



August 22, 2002

CIRCULAR NO. 17/02

TO MEMBERS OF THE ASSOCIATION

Dear Member:

**U.S. COAST GUARD RESTRICTIONS ON FOREIGN-FLAGGED VESSELS:
THE POSTING OF ARMED SECURITY GUARDS**

The United States Coast Guard (USCG), at the request of the United States Immigration and Naturalization Service (INS), has implemented new security requirements regarding foreign-flagged vessels entering U.S. ports.

During the past few months, the INS and the USCG have been requiring that armed security guards be placed on incoming vessels designated as "a potential threat to port security." The criteria used by the USCG and the INS in deciding whether a particular vessel poses such a potential security threat are classified. However, based on the Club's recent experience with vessels calling at New Orleans and Houston, it appears that the factors considered by the USCG include: (1) whether the crew have US visas; and (2) whether the crew of the subject vessel are nationals of certain countries which are considered "high risk" nations. With respect to the second factor, the Club's recent experience has seen the USCG thus far requiring armed security guards to be posted on vessels with crew members who are nationals of Egypt, Pakistan and the Philippines.

The procedure under these new requirements is as follows. The vessel provides the USCG its 96-hour advance notice of arrival, which includes the vessel crew list and nationality information. The USCG then reviews the crew list with the INS and makes a determination as to whether it is necessary to require security guards to be placed on board the vessel.

If the vessel is deemed to be a potential port security threat, the USCG sends a written restriction notice to the vessel requiring the posting of one, two or more armed security guards on board. The vessel must then receive the security guards before entering port and the guards will remain on board the vessel for the remainder of its port call. In some instances, crew members will not be permitted to disembark from the vessel while in port.

Because the cost of retaining guards can average some \$25 to \$35 per hour (per guard per day), significant expense can accumulate very quickly and place the vessel owner and charterer at odds as to which party should be responsible for the expense under the governing charter party.

At present, there do not appear to be any published arbitration or court decisions addressing the specific issue of which party should ultimately bear the cost of armed security guards. Accordingly, it is recommended that Members make arrangements to include specific provisions in their respective charter parties to allocate the responsibility for retaining and paying such guards.

It should be noted that, while these new security requirements are applicable to all vessels entering any US port, the USCG has been very strict in enforcing restrictions in US Gulf ports, such as New Orleans (Louisiana), Houston (Texas), Beaumont (Texas), and Mobile (Alabama), as well as in the US Southeast, such as Port Everglades (Florida), Savannah (Georgia), and Charleston (South Carolina).

Nevertheless, Members whose vessels regularly call at US ports should anticipate that their vessels will be the subject of USCG efforts to enforce the armed security guard requirement.

The Managers would like to thank Robert F. Fisher of Chaffe, McCall, Phillips, Toler & Sarpy LLP of New Orleans, Louisiana, as well as Charles Whited of Murphy, Rogers & Sloss of New Orleans, Louisiana for providing the Club with information relating to the application and enforcement of these recent security requirements by the USCG and the INS.

In the meantime, the Managers will be pleased to answer any inquiries that Members may have in regard to this issue.

Yours faithfully,

Joseph E.M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB

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AMENDMENTS TO USCG ADVANCE ARRIVAL NOTICE REGULATIONS JUST ADVISED

Members are further asked to note that the USCG has amended its Advance Arrival Notice regulations for vessels bound for ports or places in the United States. The amendment now requires the owner, master, operator, agent, or person in charge of the vessel to identify its charterer.

The rule defines the term "charterer" as being the party responsible for chartering the majority of a vessel's cargo carrying capacity. This definition would include time, voyage and demise or bareboat charterers. The commentary to the rule further indicates that, in situations where the vessel has been chartered and then subchartered, the head charterer would be the charterer for the purposes of this requirement for notification. Subcharterers and slot charterers do not need to be identified.

The USCG has stated that the new regulation will allow it *"to better identify charterers associated with substandard vessels."* The regulation is part of a 1994 Port State Control program which was implemented to address the concerns created by the steady increase in the number of sub-standard foreign-flagged vessels visiting U.S. waters, and to provide the USCG with resources to detain those vessels posing the greatest risk to safety and the environment.

The USCG has further commented that the amendment will advance the goals of the Port State Control program because the charterer has the greatest amount of control in selecting a vessel in suitable condition to make a voyage to the United States and, if the vessel in question is substandard, the charterer has the option to avoid entering into the charter agreement.

This new requirement will become effective on September 18, 2002. While charterer information has generally been treated as confidential information in the industry, Members are encouraged to comply with the new regulation and provide the requested information prior to a vessel's arrival at U.S. ports in order to avoid problems with the USCG or any other authorities.

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