and if operating costs for said period were reduced to a minimum in accordance with sound commercial practice.

[G.O. 27, Rev. 2, 37 FR 18466, Sept. 12, 1972]

§ 281.4 Treatment of subsidy during idle status and off-hire period.

During an idle status period, subsidy shall be payable only for such subsidizable items of expenses as are determined by the Maritime Administrator, after presentation by the operator of the facts relating to such idle status period, to be necessary for the maintenance, preservation, repair, or husbanding of the vessel during and under the circumstances involved; however, the Maritime Subsidy Board reserves the right to suspend at any time the payment of subsidy on idle vessels when, after consideration of the facts and circumstances regarding such period, it determines that an unreasonable period has elapsed or such idle period was not warranted: *Provided,* That as to a chartered ship operated under a ''Use Agreement'', operating-differential subsidy shall cease to accrue to the ship simultaneously with the time it goes ''off hire'' and subsidy shall not again accrue to said ship until it is reemployed in the subsidized service as determined in accordance with § 281.3. Nothing herein shall limit any other rights of the United States with respect to the payment or nonpayment of subsidy.

[G.O. 27, Rev. 2, 37 FR 18466, Sept. 12, 1972]

§ 281.5 Right of Maritime Administrator to recover subsidy for any period of idleness.

The Maritime Administrator may, prior to payment of subsidy for any voucher period which includes a period of idleness, require the operator to establish to the satisfaction of the Maritime Administrator that such period of idleness could not have been prevented in whole or in part through efficient and economical operation. The Maritime Administrator may recover any payment of subsidy for any item of expense allocable to such period of idleness which in the opinion of the Maritime Administrator could have been avoided by efficient and economical operation.

[G.O. 27, Rev. 2, 37 FR 18466, Sept. 12, 1972]

§ 281.6 Interpretation.

All questions of interpretation arising under the sections of this part shall be submitted to the Maritime Administrator for determination, whose decision thereon shall be final.

[G.O. 27, Rev. 2, 37 FR 18466, Sept. 12, 1972]

PART 282—OPERATING-DIFFERENTIAL SUBSIDY FOR LINER VESSELS ENGAGED IN ESSENTIAL SERVICES IN THE FOREIGN COMMERCE OF THE UNITED STATES

AUTHORITY: Secs. 204(b), 603, 606 Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1173, 1176); 49 CFR 1.66.

SOURCE: 51 FR 34609, Sept. 30, 1986, unless otherwise noted.

Subpart A—Introduction

§ 282.1 Purpose.

This part prescribes regulations implementing Title VI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1171–1176 and 1178–1181) governing operating-differential subsidy for liner vessels engaged in essential services in the foreign commerce of the United States.

§ 282.2 Definitions.

When used in this part:

(a) *Act* means the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101–1294).

(b) *Board* means the Maritime Subsidy Board of the Maritime Administration (MARAD).

(c) *Contracting Officer* means the Associate Administrator for Maritime Aids.

(d) *Fiscal Period* means any annual period beginning on July 1 and ending on June 30.

(e) *Foreign-flag competition* means those foreign-flag vessels deemed by the Maritime Administrator to be competitive with the subsidized vessel.

(f) *Maritime Administrator* means the Maritime Administrator, Maritime Administration of the Department of Transportation.

(g) *Operating day* means any day or part of a day during which a subsidized vessel is operated in accordance with the terms and conditions of an operating-differential subsidy agreement.

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

(i) *Operating-differential subsidy agreement (ODSA)* means the Agreement entered into by the operator and the United States Government for the payment of operating-differential subsidy.

(j) *ODS rate* means the method adopted by the Maritime Administrator for determining the amount of ODS that is to be paid for an item of subsidizable expense.

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

(l) *Reduced crew period* means a period in port between or during voyages when the subsidized vessel's approved crew complement is reduced by 10 percent or more and division of wages (wages of an absent seaman are divided among the seamen who provide the absent seaman's work) is not paid for the missing men.

(m) *Region Director* means the Region Director of the Maritime Administration within whose region the principal office of the operator is located.

(n) *Subsidized service* means the operation of a vessel, other than in the coastal or intercoastal trade, in accordance with the terms and conditions of the ODSA.

(o) *Subsidized vessel* means a vessel covered by an ODSA.

(p) *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.

(q) *Vessel* means subsidized vessel, unless otherwise specified.

§ 282.3 Waivers.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived in writing, by mutual agreement of the parties, in keeping with the circumstances then present, so long as the procedures adopted are consistent with the Act and with the intent of these regulations.

Subpart B—Foreign-Flag Competition

§ 282.10 Basis for determining foreign-flag competition.

The foreign-flag competition shall form the basis for determining the cost disadvantage of operating the subsidized vessels in the essential service. The Maritime Administrator shall determine the foreign-flag competition from those countries that have carried a significant amount of cargo in the service by using the following procedures:

(a) The primary source of information shall be commodity import/export data compiled by the Bureau of the Census. Cargo data shall be compiled in long tons. Trade publications which show advertised sailings shall be used to verify the liner services offered by foreign-flag operators.

(b) The U.S. import/export data shall be compiled by reference to countries actually served by the subsidized operator, using the subsidized operator's own competition data for each country to eliminate the flags which are not substantial competitors with the subsidized vessels. An example of the weighting procedure follows:

EXAMPLE

	Country A	Country B	Country C	Total
I. Determination of U.S.-Flag Weights:				
U.S. Subsidized Carrier	300	500	200	1,000
Percent	30	50	20	100
II. Actual Foreign-Flag Carryings:				
Flag 1	1,500	500	1,000	3,000
Flag 2	4,000	6,000	0	10,000
Flag 3	5,000	2,000	5,000	12,000
III. Adjusted Foreign-Flag Carrying (Actual Foreign × U.S. wts):				
Flag 1	450	250	200	900
Flag 2	1,200	3,000	0	4,200
Flag 3	1,500	1,000	1,000	3,500
				8,600
IV. Competition Computation:		Actual percent		Re-weight (percent)
Flag 2	4200/8600	49.0		55.0
Flag 3	3500/8600	41.0		45.0
		90.0		100.0

(c) The principal foreign flags shall be those countries whose cargo carrying would rank the flag among those carriers that aggregate at least 50 percent of the total foreign-flag carryings.

(d) The total cargo carryings of each principal foreign flag shall be expressed as a percentage of total cargo carryings of all principal flags on the service. The resultant ratio shall be applied to the costs of that principal flag for determining its portion of the composite foreign cost, which shall be used for establishing the cost disadvantage of U.S. vessels in the service.

(e) The determination of the principal competitors and competition weight factors shall be based upon the import/export data for the twelve months of the penultimate calendar year preceding January 1 of the subsidized year to allow several months to collect foreign cost data.

§ 282.11 Ranking of flags.

The operators under each principal foreign flag shall be ranked as predominant, secondary, etc., for the purpose of establishing the priority of costs which are representative of the flag. For liner cargo vessels, the ranking of operators shall be based on the long tons of cargo carried.

(a) If the predominant operator is an agent, charterer or a joint venture in which the vessels are owned by two or more lines, under the name of such agent, charterer or joint venture, the predominant operator shall be the owner whose vessels carried the most cargo.

(b) If cost experience cannot be obtained for the foreign-flag operators in the subsidized service, MARAD may use the costs of another service, following the same ranking of operators, if possible.

Subpart C—Calculation of Subsidy Rates

§ 282.20 Amount of subsidy payable.

(a) *Daily Rates.* Daily ODS rates shall be used to quantify the amount of ODS payable. The daily ODS rate represents the cost differential between the subsidized vessel and its foreign-flag competition. A daily rate shall be calculated for each subsidized item of expense identified in the ODSA, and the total of all items is the daily amount of ODS payable for approved vessel operating days, excluding reduced crew periods.

(b) *Reduced Crew Periods.* For reduced crew periods, as defined in § 282.3 of this part, a man-day reduction amount, calculated separately for officers and unlicensed crew members, shall be used to reduce the daily wage ODS rate to conform to the complement remaining on the vessel. The man-day reduction amounts shall be determined by dividing the daily wage ODS for officers and unlicensed crew members by the number of subsidizable crew members in each category. For each day of a reduced crew period, the man-day amount shall be multiplied by the number of crew members missing for that day, and the resulting product shall be deducted from the daily ODS rate. The difference shall be the ODS payable for such day. (See illustration in Schedule D at § 282.31 of this part.)

(c) *Review of Rates.* Daily subsidy rates shall be reviewed every six months. For the item ''wages of officers and crews,'' the daily rate shall be calculated for fiscal periods July 1 through June 30, in accordance with provisions of the Act. During the period January through June, adjustments—paid as a lump sum or as a daily amount—shall be made to wage ODS so that the correct amount of ODS for the full fiscal period is received by the operator. For other subsidizable items of expense, the daily rate shall be calculated for calendar years.

(d) *Negative Rates.* When an ODS rate in any category is less than zero, indicating that the subsidized operator is at an advantage rather than a disadvantage in such category, the negative rate shall be deducted from positive rates in determining the daily ODS amount payable.

(e) *Operator Comments.* The operator shall have the opportunity to comment on each subsidy rate as calculated by the Maritime Administration. The operator and contracting officer shall make every effort to resolve disagreements that arise. In the event of a disagreement that cannot be resolved, comments received from the operator and the contracting officer's recommendation shall be presented to the Maritime Administrator for consideration in determining subsidy rates.

§ 282.21 Wages of officers and crew.

(a) *Definitions.* When used in this part.

(1) *Base period.* The first base period under the wage index system, as provided in section 603 of the Act, is the period beginning July 1, 1970 and ending June 30, 1971. Thereafter, base period means any annual period beginning July 1 and ending June 30, with respect to which the Maritime Administrator establishes a base period cost. At intervals of not less than two years, nor more than four years, the Maritime Administrator shall establish a new base period. Base periods shall be announced by the Maritime Administrator prior to the December 31 date that would be included in the new base period.

(2) *Base period cost*—(i) *Initial base period.* For the initial base period of subsidized service, the term *base period cost* means the collective bargaining cost as of January 1 of that base period.

(ii) *Subsequent base periods.* For base periods subsequent to the initial base period, the term *base period cost* means the averaged of the collective bargaining cost as of January 1 of such fiscal year, and the base period cost of the previous base period, indexed to January 1 of the new base period by an index compiled by the Bureau of Labor Statistics. This index shall consist of the average annual change in wages and benefits placed into effect for employees covered by collective bargaining agreements, with equal weight to be given to changes affecting employees in the transportation industry (excluding the off-shore maritime industry) and to changes affecting employees in private non-agricultural industries other than transportation. However, such base period cost shall not be less than a minimum, nor more than a maximum amount, determined as a percentage of the collective bargaining cost computed for January 1 of such base period in accordance with the following schedule:

	Minimum (percent)	Maximum (percent)
Base period following a:		
2-year cycle	97½	102½
3-year cycle	96¼	103¾
4-year cycle	95	105

(3) *Collective bargaining cost (CBC)* means the annual cost, calculated on the basis of the per diem rate of expense, as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required by the operator through a collective bargaining or other agreement, covering the employment of the approved manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(4) *Approved manning complement* means the complement approved by the Board for subsidy.

(5) *U.S. wage cost (WC)* means the annual cost, calculated on the basis of the per diem rate of expense as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required of the operator through a collective bargaining or other agreement, covering the employment of the normal manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(6) *Normal manning complement* means the crew complement established by a collective bargaining or other agreement with the officers and unlicensed crew of the vessel. In cases where the complement may vary in number, the lowest number shall be the normal manning complement. When ratings of different salaries are in the same job during the year, the base wages of the rating carried most of the time shall be used.

(7) *Subsidizable wage cost* means, (i) with respect to a base period, the base period cost, and (ii) in any fiscal period other than a base period, the most recent base period cost, increased or decreased by the change from January 1 of the base period to January 1 of the non-base period in the index described above. The subsidizable wage cost shall not be less than 90 percent nor greater than 110 percent of the collective bargaining cost as of January 1 of such period.

(8) *Unpredictably timed costs* are collective bargaining costs that are not regularly incurred. Examples of unpredictably timed costs are such costs as severance pay, shortfalls, special assessments, and war zone bonuses.

(b) *Method of calculating collective bargaining cost (CBC).* CBC shall be determined by pricing out, for the approved crew complement, the per diem total of fixed costs specified in the collective bargaining agreement and adding a per diem total of variable costs obtained from the cost experience of the subsidized vessel during the first nine months of the preceding calendar year.

(1) *Fixed Costs.* The per diem total of fixed costs shall include all costs that are stated in specific or determinable amounts per time period and, based on operating experience, do not vary. In cases where a monthly amount is specified in the agreement, the per diem amount shall be determined by dividing the monthly amount by 30. When a daily amount is specified it shall be used. Example of fixed costs are:

(i) Base wages;

(ii) Non-watch pay;

(iii) Vacation pay (including contributions to vacation funds);

(iv) Tool allowance;

(v) Clothing and uniform allowances; and

(vi) Per diem contributions for pension, training, welfare, unemployment, including unallocated contributions placed in escrow.

(2) *Variable costs.* Variable costs are regularly incurred employment costs which vary with ship operating experience. The per diem aggregate of variable costs as of January 1 shall be determined by applying a ratio to the per diem aggregate of base wage costs as of January 1, the numerator of which shall be the total of variable costs for the first nine months of the preceding calendar year and the denominator of which shall be the total of base wage costs for the first nine months of the preceding calendar year. Variable costs include but are not limited to:

(i) Payroll taxes (including social security taxes);

(ii) Overtime and penalty pay;

(iii) Variable pension, training, welfare, unemployment, and vacation costs;

(iv) Pay in lieu of time off;

(v) Transportation and travel allowances;

(vi) Payments to relief officers and crews;

(vii) Wages and other expenses of USMMA cadets and extra messmen;

(viii) Board and lodging allowances;

(ix) Overlap in wages (a maximum of two days); and

(x) Penalty cargo bonuses.

(c) *Method of calculating U.S. wage cost (WC)* Two different calculations of WC are necessary—a per diem amount for every ship type on the service and a per month amount for the predominant ship type (most voyages) on the service. The purpose of the per month calculation is to make a comparison with the monthly foreign wage costs. The relationship of WC to foreign costs for the predominant ship is applied to the per diem WC for other ship types in the service to estimate comparable foreign costs for them.

(1) *Calculation of per diem WC*. The per diem WC shall be calculated by the same method that applies to CBC, except that the normal manning complement shall be used.

(2) *Calculation of per month WC*. The costs and manning level used in this calculation shall be the same as those used for the per diem WC.

(d) *Data submission requirements*. For purposes of calculating CBC and WC the operator shall each year submit Form MA–790 and, as appropriate, current copies of all collective bargaining or other agreements, memoranda of understanding, and arbitration awards, which specify the fixed costs as of January 1. Schedule A of Form MA–790, which covers wage costs on voyages terminated during the first nine months of the previous calendar year, shall be submitted by January 1 of the subsidized year. Schedule B of Form MA–790—normal manning complement, rates of pay, and contributions in effect on January 1 of the current year—shall be submitted by January 31. Form MA–790, Schedules A and B, shall be submitted to the Director, Office of Ship Operating Costs, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590.

(e) *Example calculation*. The following is a sample of calculation of CBC and WC:

ABC STEAMSHIP COMPANY

January 1, 1985, Collective Bargaining Costs (CBC) and U.S. Wage Cost (WC)

	Per diem	
	WC	CBC
Crew complement	[1] 35	[2] 31
Fixed costs as of January 1, 1985:		
Base wages and non-watch pay	$1,789.79	$1,571.60
Allowances (radio, telephone, clothing, etc.)	5.75	5.75
Vacation pay	1,189.60	1,109.65
Pension, welfare, training, unemployment fund contributions	1,280.80	1,171.75
Total fixed	$4,265.94	$3,858.75
Variable costs as of January 1, 1985:		
Variable cost factor (based on 1984 cost experience) (in percent)	104.69	104.69
Total variable costs (January 1, 1985, base wages × variable cost factor)	$1,873.73	$1,645.31
Total wage costs as of January 1, 1985	$6,139.67	$5,504.06

[1] Normal manning complement.

[2] Approved manning complement.

(f) *Method of calculating foreign wage costs*. The foreign wage cost (FC) of the principal foreign-flag competitors and the comparable WC of the subsidized vessel are matched as of January 1 of the last fiscal year preceding the subsidized fiscal year for purposes of determining the wage cost of the principal foreign flags. The following procedures are used:

(1) *Manning*. The foreign manning complement in number and nationality for the principal foreign-flag competitors shall be constructed for the subsidized vessel type using the manning scales and practices of the competitors as developed through an examination of alien crew manifests, payrolls, and other reliable information. The commonly used crew complement of the competitors shall be adjusted to fit the predominant vessel type, in recognition of differences in physical characteristics that would affect manning scales. Where the manning complement cannot be estimated with reasonable substantiation, it will be deemed to be identical with that of the subsidized vessel.

(2) *Method.* The method of calculating FC shall be the same as that used for WC, provided that it is possible to obtain foreign cost data on the same basis as wage cost data. Preference shall be given to pricing out for fixed costs and to cost experience for variable costs. Where applicable, foreign currencies shall be converted into U.S. currency equivalents by using the average of end-month exchange rates for the period July through June that includes the January 1 for which FC is calculated. The exchange rates shall be obtained from the publication, ''International Financial Statistics,'' published monthly by the International Monetary Fund. If exchange rates for particular foreign currencies are not available in this publication, they shall be obtained from the United States Department of the Treasury.

(3) *Foreign wage costs.* The per diem composite foreign wage cost is determined by multiplying the per diem WC for the U.S. ship type, calculated as of January 1 of the subsidized fiscal year, by the ratio of FC to WC, calculated as of January 1 of the last fiscal year preceding the subsidized fiscal year. The following is a sample calculation of the foreign cost percentage.

ABC STEAMSHIP COMPANY, INC., TRADE ROUTE 21—JANUARY 1, 1985—FOREIGN WAGE COST (FC)

	United States	Belgium	United States	Germany		Netherlands	United States	Norway
Crew Complement	35	35	35	23		22	35	28
Base Wages	[1] 53,687	[1] 24,779	[1] 53,687	[1] 25,192		[1] 23,127	[1] 53,687	[1] 27,257
Allowances	[1] 1,074	[1] 4,584	[1] 1,074	[1] 8,879		[1] 3,097	[1] 1,074	[1] 289
Vacation Pay (leave)	[1] 35,681	[1] 13,009	[1] 35,681	[1] 9,912		[1] 9,499	[1] 35,681	[1] 11,976
Pension and Welfare	[1] 38,407	[1] 2,065	[1] 38,407	[1] 124		[1] 3,923	[3] 36,342	[1] 124
Social Security	[2] 6,608	[2] 7,227	[1] 3,717	[1] 6,814		[1] 4,584	[2] 6,608	[2] 10,118
Overtime and other variable costs (not elsewhere included)	[2] 48,732	[2] 10,944	[2] 48,732	[2] 10,325		[2] 7,021	[2] 48,732	[2] 12,389
Repatriation	....	....	....	....	....	....	....	[2] 413
Total wage costs	184,189	62,608	181,298	61,246		51,251	182,124	62,566
Unweighted Percentage FC to WC		33.99%		33.78%		28.27%		34.35%
Competition Weight Factor		22.1%		19.6%		19.1%		39.2%
Weighted Percentage		7.51%		6.62%		5.40%		13.47%
Composite Weighted Percentage					33.00%			

[1] Based on Jan. 1 priced out cost.
[2] Based on cost experience.
[3] Excludes training costs—foreign data not available.

(g) *Determination of daily wage rate.* The foreign wage cost is deducted from subsidizable wage costs to determine the daily wage subsidy rate. Table 1 is an example calculation of a daily wage subsidy rate using the procedures described in this section.

(h) *Unpredictably timed costs (UTC)* are subsidized by calculating costs incurred during the previous six months and converting them into a daily rate or, in the alternative, a lump sum amount will be paid for special lump sum assessments or for per man-day increases to benefit plans which become effective during the six months following the establishment of the daily rate. In either case, the percentage subsidy rate—which is the differential percentage between the subsidizable wage cost and the foreign wage cost—is used to establish the amount of subsidy payable for UTC incurred.

(1) UTC expenses such as severance pay and area bonuses are eligible for subsidy payment without obtaining prior approval and subsidy shall be paid as a lump sum amount.

(2) Expenses such as shortfalls in benefit fund contributions, special assessments for benefit funds, and retroactive wage increases may be treated as UTC if the cost increase was not negotiated. Such costs must be approved as UTC by the Director, Office of Ship Operating Costs. To the extent such expenses qualify for UTC, the Director shall determine the appropriate method of paying subsidy—added to the per diem wage subsidy rate and/or as a lump sum amount treated separately.

TABLE 1—ABC STEAMSHIP CO., INC., TRADE ROUTE 21

[Calculation of wage subsidy rates*]

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Base period	Interim period	U.S. wage cost	Collective bargaining cost	Application of BLS index to base period cost	Averaging in base periods (4)+(5)	Appropriate limits	Base period cost	Subsidizable wage cost	Composite weighted percentage	Composite foreign wage cost	Wage subsidy daily rate	Wage subsidy percentage rate (12)+(9)
					2							
1981 ...	....	4,162.60	3,850.29	....	....	....	3,850.29	3,850.29	32.99	1,373.24	2,477.05	64.33
	1982 ...	4,578.24	4,230.15	3,850.29×1.0845=4,175.64	....	.9×(4)=3,807.14 1.1×(4)=4,653.17	....	4,175.64	32.98	1,509.90	2,665.74	63.84
	1983 ...	5,013.80	4,560.38	3,850.29×1.1816=4,549.50	....	.9×(4)=4,104.34 1.1×(4)=5,016.42	....	4,549.50	36.15	1,812.49	2,737.01	60.16
	1984 ...	5,539.40	4,966.90	3,850.29×1.2992=5,002.30	....	.9×(4)=4,470.21 1.1×(4)=5,463.59	....	5,002.30	34.77	1,926.05	3,076.25	61.50
1985 ...	....	6,139.57	5,504.06	3,850.29×1.4044=5,407.35	5,455.71	.95×(4)=5,228.86 1.05×(4)=5,779.26	5,455.71	5,455.71	33.00	2,026.06	3,429.65	62.86

*This computation is based on a new vessel entering subsidized service in May 1981.

[51 FR 34609, Sept. 30, 1986, as amended at 54 FR 5088, Feb. 1, 1989]

§ 282.22 Maintenance (upkeep) and repairs.

(a) *Basis for subsidy*. The fair and reasonable maintenance and repair costs not compensated by insurance, if eligible for subsidy under the ODSA and the regulations in 46 CFR part 272, shall be used for determining the daily amount of subsidy. The U.S.-foreign cost differential shall be determined from price estimates of representative items of maintenance and repair work and by using the repair practices of the foreign-flag competition.

(b) *U.S.-foreign cost differential*. MARAD shall use the following procedures for calculating the U.S.-foreign cost differential for M&R.

(1) *Cost Survey*. MARAD shall select a sample of jobs which are representative of the various types of maintenance and repair work—drydocking and underwater repairs, machinery repairs, hull and deck repairs, electrical repairs, exterior painting and interior painting, etc. The jobs shall be described fully and combined into a standard set of specifications based on a particular type of vessel. The same specifications shall be used for obtaining all price estimates. MARAD shall request reliable and mutually acceptable ship repair cost experts to ascertain the U.S. and foreign M&R prices. MARAD shall survey foreign countries during a three-year cycle. The survey year prices shall be adjusted in the years between surveys by price adjustments estimated by the ship repair cost experts.

(2) *Country cost differential*. A country cost differential shall be determined for each country where work was performed on the competitive vessels. The country cost differential shall be 100 percent minus the ratio of the estimated foreign price to the U.S. price estimate. The U.S. price estimate shall be representative of the coastal area included in the subsidized service (for example East Coast) or, if more than one coast is served, the coast where the company is home based. For example:

DETERMINATION OF COUNTRY COST DIFFERENTIAL—YEAR—1985—U.S. EAST COAST—FOREIGN COUNTRY—UNITED KINGDOM

Repair category	Foreign price	U.S. price
Drydocking & Underwater Repairs	$49,598	$70,662
Boiler Repairs	18,938	20,287
Machinery Repairs	33,004	36,193
Hull and Deck Repairs	16,729	20,853
Electrical Repairs	11,868	11,117
Exterior Painting	5,456	7,974
Interior Painting	681	1,162
Estimate Totals	$136,274	$168,248

Foreign/U.S. Price Ratio—81%
Country Cost Differential (100–81)—19%.

(3) *Distribution of repairs*. The distribution of repairs refers to the countries where M&R work was performed on the vessels of the foreign-flag competitor. When data on the repairing practices are obtained directly from the foreign competitor, they be used. If information about such practices is unavailable—or only partially available—data, published by the classification societies and Lloyd's Voyage Record, reporting the dates and localities of drydocking and completion of the various types of vessel surveys, shall be used for determining the geographical distribution of the unknown repairing practices. For diesel vessels, there are three basic types of surveys—drydocking, machinery, and hull. For steam vessels, there is a fourth survey—boiler—in addition to the other three surveys. Since these surveys may be performed in different countries, they are weighted in order to determine the distribution of repairs. The weighting factors shall be: drydocking—20 percent, machinery—40 percent (10 percent allocated to boiler survey on steam vessels), and hull—40 percent.

(4) *Proportionate cost differential*. A proportionate cost differential for each principal foreign-flag competitor shall be determined by multiplying the percentage distribution of repairs for each country where repair work was performed by the country cost differential for that country and by adding the resulting weighted percentages for all countries where repair work was performed.

(5) *U.S.-foreign cost differential*. The U.S.-foreign cost differential shall be

determined by multiplying the proportionate cost differential for each principal foreign-flag competitor by the competition weight factor for that competitor, and by adding the resulting differentials for all principal foreign-flag competitors, as shown in the following example.

ABC STEAMSHIP COMPANY, INC—TRADE ROUTE—X—U.S.-FOREIGN COST DIFFERENTIAL FOR MAINTENANCE (UPKEEP) AND REPAIRS SUBSIDY RATE—1985

Principal competitors	(1) Distribution of repairs		(2) Country cost differential (percent)	(3) Proportionate cost differential (1) × (2) (percent)	(4) Competition weight factor (Percent)	(5) Weighted differential (3) × (4) (Percent)
	Country	(Percent)				
Japan	Japan	85	36.21	30.78		
	U.S	15	0	0		
		100		30.78	23.4	7.20
Norway	Norway	15	44.72	6.71		
	Netherlands	20	43.23	8.65		
	Japan	45	36.21	16.29		
	U.S	20	0	0		
		100		31.65	31.1	9.84
United Kingdom	U.K	80	19.00	15.20		
	Hong Kong	15	50.35	7.55		
	U.S	5	0	0		
		100		22.75	45.5	10.35
U.S.-Foreign Cost Differential						27.39

(c) *Calculation.* The appropriate U.S.-foreign cost differential shall be applied to the subsidizable and audited maintenance and repair costs for the three-year period, discussed in paragraph (c)(1) of this section, to establish a relationship of the cost differentials between M&R and wages. This relationship shall be used to establish the M&R subsidy on a current basis by applying the percentage relationship to the per diem wage subsidy rate.

(1) *Historical period.* The relationship of calendar period M&R subsidy to fiscal period wage subsidy shall be measured for the three-year period commencing five years prior to January 1 of the subsidized year. The M&R subsidy and the wage subsidy shall be expressed as an amount per voyage day for purposes of establishing the relationship. This ratio shall be established for each subsidized service and applied to the per diem wage rate of each ship type in the service to factor a daily amount of subsidy for M&R. The following is an example of the determination of the relationship and the daily amount of subsidy for M&R.

DETERMINATION OF DAILY AMOUNT OF SUBSIDY FOR M&R

T.R. 98 item	Calendar Year 1980	Calendar Year 1981	Calendar Year 1982	Total
M&R C.Y. Expenses	$1,700,000	$2,000,000	$1,900,000	
Subsidy Rate	40.00%	44.00%	50.00%	
Subsidy	$680,000	$880,000	$950,000	$2,510,000
Voyage Days	1,100	1,225	1,175	3,500
Average Subsidy Per Voyage Day ($2,510,000÷3,500 days)=$717.14				
	Fiscal Year 1980	Fiscal Year 1981	Fiscal Year 1982	Total
Wages F.Y. Per Diem Rate	$7,700	$8,050	$8,200	
Voyage Days	1,180	1,230	1,060	3,470
Subsidy	$9,086,000	$9,901,500	$8,692,000	$27,679,500
Average Subsidy Per Voyage Day ($27,679,500÷3,470 days)=$7,976.80				
Ratio M&R ODS to Wage ODS $717.14÷$7,976.80=8.99%				

T.R. 98 ship type	Daily wage ODS 1/1/85	Ratio M&R to wage ODS (percent)	Daily M&R ODS 1/1/85
C4–A	$9,000	x 8.99	$809.10
C5–B	$9,300	x 8.99	$836.07
C6–C	$9,600	x 8.99	$863.04

(2) *Data submission requirement.* The operator is required to submit annually a certified statement of eligible and audited M&R expenses, segregated by service, for the historical period referred to in paragraph (c)(1) of this section. The report shall be submitted to the Director, Office of Ship Operating Costs no later than January 1 of the subsidized year.

§ 282.23 Hull and machinery insurance.

(a) *Subsidy items.* The fair and reasonable net premium costs (including stamp taxes) of hull and machinery, increased value, excess general average, salvage, and collision liability insurance against risks and liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up returns, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential. Port risk premiums are eligible for subsidy but not for determining the U.S.-foreign cost differential.

(b) *U.S.-foreign cost differential.* A U.S.-foreign cost differential shall be calculated for each service. Due to the difficulty of comparing forms and costs of hull and machinery insurance coverages, the following assumptions shall be used for estimating the composite premium cost of the foreign-flag competitor.

(1) *Coverage.* The foreign competitive vessels have the same types and amounts of insurance coverages and deductible averages as the subsidized vessels.

(2) *Premium rate.* The foreign competitive vessels are insured in the British market and the rate for such vessels is the same as the British market rate for the subsidized vessels. If the operator carries all of its insurance in the American market, the American market rate shall be assumed to be the same as the British market rate.

(3) *Repairs.* Insurable repairs of the foreign competitive vessels are performed in the same countries and in the same distribution as non-insurable repairs, and the cost differential for such repairs shall be the same as the maintenance and repair percentage differential.

(4) *Particular average.* The percentage of particular average repair claims for the foreign competitive vessels is the same as the percentage of particular average repair claims for the subsidized vessels. The particular average portion of the premium cost for the subsidized vessels shall be determined as follows:

(i) *Percentage.* The particular average portion of the premium cost shall be determined by applying a percentage to the hull and machinery premium cost after deducting the estimated total loss premium. The percentage is based on insured claims experience. The percentage shall be determined by dividing the total of underwriter's absorptions for particular average domestic repair claims paid and estimated by the total of underwriter's absorptions for all claims paid and estimated (excluding total loss and constructive total loss claims) under the hull and machinery portion of the insurance coverage, except that such percentage shall not exceed eighty-five (85) percent. The percentage is based on the claims experience of the subsidized vessels for the five (5) calendar year period preceding the subsidized year. For subsidized operators that do not have five years of claims experience, the average percentage of particular average domestic repair claims for all similar subsidized vessels shall be used unless the operator can submit data to substantiate its own claims cost experience on similar vessels.

(ii) *Data submission requirement.* The operator shall submit the five year claims experience, invoices showing net premium costs and coverages for the subsidized year, and lay-up returns for the previous year to the Director, Office of Ship Operating Costs, not later than sixty (60) days after the cost of each calendar year.

(c) *Calculation.* In calculating the subsidized premium cost, the following steps shall be taken:

(1) The particular average portion of the premium cost shall be adjusted in order to give effect to the repair cost differential for the foreign competitive vessels by applying the complement of the maintenance and repairs percentage cost differential (100 percent minus the differential) to the particular average portion of the premium cost. The adjusted particular average foreign premium cost shall be added to the net premium cost excluding the particular average portion to determine the composite foreign premium cost.

(2) The foreign premium cost shall be substracted from the operator's total premium cost to determine the difference in dollars. The percentage differential is determined by dividing the dollar difference by the operators' total premium cost. An example calculation is included in Table 2.

(3) The net premium cost of the subsidized vessels shall be divided by the number of days in the calendar year and the resultant daily insurance cost shall be multiplied by the U.S.-foreign cost differential percentage applicable to the most recent year to determine the daily amount of subsidy for hull and machinery insurance.

TABLE 2—ABC STEAMSHIP COMPANY, INC.; CARGO VESSELS—TRADE ROUTE—X, U.S./FOREIGN COST DIFFERENTIAL FOR HULL AND MACHINERY INSURANCE

[1985]

1. *COMPOSITE FOREIGN PREMIUM COST:*			
A. *Hull and Machinery,* Total coverage		$92,741,996	
Average Premium Rate in British Market		1.00966%	
Premium Cost in British Market		....	$936,379
(Estimated Total Loss Payment $92,741,966@ .46500% [1]		$431,250)	
B. *Increased Value,* Total Coverage		$1,083,325	
Average Premium Rate in British Market		.32550%	
Premium Cost in British Market			$3,526
C. *Excess Liability,* Total Coverage			None
D. *Total Premium Cost if Insured 100% in British Market*			$939,905
E. *Deduct Particular Average Portion:*			
$936,379 Less $431,250=$505,129×62% [2]			313,180
F. *Net Premium Cost Exclusive of Particular Average*			$626,725
	Trade Route No. X Line A	Trade Route No. X Line B	Trade Route No. X LIne C
Particular Average Adjustment:			
P/A Portion of Premium Cost	$313,180	$313,180	$313,180
M & R Subsidy Rate Complement [3]	84.48%	86.63%	87.34%
Adjusted P/A Foreign Premium Cost	$264,574	$271,308	$273,531
Add: Net Premium Cost (Excluding P/A)	$626,725	$626,725	$626,725
2. *Composite Foreign Premium Cost*	$891,299	$898,033	$900,256
3. *TOTAL PREMIUM COST TO SUBSIDIZED OPERATORS*	$1,068,998	$1,068,998	$1,068,998
4. DIFFERENTIAL IN DOLLARS [4]	177.699	170,965	$168,742
5. *COMPOSITE WEIGHTED DIFFERENTIAL* [5]	16.62%	15.99%	15.79%
6. *U.S.—FOREIGN COST DIFFERENTIAL*	16.62%	15.99%	15.79%

[1] Estimated gross total loss rate adjusted for broker's discounts, policy tax and other costs, as necessary.
[2] Percentage of particular average.
[3] 100% minus M&R subsidy rate of the same calendar year.
[4] Line 3 less line 2.
[5] Line 4 divided by line 3.

§ 282.24 Protection and indemnity insurance.

(a) *Subsidy items.* Items eligible for determination of subsidizable costs and the U.S.-foreign cost differential are:

(1) *Premiums.* The fair and reasonable net premium costs (including stamp taxes) of protection and indemnity, excess insurance, second seamen's insurance, ''tovalop'' or other forms of pollution insurance, bumbershoot (only that portion identified as applicable to P&I insurance), cargo liability if excluded from the primary policy, supplemental calls against liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up return premiums, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential.

(2) *Deductibles.* The fair and reasonable cost of crew claims paid by and pending with the operator under the deductible provision of the protection and indemnity insurance policy approved as to form and coverage by MARAD, to the extent that such cost would have been paid by the insurance underwriter under the terms of the policy, except for the fact that it did not exceed the deductible provision of the policy, shall be eligible for subsidy. For subsidy purposes, the deductible absorption shall not exceed $50,000 for each accident or occurrence, provided however, that benefits paid on unearned wages, if excluded from coverage under the protection and indemnity insurance policy, shall be eligible, notwithstanding that the deductible provisions of the policy may be exceeded.

(b) *Assumption made in calculation.* For purposes of determining subsidy for protection and indemnity insurance, it shall be assumed that the cost differential between the subsidized vessels and the foreign competitive vessels is limited to those portions of premium costs and deductible absorptions which are related to crew liability and that the cost of all other liabilities is the same for both the subsidized vessels and the foreign competitive vessels.

(c) *Calculation.* The following is the method of calculating the U.S.-foreign cost differential for premiums:

(1) *General.* A differential shall be calculated for each subsidized service of the vessel. Since the premium cost for all other liabilities is assumed to be the same for both the U.S. and foreign competitive vessels, the calculation of the differential for protection and indemnity insurance premiums is in effect based on the difference between U.S. and foreign premium costs for crew liabilities. Premium costs are determined in costs per gross registered ton (GRT).

(2) *Reporting Requirement.* The operator shall submit the total premium cost for the subsidized year, plus any supplemental calls and lay-up return premiums not previously reported, to the Director, Office of Ship Operating Costs, not later than 60 days after the beginning of such year. The data shall be supported by invoices from the insurance underwriter.

(3) *U.S. crew liability cost.* The crew liability portion of the total premium cost shall be determined by applying a percentage to the total premium cost based on five (5) years of claims experience for the five years commencing six years prior to January 1 of the subsidized year. The percentage shall be determined by dividing the total of underwriter's absorptions for crew claims, paid and estimated, by the total of underwriter's absorptions for all claims, paid and estimated. The crew claims portion shall be limited to eighty-five (85) percent unless the operator can substantiate a higher percentage as a result of having crew liability and all other liabilities insured with different underwriters. The operator shall submit the five-year claims experience not later than 60 days following the close of each calendar year.

(4) *All other liabilities cost—U.S. and foreign.* The all other liabilities portion of the U.S. premium cost shall be determined by subtracting the crew liability portion from the total premium cost. The same cost shall be used for the all other liabilities portion of the foreign-flag competitor's premium cost.

(5) *Foreign crew liability cost.* The crew liability cost of each principal foreign-flag competitor shall be used, if reliable cost data can be obtained. If such data cannot be obtained for a principal

competitor, and it is determined that such competitor has a non-national crew, the crew liability cost for similar vessels registered under the flag of the crew's nationality may be used, at the Maritime Administrator's discretion, provided reliable cost data are obtained. If no reliable cost data are obtained for a competitor, the crew liability cost for that competitor shall be estimated by multiplying the subsidized operator's crew liability portion of the total premium cost by the ratio of that competitor's wage costs (FC) to the subsidized operator's wage costs (WC), as determined in the calculation of the wage differential.

(6) *U.S.-foreign cost differential.* The U.S.-foreign cost differential shall be the excess of the operator's total premium cost over the principal foreign-flag competitor's estimated total premium cost, expressed as a percentage, calculated in the following manner.

ABC STEAMSHIP COMPANY, INC., TRADE ROUTE X, PROTECTION AND INDEMNITY INSURANCE PREMIUMS, 1985

Premium cost (per GRT)	United States	Greece	Pakistan	South Africa
Crew liability	[1] $3.98	[2] $1.27	[3] $0.45	[2] 0.08
All other liability	$1.06	$1.06	$1.06	$1.06
Total costs	$5.04	$2.33	$1.51	$1.14
Differential—Excess of U.S. cost over foreign cost	$2.71	$3.53	3.90	
Unweighted differential (percent)	53.77	70.04	77.38	
Competition weight factor (percent)	....	24.3	24.9	50.8
Weighted differential (percent)	....	13.07	17.44	39.31
U.S.-foreign cost differential (percent)	....	....	....	69.82

[1] Determined by applying 79.03 percent (based on 5-year claims experience) to total GRT premium rate of $5.04.
[2] Crew liability data obtained by Maritime Administration.
[3] The unweighted percentage of Pakistani to U.S. wage costs of 11.23% was applied to $3.98 to estimate the foreign cost.

(d) *Daily Subsidy Rate.* The daily subsidy rate shall be calculated in the following manner:

(1) *Premiums.* The net premium costs per calendar day for the subsidized year shall be multiplied by the U.S.-foreign cost differential percentage determined for the most recent year. The product shall be the daily amount of subsidy for P&I premiums.

(2) *Deductibles.* (i) The eligible illness and injury crew claims paid and pending for each calendar year of a three-year period commencing six years prior to January 1 of the subsidized year shall be recalculated, if necessary, to reflect the operator's current deductible levels. These expenses, after audit, shall be multiplied by the percentage wage differential, as determined in the calculation of wage subsidy for the appropriate fiscal period. The resulting calendar period P&I deductible subsidy for the three-year period shall be divided by the voyage days for the period to arrive at an aggregate daily P&I deductible subsidy. The aggregate fiscal period wage subsidy accrued in the service for the three-year period shall be divided by the voyage days for the period to arrive at an aggregate daily wage subsidy amount. The aggregate daily P&I deductible subsidy for the three-year calendar period shall be divided by the aggregate daily wage subsidy for the three-year fiscal period. The resulting percentage shall be applied to the wage per diem calculated for each ship type in the service to derive the daily amount of subsidy for P&I deductibles. As to pending claims previously recognized in the historical period, only the amount of changes in cost with respect to such claims shall be subsequently recognized. The following methodology shall be used to determine subsidy for P&I deductibles.

DETERMINATION OF DAILY AMOUNT OF SUBSIDY FOR P&I DEDUCTIBLES

T.R. 98 item	Calendar year 1979	Calendar year 1980	Calendar year 1981	Total
P&I Deductible C.Y. Expenses	$1,680,000	$1,220,000	$1,400,000	
Diff. Foreign/U.S. Wage Cost	26.00%	23.00%	20.00%	
Subsidy	$436,800	$280,600	$280,000	$997,400
Voyage Days	1,140	1,100	1,225	3,465
Average Subsidy Per Voyage Day ($997,400÷3,465 days)=$287.85				
	Fiscal year 1979	Fiscal year 1980	Fiscal year 1981	Total
Wages F.Y. Per Diem Rate	$7,660	$7,700	$8,050	
Voyage Days	1,090	1,180	1,230	3,500
Subsidy	$8,349,400	$9,086,000	$9,901,500	$27,336,900
Average Subsidy Per Voyage Day ($27,336,900÷3,500 days)=$7,810.54				
Ratio P&I Deductible ODS to Wage ODS $287.85÷$7,810.54=3.69%				

T.R. 98 ship type	Daily wage ODS 1/1/85	Ratio P&I ded. to wage ODS (percent)	Daily P&I ded. ODS 1/1/85
C4–A	$9,000	×3.69	$332.10
C5–B	9,300	×3.69	343.17
C6–C	9,600	×3.69	354.24

(ii) In cases where national insurance schemes cover crew claims costs in their entirety, resulting in no cost to the foreign competitor for deductible absorptions, the composite percentage differential for wages shall be adjusted by substituting a zero cost for such foreign competitor in the calculation of the differential. The adjustment of the wage percentage differential shall not be used for Japan, where operators incur minimal costs for deductible absorptions, rather than no costs. For Japan, the insurance related costs which are normally included in the calculation of Japanese wage costs shall be excluded in adjusting the wage percentage differential for this purpose.

(3) *Data submission requirement.* The operator is required to submit annually a certified statement of eligible and audited crew claims, as identified in paragraph (d)(2) of this section, for the historical period identified therein. The report shall be submitted to the Director, Office of Ship Operating Costs no later than January 1 of the subsidized year.

Subpart D—Subsidy Payment and Billing Procedures

§ 282.30 Payment of subsidy.

Submission of voucher. At the close of each calendar month, the subsidized operator may submit a voucher, and include for payment in such voucher the amount of ODS accrued for the voyages terminated during the period.

§ 282.31 Subsidy billing procedures.

(a) *Subsidy voucher*—(1) *Form.* Requests for payment of ODS shall be submitted on a public voucher, Standard Forms 1034 and 1034A, which can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402.

(2) *Copies.* The operator shall submit the original and 3 copies of the voucher to the MARAD Region Director for payment. The original and 2 copies must be supported by schedules and an affidavit. The third copy is the payee's copy and need not be supported.

(b) *Schedules and affidavit.* (1) The following schedules shall be used for calculating the amount of ODS payable:

SCHEDULE A

(Company)

ODSA No. ____________________

ODS Accrued During Fiscal Year 198____

ODS Payable for the Month of__________________

	Current voucher	Previous voucher	Total
Total Accrued ODS (Sched. B)	$	$	$
Less ODS Reductions: DTR/Deviations (Sched. C)	$		
Reduced Crew (Sched. D)	$		
Net ODS Accrued	$	$	$
Less Previous Payments			$
ODS Payable			$

SCHEDULE B

____

(Company)

ODS Accrued for the Month of__________________

Trade Area ____________________________________

Vessel name	Voy. No.	Voyage dates		Voy. days [1]	Per diem rates [1]	Net subsidy
		From	To			
					$	$
ODS payable for unpredictably timed expenses not included in daily amount (attach supporting information).						$
Total accrued subsidy (enter on Schedule A)						$

[1] Place* next to applicable "Voy. days" or "Per diem rate" of vessel and voyage requiring reduction of ODS because of domestic trade operations or voyage deviations.

SCHEDULE C

____

(Company)

Domestic Trade and Voyage Deviation ODS Reductions

Domestic Trade Reduction (DTR):

Vessel name	Voy. no.	Gross voyage revenue	Domestic revenue	% of dom. to gross revenue	Per diem rate	Per diem reduction	DTR days	ODS reduction
	....	$	$	........%	$	$	....	$

Deviation Reduction:

Vessel name	Voy. no.	Deviation days or % of day	Per diem rate	ODS reduction
	....	....	$	$

(Enter total Reductions on Schedule A).

SCHEDULE D

____

(Company)

Reduced Crew Period

Vessel	Reduced crew dates		No. of reduced crew days (a)	No. of crew reduced	Man-days	Man-day amount	Reduced crew reduction
	From	To					
....	....	....	×	=	×	$=	$
....	....	....	×	=	×	$=	$
....	....	....	×	=	×	$=	$
....	....	....	×	=	×	$=	$
Total Reduced Crew Reduction (Enter on Schedule A).							

(a) If licensed crew, indicate (a), (b) If unlicensed crew, include (b).

(2) A notarized affidavit as shown below shall be signed by an official of the subsidized operator who is familiar with the ODSA, these regulations, the operation of the subsidized vessel and the accounts, books, records, and disbursements of the subsidized operator relating to such operation:

AFFIDAVIT

State of ________
City of ________
County/Parish of ________

I, _______, being duly sworn, depose and say, that I am (title) of the _______ (herein referred to as the "Operator"), and as such am familiar with (a) provisions of the Operating-Differential Subsidy Agreement, Contract No. _______, dated as of _______, as amended, to which the Operator is a party; and (b) the regulations governing the payment of operating-differential subsidy for liner vessels, PART 282, Title 46, CFR; and (c) the operation of the vessels covered by said Agreement and regulations; and (d) the accounts, books, records, and disbursements of the Operator relating to such operation.

Referring to the public voucher dated _______, covering voyage days allowed for subsidy during the periods commencing _______ and ending _______, and attached, submitted by said Operator concurrent herewith for a payment on account in the sum of _______, under said Agreement, I further depose and say that, to the best of my knowledge and belief, the Operator has fully complied with the terms and conditions of said Agreement and regulations, applicable orders, rulings and provisions of the Merchant Marine Act, 1936, as amended, and is entitled, under the provisions of said Agreement and regulations, orders and rulings applicable thereof, to the amount of the payment on account requested; and further depose and say that the vessels named in the attached schedules were in authorized service for the vessel operating days on which the payment is requested and has not included in the calculation of the amount of subsidy claimed in the attached voucher any costs of a character that the Maritime Administration, or Secretary of Transportation acting by and through the Maritime Subsidy Board or any predecessor or successor, had advised the Operator to be ineligible to be so included, or any costs collectible from insurance, or from any other source.

Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval of the correctness of the amount stated to have been due, nor a waiver of any right of remedy the Maritime Administration, or Secretary of Transportation, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said Agreement, or otherwise.

I further depose and say that this affidavit is made for and on behalf and at the direction of the Operator for the purpose of inducing the Maritime Administration to make a payment pursuant to the provisions of the aforesaid Operating-Differential Subsidy Agreement, as amended.

Subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and State, this _______ day of _______,

My commission expires ________
Notary Public ________

(3) The subsidized operator shall furnish its own supply of supporting schedules and affidavit.

§ 282.32 Appeal procedures.

(a) *Appeals of annual or special audits.* An operator who disagrees with the findings, interpretations or decisions in connection with audit reports of the Office of the Inspector General and who cannot settle said differences by negotiation with the Contracting Officer may submit an appeal to the Maritime Administrator from such findings, interpretations or decisions in accordance with part 205 of this chapter.

(b) *Appeals of administrative determinations*—(1) *Policy*. An operator who disagrees with the findings, interpretations or decisions of the Contracting Officer with respect to the administration of this part may submit an appeal from such findings, interpretations or decisions as follows:

(i) Appeals shall be made in writing to the Secretary, Maritime Subsidy Board, Maritime Administration, within 60 days following the date of the document notifying the operator of the administrative determination of the Contracting Officer. In the appeal to the Secretary, the operator shall indicate whether or not a hearing is desired.

(ii) MARAD will notify the appellant in writing if a hearing is to be held and whether the operator is required to submit additional facts for consideration in connection with the appeal.

(iii) When a decision has been rendered, the Board shall notify the appellant in writing.

(2) *Appeal to the Secretary of Transportation*. An operator who disagrees with the Board may appeal such findings and determinations by filing with the Secretary of Transportation, a written petition for review of the Board's action. The petition shall be filed in accordance with provisions of the Department of Transportation pertaining to Secretarial review.

(3) *Hearings*. MARAD shall follow the Rules of Practice and Procedure (46 CFR part 201, subpart M) for hearings granted under 46 U.S.C. 1176 and 46 CFR 282.32.

PART 283—DIVIDEND POLICY FOR OPERATORS RECEIVING OPERATING-DIFFERENTIAL SUBSIDY

Sec.

AUTHORITY: Sec. 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); Dept. of Commerce Organization Order 10–8 (38 FR 19707, July 23, 1973).

SOURCE: 45 FR 37445, June 3, 1980, unless otherwise noted.

§ 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