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Order 2001-4-12

Served: April 13, 2001



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 10th day of April, 2001

INTRA-ALASKA MAINLINE  
SERVICE MAIL RATES

Docket OST-95-429 - 144  
(Docket 38961)

**ORDER ON PETITION FOR RECONSIDERATION**

**Summary**

On December 26, 2000, the Postal Service filed a motion with the Department to accept an unauthorized document. On January 31, 2001, it filed the unauthorized document, a petition for reconsideration of Order 2000-11-9, which set final mainline mail rates from October 1, 2000, through September 30, 2001. It objected that Order 2000-11-9 deviated from established procedures because the final rate was made retroactive to October 1, 2000, rather than prospective after the service date of the order. The Postal Service further argued that the Department changed its mail rate calculation methodology without first consulting with interested parties. In addition, the Postal Service notes there might be a small error in the calculation of Lynden Air Cargo's non-fuel linehaul costs. Answers were filed by Alaska Airlines on February 7 and by Alaska Central Express on February 9.

We will accept the Postal Service's motion but will deny the petition on the merits, except for correcting Lynden Air Cargo's calculation errors.

**Background**

On November 13, 2000, the Department issued Order 2000-11-9, setting new final intra-Alaska mainline mail rates effective retroactive to October 1, 2000, through September 30, 2001.<sup>1</sup> The order made several computational changes from the tentative rate earlier set by Order 2000-8-14. It added quarterly fuel costs that were not available earlier, incorporated NAC's revised financial numbers, excluded Air Cargo Express's linehaul costs from the cost pool as being unreliable, and included Lynden Air Cargo's

<sup>1</sup> On September 29, 2000, the Department issued Order 2000-9-27 which extended the then-current final rate as a retroactively adjustable interim rate effective October 1. On page (2) of that order the Department noted that it had deviated from its policy of not adjusting rates retroactively in order to balance "competing and legitimate interests."

recently available linehaul costs. The order also addressed several other issues raised by the carriers and the Postal Service in their numerous pleadings. Because Order 2000-11-9 was served as a final order on November 16, the 20-day period for filing petitions for reconsideration expired on December 4.

### **Postal Service Pleadings**

On December 26, 2000, the Postal Service filed a motion to accept a late-filed document, and on January 31, 2001, filed its petition for reconsideration. Its motion asserted that the Department should accept the late-filed petition because of “unusual and exceptional” circumstances that were faced by the Postal Service, primarily the transfer of critical legal personnel responsible for intra-Alaska mail rates. The Postal Service has three main objections to the Department setting a retroactively adjustable rate in Order 2000-9-27.

First, the Postal Service maintains that it was not its fault that the proceeding was delayed.<sup>2</sup> It had voiced its concerns about the Show Cause Order 2000-8-14 in a timely manner, and “any delay in the implementation of the final mainline rates was not caused by any act or omission of the Postal Service.” Page (3). Second, the Postal Service says that by issuing a retroactively adjustable rate the Department violated a procedure we have used for several years of not setting rates that are subject to retroactive adjustment.

“...it should be emphasized that in view of the Department’s **categorical** [emphasis added] rejection of retroactive ratemaking, any such delay does not provide a reasonable and sufficient basis for imposing rates retroactively in Order 2000-11-9. The fact that the Department made these new rates effective retroactively violates the rules set forth in Order 95-12-32.” Page (3).

Third, the Postal Service also objects that our procedure in implementing the methodological change in Orders 2000-8-14 and 2000-11-9 deviated from the procedures we said we would use in our September 2, 1997, *Final Report on the Review of the Alaska Mail Ratemaking Methodology*, which entailed all parties meeting in consensus-building discussions. The Postal Service said the Department had recently followed this procedure when it met with the bush carriers on the 9<sup>th</sup> and 10<sup>th</sup> of May, after the Postal Service had raised a number of issues in its response to Order to ShowCause 2000-1-10.<sup>3</sup>

In the conclusion to its petition, the Postal Service maintains it has “ongoing concerns with the new rate update methodology and [the Department should] consider directing all parties to participate in meetings before the next full rate update is released later this year.”

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<sup>2</sup> Postal Service Petition for Reconsideration, January 31, 2001.

<sup>3</sup> OST Docket 429.

### **Answer of Alaska Airlines**

On February 7, Alaska Airlines (Alaska) answered the Postal Service. Alaska concedes that Order 2000-11-9 departed from the Department's policy of making rates effective prospectively, but the Postal Service "noticeably fails to mention the unusual circumstances surrounding the Department's decision to deviate from its policy of non-retroactivity, and in particular the USPS' undeniably significant role in shaping those circumstances." Pages (1) and (2). Those reasons were the unresolved Postal Service objections raised for the first time by the Postal Service on September 22, eight days before the rate was to terminate, the importance the Department attached to considering those Postal Service objections, the Postal Service request for an informal meeting, and the significant magnitude of the proposed rate increase.

Alaska notes on page (4), "the nature of the retroactivity related issues which led to the formation of the Department's non-retroactivity policy are quantitatively quite different than the circumstances facing the Department last September. The retroactivity problems of the past primarily stemmed from substantial rate swings...and also generally extended for many months." On page (5), Alaska states that "Whatever the reasons, the USPS' petition neglects to acknowledge the Department's explicit explanation, the accepted importance of adjusting mail rates on October 1, and the lesser impact of any retroactivity decision under the current ratemaking methodology most certainly satisfy the legal threshold of reasoned decision-making."

### **Answer of Alaska Central Express**

Alaska Central Express (Express) answered the Postal Service's petition on February 9. Express notes the retroactive rate was in effect for only 47 days and the Department had announced its intention and explained the reasons it reluctantly set a retroactively adjustable rate on September 29, in Order 2000-9-27, to wit, "in the interest of balancing the need to consider a significant change in the rate calculation methodology and the objective of not permanently depriving the carriers of rate relief when and if a final determination" were to so determine. Page (2).

Express states that the retroactive step was necessary because of new issues raised by the Postal Service in its September 22 pleading and the Department's intention to be fair to all parties--carriers and Postal Service alike. Express continues that it would be unfair to penalize the carriers by withholding necessary rate relief for the extra time it takes to consider the comments and objections.

### **Decision**

#### Meetings Among the Parties

The first issue is the matter of the Department's consultation with the carriers. The Postal Service is correct to point out that the Department has recently emphasized resolving

matters, if possible, on a consensual basis after informal discussions among the parties. We undertook such discussions when we made the adjustments outlined in our *Final Report* dated September 2, 1997, with our bush-mail meeting in Alaska on the 9<sup>th</sup> and 10<sup>th</sup> of May, and most recently with our request for comments issued January 22, 2001. As a general matter we prefer making decisions that all parties agree are reasonable.

The Postal Service says the Department should have met with the parties. However, at no point in the proceeding was there a consensus for meetings with all the parties. From the start of the proceeding, a number of difficult and important issues were raised by the mainline carriers and the Postal Service, and a thorough written record was effectively developed on all issues in the case. On June 15, the Postal Service stated it would not respond to NAC's last pleading in that proceeding, but that "We merely request that our silence not be misconstrued as agreement with opinions and positions expressed by NAC."

The Department and the carriers both misunderstood the Postal Service in its September 22 filing to be requesting meetings, when in fact they were not as evidenced in its letter dated October 3. Order 2000-11-9 thus dismissed the issue of informal meetings as moot because the "Postal Service by correspondence dated October 3 indicated that it did not wish to meet with the carriers to try to reach a consensus on this issue."

Nevertheless, our misunderstanding of the Postal Service's September 22 filing did add in part to delay in finalizing a rate and contributed to our decision in Order 2000-9-27 to set retroactively adjustable rates.

In response to the Postal Service's January 31, 2001, petition requesting meetings with the parties, the Department will meet to discuss any issues, including those about which the Postal Service still has concerns, as stated in their petition. However, the final, retroactive rate stipulated in Order 2000-11-9 will remain effective from October 1, 2000. To change the effective date of the final rate and reinstitute the prior rate almost five months into the rate period would not be in the public interest. We reiterate our desire to reach consensus with the parties if possible, and will work, as a general matter, to ensure that topics are fairly discussed before final decisions are reached.

#### Lynden Recalculation

The Postal Service in its petition states that it suspected there was an error in our calculation of the rate in Order 2000-11-9. Lynden, a carrier recently added to the cost pool, mislabeled a document as "Hercules Only" operations when in fact it included a small amount of wet-leased DC-6 and B-727 costs but not the corresponding traffic volumes. No party has objected to our making this correction prospectively to a rate that

is final. Accordingly, we have determined that the rate in Order 2000-11-9 is overstated by 0.22% and we will correct it prospectively.<sup>4</sup>

### Retroactivity

The Postal Service maintains that the Department had decided on a “categorical” basis to dispense with retroactively adjustable rates. We disagree. At the meetings in 1995 and 1996 where the abolition of retroactively adjustable final rates was discussed, it was agreed that while final rates would be strongly preferred, there could be unusual circumstances under which retroactively adjustable rates might still be needed. Indeed, Order 2000-4-1 stated that the “Department **in general** [emphasis added] no longer sets rates that are retroactively adjustable.” In other words, we did not **categorically** renounce setting retroactively adjustable rates; however, it remains our general policy to have final rates in place at all times.

In addition, the Postal Service contends that the Department recently set bush rates that were final until further Department action, rather than retroactively adjustable. (Order 2000-4-1). However, as we noted in Order 2000-9-27, the circumstances in Order 2000-4-1 were sufficiently different to warrant a different treatment. In the bush order the unresolved issue involved data collection matters that were anticipated to take a significant time to resolve.<sup>5</sup> Here, we noted, the main issue involved a change in weighting methodology that had already been commented on by the parties in various pleadings over several months. Recognizing that the current mainline update was imminent, we acknowledged the interest of the carriers in not being permanently deprived of the anticipated higher rates, should we eventually finalize the adjustment but continue the older rate as final into the new period.<sup>6</sup> We therefore reluctantly concluded that under these special circumstances, we would extend the current rates on an interim basis subject to retroactive adjustment.

All parties agree that it is best for the Department to have accurate final rates in place as soon as possible and well before the current rate is stipulated to expire.<sup>7</sup> For a number of reasons discussed above, that was not accomplished this year. Because the best resolution would be for the Department to act sooner, we will discuss with the parties the possibility of shortening our comment period from 45 days to 30 days, or to make it clear that we might shorten the comment period in the future in certain cases.

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<sup>4</sup> The corrections to earlier orders are shown in the Appendices in bold. Also, the regressions are unaffected, because they have been based on the costs of Alaska and NAC only. Also, only the non-fuel linehaul portion of the costs are affected.

<sup>5</sup> Indeed, the question of adding Yute’s corrected costs to the bush cost pool has not yet been resolved.

<sup>6</sup> From the previous pleadings and data provided by the carriers we had reason to believe that all parties expected that mainline rates would increase significantly whether we adopted the carriers’ position or the Postal Service’s proposed adjustment of weighting unit costs by mail transported by each carrier.

<sup>7</sup> Technically rates do not expire on their own terms, i.e., they remain effective past their projected one-year life span. It is generally our intent to have rates in effect for one year only.

**ACCORDINGLY,**

1. We deny in part the Postal Service's petition for reconsideration that a retroactively adjustable rate, as that set by Order 2000-11-9, should not be imposed;
2. We grant the Postal Service's petition for reconsideration that the rate be corrected for revisions in data by Lynden Air Cargo;
3. The fair and reasonable final rates of compensation to be paid in their entirety by the Postmaster General pursuant to the provisions of 49 U.S.C. 41901 for the transportation of mail by aircraft having a payload exceeding 7,500 pounds, the facilities used and useful therefor, and the service connected therewith, by each holder of a certificate authorizing the transportation of mail by aircraft within the State of Alaska for the period beginning three days after the service date of this order, through September 30, 2001, or until further order of the Department, whichever occurs later, are those specified in the attached Appendix A;
4. Because all interested persons have had an opportunity to comment, we shall not entertain petitions for reconsideration of this order, including any motions that may accompany such petition;
5. This docket will remain open until further order of the Department; and
6. We shall serve this order upon parties on the Service List for this Docket.

By:

**Susan McDermott**  
Deputy Assistant Secretary for Aviation  
And International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at  
<http://dms.dot.gov>*

**INTRA-ALASKA MAINLINE CLASS SERVICE MAIL RATES**

Effective: Three days after the service date of the order, through September 30, 2001, or until further Department action, whichever comes later.

Base Year <u>Rates 1/</u>	Adjustment <u>Factors 2/</u>	Proposed <u>Final Rates 3/</u>	Prior Rates: Orders 00-11-9 and 01-3-11	Change from <u>Prior Rate</u>
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**Linehaul Charge per Billing Ton-Mile**

Priority	\$1.1969	<b>65.50%</b>	<b>\$1.9809</b>	\$1.9853	<b>-0.22%</b>
Non-priority	\$.7246	<b>65.50%</b>	<b>\$1.1992</b>	\$1.2019	<b>-0.22%</b>

**Terminal Charge per Pound Originated**

Priority	\$ .1697	53.89%	\$ .2612	\$ .2519	3.69% 4/
Non-priority	\$ .1458	53.89%	\$ .2244	\$ .2165	3.65% 4/

1/ Per Order 82-11-23

2/ See Appendix B

3/ Column (1) increase by Column (2).

4/ Differences due to rounding.

**INTRA-ALASKA CLASS SERVICE MAIL RATES COST ADJUSTMENT FACTORS**  
(Expenses in Thousands of Dollars)

	Base Year Ended 9/30/80 1/	Year Ended 3/31/00 2/	Average Annual Change YE 3/31/90 to YE 3/31/00 3/	Midpoint to Midpoint Change	Estimated Unit Cost at 4/1/01	Percent Change 1980 Base Year to 4/1/01 4/
Unit Cost per Available Ton-Mile			\$ .225914 5/ Inflation Not Applicable to Fuel		\$ .225914	
Fuel		<b>\$ .421724</b>	2.12%	3.20%	<b>\$ .435219</b>	
Nonfuel	\$ .399469	<b>\$ .647638</b>			<b>\$ .661133</b>	<b>65.50%</b>
Total						
Unit Cost per Ton Emplaned	\$191.54	\$288.11	1.53%	2.31%	\$294.77	53.89%

1/ Per Order 82-11-23, updated most recently in Order 97-12-24.

2/ See Appendix C.

3/ These are trends for Alaska and NAC only, unweighted by mail carried, and so are unaffected by the revision to Lynden's costs.

4/ \$.661133 in preceding column divided by \$.399469 in the base period.

5/ Fuel cost per weighted available ton-mile for QE 9/30/2000. See Appendix C.

