

Procedural

This meeting is open to the public. Please note that the meeting may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify Mr. Gould no later than August 2, 2004. Written material for distribution at the meeting should reach the Coast Guard no later than August 2, 2004. If you would like copy of your material distributed to each member of the committee or working group in advance of the meeting, please submit 25 copies to Mr. Gould no later than August 2, 2004.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Gould at the number listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: June 28, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 04-15113 Filed 7-1-04; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG-2004-17465; formerly CGD 94-100]

Withholding of Vessel Clearances or Permits; Identification of Satisfactory Sureties in Lieu of Clearance or Permit Denial

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard is making available an optional standard form Letter of Undertaking that will be satisfactory for use in most minor civil penalty cases. Letters of undertaking are often proffered to the Coast Guard on behalf of vessels that might otherwise be denied clearance to leave port, due to possible statutory violations.

DATES: The optional standard form Letter of Undertaking is available for use on July 2, 2004.

ADDRESSES: The Department of Transportation's Docket Management Facility maintains the public docket for this notice, USCG-2004-17465. Comments and material received from the public will become part of this

docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket electronically, through the Web Site for the Docket Management System, <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact LCDR Sam Goswellen, Office of Investigations and Analysis (G-MOA), U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593-0001, telephone 202-267-0691, or email sgoswellen@comdt.uscg.mil. If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202-366-0271.

SUPPLEMENTARY INFORMATION:

Background

Under certain conditions, a U.S. or foreign flag vessel must obtain clearance from the Bureau of Customs and Border Protection (CBP) before it departs a port or place in the United States (see Title 46 Appendix, U.S. Code, sec. 91). The Coast Guard can ask CBP to deny or revoke the vessel's clearance if its owner, operator, or person in charge could be subject to a fine or civil penalty for violating one of the following statutes:

- Federal Water Pollution Control Act, 33 U.S.C. 1321(b)(12);
- Act to Prevent Pollution from Ships, 33 U.S.C. 1908(e), and implementing regulations;
- Ports and Waterways Safety Act, 33 U.S.C. 1232(f), and implementing regulations;
- Tank vessel operating or inspection requirements, 46 U.S.C. 3718(e), and implementing regulations in 33 CFR part 157 and 46 CFR parts 30 through 40 and 150 through 154;
- Inland Navigation Rules, 33 U.S.C. 2072(d); and
- Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended by the National Invasive Species Act, 16 U.S.C. 4711(g)(3).

In lieu of asking CBP to deny or revoke clearance, we can also accept a bond or other satisfactory surety proffered on behalf of the vessel. Local Coast Guard Captains of the Port (COTPs) determine whether a surety is satisfactory. In a 1995 **Federal Register** notice (60 FR 7927, Feb. 10, 1995), we asked the public to comment on this practice. We specifically requested input on 11 questions, including whether we need greater uniformity in

surety format and content, and whether sureties should be the subject of new Coast Guard rules.

In light of the comments we received, we have decided to take further action only with respect to Letters of Undertaking (LOUs). LOUs are often proffered to and accepted by the Coast Guard as one form of satisfactory surety. An LOU is proffered on behalf of a vessel's owner, operator, or both (hereafter: "owner/operator"). Among other undertakings, the owner/operator promises to satisfy any adverse judgment, up to a stated maximum amount.

Discussion of Comments

We received four sets of comments in response to our 1995 notice. These comments will be entered in the docket for USCG-2004-17465 as supplemental materials.

Two commenters favored nationwide uniformity in the format and content of sureties. The Coast Guard wants to make the process of proffering and accepting sureties easier for industry and for us. Some degree of uniformity can help us attain that goal. However, we also want to preserve the COTP's authority to accept a proffered surety only if it fits the circumstances of a particular case.

Two commenters said existing practices can be reformed without requiring regulations. We agree that some reforms can be instituted without adding or amending regulations. The action we are taking with respect to LOUs does not require rulemaking.

One commenter said surety procedures should allow for different formats. With respect to LOUs, this commenter said the Coast Guard should develop minimum requirements which, if met by the profferor, would result in the LOU's acceptance. This commenter, and a second commenter, also recommended accepting a standard LOU developed on behalf of protection and indemnity ("P&I") clubs (maritime insurers) by the International Group of P&I Clubs. The second commenter cited an unreported U.S. district court opinion in support of this view. The Coast Guard agrees that a standard form provides useful guidance, but we do not think a single form can be accepted under all conditions. The LOU is in essence a contract. Therefore, it is subject to negotiation and agreement on its terms to fit the circumstances of the particular case. We note that in the past, when a standard form has been approved by P&I club managers, almost always this approval has been in the context of a suit asserting a vessel's *in rem* liability. However, the statutes authorizing the Coast Guard to request

denial or revocation of CBP clearance are not dependent on, limited in scope by, or equivalent to, the laws and procedures applicable to the assertion of an *in rem* claim against the vessel. Therefore, applying rules and practices developed with regard to asserting *in rem* claims against vessels under admiralty law is inappropriate and not required.

One commenter recommended that the Coast Guard use the International Group of P&I Clubs' membership information to determine from whom the Coast Guard will accept an LOU. This involves how the Coast Guard determines who can be an "approved" LOU issuer, what standards will be applied in that analysis, and development and maintenance of an "approved LOU issuer list" over time. These issues are under active Coast Guard consideration but are beyond the scope of this notice.

Two commenters said LOUs should be satisfactory to the Coast Guard whether the potential fine is civil or criminal in nature. The Coast Guard agrees that properly drafted sureties can be used in either civil or criminal cases. However, sureties for more serious or complex civil or criminal cases may need to address factors that do not arise in more common civil cases. The optional standard form LOU we are making available is intended for use only in the more common civil cases.

One commenter said a COTP should give "verbal authorization to release" a vessel before the paperwork for the surety is completed. The Coast Guard disagrees. Congress has provided statutory means for keeping vessels alleged to be involved in statutory violations in port until the public's interests are adequately secured, and we believe those means should be used unless and until the vessel provides satisfactory surety. An unenforceable verbal agreement does not provide such surety.

One commenter said that the Coast Guard's current procedures require a vessel to provide unnecessary and unreasonable double security, because in addition to the LOU itself, the vessel's owner must waive all objections to the Coast Guard's *in rem* jurisdiction over the vessel. The Coast Guard disagrees that the current procedures require the vessel interests to post unnecessary and unreasonable double security. The optional standard form LOU preserves the vessel interests' defenses, none of which is to be regarded as waived, except as stated in the LOU itself. The Coast Guard's procedures do not continue to subject the vessel to *in rem* seizure for the same

violation, once an LOU or other satisfactory surety is posted, provided the LOU or other surety terms are satisfied.

One commenter said that, under 33 U.S.C. 1232, the clearance denial and revocation provisions of 46 U.S.C. Appendix, sec. 91, apply only if a vessel's owner has been given notice of the alleged violation and an opportunity for a hearing. This commenter said the Coast Guard oversteps the bounds of its police power by refusing port clearance to a vessel that has received no such notice and hearing. The Coast Guard disagrees. The statutes authorizing us to request the CBP's denial or revocation of a vessel's clearance do not require that request to be preceded by a hearing. No case has held that a pre-hearing request to withhold clearance violates due process. We note that, while not directly applicable, the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure do not require a pre-issuance hearing before a warrant of *in rem* or *quasi in rem* arrest is issued by a U.S. Magistrate Judge.

One commenter criticized the Coast Guard for trying to retain the right to arrest a vessel or other property of the vessel owner even after satisfactory surety is posted. This commenter contended that, in *in rem* proceedings against vessels, admiralty law principles preclude arresting the vessel or attaching any other property once an LOU has been accepted as surety. However, the statutes authorizing the Coast Guard to request denial or revocation of CBP clearance are not dependent on, or equivalent to, the assertion of an *in rem* claim against the vessel. Therefore, applying rules and practices developed with regard to asserting *in rem* claims against vessels under admiralty law is inappropriate and not required.

One commenter said that the Coast Guard's efforts to require an LOU correspondent to agree to act as a P&I club's agent for service of process are wrong because club correspondents are not agents of the club, and unnecessary because the International Group of P&I Clubs' standard LOU form issued in admiralty *in rem* actions against vessels contains an agreement to appear in any court of competent jurisdiction and file a claim on behalf of the owner of the vessel. The Coast Guard points out that the vessel's master is ordinarily the agent for the vessel owner and that appointment of a local individual or entity to receive correspondence and service of process on the owner's behalf and in the master's stead is a reasonable tradeoff for the Coast Guard's

acquiescence in clearance for the departure from local waters of both the vessel and its master. The Coast Guard also notes that, since 1995, most LOUs issued by P&I clubs contain a provision similar to the one criticized by the commenter.

Standard Form Letter of Undertaking

Comments received in response to our 1995 notice confirm the Coast Guard's view that all sides will be benefited by having a standard form LOU that can be used nationwide for most civil penalty cases. Therefore, we are making available the optional standard form LOU appearing as an Appendix to this notice.

We do not think this form would be suitable for criminal cases or for civil cases where the penalty may be \$500,000 or more. Serious or complex cases require other forms of surety. For a surety document to be satisfactory in a serious or complex case, it may need to include some or all of the following pledges or guarantees from the vessel owner, operator, or person in charge to:

- (1) make vessel crew members and other employees available for legal proceedings, including making necessary travel arrangements to facilitate appearances;
- (2) stipulate to certain incontrovertible facts, *e.g.* ownership and operation of the vessel or the authenticity of documents and things from the ship, without prejudice to its or their other rights and defenses;
- (3) authorize acceptance of service of correspondence and legal papers;
- (4) enter an appearance in Federal district court; or
- (5) comply with instructions regarding payment of funds.

Use of the standard form LOU is entirely optional on the part of a profferrer. It can be proffered in any COTP zone. In addition, vessel representatives can still proffer a nonstandard LOU, a surety bond, or any other satisfactory form of surety. However, in each case, a COTP retains full authority to accept or reject a proffered surety, including a proffered standard form LOU, after consultation with the COTP's servicing legal office.

Dated: June 25, 2004.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

Appendix—Optional Standard form Letter of Undertaking

Secretary of Homeland Security
C/O Commanding Officer
U.S. Coast Guard
Marine Safety Office

[address]

Re: [name of vessel, on or about date,
location] [applicable regulation or statute]

Dear Sir:

In consideration of the United States of America refraining from withholding the clearance required by 46 U.S.C. App. 91 of the [name of vessel], arresting the vessel or attaching any property belonging to the owners of the vessel in connection with claims and actions arising out of alleged violations described above occurring within the navigable waters and the Exclusive Economic Zone of the United States, and arising on or after [date of alleged violation] (hereafter referred to as the "alleged incident"), the undersigned [name of the bound party], hereby agrees:

1. That [name of agent or attorney-in-fact] as agent [or attorney in fact] for the owner/[name of bound party] and operator/[name of bound party] shall accept delivery of correspondence for the owner/[name of bound party] and operator/[name of bound party] and service of any process on behalf of the owner/[name of bound party] and operator/[name of bound party] in any case, action, administrative hearing, or proceeding related to or arising from civil penalties for violations as generally identified above; that delivery to the agent [or attorney-in-fact] constitutes effective notice and service on the owner/[name of bound party] and operator/[name of bound party];

2. To file, or cause to be filed, upon demand, a claim and/or appearance by the owner and/or operator of the vessel [name of vessel] in any action brought against either or both of them by the United States concerning the alleged violations, and to defend the vessel from any *in rem* claim asserted against it;

3. In the event a final judgment (after appeal if any) is entered, in favor of the United States against the vessel [name of vessel], or her owner or operator as a result of such action, to pay and satisfy said judgment, plus interest and costs, up to and not exceeding [maximum amount of civil penalty that may be assessed], or any lesser amount settled between the parties, provided said settlement has been made with the written approval of [name of bound party];

4. Upon written demand, to cause to be filed in said hearing or action, a bond in form and sufficiency of surety satisfactory to you, or to the court, sufficient in amount not to exceed [maximum amount of civil penalty that may be assessed], including interest and costs, to secure your claim against the owner and/or operator, and [name of vessel] in the aforesaid judicial action. In the event that the bond referred to in this paragraph is filed, the undersigned shall have no further obligation under Paragraph 3 above.

This letter is to be binding whether the [name of vessel] be lost or not lost, in port or not in port, and is given without prejudice to all rights or defenses which the [name of vessel] and/or her owner or operator may have, none of which is to be regarded as waived, with the exception that the owner and operator agree that delivery to the agent identified in Paragraph 1 above, of correspondence for the owner/[name of bound party] and operator/[name of bound

party] will constitute effective notice to the owner/[name of bound party] and operator/[name of bound party], and that the owner/[name of bound party] and operator/[name of bound party] will not assert in any subsequent hearing or action any alleged defects in notice or service of process issued and served in accordance with this undertaking. This letter does not constitute an admission of liability by the vessel or its owner/[name of bound party] and operator/[name of bound party].

This letter is also written entirely without prejudice to any claims and rights the United States of America may have pursuant to any applicable certificate of financial responsibility ("COFR") pertaining to the vessel, none of which claims and rights is to be regarded as waived or discharged.

Owner/[name of bound party] warrants that it owns the vessel. Operator/[name of bound party] agrees that it may be considered an operator of the vessel under applicable United States law.

If no penalty is assessed, or no action is filed in the aforesaid court within a period of three (3) years from the date hereof, this letter shall become null and void. If the owner/[name of bound party] fails to appear as required by Paragraph ## or fails to waive objections to jurisdiction as required by Paragraph ##, then the undersigned association agrees to pay to the United States the full amount of this letter of undertaking.

It is understood and agreed that the execution of this letter by [name of law firm] on behalf of the undersigned [name of bound party underwriter or P&I club] shall not be construed as binding upon [name of law firm] but is binding only upon the undersigned [name of bound party underwriter or P&I club].

Sincerely,

[name of bound party underwriter or P&I club]

By: [firm]

[name of attorney]

As attorney-in-fact for the above limited purposes only per [telex, telefax, letter] authority from [name of bound party underwriter or P&I club] dated [date].

[FR Doc. 04-15112 Filed 7-1-04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1523-DR]

Kentucky; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the

Commonwealth of Kentucky (FEMA-1523-DR), dated June 10, 2004, and related determinations.

DATES: *Effective:* JUNE 24, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 10, 2004:

Hancock County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04-15056 Filed 7-1-04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1521-DR]

Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA-1521-DR), dated June 8, 2004, and related determinations.

DATES: *Effective:* June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.