

**§ 280.3**

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 per-

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cent 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.

(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