

Pine Dam and Reservoir, a Water and Power Resources Service project in Placer County, California.

**EFFECTIVE DATE:** June 3, 1980.

**FOR FURTHER INFORMATION CONTACT:** Marie M. Getsman, California State Office, 916-484-4431.

By virtue of the authority vested in the Secretary of the Interior pursuant to Section 204 of the Act of October 21, 1976, 90 Stat. 2751 (43 U.S.C. 1714), it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands which are under the jurisdiction of the Secretary of Agriculture, are hereby withdrawn from location and entry under the mining laws, (30 U.S.C. Ch. 2), and reserved for the Sugar Pine Dam and Reservoir project.

#### Tahoe National Forest

*Sugar Pine Reservoir; Mount Diablo Meridian*

T. 15 N., R. 10 E.,

Sec. 13, NE $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , and S $\frac{1}{2}$ SE $\frac{1}{4}$ ;

Sec. 24, S $\frac{1}{2}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ .

T. 15 N., R. 11 E.,

Sec. 18, lots 3 and 4, E $\frac{1}{2}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , and E $\frac{1}{2}$ SW $\frac{1}{4}$ ;

Sec. 19, lots 1, 2, 5, 6, 7, and 8 (Iowa Hill 1, 2, 3, and 4), E $\frac{1}{2}$ , and E $\frac{1}{2}$ NW $\frac{1}{4}$ .

The area described aggregates 1,515.77 acres in Placer County, California.

2. Of the lands listed in paragraph 1, the following were reconveyed to the United States on February 27, 1932, with all minerals reserved to the Grantor for a 50-year period, at which time all minerals will vest in the United States.

T. 15 N., R. 11 E., M.D.M.,

Sec. 19, lots 1, 2, 5, 6, 7, and 8, E $\frac{1}{2}$ , and E $\frac{1}{2}$ NW $\frac{1}{4}$ .

Therefore, on February 27, 1982, subject to valid existing rights, the aforesaid mineral estate is withdrawn from location and entry under the mining laws, (30 U.S.C. Ch. 2).

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of national forest lands under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

4. This withdrawal shall remain in effect for a period of 100 years from the date of this order.

Inquiries concerning the land should be addressed to the Bureau of Land Management, U.S. Department of the Interior, Room E-2841 Federal Office

Building, 2800 Cottage Way, Sacramento, California 95825.

**Guy R. Martin,**

*Assistant Secretary of the Interior.*

May 27, 1980.

[FR Doc. 80-16738 Filed 5-2-80; 8:45 am]

**BILLING CODE 4310-84-M**

### 43 CFR Public Land Order 5727

[N-054565, N-6453]

#### Nevada; Withdrawal and Reservation of Lands: Extending the Eastern Boundary of the Toiyabe National Forest

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order adds 1,133 acres of public domain land and approximately 10,977 acres of patented land to the Toiyabe National Forest and deletes 87 acres of patented land.

**EFFECTIVE DATE:** June 3, 1980.

**FOR FURTHER INFORMATION CONTACT:** Vienna Wolder, Nevada State Office, 702-784-5703.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751, 43 U.S.C. 1714), it is ordered as follows:

1. Subject to valid existing rights, the following described land is subject to all laws and regulations of the Toiyabe National Forest. The land is segregated from all forms of appropriation under the public laws excluding the mining and mineral leasing laws:

#### Mount Diablo Meridian

T. 12 N., R. 19 E.,

Sec. 4, W $\frac{1}{2}$  of lots 1 and 2 of NE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 22, NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$  (fractional);

Sec. 23, SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;

Sec. 26, lot 5.

T. 13 N., R. 19 E.,

Sec. 4, lots 1 and 2 of NE $\frac{1}{4}$ , SE $\frac{1}{4}$ ;

Sec. 9, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 15, SW $\frac{1}{4}$ ;

Sec. 16, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ ;

Sec. 21, E $\frac{1}{2}$ E $\frac{1}{2}$ ;

Sec. 22, NW $\frac{1}{4}$ ;

Sec. 28, E $\frac{1}{2}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ ;

Sec. 33, N $\frac{1}{2}$ , SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ .

T. 14 N., R. 19 E.,

Sec. 3, all;

Sec. 4, lots 1 and 2 of NE $\frac{1}{4}$ , lots 1 and 2 of NW $\frac{1}{4}$ , SE $\frac{1}{4}$ ;

Sec. 9, E $\frac{1}{2}$ ;

Sec. 10, N $\frac{1}{2}$ ;

Sec. 16, W $\frac{1}{2}$ E $\frac{1}{2}$ .

T. 15 N., R. 19 E.,

Sec. 2, lot 1 of NW $\frac{1}{4}$ , E $\frac{1}{2}$  of lot 2 of NW $\frac{1}{4}$ , SW $\frac{1}{4}$ ;

Secs. 3, 4, 8, 9, those portions lying south and east of the hydrographic divide

between Washoe Lake and Carson River being the old Washoe County line;

Sec. 10, all;

Sec. 11, W $\frac{1}{2}$ ;

Sec. 14, W $\frac{1}{2}$ , exclusive of patented M.S. 38;

Sec. 15, exclusive of patented M.S. 38;

Sec. 16, all;

Sec. 17, NE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ , that portion lying southeast of the hydrographic divide between Washoe Lake and Carson River being the old Washoe County line, NE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ ;

Sec. 20, SW $\frac{1}{4}$ ;

Sec. 21, S $\frac{1}{2}$ SW $\frac{1}{4}$ ;

Sec. 22, NE $\frac{1}{4}$ , S $\frac{1}{2}$ ;

Sec. 23, W $\frac{1}{2}$ ;

Sec. 27, all;

Sec. 28, SE $\frac{1}{4}$ ;

Sec. 29, NE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ ;

Sec. 33, NE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 34, N $\frac{1}{2}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ .

T. 16 N., R. 19 E.,

Sec. 34, SE $\frac{1}{4}$ , that portion lying south and east of the hydrographic divide between Washoe Lake and Carson River being the old Washoe County line;

Sec. 35, SE $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ , that part south of the hydrographic divide between Washoe Lake and Carson River being the old Washoe County line.

The areas described aggregate approximately 12,110 acres of public and patented lands in Ormsby and Douglas Counties. Of these lands, the following are public lands:

#### Mount Diablo Meridian

T. 12 N., R. 19 E.,

Sec. 23, SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;

Sec. 26, lot 5.

T. 13 N., R. 19 E.,

Sec. 15, SW $\frac{1}{4}$ ;

Sec. 21, NE $\frac{1}{4}$ NE $\frac{1}{4}$ ;

Sec. 22, NW $\frac{1}{4}$ .

T. 15 N., R. 19 E.,

Sec. 10, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ ;

Sec. 11, NW $\frac{1}{4}$ NW $\frac{1}{4}$ ;

Sec. 14, W $\frac{1}{2}$ NW $\frac{1}{4}$ , exclusive of patented M.S. 38, SW $\frac{1}{4}$ ;

Sec. 15, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , exclusive of patented M.S. 38, W $\frac{1}{2}$ NE $\frac{1}{4}$ ;

Sec. 27, W $\frac{1}{2}$ NE $\frac{1}{4}$ .

T. 16 N., R. 19 E.,

Sec. 35, N $\frac{1}{2}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ , that part south of the hydrographic divide between Washoe Lake and Carson River being the old Washoe County line.

The areas described aggregate approximately 1,133 acres.

The following described patented land will be excluded from the Toiyabe National Forest and the boundary of said forest will be adjusted accordingly:

#### Mount Diablo Meridian

T. 12 N., R. 19 E.,

Sec. 9, E $\frac{1}{2}$ NE $\frac{1}{4}$ .

T. 16 N., R. 19 E.,

Sec. 35, N $\frac{1}{2}$ SE $\frac{1}{4}$ , that part lying north of hydrographic divide between Washoe Lake and Carson River being the old Washoe County line.



The areas described aggregate 87 acres in Douglas and Ormsby Counties.

Guy R. Martin,

*Assistant Secretary of the Interior.*

May 27, 1980.

[FR Doc. 80-16737 Filed 6-2-80; 8:45 am]

BILLING CODE 4310-84-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 205

[Docket No. FEMA-DR-205K]

#### Disaster Assistance: Flood Insurance Requirements

**AGENCY:** Federal Emergency Management Agency, Disaster Response and Recovery.

**ACTION:** Final rule.

**SUMMARY:** This rule redesignates the existing Subpart E of 44 CFR Part 205 as a new Subpart K, amends certain sections, and clarifies and updates FEMA policies concerning flood insurance requirements under Pub. L. 93-234 for disaster assistance under the Disaster Relief Act of 1974, Pub. L. 93-288. It describes requirements to obtain flood insurance placed on recipients from FEMA of financial assistance for acquisition or construction under that Act.

**EFFECTIVE DATE:** July 3, 1980.

**FOR FURTHER INFORMATION CONTACT:** Gene Morath, Office of Public Assistance, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472; Telephone: (202) 634-7835.

**SUPPLEMENTARY INFORMATION:** A notice issued in the Federal Register on May 2, 1979, establishing CFR Title and Chapter for FEMA regulations (Title 44, Chapter I, Federal Emergency Management Agency, with Subchapters A-E) indicated that Disaster Assistance would be Subchapter D, Parts 200-299. On September 28, 1979, FEMA published a Notice of Transfer and Redesignation that transferred the Federal Disaster Assistance Regulations from 24 CFR Parts 2200-2205 to 44 CFR Part 200 *et seq.* The regulations implementing the Disaster Relief Act of 1974, Pub. L. 93-288 (44 CFR Part 205), are in the process of reorganization and revision.

On November 1, 1979, the Associate Director for Disaster Response and Recovery Published in the Federal Register (44 FR 63070) a proposed rule to revise and recodify the material in the existing 44 CFR 205 Subpart E as a new Subpart K. The proposed rule incorporated material previously

published in the FEMA Insurance Handbook for Public Assistance, 3300.13 and portions of the material have been revised to clarify existing policy and procedures. Comments were invited to December 31, 1979. In addition, copies were sent to each State official responsible for disaster operations.

Eight comments were received, including submissions from Minnesota, New York, and Pennsylvania. One State cited its experience with flooding disasters, pointing out that basing the flood insurance requirement for public assistance on the full insurable value of the property was unreasonable and counter production to its hazard mitigation efforts. It also questioned the excessive amount of contents coverage required as a condition for receiving Federal disaster assistance for publicly-owned buildings. Another State questioned why emergency work was not excluded, and also questioned the flood insurance requirement for structures located outside of the base floodplain (flood hazard area). The other State requested clarification as to what types of emergency work are subject to the flood insurance requirement. The remaining comments urged that the flood insurance requirement be based on the Federally funded project cost, and one suggested that flood insurance be required for damage restoration work in non-flooding disasters.

All of the above comments were considered carefully in developing the final rule. The October 12, 1977, amendment (Pub. L. 95-128) to the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) eliminated the original exemption for emergency work, and also eliminated the previous requirement for flood insurance for Federal financial assistance in non-flooding disasters. Section 314, Pub. L. 93-288, requires such hazard insurance as may be reasonably available, adequate, and necessary for assistance under Sections 402 and 419 of Pub. L. 93-288. As was indicated in the proposed rule, § 205.253(a)(4), in such cases flood insurance may be required under Pub. L. 93-288 for buildings located outside of the base floodplain under Subpart J of the regulations, (Subpart J—General Insurance Requirements—was published as a final rule on December 11, 1979, in 44 FR 71794). Regarding the amount of flood insurance coverage on buildings and contents, the guidelines published by the Federal Insurance Administration on February 17, 1978, (43 FR 7146) base the mandatory insurance requirement on the "project cost" as the administering Federal agency involved normally would construe it. In administering the

Federal disaster public assistance program a "project" is synonymous with the Federal financial assistance for the cost of repairing or restoring a particular damaged public facility. Based on the comments received we have modified the regulation to base the requirement for mandatory flood insurance on the amount of the applicable Federal grant (project cost) for the structure. This will place the flood insurance requirement on the same basis as the hazard insurance required under Section 314, Pub. L. 93-288, as provided in Subpart J of these regulations. Emergency work is covered in Subpart E (Public Assistance) which was published as a proposed rule on November 1, 1979, (44 FR 63061). Consequently, it is not deemed necessary to provide further discussion in this subpart, except to point out that "emergency work" as used herein refers to any Federal financial assistance for acquisition or construction purposes.

A Finding of Inapplicability of section 102(2)(c) of the National Environmental Policy Act of 1969 has been made in accordance with "Procedures for Protection and Enhancement of Environmental Quality." Interested parties may obtain and inspect copies of this Finding of Inapplicability at the Office of the Rules Docket Clerk of the Federal Emergency Management Agency in Washington, D.C. 20472.

The regulation is in consonance with the provision of the Executive Order dated November 16, 1979, and does not impose an unnecessary burden on the small business sector of the economy.

#### §§ 205.61—205.64 (Subpart E) [Deleted]

Accordingly, 44 CFR Part 205 of the Federal Disaster Assistance Regulations is revised by deleting Subpart E (§§ 205.61—205.64) and adding a new Subpart K (§§ 205.250—205.253) as follows:

#### Subpart K—Flood Insurance Requirements

Sec.	
205.250	General.
205.251	Definitions.
205.252	Exclusions.
205.253	Applicability.

**Authority:** Sec. 601, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, 88 Stat. 163 (42 U.S.C. 5201); Executive Order 12148 (44 FR 43239); and Delegation of Authority (44 FR 44792).

#### § 205.250 General.

(a) The Flood Disaster Protection Act of 1973, Pub. L. 93-234, as amended, imposes certain restrictions on approval of Federal financial assistance for acquisition or construction purposes for use in any area defined by the Director, FEMA, as an area having special flood hazards. This subpart implements Pub.



L. 93-234 as amended, except as specified in paragraph (b) of this section.

(b) Specific flood insurance requirements pertaining to Temporary Housing Assistance and Individual and Family Grants are contained in new Subpart D, §§ 205.52 and 205.54, respectively. To the extent this subpart is inconsistent with those sections, the more specific regulations in those sections apply.

#### § 205.251 Definitions.

As used in this Subpart:

(a) "Building" means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a mobile home on a foundation.

(b) "Community" means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native Village or organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

(c) "Federal financial assistance" means any loan or grant or other form of direct or indirect Federal financial assistance under the Act and these regulations which is not excluded under § 205.252.

(d) "Financial assistance for acquisition or construction purposes" means any form of Federal financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machines, equipment, fixtures, and furnishings contained or to be contained in them but shall exclude assistance pursuant to the Disaster Relief Act of 1974 (other than assistance under such Act in connection with a flood).

(e) "National Flood Insurance Program" (NFIP) means the program authorized by 42 U.S.C. 4001-4128.

#### § 205.252 Exclusions.

(a) The following categories of Federal disaster assistance are excluded from the provisions of the Flood Disaster Protection Act of 1973:

(1) Federal financial assistance on any State-owned property that is already covered by an adequate State policy or self-insurance approved by the Director, Federal Emergency Management Agency.

(2) Federal financial assistance under Title II of the Act.

#### § 205.253 Applicability.

(a) Federal financial assistance for acquisition or construction purposes.

(1) FEMA shall not approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director, FEMA, as an area having special flood hazards unless the community in which such area is situated is participating in the National Flood Insurance Program at the time of the approval. This prohibition applies only to communities which have been formally identified for at least one year as communities containing one or more areas having special flood hazards. The "time of approval" of financial assistance is the date on which the authorized FEMA official obligates Federal grant or loan funds. This subsection does not mandate a requirement for community participation in connection with damage resulting from a hazard other than flooding.

(2) FEMA shall not approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director, FEMA, as an area having special flood hazards and in which the sale of flood insurance is available under the National Flood Insurance Program unless the building or mobile home and their contents to which the financial assistance relates are or will be covered by an adequate policy of insurance. As in § 205.253(a)(1) above, this subsection does not mandate a requirement for an insurance purchase in connection with damage resulting from a hazard other than flooding.

(i) As a condition for receiving a grant under the Act, an adequate flood insurance policy for a project involving emergency or permanent work shall be:

(A) The Standard Flood Insurance Policy (44 CFR Part 61, Appendix A) or one which complies with the criteria for the "Acceptance of Private Flood Insurance To Meet Statutory Requirement (43 FR 7147, at "D"); and

(B) Purchased and maintained to cover the insurable building and any contents to which the grant relates during the anticipated useful life of the project, as determined by the Regional Director, in an amount equal to the lesser of the project cost (less estimated land cost, if any) or the maximum available limits of flood insurance coverage under the National Flood Insurance Act of 1968.

(ii) For purposes of this paragraph (a)(2), the term "project" shall mean the construction, acquisition, restoration or repair of a building or a part thereof together with the repair, restoration or

replacement of any personal property to which the financial assistance relates.

(3) In the case of subparagraph (1) or (2) of this paragraph, any building may become eligible for Federal financial assistance if the community concerned:

(i) Qualifies for and enters the NFIP within six months after the date of the Presidential declaration.

(ii) Obtains and maintains the necessary flood insurance, and

(iii) Provides FEMA with written evidence of that insurance.

(4) If the applicant replaces a building outside of the base floodplain, Federal financial assistance will not be denied for failure of the community to participate in the NFIP or to obtain/maintain flood insurance, unless required under Subpart J of these regulations by the Regional Director as a condition for disaster assistance under the Act.

(b) The Regional Director shall work closely with the Governor's Authorized Representative, and State and local governments, to ensure that the provisions of this subpart for special flood hazard areas are considered in the processing and approval of project applications. In addition, the Regional Director shall require compliance with the provisions of this subpart in issuing mission assignments for direct Federal assistance under Subpart H of these regulations whenever property subject to the provisions of the Flood Disaster Protection Act of 1973 is involved.

(c) For any State owned building not covered by an approved State policy or self-insurance, the Regional Director shall require proof of adequate flood insurance covering proposed disaster assistance eligible for reimbursement under the Act.

(d) In accordance with § 205.253(a)(1) and (2) above, the applicant shall make a commitment to continue flood insurance for the useful life of the project, as determined by the Regional Director. For those buildings on which the eligible applicant is delinquent on prior flood insurance commitments in previous disasters, the Regional Director shall suspend any future Federal financial assistance for acquisition or construction purposes until such delinquency is eliminated. In such cases, any assistance shall be reduced by the insurance settlement which would have been received had the required insurance coverage been maintained in force.

(e) When a State has been approved by the Director, FEMA, as a self-insurer prior to the declaration of a major disaster or an emergency, the Regional Director shall determine the amount of self-insurance applicable to any building



damaged by a major disaster and shall deduct such self-insurance coverage from the Federal grant for disaster assistance work.

(f) In administering this section, the Regional Director shall utilize current information from the Federal Insurance Administration to identify States having a satisfactory program of self-insurance, the communities eligible for flood insurance under the regular or emergency programs, flood hazard boundary maps, and flood insurance rate maps.

(Sec. 601, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, 88 Stat. 163 (42 U.S.C. 5201); Executive Order 12148 (44 FR 43239); and Delegation of Authority (44 FR 44792))

Issued at Washington, D.C., May 27, 1980.

William H. Wilcox,

Associate Director, Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 80-16758 Filed 6-2-80; 8:45 am]

BILLING CODE 6718-01-M

#### 44 CFR Part 65

[Docket No. FEMA-5831]

#### Notice of Communities With Minimal Flood Hazard Areas for the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

**SUMMARY:** The Federal Insurance Administrator, after consultation with local officials of the communities listed below, has determined based upon analysis of existing conditions in the communities, that these communities' Special Flood Hazard Areas are small in size, with minimal flooding problems. Because existing conditions indicate that the area is unlikely to be developed in the foreseeable future, there is no immediate need to use the existing detailed study methodology to determine the base flood elevations for the Special Flood Hazard Areas. Therefore, the Administrator is converting the communities listed below to the Regular Program of the National Flood Insurance Program (NFIP) without determining base flood elevations.

**EFFECTIVE DATE:** Date listed in fourth column of List of Communities with Minimal Flood Hazard Areas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line 800-424-8872, Federal Emergency Management Agency, Washington, D.C. 20472.

**SUPPLEMENTARY INFORMATION:** In these communities, the full limits of flood insurance coverage are available at actuarial, non-subsidized rates. The rates will vary according to the zone designation of the particular area of the community.

Flood Insurance for contents, as well as structures, is available. The maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program.

Flood insurance coverage for property located in the communities listed can be purchased from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program. The effective date of conversion to the Regular Program will not appear in the Code of Federal Regulations except for the page number of this entry in the Federal Register.

The entry reads as follows:

#### § 65.7 List of communities with minimal flood hazard areas.

State, County, Community Name, and Date of Conversion to Regular Program.

State	County	Community name	Date of conversion to regular program
Colorado .....	Otero .....	City of Rocky Ford.	June 3, 1980.
Nebraska.....	Cass.....	Village of Greenwood.	June 3, 1980.
Ohio.....	Ottawa.....	Village of Clay Center.	June 20, 1980.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: May 12, 1980.

Gloria M. Jimenez,  
Federal Insurance Administrator.

[FR Doc. 80-16760 Filed 6-2-80; 8:45 am]

BILLING CODE 6718-03-M

#### DEPARTMENT OF EDUCATION

##### 45 CFR Part 100c

#### Education Division General Administrative Regulations (EDGAR) Amendments

AGENCY: Department of Education.

ACTION: Final Amendments.

**SUMMARY:** This document makes

technical amendments to the Education Division General Administrative Regulations (EDGAR) to revise the definitions of "Department" and "Secretary" to bring them up to date with the creation of the Department of Education on May 4, 1980.

**EFFECTIVE DATE:** June 3, 1980.

**FOR FURTHER INFORMATION CONTACT:**

A. Neal Shedd; (202) 245-7091.

Part 100c of Title 45 of the Code of Federal Regulations is amended as follows:

#### § 100c.1 [Amended]

(1) The title of § 100c.1 is revised to read:

#### § 100c.1 Definitions that apply to all programs.

\* \* \* \* \*

(2) The definition of "Department" is revised to read: "Department" means the U.S. Department of Education.

\* \* \* \* \*

(3) The definition of "Secretary" is revised to read:

"Secretary" means the U.S. Secretary of Education, or an official or employee of the Department acting for the Secretary under a delegation of authority.

Dated: May 28, 1980.

Shirley M. Hufstetler,  
Secretary of Education.

[FR Doc. 80-16823 Filed 6-2-80; 8:45 am]

BILLING CODE 4110-02-M

#### DEPARTMENT OF COMMERCE

##### Maritime Administration

##### 46 CFR Part 283

#### Dividend Policy for Operators Receiving Operating-Differential Subsidy

AGENCY: Maritime Administration, Commerce.

ACTION: Final Rule.

**SUMMARY:** The final amendment effectuated by this action adjusts the dividend requirements of 46 CFR Part 283 to reflect more appropriately the financial nature of the maritime industry and certain financial standards utilized by the Maritime Administration (MarAd) in other programs. As a result of this amendment, reliance on the working capital standard is deemphasized and a greater reliance is placed on long-term indicators of financial strength, such as the long-term debt to net worth ratio, net worth level and funds available for new construction and for other uses. In our



opinion, the dividend policy as amended is less restrictive than the old policy. A lengthy calculation required for reporting purposes under the old policy has been eliminated, as well as the reporting requirement for operators not desiring to pay a dividend. In addition, the new policy will be easier to administer and less subjective in operation.

**EFFECTIVE DATE:** June 3, 1980.

**FOR FURTHER INFORMATION CONTACT:** Murray A. Bloom, Office of the Secretary, Maritime Administration, Telephone: (202) 377-2188.

**SUPPLEMENTARY INFORMATION:** On July 18, 1979, the Maritime Administration (MarAd), published in the Federal Register a proposed rule (44 FR 41854) to revise 46 CFR Part 283. Responses to the Notice were received on behalf of (1) Suwannee River Finance, Inc., Suwannee River SPA Finance, Inc. and Suwannee River Phosphate Finance, Inc. (Suwannee), (2) American President Lines, Ltd. (APL), (3) Moore McCormack Lines, Incorporated (MorMac), (4) Waterman Steamship Corporation (Waterman), (5) Delta Steamship Lines, Inc. (Delta), and (6) the Council of American Flag Ship Operators (CASO).

The present Conservative Dividend Policy applicable to operators of U.S.-flag vessels subsidized under Title VI of the Merchant Marine Act, 1936, as amended (the Act) (46 USC 1171 *et seq.*) contains two principal criteria. The operator must, after payment of a proposed dividend, meet a working capital test of one-half average voyage expenses and must also meet a funds available/funds required test whereby the operator's ability to fund for the replacement of existing vessels is considered. Operators are required to submit an annual report regardless of whether they desire to pay any dividends.

The present policy has been criticized for several reasons. The working capital standard is unnecessarily excessive since the industry is characterized by low amounts of inventory, in contrast to other industries where inventory constitutes a large portion of working capital. The calculation of the one-half average voyage expense standard is a long and tedious calculation not needed for any other purpose. The required annual report contains information duplicative of other required reports. Finally, from an administrative viewpoint, the funds required test has been applied with a greater degree of subjective interpretation than is desirable.

The proposed policy attempted to strike a reasonable balance between two divergent objectives. On one hand, MarAd expects in return for the payment of operating-differential subsidy that operators will retain sufficient capital to replace existing vessels at the end of their economic lives so as to fulfill the mandate of Section 101 of the Act to develop and maintain a U.S. merchant marine composed of the best-equipped, safest, and most suitable types of vessels. On the other hand, we recognize that it would be difficult or impossible to attract new capital to the industry without allowing for an adequate return on investment.

The new policy establishes two sets of criteria under the 40 percent rule and the 100 percent rule. The 40 percent rule allows companies in good financial condition to pay some dividends while retaining 60 percent of their earnings for reinvestment in the industry. The retention of 60 percent of earnings should be adequate for replacement of existing assets and eliminates the need for meeting the funds required test under this rule. It provides for an adjustment to allow for the variability of yearly earnings associated with shipping company net income by applying the 40 percent against the prior three year pool of earnings, less dividends already paid during that period. The policy reflects the belief that if an operator were to experience a steep decline in earnings, evidenced by two successive loss years, as well as a loss in the immediate year, it should be precluded from paying a dividend.

Briefly, the criteria for eligibility under the 40 percent rule are as follows: If an operator, after payment of a proposed dividend has (1) working capital greater than \$1, (2) long-term debt equal to or less than two times net worth, and (3) net worth above floor net worth, it may pay a dividend 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. Prior years' earnings means the aggregate 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 income after tax for the current fiscal year, provided that such amount is based upon actual net income after tax for the first nine months of the current year, and provided further, that

if an operator includes estimated current income in its prior years' earnings computation, then it may also include only the immediately preceding two years' income in the prior years' earnings computation.

Briefly, the criteria under the 100 percent rule are as follows: If an operator, after payment of a proposed dividend, has (1) working capital of \$1, (2) long-term debt equal to or less than net worth, (3) "funds available" greater than "funds required," and (4) net worth above floor net worth, then it may pay a dividend of 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 an operator cannot meet the requirements of the 100 percent rule, then it may pay dividends under the 40 percent rule. It is intended that the operator may pay dividends under the rule which allows it to pay the larger dividend.

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. The 100 percent rule is intended to allow operators in strong financial condition to pay out what they desire so long as they remain in strong financial condition. The 100 percent rule is to be applied against retained earnings without restriction as to earnings in any particular year, except where there has been an extended loss period.

All the comments received in response to the notice of proposed rulemaking were carefully considered and many suggestions were incorporated. It was apparent from the quality of the responses that despite the complexity of the regulation, each respondent understood the thrust of the proposed regulation and also understood our reasons for issuing the proposed regulation as we did. A detailed discussion of the principal comments, by issue and our response follows:

(1) Current Assets—

(a) *Net Unterminated Voyage Revenue*—The proposed policy required a deduction from current assets of net untermiated voyage revenue because



the expenses to be incurred on the voyage were not reflected in current liabilities. Waterman, MorMac, and CASO opposed this provision. Suwannee stated that a provision should be made for those operators who use period accounting instead of voyage accounting. In this case we have agreed with the operators. Since revenue is received before expenses are incurred on a voyage, the operator retains as a current asset revenue that has not yet been earned. This revenue is available as working capital to pay bills as they become due and presumably an operator making consecutive voyages will continually receive revenue for the next voyage, thereby maintaining a positive balance of net untermated voyage revenue.

(b) *Guaranteed receivables*—The proposed policy permitted the inclusion in working capital of receivables from affiliates if they arise in the ordinary course of business and are no older than 60 days. APL stated that accounts receivable of affiliates should be included in working capital if properly secured. We believe that questions of this kind can be addressed on a case by case basis and, if appropriate, a waiver of the existing requirements can be granted. In the final regulation, we have increased the time limit for affiliate receivables from 60 days to 120 days.

(c) *CCF Accruals*—The proposed policy provided that amounts set aside in a Capital Construction Fund (CCF) are deducted from working capital. CASO and APL stated that 50 percent of the deposits in excess of minimum required deposits should be included in working capital. We have reconsidered our original position on this issue and have modified the final regulation to permit the inclusion in working capital of accrued CCF deposits, to the extent not actually deposited, if the operator has met its prorated CCF minimum deposit schedule. Our decision reflects the fact that until funds are actually deposited, the operator can decide not to accelerate its CCF deposits. Therefore, funds not deposited would be available as working capital.

(2) *Current Liabilities*—The proposed policy provided that current liabilities would be increased by 1/2 of annual charter hire and other lease obligations (having a term of more than six months) not already shown on the operators' balance sheet. CASO and MorMac disputed the necessity of this requirement. We maintain that such adjustment is necessary to reflect the current portion of such leases on approximately the same basis as the current portion of long-term debt would

be reflected on an operator's balance sheet if it owned the vessel instead of leasing it. If these leases are already reflected on an operator's balance sheet, then no increase to current liabilities is required. We have, however, reconsidered the duration of leases to be included, and the final regulation requires inclusion only of charters and leases having terms in excess of 12 months.

APL argued that the current portion of long-term debt should be excluded from current liabilities and reflected in the debt/equity ratio to reflect the ability of operators to borrow long-term funds for use as working capital to comply with the working capital requirement. We disagree with APL on this point and do not want to sanction the practice of too much reliance on long-term capital structure for working capital purposes. We believe that we have taken a major step in reducing the present working capital standard and the further steps proposed by APL are not advisable.

(3) *Long-Term Debt*—As defined in the proposed policy, long-term debt includes, with certain exceptions, guarantees of the debt of any other person. MorMac, CASO and APL argued against this position. In reviewing their arguments, we concluded that these contingent liabilities need not be reflected in the operator's financial statements for the purposes of this policy. Accordingly, this provision has been deleted from the final regulation.

APL argued that a distinction be recognized between senior and subordinated debt. We disagreed and concluded that no distinction was advisable since both levels of debt represent an obligation of the company funds.

All respondents except Suwannee argued that the proposed long-term debt to equity ratios were too restrictive and should be relaxed. However, we believe that the ratios that we proposed are in line with those of most firms listed on the major stock exchanges which are considered to be in good financial condition. Also we believe that these ratios are necessary to protect the Government's exposure on the Title XI debt incurred by the operators.

(4) *Capitalized Lease Obligations*—Where in the proposed policy we referred to "Deferred Lease Hire", we now refer to "Capitalized Lease Obligations" to avoid confusion as to whether the term actually denotes a liability account. The proposed policy provided that capitalized lease obligations were defined as the outstanding long-term portion of lease or charter hire (unless already on the operator's books) relating to vessels,

major equipment or facilities and that the Assistant Secretary shall determine which leases shall be included and the computation of such outstanding long-term portion.

CASO argued against the inclusion of capitalized lease obligations in long-term debt. Suwannee and APL stated that capitalized lease obligations should be calculated as 1/2 of the aggregate of outstanding lease or charter hire payments. In addition, Suwannee stated that there is no provision for submission of these leases for review by the Assistant Secretary.

We believe that certain operating leases which are now required by accounting standards to be reflected only in footnotes to financial statements must be reflected in the debt/equity ratio to accurately reflect an operator's long-term financial position. With the exact definition of capitalized lease obligations, review of these leases by the Assistant Secretary is not required.

Accordingly, in the final regulation capitalized lease obligations are defined as an amount (excluding amounts already included in long-term debt) equal to the sum of (1) the present value of all capital leases and (2) 1/2 of minimum rentals of all operating leases required to be reflected in the footnotes to the operator's financial statements with regard to shipping property.

(5) *Floor Net Worth*—The proposed policy provided that the operator's net worth floor would be set at the greater of 90 percent of the operator's existing net worth or 50 percent of the operator's long-term debt at December 31, 1978. All respondents except Suwannee protested inclusion of this provision. Basically, they argued that setting a net worth floor would unfairly discriminate against operators that have accumulated earnings in prior years and have voluntarily forgone dividend payments they might have made. We believe that the net worth floor is needed to provide the operator with a cushion for periods of economic downturn. However, the respondent's point about accumulated earnings is valid. The final regulation provides that an operator's floor net worth requirement may be reduced, with the consent of the Assistant Secretary, by an amount equivalent to amounts an operator was authorized to pay in dividends in the three years prior to the effective date of this amended regulation but chose to retain. The operator shall have the burden of demonstrating the validity of its calculation of the amounts that could have been paid out under the policy prior to the effective date of this amendment to the regulation. The net worth floor shall be the greater of 90



percent of the operator's existing net worth or 50 percent of the operator's long-term debt as of December 31, 1979, reduced where appropriate.

#### (6) Prior Years' Earnings

**Computation.**—The prior years' earnings computation was designed to allow operators to pay a stable dividend in the face of a gyrating earnings pattern. The proposed policy excluded extraordinary gains but not extraordinary losses from this calculation. Delta and CASO argued that prior years' earnings should include investment income and other income from whatever source derived. In the final regulation, extraordinary items are being allowed in the prior years' earnings computation, since such extraordinary items (both income and losses) affect the operators' ability to pay dividends.

Delta further argued that an operator is limited by the 40 percent rule retroactively if in one of the prior years included in the prior years' earnings computation it had paid dividends in excess of 40 percent, under the 100 percent rule. We believe this point to be valid. Accordingly, in the final regulation we have provided that if dividends were paid under the 100 percent rule during one or more of the three prior years included in the prior years' earnings computation, then the earnings and dividends attributed to that year or years may be excluded from the prior years' earnings computation.

(7) **Funds Required Calculation.**—In the proposed policy the funds required calculation reflected adoption of the previous policy, but it would apply only to dividends under the 100 percent rule. No respondent objected to this provision. However, problems exist with this provision from an administrative viewpoint. Most replacement obligations in the current ODSA's do not state the precise number of vessels required to be constructed. Thus, the operator has a great deal of discretion in determining what its anticipated cost will be for replacement vessels, without the concurrence of the Maritime Administration. Accordingly, the final regulation provides that an operator must submit the basis for the estimate of vessel replacement costs for approval prior to the payment of dividends under the 100 percent rule.

(8) **Application of Policy.**—The proposed policy provided that it would be applicable when effective for both new and existing operators. MorMac stated that operators should be allowed to remain under the present policy if they desired. Delta stated that the policy should be applicable only with consent of the operator. CASO stated that the operator should be allowed to elect to

remain under the present policy until December 31, 1982. Suwanee stated that the policy should not apply at all to operators with no replacement obligation.

We believe that it would not be advisable to operate with two dividend policies in existence, even for a short period of time. We also believe that we have provided for the problems associated with a transition from the previous policy to the new policy. There is no legal requirement for the consent of operators under an ODSA to an amendment to applicable regulations. The regulation being amended is promulgated under Section 204(b) of the Act, which authorizes the Board to adopt all necessary rules and regulations to carry out the powers, duties and functions vested in it by the Act. Adoption of a new dividend policy is within the scope of the provisions of the ODSA's which provide that the ODSA's are subject to such rules and regulations which have been or which may be from time to time promulgated.

(9) **Reporting Requirements.**—The proposed policy provided that operators declaring dividends must immediately submit a report containing information no older than 30 days. Also, even if no dividend is declared, the operator must submit a report within 90 days of the end of each calendar year.

CASO and Suwanee stated that the reporting requirement should be waived if an operator does not declare dividends. CASO and APL stated that they should be allowed to submit data older than 30 days when declaring a dividend.

In consonance with Presidential directives to reduce the reporting requirements of the Federal Government, we have concluded that annual reports will no longer be required of operators that do not declare dividends. However, we believe that a requirement that financial information be no less current than 30 days is appropriate since in evaluating whether to declare a dividend the board of directors of the operator requires current information. We believe that such information must be submitted in order for us to review the allowability of the dividend payment under provisions of the amended regulation.

This revision of Part 283 has been reviewed in accordance with Executive Order 12044, "Improving Government Regulations" (43 FR 12661, March 24, 1978), Department of Commerce Administrative Order 218-7, "Issuing Government Regulations" and the Maritime Administration implementing procedures, and a determination has

been made that a regulatory analysis is not required.

Accordingly, Part 283 of Title 46, Code of Federal Regulations is revised in its entirety to read as follows:

### 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:** Section 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); Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973).

#### § 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 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)  $\frac{1}{2}$  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 Assistant Secretary 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 subsidized 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 Assistant Secretary or the Maritime Subsidy Board (Board);

(5) Balance of trade-in allowances pursuant to § 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 Assistant Secretary 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 Assistant Secretary 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.

(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 Assistant Secretary shall be obtained prior to any declaration of dividends by the operator, if the payment of dividends does not meet the criteria of either paragraphs (b) or (c) of this section. It is intended that dividend payments be permitted under the provisions of either paragraphs (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 Assistant Secretary.

(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. 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 Assistant Secretary 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 Assistant Secretary 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.

### § 283.5 Notification and reporting requirements.

(a) *Notice*—The operator shall give written notice of a dividend declaration to the Assistant Secretary 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 Assistant Secretary 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 Section 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 Assistant Secretary 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, D.C. 20230, with a copy of such notice or request to the appropriate Maritime Administration Region Director.

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## Schedule A

## Ratio of Debt to Equity, Floor Net Worth, and Prior Years' Earnings

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

(Company)

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\_\_

## I. FUNDS AVAILABLE

## 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  
reconditioningD. Progress payments made on additional  
vessels and related barges and containers  
agreed to be constructed or acquired



E. Balance of trade-in allowances (\$510 of the Act)

F. Capitalized Lease Obligations as defined in §283.2(b)

G. Net Working Capital (from Schedule C)

TOTAL FUNDS AVAILABLE \$

## II. FUNDS REQUIRED

### A. Cost of current commitments:

#### 1. ODSA vessels under construction or reconstruction:

Number of Vessels	Total Cost	Less Government Contributions	Cost to Operator
\$	\$	(\$ )	\$
25% of Cost to Operator			\$

#### 2. 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			\$

#### 3. Barges and containers under construction or contract to purchase:

Number of Barges Containers	Cost to Operator
\$	\$
25% of Cost to Operator	
\$	\$

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

#### 1. Subsidized vessels to be replaced under ODSA:

Number of Vessels	Total Cost	Less Government Contributions	Cost to Operator
\$	\$	(\$ )	\$
25% of Cost to Operator			\$

#### 2. Additional vessels agreed to be constructed or acquired:

Number of Vessels	Total Cost	Less Government Contributions	Cost to Operator
\$	\$	(\$ )	\$
25% of Cost to Operator			\$

#### 3. Additional barges and containers required as the complement of vessels agreed to be constructed or acquired in items B1 and B2 above:

Number of Barges Containers	Cost to Operator
\$	\$
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)

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

Company \_\_\_\_\_

A. CURRENT ASSETS:

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

\_\_\_\_\_  
(Signature of Chief Financial Officer  
or other authorized officer)



(Section 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); Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973))

(Catalog of Federal Domestic Assistance Program No. 11.504, Operating-Differential Subsidy (ODS))

By order of the Maritime Subsidy Board.

Dated: May 28, 1980.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 80-18868 Filed 6-2-80; 8:45 am]

BILLING CODE 3510-15-M

Pursuant to regulations promulgated at 50 CFR 230.74(c) (45 FR 20486), I am announcing the closure of the bowhead whale fishery for the calendar year 1980. This action is necessary inasmuch as the bowhead quota has reached 15 landed and 26 struck, thus meeting the IWC quota of 18 landed or 26 struck, whichever occurs first.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 80-16754 Filed 5-29-80; 1:42 pm]

BILLING CODE 3510-22-M

## National Oceanic and Atmospheric Administration

### 50 CFR Part 230

#### Taking of Bowhead Whales by Indians, Aleuts, or Eskimos for Subsistence Purposes

**AGENCY:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

**ACTION:** Notice of Closing.

**SUMMARY:** This notice is filed pursuant to 50 CFR 230.74(c), which allows the Assistant Administrator of Fisheries of the National Marine Fisheries Service to close the bowhead whaling season when the quota has been reached by those villages.

**EFFECTIVE DATE:** This notice becomes effective May 29, 1980.

**ADDRESSES:** Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

**FOR FURTHER INFORMATION CONTACT:**

Dr. William Aron, Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235, Telephone: (202) 634-7287.

**SUPPLEMENTARY INFORMATION:** On May 28, 1980, the National Marine Fisheries Service determined that Barrow struck its 16th whale of the 1980 calendar season, bringing the total of entire bowhead whales landed and struck by Alaskan Eskimos for the calendar year 1980 to 15 and 26, respectively. Inasmuch as the quota for calendar year 1980 is 18 landed or 26 struck, whichever occurs first, the 1980 bowhead quota has now been reached.