

## Maritime Administration, DOT

## § 283.1

I further depose and say that this affidavit is made for and on behalf and at the direction of the Operator for the purpose of inducing the Maritime Administration to make a payment pursuant to the provisions of the aforesaid Operating-Differential Subsidy Agreement, as amended.

Subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and State, this \_\_\_\_\_ day of \_\_\_\_\_.

My commission expires \_\_\_\_\_  
Notary Public \_\_\_\_\_

(3) The subsidized operator shall furnish its own supply of supporting schedules and affidavit.

### § 282.32 Appeal procedures.

(a) *Appeals of annual or special audits.* An operator who disagrees with the findings, interpretations or decisions in connection with audit reports of the Office of the Inspector General and who cannot settle said differences by negotiation with the Contracting Officer may submit an appeal to the Maritime Administrator from such findings, interpretations or decisions in accordance with part 205 of this chapter.

(b) *Appeals of administrative determinations—(1) Policy.* An operator who disagrees with the findings, interpretations or decisions of the Contracting Officer with respect to the administration of this part may submit an appeal from such findings, interpretations or decisions as follows:

(i) Appeals shall be made in writing to the Secretary, Maritime Subsidy Board, Maritime Administration, within 60 days following the date of the document notifying the operator of the administrative determination of the Contracting Officer. In the appeal to the Secretary, the operator shall indicate whether or not a hearing is desired.

(ii) MARAD will notify the appellant in writing if a hearing is to be held and whether the operator is required to submit additional facts for consideration in connection with the appeal.

(iii) When a decision has been rendered, the Board shall notify the appellant in writing.

(2) *Appeal to the Secretary of Transportation.* An operator who disagrees with the Board may appeal such findings and determinations by filing with the Secretary of Transportation, a written petition for review of the Board's action. The petition shall be filed in ac-

cordance with provisions of the Department of Transportation pertaining to Secretarial review.

(3) *Hearings.* MARAD shall follow the Rules of Practice and Procedure (46 CFR part 201, subpart M) for hearings granted under 46 U.S.C. 1176 and 46 CFR 282.32.

## PART 283—DIVIDEND POLICY FOR OPERATORS RECEIVING OPERATING-DIFFERENTIAL SUBSIDY

Sec.

283.1 Purpose.

283.2 Definitions.

283.3 Dividend policy criteria.

283.4 Alternate standards.

283.5 Notification and reporting requirements.

AUTHORITY: Sec. 204(b) Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1026); Dept. of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973).

SOURCE: 45 FR 37445, June 3, 1980, unless otherwise noted.

### § 283.1 Purpose.

(a) The rules of this part establish requirements for the declaration and payment of cash dividends by operators receiving operating-differential subsidy (ODS) under Title VI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101 et seq.) (Act). This part shall be applicable immediately unless otherwise provided for in the operators' operating-differential subsidy agreement (ODSA).

(b) One of the purposes of the Act is to foster the development and encourage the maintenance of the United States Merchant Marine. Subsidized operators are required to maintain the financial ability to assure adequate and timely reinvestment in the merchant marine. The policy contained herein takes into consideration the operators' contractual obligations to construct and acquire vessels, retire debt obligations secured by ship mortgages and maintain adequate working capital. However, this policy also takes into consideration the operators' need to attract new capital to the industry

## § 283.2

## 46 CFR Ch. II (10-1-01 Edition)

by paying dividends which are appropriate in light of the operators' earnings and long-range financial position.

### § 283.2 Definitions.

(a) *Long-Term Debt* means, as of any date, the total notes, bonds, debentures, equipment obligations and other evidence of indebtedness that would be included in Long-Term Debt in accordance with generally accepted accounting principles, less the balance of escrow fund deposits attributable to the principal of obligations guaranteed pursuant to Title XI of the Act, where deposits are required in accordance with § 298.33. Capitalized Lease Obligations shall be included, but deferred income taxes shall not be included.

(b) *Capitalized Lease Obligations* means, as of any date, an amount (excluding amounts already included in Long-Term Debt) equal to the sum of: (1) The present value of all capital leases, as defined and computed in accordance with the Financial Accounting Standards Board Statement No. 13, Accounting for Leases (FASB-13), and (2) ½ of the minimum rentals (less operating components such as insurance, maintenance, property taxes, etc.) of all operating leases, as defined and includable in footnotes to the financial statements in accordance with FASB-13, for shipping property, i.e., vessels, containers, barges, terminals and other similar property.

(c) *Equity* (net worth) means, as of any date, the total of paid-in-capital stock, paid-in-capital, retained earnings and all other amounts that would be included in Equity in accordance with generally accepted accounting principles, but adjustable as follows. The net worth shall be reduced to the extent that the net worth computation includes any receivables from an affiliate of the company or any stockholder, director, officer, or employee (or any member of the employee's family) of the company, or of an affiliate of the company, other than (1) reasonable advances to affiliated agents required for the normal operation of the company's vessels, or (2) current receivables arising out of the ordinary course of business, and which are not outstanding for more than 120 days.

(d) *Floor net worth* means net worth computed as follows: The net worth requirement for existing operators shall be initially set at the greater of 90 percent of the operator's existing net worth or 50 percent of the operator's long-term debt contained in its audited financial statements for the year ended December 31, 1979. A new operator's net worth requirement shall initially be set at the greater of 90 percent of existing net worth or 50 percent of the original long-term debt issued with respect to the operator's vessel(s).

(e) *Adjusted floor net worth* means that the floor net worth requirement may be reduced with consent of the Maritime Administrator in an amount equivalent to amounts an operator could have paid in dividends under the previous policy set forth in this regulation prior to amendment in 1980, in the three years prior to the date of effectiveness of this policy, but chose not to pay out in dividends. The floor net worth requirement for both existing operators and new operators shall be further adjusted from time to time as follows:

(1) The net worth requirement shall be increased by an amount equal to 50 percent of the original long-term debt to be issued with respect to new vessel construction (with respect to existing operators, new vessel construction contracts executed after December 31, 1979), and

(2) the net worth requirements shall be decreased by an amount equal to 50 percent of the original long-term debt issued with respect to vessels which are removed from service or otherwise transferred or sold.

(f) *Working capital* means the difference between current assets and current liabilities, both determined in accordance with generally accepted accounting principles, adjusted as follows:

(1) Current assets shall be reduced with respect to:

(i) Amounts in any Title XI Reserve Fund, pursuant to 46 CFR 298.35(e) or Capital Construction Fund (CCF) Security Amount prescribed by 46 CFR 298.35(f), that is being maintained pursuant to an agreement covering a vessel owned or leased by the company, or in another similar fund required under

any other mortgage, indenture or other agreement to which the company is a party;

(ii) Any securities, obligations or evidences of indebtedness of an affiliate of the company or of any stockholder, director, officer or employee (or any member of the family of an employee of the company or of such affiliate), except: (a) Reasonable advances to affiliated agents required for the normal current operation of the company's vessels, or (b) receivables outstanding for not more than 120 days, arising out of the ordinary course of business.

(2) Current assets shall be increased with respect to CCF accruals (but not actual deposits), if the operator has first met its prorated CCF minimum deposit schedule.

(3) Current liabilities shall be increased by one-half of the annual payment of all charter hire and other lease obligations having a term of more than twelve months, other than charter hire and other lease obligations already included and reported as a current liability on the company's balance sheet.

(4) Current liabilities shall be decreased by amounts on deposit in a CCF which are available for the payment of current liabilities.

(g) *Prior years' earnings* means the aggregate net income after tax for the three years immediately preceding the year in which the dividend is declared. An operator may include in prior years' earnings estimated net operating income after tax for the current fiscal year if such amount is based upon actual net operating income after tax for the first nine months of the current year. If an operator includes estimated current income in its prior years' earnings computation, it may also include earnings for only the immediately preceding two years, rather than three years, in the computation of prior years' earnings.

(h) *Funds available* shall mean the sum of:

(1) Amounts on deposit in any fund established pursuant to the Act plus accrued deposits, unless already included in working capital, (including interest thereon), less accrued withdrawals from any such fund;

(2) Gross book value, as shown on the operators' books of account, of sub-

sidized vessels and related barges and containers, less accumulated depreciation;

(3) Progress payments made on subsidized vessels and related barges and containers undergoing construction, reconstruction, or reconditioning;

(4) Progress payments made on additional vessels and related barges and containers, if any, which the operator has agreed to construct or acquire pursuant to any contract entered into with the Maritime Administrator or the Maritime Subsidy Board (Board);

(5) Balance of trade-in allowances pursuant to section 510 of the Act;

(6) Capitalized Lease Obligations as defined in §283.2(b); and

(7) Working capital as defined in §283.2(f).

(i) *Funds required* means the sum of:

(1) 25 percent of the total cost to the operator of: (i) Subsidized vessels under construction, reconstruction or reconditioning, (ii) additional vessels under construction, reconstruction or reconditioning pursuant to any contract entered into between the operator and the Maritime Administrator or the Board, and (iii) barges and containers under construction or under contract to purchase, and to be used as part of the complement of such vessels;

(2) 25 percent of the total cost to the operator, estimated at the time a cash dividend is to be declared, of: (i) Replacement of subsidized vessels required to be replaced under the current ODSA (which cost must be indicated whether or not the operator anticipates leasing replacement vessels), (ii) additional vessels which the operator has agreed to construct or acquire pursuant to any contract entered into with the Maritime Administrator or the Board, and (iii) barges and containers required as part of the complement of such vessels. In making this computation, the operator shall obtain the prior written agreement of the Maritime Subsidy Board as to number of replacement vessels, type and commercial characteristics, projected award date of construction contract, projected delivery dates, estimated total cost (current) and method used to determine such cost, intended area of operation, and identity of vessels to be replaced.

### § 283.3

(3) Capitalized Lease Obligations as defined in § 283.2(b), excluding that portion of any such amount payable within one year; and

(4) Outstanding indebtedness on, or secured by, subsidized vessels and related barges and containers, or incurred in connection with the acquisition, construction or reconstruction of such vessels and related barges and containers.

#### § 283.3 Dividend policy criteria.

(a) *In general.* A subsidized operator may pay cash dividends at any time it desires up to the amount set forth in paragraph (b) of this section. Dividends may be paid pursuant to paragraph (c) of this section, as provided therein. The written approval of the Maritime Administrator shall be obtained prior to any declaration of dividends by the operator, if the payment of dividends does not meet the criteria of either paragraph (b) or (c) of this section. It is intended that dividend payments be permitted under the provisions of either paragraph (b) or (c), whichever allows payment of the greatest amount of dividends. Nothing in this part shall alter restrictions on the payment of dividends which may affect the operator under any other agreements with the Maritime Administrator.

(b) *40 percent dividend criteria*—If the operator is able to meet the criteria of this paragraph after declaration and payment of the proposed dividend, it may declare a dividend of up to 40 percent of prior years' earnings, less any dividends that were paid in such years, unless there is an operating loss in the fiscal year to the date of proposed payment of dividend, as well as operating losses in the immediately preceding two years. If in any of the years included in the prior years' earnings calculation dividends were paid under the 100 percent rule, those years' earnings and dividends may be excluded from the prior years' earnings calculation, and then only the earnings and dividends associated with the remaining years of the three year period may be used. This provision enables an operator to pay dividends under the 40 percent rule when in past years it has paid dividends under the 100 percent rule.

### 46 CFR Ch. II (10–1–01 Edition)

The criteria which must be satisfied are as follows:

(1) *Working Capital*—Working Capital must equal or exceed one dollar.

(2) *Long-term Debt to Equity ratio*—Long-Term Debt must not exceed two times Equity. (The Maritime Administrator may modify this requirement during periods of vessel construction).

(3) *Net Worth Floor*—Net Worth must exceed the adjusted net worth floor as computed in § 283.2.

(c) An operator may declare a dividend in an amount up to 100 percent of retained earnings, unless there is an operating loss in the fiscal year to the date of proposed payment of dividend, as well as operating losses in the immediately preceding two years, if the following criteria are satisfied:

(1) *Working Capital*—Working Capital must equal or exceed one dollar.

(2) *Long-Term Debt to Equity ratio*—Long-Term debt must not exceed Equity.

(3) *Net Worth Floor*—Net worth must exceed the Adjusted Net Worth floor as computed in § 283.2.

(4) *Funding for Replacement Vessels*—Funds available must exceed Funds Required, and the basis for Funds Required for replacement vessels must receive prior approval, as provided in § 283.2(i) herein.

#### § 283.4 Alternate standards.

(a) The Maritime Administrator may waive or modify any of the financial terms or requirements otherwise applicable in part 283, upon determining that other factors exist which make alternate terms or requirements appropriate. An example of such a situation would involve an operator that: (1) Has no replacement obligation and (2) has a guarantee of charter hire or other guarantees sufficient to cover capital costs. In such cases, the Government's interest may be sufficiently protected although the operator cannot meet the standard part 283 requirements. Another example may be to include receivables otherwise excluded if they are properly guaranteed by an acceptable guarantor.

(b) [Reserved]

**Maritime Administration, DOT**

**§ 283.5**

**§ 283.5 Notification and reporting requirements.**

(a) *Notice*—The operator shall give written notice of a dividend declaration to the Maritime Administrator immediately upon such declaration.

(b) *Reports*—The operator shall submit a report as described below whenever it declares a dividend or applies for approval under § 283.3 to declare a dividend as of the approximate date of such declaration or request. Such statements shall include information no less current than 30 days. If no dividends are declared during the calendar year, the operator is not required to submit a statement.

If the Maritime Administration determines that the operator was, for any reason, not qualified to pay the dividend, then the operator shall, in writing, request the approval of the Maritime Administrator for any subsequent dividend declaration. If such approval is then granted, the operator may follow the requirements of this part 283 once again. The reports required by this section shall be prepared in accordance with the definitions set forth in § 283.2. A separate statement shall be submitted showing the adjustments made to working capital, long-term debt and net worth, and shall conform to the definitions of such items as contained herein. As appropriate, reports shall include the following:

(1) The ratio of debt to equity, floor net worth and prior years' earnings in the format set forth in Schedule A;

(2) The excess of "funds available" over "funds required" in the format as set forth in Schedule B;

(3) Working capital as set forth in Schedule C; and

(4) Other applicable limitations prescribed in any agreements between the operator and the Maritime Administrator affecting the payment of dividends.

(c) *Officials to whom notices and reports are to be directed.* Operators shall submit, in triplicate, all notices, reports and requests prescribed in this part to the Secretary, Maritime Administration, Washington, DC 20590, with a copy of such notice or request to the appropriate Maritime Administration Region Director.

**SCHEDULE A—RATIO OF DEBT TO EQUITY, FLOOR NET WORTH, AND PRIOR YEARS' EARNINGS**

	Company _____	
	_____, 19__	
Long-term debt .....		\$.....
Retained earnings .....		\$.....
Equity .....		\$.....
Ratio of Long-Term Debt to Equity .....		
Adjusted Floor Net Worth as computed in accordance with § 283.2. ....		\$.....
Prior years' earnings as defined in § 283.2 .....		\$.....
	_____	
		(Signature of Chief Financial Officer or other authorized officer)

**SCHEDULE B—FUNDS AVAILABLE AND FUNDS REQUIRED**

	Company _____	
	_____, 19__	
<b>I. FUNDS AVAILABLE</b>		
A. On deposit in statutory funds:		
Capital construction fund .....		\$.....
Construction reserve fund .....		
Construction and escrow funds .....		
Plus accrued deposits to funds (or less accrued withdrawals from funds) .....		\$.....
B. Gross book value of vessels and related barges and containers employed in subsidized services:		
Subsidized vessels .....		
Related barges .....		
Related containers .....		
Less accumulated depreciation .....	(.....)	
C. Progress payments made on subsidized vessels and related barges and containers undergoing construction, reconstruction or reconditioning .....		
D. Progress payments made on additional vessels and related barges and containers agreed to be constructed or acquired .....		
E. Balance of trade-in allowances (section 510 of the Act) .....		
F. Capitalized Lease Obligations as defined in § 283.2(b) .....		
G. Net Working Capital (from Schedule D) .....		
<b>TOTAL FUNDS AVAILABLE .....</b>		<b>\$.....</b>

II. FUNDS REQUIRED

A. Cost of current commitments:

- ODSA vessels under construction or reconstruction:
 

Number of vessels	Total cost	Less Government contributions	Cost to operator
.....	\$ .....	(\$.....)	.....
	25% of cost to operator	.....	.....
- Additional vessels under construction, reconstruction or reconditioning pursuant to a contract with the Assistant Secretary or the Board:
 

Number of vessels	Total cost	Less Government contributions	Cost to operator
.....	\$ .....	(\$.....)	.....
	25% of cost to operator	.....	.....
- Barges and containers under construction or contract to purchase:
 

Number of:	Cost to operator
Barges .....	\$ .....
Containers .....	\$ .....
	25% of Cost to Operator
	.....

B. Estimated cost of additional vessels (whether to be owned or leased):

- Subsidized vessels to be replaced under ODSA:
 

Number of vessels	Total cost	Less Government contributions	Cost to operator
.....	\$ .....	(\$.....)	\$ .....
	25% of cost to operator	.....	\$ .....
- Additional vessels agreed to be constructed or acquired:
 

Number of vessels	Total cost	Less Government contributions	Cost to operator
.....	\$ .....	(\$.....)	\$ .....
	25% of cost to operator	.....	\$ .....
- Additional barges and containers required as the complement of vessels agreed to be constructed or acquired in items B1 and B2 above:
 

Number of:	Cost to operator
Barges .....	\$ .....
Containers .....	\$ .....
	25% of Cost to Operator
	.....

C. Outstanding indebtedness on, or secured by, subsidized vessels and related barges and containers, or incurred in connection with the acquisition, construction, or reconstruction of such vessels and related barges and containers.

D. The present value of Capitalized Lease Obligations as defined in § 283.2(b), excluding that portion of any such amount payable within one year.

TOTAL FUNDS REQUIRED ..... \$.

III. EXCESS FUNDS (DEFICIENCY OF FUNDS).

(Signature of Chief Financial Officer or other authorized officer)

SCHEDULE C—DETERMINATION OF WORKING CAPITAL (AS DEFINED IN 46 CFR 283.2)

Company \_\_\_\_\_, 19 \_\_\_\_\_

A. CURRENT ASSETS:

Cash and marketable securities .....	\$.....
Accounts receivable (current) .....	.....
Other current assets (specify) .....	.....
Total .....	\$.....

SCHEDULE C—DETERMINATION OF WORKING CAPITAL (AS DEFINED IN 46 CFR 283.2)—Continued

Accrued deposits to CCF, (provided operator has met prorated deposit schedule) .....	\$.....
Other adjustments (specify) .....	\$.....

B. CURRENT LIABILITIES:

Current liabilities .....	\$.....
Add one-half annual charter hire (if not included above) .....	.....
Less current liabilities for which payment is available from CCF deposits .....	.....
Other adjustments (specify) .....	\$.....

C. WORKING CAPITAL:

Current assets less current liabilities .....	\$.....
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(Signature of Chief Financial Officer or other authorized officer)

PART 287—ESTABLISHMENT OF CONSTRUCTION RESERVE FUNDS

- Sec.
- 287.1 Definitions.
  - 287.2 Scope of section 511 of the Act and the regulations in this part.
  - 287.3 Requirements as to vessel operations.
  - 287.4 Application to establish fund.
  - 287.5 Tentative authorization to establish fund.
  - 287.6 Establishment of fund.
  - 287.7 Circumstances permitting reimbursement from a construction reserve fund.
  - 287.8 Investment of funds in securities.
  - 287.9 Valuation of securities in fund.
  - 287.10 Withdrawals from fund.
  - 287.11 Time deposits.
  - 287.12 Election as to nonrecognition of gain.
  - 287.13 Deposit of proceeds of sales or indemnities.
  - 287.14 Deposit of earnings and receipts.
  - 287.15 Time for making deposits.
  - 287.16 Tax liability as to earnings deposited.
  - 287.17 Basis of new vessel.
  - 287.18 Allocation of gain for tax purposes.
  - 287.19 Requirements as to new vessels.
  - 287.20 Obligation of deposits.
  - 287.21 Period for construction of certain vessels.
  - 287.22 Time extensions for expenditure or obligation.
  - 287.23 Noncompliance with requirements.
  - 287.24 Extent of tax liability.
  - 287.25 Assessment and collection of deficiencies.
  - 287.26 Reports by taxpayers.
  - 287.27 Controlled corporation.
  - 287.28 Administrative jurisdiction.

AUTHORITY: Secs. 204, 511, 49 Stat. 1987, as amended, 54 Stat. 1106, as amended; 46 U.S.C. 1114, 1161.