorporated in this paragraph, as follows:

SCHEDULE A—TRANSPACIFIC ROUTINGS

| Between | And | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Thailand | South-Viet-Nam | Philippine Islands | Guam | Wake | Hawaii | Formosa | Okinawa | Japan [2] | Alaska |
| U.S. west coast [1] | 8 or 5 | 8 or 5 | 7 or 4 | 7 | 6 | 1 | 14 or 4 | 7 or 4 | 7 or 2 | 1 |
| Alaska | 15 | 15 | 3 | | | | 3 | 3 | 1 | |
| Japan | 12 | 12 | 1 | 1 | 1 | 9 | 1 | 1 | | |
| Okinawa | 12 | 12 | 1 | 1 | 1 | 9 | 1 | | | |
| Formosa | 12 | 12 | 1 | 1 | 11 | 10 | | | | |
| Hawaii | 13 | 13 | 9 | 9 | 1 | | | | | |
| Wake | 12 | 12 | 1 | 1 | | | | | | |
| Guam | 12 | 12 | 1 | | | | | | | |
| Philippine Islands | 1 | 1 | | | | | | | | |
| South Viet-Nam | 1 | 1 | | | | | | | | |

Routings:

1. Direct.
2. Via Anchorage.
3. Via Tachikawa.
4. Via Anchorage-Tachikawa.
5. Via Anchorage-Tachikawa-Clark.
6. Via Honolulu.
7. Via Honolulu-Wake.
8. Via Honolulu-Wake-Clark.
9. Via Wake.
10. Via Wake-Guam.
11. Via Guam.
12. Via Clark.
13. Via Wake-Clark.
14. Via Honolulu-Wake-Guam.
15. Via Tachikawa-Clark.

NOTE: Alternative routings 7, 8, and 14 are to be used for calculation of the mileage if MAC requires that an intermediate point along the mid-Pacific route be served.

[1] Any place in the State of California, Oregon, or Washington.
[2] For services to and from Japan, compute mileage to and from Tachikawa Air Base.

(3) *Transatlantic services.* In the case of transatlantic services, when the nonstop airport-to-airport distance between origin and destination of the flight is 4,000 miles or more and no intermediate points are specified by the terms of the MAC contract, the mileage shall be no less than as computed via Shannon, Ireland, or via Lajes/Santa Maria, Azores, whichever routing yields a lower mileage.

(e) *On-loading and off-loading of traffic.* It shall not be deemed a violation of the provisions of this section for an air carrier operating a charter flight to permit MAC to on-load and/or off-load traffic (passenger or cargo) at any operational stops en route made for the carrier's convenience, to the extent that it does not interfere with the carrier's scheduled ground operation: *Provided,* That the carrier receives minimum compensation consistent with the provisions of this section for resulting load carried on any flight stage which is in excess of the load paid for under the contract.

### § 288.8 Application for other relief.

Air carriers may make timely applications for authority to engage in air transportation for the military establishment not covered by this part, including relief from any limitation or requirement imposed by this part. Such applications shall be governed by the provisions contained in Part 302, Subparts A and D of this chapter.

## Subpart C—Enforcement

### § 288.15 Violations.

Operations by any carrier for the military establishment which are not within the scope of such carrier's basic authority or of this part or of other authority granted by the Board prior to the time such operations are undertaken, or noncompliance with any applicable requirements, conditions or limitations in this part constitute violations of the Federal Aviation Act of 1958 and will render the offending air carrier subject to imposition of lawful sanction, including in proper cases criminal prosecution under section 902(a) of the Act.

## Subpart D—Duration

### § 288.18 Expiration.

(a) This part shall expire June 30, 1967, unless rescinded by the Board at an earlier date. The Board reserves the right to rescind this part or any provision thereof at any time, with or without notice or hearing, as the public interest may require.

(b) The transportation services performed pursuant to the authorization granted in this part do not constitute an activity of a continuing nature within the meaning of section 9(b) of the Administrative Procedure Act, 5 U.S.C. 1008(b).

By the Civil Aeronautics Board: [22]

[SEAL] HAROLD R. SANDERSON,
*Secretary.*

[F.R. Doc. 66-3604; Filed, Apr. 4, 1966; 8:45 a.m.]

[22] Joint concurring and dissenting statement of Vice Chairman Murphy and Member Minetti filed as part of the original document.

SUBCHAPTER F—POLICY STATEMENTS

[Reg. No. PS-30]

# PART 399—STATEMENTS OF GENERAL POLICY

## Military Exemptions and Military Tariff Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 29th day of March, 1966.

On January 13, 1966, by notice of proposed rule making EDR-96/PSDR-15 (31 F.R. 565), the Board proposed to amend Part 399 by changing the minimum rates for domestic military charters and for individually ticketed and waybilled military transportation. Written data, views, and arguments have been filed in response to the notice. All comments and supporting statements before the Board have been carefully considered, and all contentions not otherwise disposed of hereinafter are rejected. Final amendments to Part 288, Exemption of Air Carriers for Short-Notice Military Contracts and Substitute Service, are being adopted concurrently herewith (ER-456).

*Domestic military cargo charters.* With respect to domestic military cargo charters (Logair and Quicktrans), the notice proposed a decrease in the CL-44 minimum rate, an increase in the C-46 rate, a multielement rate (consisting of a basic mileage rate plus $100 per landing) for the DC-6A and AW-650, and no change in the minimum rate for DC-7F and L-1049H aircraft. Comments on the proposals were received from five carriers [1] and from the Department of Defense (DOD). Upon consideration of the comments and adjusted cost data, the Board has adopted revised minimum fair and reasonable rates, which are listed below along with the current rates and the rates proposed in the notice:

| Aircraft type | Rate per aircraft statute mile (course-flown) | | |
|---|---|---|---|
| | Present | Proposed | Adopted |
| DC-7F, L-1049H | $1.950 | $1.950 | $1.950 |
| CL-44 | 2.40 | 1.788 | 2.207 |
| C-46 | .735 | .830 | .830 |
| DC-6A, AW-650 | 1.40 | [1] 1.17 | [1] 1.1765 |

[1] Plus $100/landing.

Aaxico, Zantop, Tiger, and DOD raised various objections to the adjusted costs recognized by the Board. Airlift asserted a return element equal to 19 cents per mile should be allowed in the C-46 rate. World objected only to the proposed dual-element rate for DC-6A and Argosy services and urged that the rate continue to be established as a single rate per aircraft-mile.

Aaxico proposes that the total operating cost of $1.35 per revenue mile for DC-6A aircraft recognized by the Board should be increased by 2.3 cents. Of this amount, 2.1 cents purports to be an in-

[1] AAXICO/Saturn Airways, Inc., Airlift International, Inc., The Flying Tiger Line Inc., World Airways, Inc., and Zantop Air Transport, Inc.