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(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 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 secton 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.

(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
Total gross revenue	10,000,000

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 _____ [1] 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	.....	.....	.....	.....	.....	.....
Total Outbound Freight Revenue	.....	100	.....	100	.....	100