

(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

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(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 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.

(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