§ 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

ABC STEAMSHIP COMPANY—Continued

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

	Per diem	
	WC	CBC
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) 2	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)
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]