which sum will be retained to recover the cost of processing the application.

(Sec. 4; 5 U.S.C. 553)

[G.O. 106, 31 FR 3397, Mar. 4, 1966]

PART 252—OPERATING-DIFFERENTIAL SUBSIDY FOR BULK CARGO VESSELS ENGAGED IN WORLDWIDE SERVICES

Subpart A—Introduction

Subpart B—Eligibility and Agreement

Subpart C—Operation

Subpart D—Calculation of Subsidy Rates

Subpart E—Subsidy Payment and Billing Procedures

AUTHORITY: 46 app. U.S.C. 1114(b), 1117, 1121, 1171, 1172, 1173, and 1175; 49 CFR 1.66.

SOURCE: 40 FR 43490, Sept. 22, 1975, unless otherwise noted.

Subpart A—Introduction

§ 252.1 Purpose.

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

[51 FR 40425, Nov. 7, 1986, as amended at 61 FR 32706, June 25, 1996]

§ 252.2 Policy.

The policy of the Merchant Marine Act, 1936, as amended, is set forth in section 101 thereof, as follows:

It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (b) capable of serving as a naval and military auxiliary in time of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States insofar as may be practicable, (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel, and (e) supplemented by efficient facilities for shipbuilding and ship repair. It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine.

§ 252.3 Definitions.

When used in this part:

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

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

(c) *Board* means the Maritime Subsidy Board of the Maritime Administration.

(d) *Bulk cargo vessel* means a vessel built to carry solid, liquid or gaseous commodities that in normal shipment are contained only by the vessel's structure.

(e) *Citizen of the United States* includes a corporation, if all directors of the corporation are citizens of the United States, partnership or association but only if it is deemed a citizen of the United States under section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802).

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

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

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

(i) *Gross revenue* means the operator's total gross receipts from cargoes or fixtures of a vessel or both.

(j) *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.

(k) *Operating-differential subsidy* (*ODS*) means, except as the operator and the United States government should agree upon a lesser amount, the excess of the 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, or such sums as the Board may determine to be necessary to make the cost of operating such vessel competitive with the cost of operating similar vessels under the registry of a foreign country.

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

(m) *Reduced crew period* means any period in port beginning on the day that a vessel's normal crew complement is reduced by 4 or more men and division of wages is not paid for the missing men and ending on the day prior to the day that the vessel's crew complement is restored to not more than 3 men less than the normal crew complement, or division of wages is paid for the missing men, or the vessel is temporarily or permanently withdrawn from subsidized service, whichever occurs first.

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

(o) *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.

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

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

(r) *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.

(s) *Vessel* means subsidized vessel unless otherwise specified.

(t) *Voyage day* means any day or part of a day during which a subsidized vessel is operated in accordance with the terms and conditions of the ODSA.

[40 FR 43490, Sept. 22, 1975, as amended at 45 FR 30442, May 8, 1980; 51 FR 40425, Nov. 7, 1986]

§ 252.4 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, provided that the procedures adopted are consistent with the Act and with the intent of these regulations.

[51 FR 40425, Nov. 7, 1986]

Subpart B—Eligibility and Agreement

§ 252.10 Eligibility.

Any citizen of the United States may apply to the Board for the payment of ODS for the operation of a bulk cargo vessel in an essential service in the U.S. foreign commerce.

§ 252.11 Application forms.

Application forms may be obtained from the Secretary, Maritime Administration, Department of Transportation, Washington, DC 20590.

§ 252.12 Approval.

The Board may not approve an application for the payment of ODS until the Board has determined, in addition to other statutorily required determinations, that:

(a) The operation of the vessel in an essential service is required to meet foreign-flag competition and to promote U.S. foreign commerce;

(b) The vessel was built in the United States, or built foreign and determined to be eligible for ODS pursuant to the applicable law at the time it was built or acquired, and the vessel is documented under the laws of the United States.

(c) The applicant owns or leases, or can and will build or purchase or lease, a vessel or vessels of the size, type, speed and number, and with the proper equipment required to enable him to operate in an essential service in such manner as may be necessary to meet competitive conditions and to promote U.S. foreign commerce;

(d) The applicant possesses the ability, experience, financial resources and other qualifications necessary to enable him to conduct the proposed operation of the vessel to meet competitive conditions and promote U.S. foreign commerce;

(e) The granting of the aid applied for is necessary to place the proposed operations of the vessel on a parity with the vessels of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of the Act;

(f) The vessel is of steel or other acceptable metal, is propelled by steam or motor, and is as nearly fireproof as practicable; and

(g) The vessel is constructed in accordance with plans and specifications approved by the Board and Secretary of the Navy, with particular reference to economical conversion into an auxiliary naval vessel, or approved by the Board and Navy Department as otherwise useful to the United States in time of national emergency.

[40 FR 43490, Sept. 22, 1975, as amended at 51 FR 40425, Nov. 7, 1986]

§ 252.13 Contract.

Upon approval by the Board of an application for ODS, the applicant and the United States may enter into an ODSA.

Subpart C—Operation

§ 252.20 Subsidized and nonsubsidized voyages.

(a) *Subsidized voyages*—(1) *Minimum operation.* The operator shall operate each subsidized vessel for a minimum of 335 days each year in the worldwide carriage of bulk cargo in the U.S. foreign commerce and in the carriage of such cargo between foreign ports.

(2) *Commencement.* The first voyage shall commence at the time provided in the ODSA. All subsequent voyages shall commence at 0001 hours local time of the day following the day of termination of the previous voyage or, in the event that a reduced crew period follows such termination, at 0001 hours local time of the day following the day on which such reduced crew period terminates.

(3) *Termination.* A voyage shall terminate at 2400 hours local time:

(i) In a U.S. port, on the day of completion of (*a*) paying off the crew from foreign articles, (*b*) discharge of cargo at the last U.S. port of discharge, or (*c*) voyage repairs, whichever event occurs last;

(ii) In a foreign port, on the day (*a*) of completion of the discharge of cargo if the vessel loads cargo in such port of discharge, (*b*) prior to the day of commencement of loading cargo if the vessel departed its last port of cargo discharge in ballast;

(iii) In the case of special circumstances such as strike or lack of cargo activity, on the day approved by the Region Director upon request for a variance by the operator; or

(iv) On the final voyage, on the day provided in the ODSA for termination of the final voyage.

(4) *Periods of reduced crew, idleness, delay or lay-up*—(i) *Report by operator.* The operator shall report promptly to the Region Director any reduced crew period and any period of idleness, lay-

up or delay occurring during or between voyages and the facts and circumstances relating to any such period.

(ii) *Region Director's finding.* The Region Director shall make a finding as to whether the period reported by the operator could have been avoided through the efficient and economical operation of the vessel and whether operating costs were reduced to a minimum in accordance with sound commercial practice. The Region Director shall, by means of a written report, promptly advise the operator and Contracting Officer of his finding.

(iii) *Contracting Officer's determination.* The Contracting Officer shall consider the Region Director's finding and shall determine what costs, if any, shall be subsidized during the period reported by the operator. The Contracting Officer shall promptly advise the operator of his determination in writing.

(b) *Nonsubsidized voyages in the U.S. foreign commerce.* (1) For any period of nonsubsidized service in the U.S. foreign commerce with respect to which the Board has granted prior authorization, a vessel shall go off subsidy after 2400 hours local time of the day of final discharge of cargo on the last subsidized voyage, or in the event the nonsubsidized voyage follows a subsidized period of reduced crew, idleness or layup, the vessel shall be deemed to be off subsidy at 0001 hours local time of the day following the day on which such period of reduced crew, idleness or layup terminates. The vessel shall continue in this nonsubsidized service until 2400 hours local time of the day of final discharge of the nonsubsidized cargo after which time the vessel will resume subsidized status. In the event the vessel makes consecutive nonsubsidized voyages during any such period of nonsubsidized service, it will remain in nonsubsidized status until completion of the final nonsubsidized voyage.

(2) For the purposes of meeting the requirements set forth in §§ 252.20(a) and 252.21, any such nonsubsidized voyage will be considered in the same manner as a subsidized voyage.

(3) Voyage reports shall be submitted upon the completion of each nonsubsidized voyage in the same manner as specified in § 252.23(a) and shall clearly indicate that the voyage is nonsubsidized.

[40 FR 43490, Sept. 22, 1975, as amended at 43 FR 4858, Feb. 6, 1978; 51 FR 40426, Nov. 7, 1986]

§ 252.21 Essential service requirement.

(a) *Essential service.* A vessel which is not subject to a charter, or a vessel subject to a charter which does not exceed 5 years duration and which may not be extended beyond 5 years duration by exercise of an option either within the charter or contained in a separate agreement, shall be deemed to be in an essential service, within the meaning of section 211(b) of the Act. The operator shall be entitled to the full amount of ODS payable under the operator's ODSA (less any reduction with respect to the carriage of cargo in the coastwise or intercoastal trades, as described in section 605(a) of the Act). A vessel subject to a charter which exceeds 5 years duration, or which may be extended beyond 5 years duration by exercise of an option (pursuant to provision of the charter or any separate agreement), shall not be deemed to be in an essential service unless such charter has been approved by the Maritime Administrator pursuant to paragraph (b) of this section.

(b) *Approval of charters.* Charters of vessels that exceed 5 years duration or that may be extended beyond 5 years duration by exercise of an option (pursuant to provision of the charter or any separate agreement) shall be submitted to the Maritime Administrator for review and approval at least 30 days prior to execution of such charter. Charters exceeding 5 years shall be approved if the Maritime Administrator finds that the vessel will probably be employed during a substantial portion of its economic life in carrying a significant volume of cargo in the U.S. foreign commerce. The Maritime Administrator shall base this finding on all relevant considerations, including but not limited to, the terms of the charter, the business of the charterer and the normal tendency for bulk operators to participate substantially in

U.S. foreign commerce. When the Maritime Administrator has made this finding with respect to a vessel, its operations during any period of subsidized service while subject to that charter shall be deemed to be operation in an essential service. The payment of ODS for such period shall not be reduced because of any amendment to this section or any other provision in this part 252 made prior to expiration of the charter. ODSA default provisions shall be applicable to noncompliance with this requirement. Charters that do not exceed 5 years and do not provide for extension beyond 5 years do not have to be submitted for approval by the Maritime Administrator, unless otherwise required by the ODSA. Charters previously approved by the Maritime Administration under existing procedures are deemed approved for purposes of this section.

(c) *Modification of requirement.* The Board shall have the authority to modify prospectively the provisions of this section as future circumstances may dictate. However, any such modification made by the Board shall apply only to charters that are executed on or after the date of the Board action, and the Board shall have discretion in determining whether such modification shall have general or limited applicability.

(d) *Applicability.* This is a general requirement applicable to the payment of ODS to operators of all types of bulk cargo vessels. The provisions of any ODS regulations pertaining specifically to dry bulk cargo vessels as may be finally adopted by the Maritime Administration and set forth in title 46, Code of Federal Regulations, shall govern as to dry bulk cargo vessels where such provisions are inconsistent with those contained in this section.

[45 FR 30442, May 8, 1980]

§ 252.22 Substantiality and extent of foreign-flag competition.

(a) *Type and tonnage groupings.* Foreign-flag competition shall be determined, as of January 1 of the year preceding January 1 of the subsidized year, by surveying a data file known as ''Merchant Fleets of the World'' that is maintained by MARAD. All foreign-flag bulk cargo vessels included in this data file are divided by type and category, and further subdivided by class. Classes include, but are not limited to general tanker, chemical tanker, OBO, general dry bulk carrier and wood chip carrier. Each vessel class is further divided into deadweight tonnage ranges as follows:

(1) Range A-vessels of less than 25,000 DWT;

(2) Range B-vessels of 25,000 but less than 50,000 DWT;

(3) Range C-vessels of 50,000 but less than 100,000 DWT; and

(4) Range D-vessels of 100,000 or more DWT.

(b) *Competitive classes and range.* The following classes of foreign-flag vessels in the same tonnage range as the subsidized vessel shall be deemed to be competitive with the subsidized vessel:

Subsidized Vessels and Foreign-flag Class

(1) General tanker—general tanker

(2) Chemical tanker—general and chemical tankers

(3) OBO—general dry bulk carriers and tankers, OBO, bulk/oil, ore/oil and ore carriers

(4) General dry bulk carrier—general dry bulk carriers

(c) *Grouping and ranking competitive foreign-flags.* The foreign-flag vessels deemed to be competitive with the subsidized vessel shall be grouped by nationality and ranked according to the total deadweight tonnage under each foreign-flag.

(d) *Competitive foreign flag.* The competitive foreign flag shall be the flag with the greatest total tonnage in the range.

(e) *Largest foreign flag not competitor.* In the event that the Board believes that the competitive foreign-flag so determined pursuant to this § 252.22 is not a substantial competitor of any particular operator, the Board may determine the foreign-flag competition in a manner that more accurately reflects the true competition of the particular operator. In making this determination, the Board shall consider the written views of the operator and any other interested parties.

[40 FR 43490, Sept. 22, 1975, as amended at 45 FR 8024, Feb. 6, 1980; 51 FR 40426, Nov. 7, 1986]

§ 252.23 Financial and other reporting requirements.

(a) *Voyage report.* The operator shall submit a voyage report to the Director, Office of Subsidy Administration, Maritime Administration, Washington, DC 20590, upon the completion of each subsidized voyage. Each voyage report shall include the following:

(1) Name of vessel and voyage number.

(2) Subsidy contract number.

(3) Vessel activity, including the following:

(i) Ports of voyage commencement and termination, including dates and times.

(ii) Loading ports, including dates of arrival and departure and long tons of cargo loaded (specify commodity).

(iii) Discharge ports, including dates of arrival and departure and long tons of cargo discharged.

(iv) Other ports, ports of bunkering, emergency calls, etc., including dates of arrival and departure (specify reason for call).

(4) All reduced crew periods, all periods of idleness, lay-up and delay, and all related correspondence with the Region Director.

(b) *Condition of vessels, inspection and repairs.* In order that the Maritime Administration may participate in the inspection of vessels, in compliance with part 272 of this subchapter, the operator shall give at least 24 hours notice to the Region Director as to the time and place of vessel inspections.

(c) *Vessel insurance*—(1) *Policies.* Upon the binding of any insurance policy with respect to a subsidized vessel, the operator shall submit promptly to the Director, Office of Marine Insurance, Maritime Administration, Washington, DC 20590, for approval of the Maritime Administration, a signed copy of each cover note issued by the operator's brokers, which, to the extent applicable, shall set forth as to such vessel the amounts covered by hull, increased value and other forms of total loss protection, as well as protection and indemnity insurance. Such cover notes shall include the rates, the amounts placed in the different markets, the participating underwriters, the amount underwritten by each underwriter, and the amounts of the deductibles. Upon request, copies of the policy shall be submitted to the Maritime Administration for examination.

(2) *Cancellation and policy changes.* The operator shall advise the Maritime Administration promptly of the cancellation of any policy of insurance, any changes in the terms or underwriters of any policy of insurance, any period of lay-up that permits the collection of return premiums, and the occurrence of any major casualty or total loss covered by a policy of insurance.

(d) *Financial statements.* The operator shall submit, in triplicate, to the Director, Office of Financial Approvals, Maritime Administration, Washington, DC 20590, the following reports, including management footnotes where necessary to make a fair financial presentation:

(1) Not later than 120 days after the close of the operator's semiannual accounting period, a Form MA–172 on a semiannual basis, in accordance with 46 CFR 232.6.

(2) Not later than 120 days after the close of the operator's annual accounting period an audited annual financial statement, in accordance with 46 CFR 232.6.

(Reporting requirements for paragraph (a) were approved by the Office of Management and Budget under control number 2133–0024 and reporting requirements for paragraph (d) were approved by the Office of Management and Budget under control number 2133–005)

[40 FR 43490, Sept. 22, 1975, as amended at 45 FR 30443, May 8, 1980; 47 FR 25530, June 14, 1982. Redesignated and amended at 51 FR 40426, Nov. 7, 1986]

§ 252.24 Continued eligibility for subsidy.

Operators shall remain eligible for ODS so long as they are engaged in service which would, under this part and sections 601(a), 602, and 605(c) of the Act, qualify for approval of an ODSA. The payment of ODS will be made only for carriage of commercial cargoes for which U.S.-flag vessels are in direct competition with foreign-flag vessels. An example of cargo that is excluded is bulk cargo reported by a shipper as the U.S.-flag share of cargoes subject to an agreement (including a unilateral commitment by a foreign government which has the effect of reserving cargoes for U.S.-flag vessels), between the United States and a foreign government in connection with any U.S. cash transfer foreign assistance program. In such a circumstance, there is no foreign-flag competitions for such cargoes.

[54 FR 39182, Sept. 25, 1989]

Subpart D—Calculation of Subsidy Rates

SOURCE: 51 FR 40426, Nov. 7, 1986, unless otherwise noted.

§ 252.30 Amount of subsidy payable.

(a) *Daily rates.* Daily ODS rates shall be used to quantify the amount of ODS payable except for the ODS rates applicable to maintenance and repair expenses, as described separately in § 252.32. 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 (with the exception of ODS rates applicable to maintenance and repair expenses), 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 § 252.3 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 C at § 252.41 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 MARAD. 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 Board for its consideration in determining subsidy rates.

[51 FR 40426, Nov. 7, 1986, as amended at 58 FR 17349, Apr. 2, 1993]

§ 252.31 Wages of officers and crews.

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

(1) *Base period.* The first base period under the wage index systems, 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 Board establishes a base period cost. At intervals of not less than two years, nor more than four years, the Maritime Subsidy Board shall establish a new base period. Base periods shall be announced by the Board 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 average 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 wth the following schedule:

	Minimum (pct)	Maximum (pct)
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. 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. 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. Examples 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 three days for officers and two days for unlicensed crew); 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 December 31. 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 calculation of CBC and WC:

ABC BULK CO.

Jan. 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	$,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) (pct)	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 competitor 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 competitor shall be constructed for the subsidized vessel type using the manning scales and practice of the competitor as developed through an examination of alien crew manifests, payrolls, and other reliable information. The commonly used crew complement of the competitor 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 percentage.

ABC BULK COMPANY, INC.

[Jan. 1, 1985—Foreign Wage Cost (FC)]

	United States	Liberia
Crew Complement	26	26
Base Wages	[1] $53,687	[1] $24,779
Allowances	$1,074	$4,584
Vacation Pay (leave)	[1] $35,681	[1] $13,009
Pension and Welfare	[3] $38,407	[1] $2,065
Social Security	[2] $6,608	[2] $7,227
Overtime and other variable costs (not elsewhere included)	[2] $48,732	[2] $10,944
Repatriation		
Total wage costs	$184,189	$62,608
Percentage FC to WC		33.99

[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. A lump sum amount would be paid for special lump sum assessments or for per man-day increases to benefits 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 shall be 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 benefits 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 BULK COMPANY, INC.

[Calculation of Wage Subsidy Rates [1]]

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) / 2	Appropriate limits
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1981		$4,162.60	$3,850.29			
	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
	1983	$4,578.24	$4,230.15	$3,850.29 × 1.1816 = $4,549.50		.9 × (4) = $4,104.34 1.1 × (4) = $5,016.42
	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
1985		$6,139.57	$5,504.06	$3,850.29 × 1.4044 = $5,407.35		.95 × (4) = $5,228.86 1.05 × (4) = $5,779.26

[1] This computation is based on a new vessel entering subsidized service in May 1981.

Base period cost	Subsidizable wage cost	Foreign cost percentage	Foreign wage cost	Wage subsidy daily rate	Wage subsidy percentage rate (12)+(9)
$3,850.9	$3,850.29	32.99	$1,373.24	$2,477.05	64.33
	$4,175.64	32.98	$1,509.90	$2,665.74	63.84
	$4,549.50	32.15	$1,812.49	$2,737.01	60.16
	$5,002.30	34.77	$1,926.05	$3,076.25	61.50
$5,455.71	$5,455.71	33.99	$2,086.84	$3,368.87	61.75

[51 FR 40426, Nov. 7, 1986, as amended at 54 FR 5086, Feb. 1, 1989]

§ 252.32 Maintenance (upkeep) and repairs.

(a) *Subsidy items*. 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, incurred by the operator during the calendar year.

(b) *Subsidy rate*. The subsidy rate for maintenance and repair shall be the U.S.-foreign cost differential determined from price estimates of representative items of maintenance and repair work and by using the repair practices of the foreign-flag competition. See paragraph (b)(4) of this section for an example calculation.

(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. Atlantic—Gulf Coast; Foreign Country—Singapore]

Repair category	Foreign price	U.S. price
Drydocking and Underwater Repairs	$89,840	$300,245
Tank Cleaning and Coating	70,160	77,080
Boiler Repairs	10,545	47,550
Machinery Repairs	22,505	108,165
Hull and Deck Repairs	33,500	99,370
Piping System	71,905	215,830
Electrical Repairs	12,340	36,660
Exterior Painting	5,035	30,640
Interior Painting	390	1,470
Estimate Totals	316,220	917,010

Foreign/U.S. Price Ratio—34%.
Country Cost Differential (100–34)—66%.

(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 shall 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. If such information is unavailable, repairing practices shall be determined on the basis of the industry as a whole.

(4) *M&R subsidy rate.* The U.S.-foreign cost differential for the 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 cost differential for all countries. For example:

ABC BULK COMPANY, INC., MAINTENANCE AND REPAIR SUBSIDY RATE

Principal competitor	Distribution of repairs		Country cost differential percent	Weighted cost differentials (1) × (2) (percent)
	Country	Percent		
	(1)		(2)	(3)
Liberia	U.K.	15	19	2.9
	Japan	20	36	7.2
	Singapore	65	57	37.1
Subsidy rate				47

(c) *Data submission requirement.* The operator is required to submit a Subsidy Repair Summary (Form MA–140) quarterly, in accordance with 46 CFR part 272.

[51 FR 40426, Nov. 7, 1986, as amended at 54 FR 5086, Feb. 1, 1989; 58 FR 17349, Apr. 2, 1993; 61 FR 32706, June 25, 1996]

§ 252.33 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 the 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 close 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 subtracted 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 operator's 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 BULK COMPANY, INC., U.S./FOREIGN COST DIFFERENTIAL FOR HULL AND MACHINERY INSURANCE—1985

1. 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 Premium $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

TABLE 2—ABC BULK COMPANY, INC., U.S./FOREIGN COST DIFFERENTIAL FOR HULL AND MACHINERY INSURANCE—1985—Continued

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
G. *Particular Average Adjustment.*	Worldwide service	
P/A Portion of Premium Cost	$313,180	
M&R Subsidy Rate Complement[3]	84.48%	
Adjusted P/A Foreign Premium Cost	264,574	
Add: Net Premium Cost (Excluding P/A)	626,725	
2. *Foreign Premium Cost*	891,299	
3. *Total Premium Cost to Subsidized Operators*	1,068,998	
4. *Differential in Dollars*[4]	177,699	
5. *U.S.–Foreign Cost Differential*[5]	16.62%	

[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.

§ 252.34 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) *Assumptions 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 the service of the vessels. 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 Board'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 BULK COMPANY, INC., PROTECTION AND INDEMNITY INSURANCE PREMIUMS, 1985

Premium cost (per GRT)	United States	Liberia
Crew liability	[1] $3.98	[2] $1.27
All other liability	$1.06	$1.06
Total cost	$5.04	$2.33
Differential—Excess of U.S. cost over foreign cost		$2.71
U.S.-foreign cost differential (pct)		53.77

[1] Determined by applying 79.03% (based on 5-year claims experience) to total GRT premium rate of $5.04.

[2] Crew Liability data obtained by Maritime Administration.

NOTE: The unweighted percentage of foreign to U.S. wage costs would be used to estimate the foreign cost if the foreign crew liability data were not available.

(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, and 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 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 period. The P&I deductible differential shall be divided by the fiscal period wage differential in the service for the three-year period, and 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 determine subsidy for P&I deductibles.

DETERMINATION OF DAILY AMOUNT OF SUBSIDY FOR P&I DEDUCTIBLES

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 (pct)	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 fiscal year 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 (pct)	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	354.34

(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 E—Subsidy Payment and Billing Procedures

SOURCE: 51 FR 40432, Nov. 7, 1986, unless otherwise noted.

§ 252.40 Payment of subsidy.

(a) *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.

(b) *Maintenance and repair subsidy*. In the case of payments for maintenance and repair subsidy only, the subsidized operator shall submit an initial voucher and include for payment in such voucher a percentage of the ODS payable for the period covered by the voucher, which percentage shall be negotiated between MARAD and the subsidized operator, but in no instance shall exceed 90 percent. Upon the completion of MARAD's determinations that the expenses are fair and reasonable, MARAD's computation of the ratio of subsidized vs. nonsubsidized days during the calendar year in which the last voyage terminated, and the Office of the Inspector General's audit of subsidizable expenses, the subsidized operator shall submit a final voucher for an adjustment of the amount of subsidy paid.

[51 FR 40432, Nov. 7, 1986, as amended at 58 FR 17349, Apr. 2, 1993]

§ 252.41 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 19__

ODS Payable for the Month of _____

	Current voucher	Previous voucher	Total
Total accrued ODS (sched. B)	$_____	....	....
Les ODS reductions: reduced crew (sched. C)	_____	....	....
Net ODS accrued	_____	$_____	$_____
Less previous payments	....	....	_____
ODS payable	....	....	_____

SCHEDULE B

(Company) ______

ODS Accrued for the Month of _____

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

SCHEDULE C

(Company) ______

REDUCED CREW PERIODS

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, indicate (b).

(2) A notorized 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 bulk cargo vessels, PART 252, 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 thereto, 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.

§ 252.42 Appeals 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 administration determination of the Contracting Officer. In his appeal to the Secretary the operator shall indicate whether or not he desires a hearing.

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

(iii) When a decision has been rendered by the Board, the appellant will be notified in writing.

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

(3) *Hearings,* The Rules of Practice and Procedures, 46 CFR part 201, subpart M, shall be followed for all hearings granted under 46 U.S.C. 1176 and 46 CFR 252.42.