

be conclusive for the purposes of determining the timeliness of any requests for review made under the provisions of this part.

### **PART 276—CONSTRUCTION-DIFFERENTIAL SUBSIDY REPAYMENT**

Sec.

276.1 Partial repayment—incidental domestic trading.

276.2 Reporting requirement—partial repayment.

AUTHORITY: 46 App. U.S.C. 1114(b), 1117, 1156, and 1204; 49 CFR 1.66.

#### **§ 276.1 Partial repayment—incidental domestic trading.**

In every instance where a vessel, with respect to which a construction-differential subsidy has been paid or allowance therefor has been made in calculating the basic charter hire under section 714 of the Merchant Marine Act, 1936, as amended (49 Stat. 1995, 52 Stat. 995; 46 U.S.C. 1151) is operated in other than exclusively foreign trade, the owner or charterer thereof shall pay to the Maritime Administration, not later than March 31 of the calendar year succeeding such operation, the proportion of the difference between the domestic and foreign cost of such vessel that is required to be paid to the Maritime Administration in such act, and particularly sections 506 and 714 thereof.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

[G.O. 50, 7 FR 588, Jan. 29, 1942, as amended at 45 FR 68394, Oct. 15, 1980]

#### **§ 276.2 Reporting requirement—partial repayment.**

Every owner of a vessel for which a construction-differential subsidy has been paid and every charterer of a vessel constructed under the provisions of the Merchant Marine Act, 1936, shall file with the Maritime Administration a General Financial Statement in the form and at the times prescribed by the Maritime Administration but not less frequently than annually; the amount of the payment due the Maritime Administration on account of the operation of such vessel in other than exclusively foreign trade must be shown in Balance Sheet Account No. 430; and

a schedule reflecting the details of the manner in which the amount of such payment was determined must be made a corporate part of the General Financial Statement.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

[G.O. 50, 7 FR 588, Jan. 29, 1942, as amended at 45 FR 68394, Oct. 15, 1980]

### **PART 277—DOMESTIC AND FOREIGN TRADE; INTERPRETATIONS**

#### **§ 277.1 Guam, Midway and Wake.**

Steamship service between ports of the United States mainland and ports in the islands of Guam, Midway and Wake is not “domestic intercoastal or coastwise service” within the meaning of section 805(a) of the Merchant Marine Act, 1936. This interpretation is limited to Guam, Midway and Wake and does not signify that a similar interpretation is or would be applicable to Hawaii, Puerto Rico or Alaska.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interprets or applies sec. 805, 49 Stat. 2012, as amended; 46 U.S.C. 1223)

[G.O. 73, 15 FR 9065, Dec. 19, 1950]

### **PART 280—LIMITATIONS ON THE AWARD AND PAYMENT OF OPERATING-DIFFERENTIAL SUBSIDY FOR LINER OPERATORS**

Sec.

280.1 Purpose.

280.2 Definitions.

280.3 Standards governing award of an ODS agreement.

280.4 Standards governing payment of ODS.

280.5 Criteria for determining whether or not civilian preference cargo is carried at a premium rate.

280.6 Calendar year accounting.

280.7 Reporting and recordkeeping requirements.

280.8 Certain ODS agreement provisions not affected.

280.9 Special rules for last year of ODS agreement.

280.10 Waiver.

280.11 Example of calculation and sample report.

AUTHORITY: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114) 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. 1036), Department of

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Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973).

SOURCE: 42 FR 61460, Dec. 5, 1977, unless otherwise noted.

### § 280.1 Purpose.

The purpose of this part is to prescribe regulations governing the award of operating-differential subsidy agreements and payment of operating-differential subsidy to liner operators under Title VI of the Merchant Marine Act, 1936, as amended, as interpreted by the Maritime Subsidy Board in Docket No. S-244.

### § 280.2 Definitions.

For purposes of this part only:

(a) *Commercial cargo* means cargo other than military cargo and civilian preference cargo.

(b) *Military cargo* means that cargo required to be carried on a U.S.-flag vessel by 10 U.S.C. 2631.

(c) *Civilian preference cargo* means any cargo other than military cargo required by law to be carried on a U.S.-flag vessel, including, but not limited to, cargo required to be carried on a U.S.-flag vessel by 15 U.S.C. 616a and 46 U.S.C. 1241(b).

(d) *Conference-rated civilian preference cargo* means any civilian preference cargo moving at rates set by an international rate conference.

(e) *International rate conference* means any formal organization of competing carriers established for the purpose of setting shipping rates.

(f) *Open-rated civilian preference cargo* means any civilian preference cargo moving at a rate other than a set rate established by an international rate conference.

(g) *Open-rated civilian preference cargo carried at the world rate* means any open-rated civilian preference cargo that is considered pursuant to § 280.5 not to be carried at a premium rate.

(h) *Competitive cargo* means commercial cargo, conference-rated civilian preference cargo, and open-rated civilian preference cargo carried at the world rate.

(i) *Secretary* means the Secretary of the Maritime Administration, Department of Transportation.

(j) *Region Director* means the Region Director of the Maritime Administra-

tion within whose region the principal office of the operator is located.

(k) *Operator* means any individual, partnership, corporation or association that contracts with the United States Government under Title VI of the Act to receive ODS.

(l) *Board* means the Maritime Subsidy Board of the Maritime Administration, Department of Transportation.

(m) *Act* means the Merchant Marine Act, 1936, as amended.

(n) *Operating-differential subsidy (ODS)* means, except as the operator and the United States Government shall agree upon a lesser amount, the excess of the cost of subsidizable items of expense incurred in the operation under United States registry of a vessel over the estimated fair and reasonable cost of the same items of expense (excluding any increase in the cost of such items necessitated by features incorporated for national defense), if such vessel were operated under the registry of a foreign country whose vessels are substantial competitors of the vessel.

(o) *Gross freight revenue* means total gross receipts earned from the carriage of cargo (other than mail) in the U.S. foreign commerce.

(p) *Miscellaneous gross revenue* means total gross receipts earned in the U.S. foreign commerce from the carriage of passengers and mail plus miscellaneous voyage revenues.

(q) *Inbound gross freight revenue* means gross freight revenue earned from the carriage of cargo in foreign commerce inbound to the United States.

(r) *Outbound gross freight revenue* means gross freight revenue earned from the carriage of cargo in foreign commerce outbound from the United States.

(s) *Wayport gross freight revenue* means gross freight revenue earned from the carriage of cargo between foreign ports.

(t) *Total gross revenue* means the sum of inbound gross freight revenue, outbound gross freight revenue, wayport gross freight revenue and miscellaneous gross revenue.

(u) *Service* means any essential service in the foreign commerce of the United States under section 211(a) of

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the Act for which an ODS agreement has been entered into by the operator and the United States.

(v) *ODS payable on the inbound leg of a service* means the inbound gross freight revenue of the service divided by the total gross revenue of the service times the ODS payable for the service.

(w) *ODS payable on the outbound leg of a service* means the outbound gross freight revenue of the service divided by the total gross revenue of the service times the ODS payable for the service.

(x) *U.S. foreign commerce* means the commerce or trade between the United States, its territories or possessions, or the District of Columbia and a foreign country.

**§ 280.3 Standards governing award of an ODS agreement.**

No ODS agreement, including any amendments thereto concerning additional services or revised service area, shall be made under Title VI of the Act, unless the applicant establishes in its application to the satisfaction of the Board, that the vessel operations proposed to be subsidized will be conducted in a manner which will not preclude the applicant from earning at least 50 percent of its inbound gross freight revenue and at least 50 percent of its outbound gross freight revenue for each service covered by the application from the carriage of competitive cargo.

**§ 280.4 Standards governing payment of ODS.**

(a) *Full payment.* Except to the extent otherwise provided in § 280.8, ODS shall be paid in full to the operator for vessel operations on the inbound and outbound legs of each service if, during the calendar year, at least 50 percent of the inbound and 50 percent of the outbound gross freight revenues earned on voyages terminated during the calendar year, for each service, are earned from the carriage of competitive cargo.

(b) *Reduction in payment*—(1) *Inbound leg of service.* The amount of ODS payable for the inbound leg of a service for the calendar year shall be reduced as provided in paragraph (b)(3) of this section if, during the calendar year, less

than 50 percent of the inbound gross freight revenue earned in such service, on voyages terminated during the calendar year, is earned from the carriage of competitive cargo.

(2) *Outbound leg of service.* The amount of ODS payable for the outbound leg of a service for the calendar year shall be reduced as provided in paragraph (b)(3) of this section if, during the calendar year, less than 50 percent of the outbound gross freight revenue earned in such service, on voyages terminated during the calendar year, is earned from the carriage of competitive cargo.

(3) *ODS reduction formula.* The reduction in ODS payable required by paragraphs (b) (1) and (2) of this section for any calendar year shall be made by reducing the amount payable on one or more ODS vouchers for the subsequent calendar year by a cumulative amount equal to an amount determined in accordance with the following table:

Percent of inbound or outbound gross freight revenue from carriage of competitive cargo	ODS reduction <sup>1</sup>
40 to 49.9 .....	20
30 to 39.9 .....	40
20 to 29.9 .....	60
10 to 19.9 .....	80
0 to 9.9 .....	100

<sup>1</sup>Expressed in percent of total ODS payable for cargo carriage on the inbound or outbound leg of the service.

(4) *Last calendar year exception.* The provisions of this paragraph do not apply to the last calendar year of an ODS agreement except to the extent that any reduction in ODS payable required by this section for the calendar year immediately preceding the last calendar year is to be made, pursuant to paragraph (b)(3) of this section, on ODS vouchers submitted in the last calendar year.

**§ 280.5 Criteria for determining whether or not civilian preference cargo is carried at a premium rate.**

Civilian preference cargo shall be considered to be carried at a premium rate unless carried:

(a) At the tariff commodity rate published in a conference tariff or at the stated minimum level or floor rate for an open-rated commodity published in a conference tariff, *Provided*, That the international rate conference issuing such tariff commodity rate, stated

minimum level, or floor rate has at least one foreign-flag carrier as a voting member, or

(b) At a rate or tariff agreement rate, or at the stated minimum level or floor rate for an open-rated commodity, established by a rate making group other than an international rate conference, *Provided*, That such rate making group has at least one foreign-flag carrier as a voting member, or

(c) At a rate approximately the same as or less, or at a rate that the subsidized operator by use of indices or other mechanism can demonstrate is reasonably equated to or less, than a rate quoted or actually charged by a foreign-flag carrier for the same commodity with the same or a competitive origin and destination and within a reasonably similar time period. This paragraph is applicable to, but is not limited to, rates:

(1) Established by a conference or other rate making group that has only U.S. flag carriers as voting members;

(2) Quoted by an individual member of an international rate conference or other rate making group with permits an individual member to negotiate or otherwise establish its own rate; or

(3) Quoted by a carrier and not published in any conference tariff.

#### § 280.6 Calendar year accounting.

Except as provided in § 280.9 (relating to the final year of an ODS agreement), the calculations required under this part for years after 1973 shall be on the basis of voyages terminated during the calendar year. Calculations for the calendar year 1973 shall be made on the basis of voyages commenced and terminated in 1973.

#### § 280.7 Reporting and recordkeeping requirements.

(a) *Reporting requirement.* Except as provided in § 280.9 of this part (relating to the final year of an ODS agreement), each operator shall submit to the Secretary (two copies) and to the Region Director (one copy), by March 31 of the succeeding year, a report for each calendar year setting forth for each service; the total gross revenue, the miscellaneous gross revenue, the inbound and outbound gross freight revenues, the wayport gross freight revenue, and

the outbound and inbound gross freight revenues earned from the carriage of military cargo and from the carriage of civilian preference cargo carried at premium rates as determined pursuant to § 280.5. See § 280.10(b) for the form of the report required to be submitted by this paragraph.

(b) *Recordkeeping requirement.* In support of each report submitted pursuant to this section or § 280.9, each operator shall:

(1) Maintain and make available for audit upon request, records for each service, outbound and inbound, which show for each item of civilian preference cargo carried during the calendar year, the name of the commodity carried according to the tariff description, the rate at which it was carried, the world rate for the commodity for the same or a competitive origin and destination and within a reasonably similar time period, and whether or not the item was considered to have been carried at a premium rate, or

(2) Establish upon request to the satisfaction of the Region Director, by demonstration of its accounting system or by other reasonable means, that the report filed under paragraph (a) of this section is substantially correct.

(c) *Certification of report.* Each report submitted pursuant to this section or § 280.9 must be accompanied by a certification by a responsible official of the operator in the following form:

I hereby certify to the best of my knowledge and belief that this report is complete and accurate and conforms to the requirements of 46 CFR part 280.

(d) *Requirements for requesting confidentiality.* (1) Except as otherwise provided in this paragraph, the information contained in any report submitted pursuant to this section or § 280.9 is not entitled to be considered confidential for purposes of the Freedom of Information Act (5 U.S.C. 552).

(2) If an operator desires confidential treatment of any information contained in such a submitted report, the operator is required to file concurrently with each such report a written request for a determination of confidentiality.

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(3) The operator shall include in any confidentiality request filed under this paragraph:

(i) A precise, item-by-item specification of the information in the report that the operator asserts is within one of the exemptions from disclosure in 5 U.S.C. 552(b);

(ii) A statement as to whether each identified item is treated as confidential by the operator and the steps taken by the operator to ensure that confidentiality; and

(iii) An explanation of how release of each identified item would cause substantial competitive injury to the operator, and the exact nature of that injury.

(4) An operator's general, unexplained assertions of exemption under section 552(b) are insufficient and the item or items concerned will not be considered for confidential treatment.

(e) *Determination.* (1) If it is determined that an exemption is applicable to an item or items of information which have been properly specified and supported in a confidentiality request under paragraph (d) of this section, the operator will be so notified in writing.

(2) If it is determined that no exemption is applicable to or that none will be asserted for an item of information included in a confidentiality request, the operator will be given a written statement of and reasons for that determination.

### § 280.8 Certain ODS agreement provisions not affected.

The provisions of this part are not intended to supersede contractual or other requirements dealing with sailings, and the carriage of full loads of military or bulk cargoes.

### § 280.9 Special rules for last year of ODS agreement.

(a) *Reduction in payment of ODS.* ODS payable during the last year of any ODS agreement shall be reduced, as provided in paragraph (b) of this section, if on a cumulative basis for each quarter of the calendar year:

(1) Less than 50 percent of the inbound gross freight revenue earned on the inbound leg of a service, or

(2) Less than 50 percent of the outbound gross freight revenue earned on

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the outbound leg of a service, is earned from the carriage of competitive cargo. Any reduction required by this paragraph is in addition to any reduction in ODS payable for the preceding calendar year as required by paragraph (b) (3) of § 280.4.

(b) *Amount and method of required reduction—*(1) *Quarterly voucher.* As required by paragraph (a) of this section, the amount payable on the ODS voucher for the last month of any quarter of the last calendar year is to be reduced by an amount determined by applying the table in paragraph (b)(3) of § 280.4 to the cumulative ODS payable.

(2) *Insufficient ODS payable—*(i) *Vouchers for subsequent months.* If the total amount of reduction required to be made pursuant to (b)(3) of § 280.4 or paragraph (b)(1) of this section or both, is greater than the amount of ODS payable on the ODS vouchers for the last month of the 1st, 2nd, or 3rd quarter of the last calendar year, the operator shall carry an amount equal to this excess forward to one or more of the months subsequent to such quarter of the last calendar year as a reduction in the ODS payable on the ODS voucher for any such subsequent months.

(ii) *Voucher in the final quarter.* If the amount of reduction required by paragraph (b)(1) of this section is greater than the amount of ODS payable on the ODS voucher for the last month of the final quarter of the last calendar year, the Maritime Administrator may apply an amount equal to this excess as a reduction of any outstanding ODS payable to the operator for the last calendar year or any preceding years.

(c) *Reporting requirements.* During the last year of the ODS agreement, the operator shall submit a report to the Secretary (two copies) and to the Region Director (one copy) for each quarter of the calendar year, providing for each such quarter on a cumulative basis for the calendar year, the information required by paragraph (a) of § 280.7. The reports required by this paragraph shall be submitted concurrently with the operator's vouchers for the 3rd, 6th, 9th and 12th months of the calendar year. Each report submitted pursuant to this paragraph is also subject to the other applicable requirements of § 280.7.

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(d) *Cumulative quarterly accounting.* The calculations required under this section shall be made on the basis of the cumulative voyages terminated from the beginning of the calendar year through the reported quarterly period.

(e) *Special procedures.* Whenever the Maritime Administrator, Department of Transportation determines that the provisions of this section may fail at any time to protect the interests of the Maritime Administration, the Maritime Administrator may take any measures necessary to ensure against an overpayment of ODS or to ensure the prompt repayment of any such overpayment.

**§ 280.10 Waiver.**

The Board has the power to waive the requirements of any provision of this part for a specific period of time under special circumstances and for good cause shown.

**§ 280.11 Example of calculation and sample report.**

(a) *Example of calculation.* The provisions of this part may be illustrated by the following example:

Company A operates several vessels engaged in carrying cargo, passengers and mail from the west coast of the United States outbound to foreign ports in the Far East, cargo between the foreign ports in the Far East, and cargo from foreign ports in the Far East inbound to the west coast of the United States. Company A's operation on this service is subsidized under an ODS agreement made in accordance with § 280.3. Total annual subsidy payable for Company A's service is \$1 million. In 1976 Company A's total gross revenue was \$10 million, computed as follows:

Outbound gross freight revenue .....	\$4,000,000
Inbound gross freight revenue .....	4,000,000
Wayport gross freight revenue .....	1,000,000
Miscellaneous gross revenue .....	1,000,000
<b>Total gross revenue .....</b>	<b>10,000,000</b>

Of the \$4 million outbound gross freight revenue \$1,600,000, or 40 percent, was earned from carriage of competitive cargo. Of the \$4 million inbound gross freight revenue \$1,200,000, or 30 percent, was earned from carriage of competitive cargo. Accordingly, total ODS payable to Company A for voyages terminated during the calendar year 1976 is reduced by \$240,000, from \$1 million to \$760,000, as follows:

OUTBOUND LEG OF SERVICE	
ODS payable .....	\$400,000
(Outbound freight revenue, \$4 million, divided by total gross revenue, \$10 million, times total ODS payable for service, \$1 million.)	
Percent reduction of ODS payable .....	20%
(40% carriage of competitive cargo requires 20% reduction in ODS payable.)	
Amount of reduction in ODS payable .....	\$80,000
(20% of \$400,000.)	
INBOUND LEG OF SERVICE	
ODS payable .....	\$400,000
(Inbound freight revenue, \$4 million, divided by total gross revenue, \$10 million, times total ODS payable for service, \$1 million.)	
Percent reduction of ODS payable .....	40%
(30% carriage of competitive cargo requires 40% reduction in ODS payable.)	
Amount of reduction in ODS payable .....	\$160,000
Total amount of reduction in ODS payable .....	\$240,000
(\$80,000 plus \$160,000.)	
Total ODS payable for service in 1976 (after reduction) .....	\$760,000
(\$1 million minus \$240,000.)	

(b) *Sample report.* Reports providing the information required by §§ 280.7 and 280.9 shall be made in the following form:

MA—819 (COMPANY)  
Report of Revenues Earned for \_\_\_\_\_<sup>1</sup> Pursuant to 46 CFR Part 280  
Form Approval—OMB No. 41.R2954—15

	Trade Route No.		Trade Route No.		Trade Route No.	
	Dollars	Percent	Dollars	Percent	Dollars	Percent
Outbound freight revenue:						
Military and Premium Rated Civilian .....						
Competitive .....						

MA—819 (COMPANY)—Continued  
 Report of Revenues Earned for \_\_\_\_\_<sup>1</sup> Pursuant to 46 CFR Part 280  
 Form Approval—OMB No. 41.R2954—15

	Trade Route No.		Trade Route No.		Trade Route No.	
	Dollars	Percent	Dollars	Percent	Dollars	Percent
Total Outbound Freight Revenue .....		100		100		100
Inbound freight revenue:						
Military and premium rated civilian .....						
Competitive .....						
Total inbound freight revenue .....		100		100		100
Wayport freight revenue .....						
Miscellaneous revenue .....						
Total gross revenue .....						

<sup>1</sup> Enter Calendar Year \_\_\_ or Cumulative Quarterly Period Ending \_\_\_ as applicable for the report being filed.

**PART 281—INFORMATION AND PROCEDURE REQUIRED UNDER LINER OPERATING-DIFFERENTIAL SUBSIDY AGREEMENTS**

- Sec.
- 281.1 Information and procedure required under liner operating-differential subsidy agreements.
- 281.2 Definitions.
- 281.3 Method of commencing and terminating voyages and of determining idle status.
- 281.4 Treatment of subsidy during idle status and off-hire period.
- 281.5 Right of Maritime Administrator to recover subsidy for any period of idleness.
- 281.6 Interpretation.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interpret or apply sec. 606, 49 Stat. 2004, as amended; 46 U.S.C. 1176.

**§ 281.1 Information and procedure required under liner operating-differential subsidy agreements.**

In compliance with the terms of the operating-differential subsidy agreement, the following information shall be submitted to the Maritime Administration by each operator who is a party to any such agreement and operates liner type vessels pursuant to such agreement.

(a) *Sailing schedules, routes, etc.* (1) One copy of a list of sailings is required to be submitted not later than the 5th day of each month, listing each outbound sailing during the preceding

month. Such list shall show for each such sailing: (i) Vessel name; (ii) voyage number; (iii) last continental U.S. port; (iv) sailing date; and (v) the service on which the sailing took place.

(2) A “Final Report” in five copies shall be submitted not later than 15 days after the end of the month in which the voyage is terminated and shall show: (i) The time and ports at which the voyage commenced and terminated; (ii) the arrival and sailing dates of the vessel at and from each United States and foreign port, including ports of call for bunkering and/or mail only; (iii) explanation of any delay in excess of 2 days at a United States or foreign port; (iv) appropriate notation of official authorization for any deviations from the service described in the applicable contract.

(3) The procedures outlined in paragraphs (a) (1) and (2) of this section shall be effective on the first of the month following publication in the FEDERAL REGISTER.

(4) The sailing schedules and lists of sailings specified in this paragraph shall be sent to the Division of Trade Studies, Office of Subsidy Administration, Maritime Administration, Washington, DC 20590.

(b) *Condition of vessels, inspection and repairs.* (1) In order that the Maritime Administration may have an opportunity to participate in the inspection of the vessels, the operator is required to give at least twenty-four hours’ notice to the Maritime Administration as