

7 FAM 700 SHIPPING AND SEAMEN SERVICES

7 FAM 710 POLICY AND RESPONSIBILITIES

(CT:CON-091; 09-03-2004)
(Office of Origin: CA/OCS/PRI)

7 FAM 711 GENERAL

7 FAM 711.1 Vessel Documentation

(CT:CON-091; 09-03-2004)

- a. The United States assumed its responsibilities with regard to seamen abroad before the creation of the U.S. Consular Service. Consular involvement with maritime affairs was intricately tied to the development of our national defense policy and to the early history of the Department of State. Although changes in the maritime laws and customs, treaties, consular conventions, union contracts and other collective bargaining agreements may have lessened the role of the consular officer, your role remains vital in assisting seamen of the U.S. and in documenting American vessels when necessary.
- b. Following are other Federal agencies concerned with shipping and seamen issues.
- c. **United States Coast Guard (USCG)** - a military, multi-mission, maritime service and the Department's primary contact for issues related to shipping and seamen services. In addition to its compelling national defense role as one of the five U.S. Armed Services, the Coast Guard is charged with a broad scope of regulatory, law-enforcement, humanitarian, and emergency-response duties.

The USCG investigates certain marine casualties, investigates misconduct and takes disciplinary action concerning U.S. merchant seamen and inspects and certifies vessels subject to U.S. inspection laws.

USCG

202-267-2229

The Office of Vessel Traffic Management provides direction, program oversight, and policy guidance for the U.S. System of Vessel Traffic Services.

The National Vessel Documentation Center provides the most common forms used in the Vessel Documentation Process.

The National Maritime Center (Telephone: 202-493-1022/202-493-1000, FAX: 202-493-1060 or E-mail: Swalker@Ballston.uscg.mil issues merchant mariners' documents and licenses, maintains the records of U.S. mariners and provides guidance concerning their qualifications as well as other issues such as wage disputes, and documents vessels.

Union contracts, treaties, laws and consular conventions govern many actions pertaining to seamen, such as repatriation, death notification and disposition of remains and effects. Contact the USCG National Maritime Center for specific information.

d. **Department of Homeland Security (DHS):**

Bureau of Customs and Border Protection (BCBP) - Coordinates activities with DHS's Bureau of Citizenship and Immigration Services (BCIS) and the Bureau of Immigration and Customs Enforcement (BICE), the U.S. Coast Guard and other agencies as required. BCBP also handles admissibility determinations concerning alien seamen, shore leave in the United States, and service time aboard U.S. ships.

e. **U.S. Maritime Administration** - Handles the Maritime Security Program and other forms of promotional assistance to the merchant marine; manages and operates the Ready Reserve Force which is a reserve fleet of cargo ships that are activated in time of national emergency; and controls the charter and sale of U.S. flag vessels to foreign interests.

f. **Federal Communications Commission** - Licenses ship radio equipment and radio operations.

7 FAM 711.2 U.S. Vessels

(CT:CON-091; 09-03-2004)

U.S. vessels are vessels registered by U.S. citizens under the U.S. flag. U.S. vessels may be registered (documented) either by the Federal Government (USCG) or by state registration systems. Small recreational vessels are more often registered by the states (depending on their size) while the USCG usually documents commercial vessels.

7 FAM 711.3 Foreign Vessels

(CT:CON-091; 09-03-2004)

Foreign Vessels are vessels documented under a foreign flag regardless of ownership. A vessel owned by U.S. citizens is a “foreign vessel” if it is registered under the laws of a foreign country.

7 FAM 711.4 USCG National Vessel Documentation Center

(CT:CON-091; 09-03-2004)

792 T. J. Jackson Drive
Falling Waters, WV 25419
Telephone: 304-271-2400
800-799-8362
FAX: 304-271-2405

To be registered by the United States Government, a vessel must measure at least five net tons, and must meet certain rules determining level of ownership and control by a citizen of the U.S. (except certain oil spill response vessels).

The National Vessel Documentation Center (NVDC) has an excellent Web site that includes a “Frequently Asked Questions” segment covering most questions that may be asked of you. It also includes:

- Vessel documentation forms
- Documentation instructions
- Addresses, fax, and telephone information

7 FAM 711.4-1 Vessel Documentation

(CT:CON-091; 09-03-2004)

A national form of registration that:

- Provides conclusive evidence of nationality for international purposes
- Provides for unhindered commerce between the states
- Admits vessels to certain restricted trades, such as coastwise trade and the fisheries

7 FAM 711.4-2 Basic Requirements for Documentation of a Vessel by the USCG

(CT:CON-091; 09-03-2004)

Documents that demonstrate:

- Ownership of the vessel
- U.S. citizenship
- Eligibility for the endorsement sought

Every vessel documented by the USCG must have on board a Certificate of Documentation (CG-1270) as evidence of its documentation under the laws of the United States. Applications are sent to NVDC by individuals.

Vessel documentation regulations may be obtained via by telephone at 304-371-2400; 800-799-8362 or by FAX: 304-271-2405.

7 FAM 711.5 Registration of U.S. Vessels (Merchant and Pleasure)

(CT:CON-091; 09-03-2004)

For U.S. Citizens Living Abroad:

- a. Submit a completed **Application for Initial Issue, Exchange, or Replacement of Certificate of Documentation**; Redocumentation (CG-1258) to NVDC for processing.
- b. The NVDC issues **Certificates of Ownership (CG-1330)** that indicate the owner of the vessel and whether there are outstanding encumbrances of record. Owners retain these for legal and financial purposes (mortgages) and it is not necessary to have a Certificate of Ownership on board.
- c. **The NVDC issues Certificates of Documentation (CG-1270)** as evidence of a vessel's documentation under the laws of the United States. Every U.S. vessel must have a Certificate of Documentation on board.

7 FAM 711.6 Locating the Registered Owner of a Merchant or Pleasure Vessel

(CT:CON-091; 09-03-2004)

If the vessel is documented, the USCG can provide an Abstract of Title, CG-1332, that will show the chain of title and all encumbrances recorded.

Call the NVDC for assistance:

304-271-2400/800-799-8362

FAX: 304-271-2405

7 FAM 711.7 Conventions

(CT:CON-091; 09-03-2004)

There are a number of international conventions that apply to shipping. Some are discussed here. One important feature of many of these conventions is the concept of port state control. For example, the International Convention for the Safety of Life at Sea (SOLAS) regulation I.19 allows a port state to come aboard foreign flag vessels in its waters and ensure the vessel is in compliance with the terms of the convention. A port state may even prevent/detain departure of a vessel until the vessel is in compliance. A port state should contact the nearest U.S. consular office promptly when taking any enforcement actions under an international convention.

7 FAM 711.7-1 International Convention for the Safety of Life at Sea

(CT:CON-091; 09-03-2004)

The International Convention for the Safety of Life at Sea of 1974 (SOLAS) prescribes certain minimum standards, safety equipment, radio installation, and general procedures for the ships of the United States and other countries that are parties to the Convention.

- a. Under SOLAS, you may extend certain international certificates that expire before the vessel reaches a port in the U.S. for five months or less. (For example, SOLAS certificates may be extended to allow the ship to complete its return voyage to the port where it is registered or is to be surveyed.)

However, before taking such actions it may be advisable to contact USCG headquarters Office of Compliance (202-267-2978).

- b. Amend certificates by adding the following to each certificate:

Extended on (mm/dd/yy)_____at the Port of _____for the purpose of allowing the S.S. _____to complete its return voyage to the U.S. but not to exceed five months from (mm/dd/yy) _____
Date of expiration of certificate.

Signature of Consular Officer

IMPRESSION_____

SEAL

Typed name of Consular Officer

Title of Consular Officer

- c. You may request the authorities of a foreign government, party to the Convention, to issue a new certificate.
- d. You may request the local government authority (if party to the Safety Convention) to inspect the vessel for compliance if the master of a U.S. flag vessel requests a Cargo Ship Safety Radiotelegraphy, Radiotelephony, or Cargo Ship Safety Equipment Certificate be issued.

For further information, contact the Office of Compliance at USCG at 202-267-2978.

Cargo Ship Safety Construction Certificates, the U.S. Coast Guard Certificates of Inspection (form CG-841) and the International Oil Pollution Prevention (IOPP) Certificates may not be extended.

7 FAM 711.7-2 International Convention on Load Lines of 1966

(CT:CON-091; 09-03-2004)

Under this convention the enforcement authorities of a foreign port are required to notify the consulate if a U.S. vessel in the port is reported to be loaded deeper than the permissible draft. If the master of the vessel disputes the allegation, you should make appropriate inquiries and report your findings to the local authorities. A report of the alleged violation should be made to the Department for the attention of the USCG.

7 FAM 712 WHAT IS THE CONSULAR OFFICER'S AUTHORITY AND RESPONSIBILITY REGARDING SHIPPING AND SEAMEN SERVICES?

(CT:CON-091; 09-03-2004)

The master and crew of a vessel of the United States are subject to the jurisdiction of the United States for certain purposes during the period of their employment aboard ship and are entitled to certain protections under U.S. law.

7 FAM 712.1 Authorities

(CT:CON-091; 09-03-2004)

22 U.S.C. 4193, 4194, 4205-07 (Foreign Relations and Intercourse);

46 U.S.C. (Shipping);

International Convention for the Safety of Life at Sea (Treaties and Other International Acts, Series 9700).

Also, other important legal authorities that affect shipping and seamen services are:

Shipowners Liability Convention of 1936;

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended; and

International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended (Treaties and Other International Acts, Series 9700).

Many agreements grant enforcement authority to port states in addition to flag state authority to ensure foreign vessel compliance with the substantive requirements in the agreements.)

7 FAM 712.2 Definitions and Descriptions

(CT:CON-091; 09-03-2004)

- a. **Classification society** – means a non-governmental organization that establishes safe standards for the strength of the hull and reliability of the machinery of a vessel and may issue certificates on behalf of a government (e.g. American Bureau of Shipping or Det Norske Veritas for the U.S.).
- b. **Crew of a vessel** – means every person engaged or employed in any capacity in the business of a vessel who has not contributed consideration for carriage and who is paid for on board services. Passengers (see 46 U.S.C. 2101(21)) are not crew. Laborers or other persons hired locally for work aboard ship while the vessel is in port are not crew.
- c. **Discharge** – dismiss from employment.
- d. **Demise charter** – is a contract between a vessel owner and a charterer where the charterer takes over the use, operation (including supplying a crew), and navigation of the owner’s vessel. The level of control the demise charter is to the level that it is considered functionally equivalent to ownership, but title doesn’t change. Agencies such as the U.S. Navy’s Military Sealift Command often demise charter a vessel.
- e. **Foreign vessel** – means any foreign-owned vessel, or any vessel regardless of ownership, which is documented under the laws of a foreign

country. A vessel owned by a U.S. citizen, but registered under a foreign flag is a foreign vessel.

- f. **Master** – means the individual having command of a vessel. The master of a U.S. documented vessel must be a U.S. citizen.
- g. **Official log book** – means an official record for required information pursuant to 46 U.S.C. 11301. Consular officers may certify an entry in the official log book concerning an event of which he/she may have personal and positive knowledge.
- h. **Owner** – means the person to whom the vessel belongs.
- i. **Passenger vessel** – means a vessel of at least 100 gross tons authorized to carry more than 12 passengers including at least one passenger for hire (a person providing consideration in return for passage) in addition to the master, crew, or other persons employed or engaged on board a vessel in any capacity connected with the business of the vessel. (See 46 U.S.C. 2101(22).)
- j. **Seaman** – means an individual (except scientific personnel, a sailing school instructor, or a sailing school student) engaged or employed in any capacity on board a vessel. (See 46 U.S.C. 10101.)
- k. **Seaman of the U.S.** – means U.S. citizens and lawful resident aliens of the U.S. when they are sailing on a U.S. flag vessel under the authority of U.S. Coast Guard issued licenses or merchant mariner documents.
- l. **Ship's papers** – include the Certificate of Documentation of a U.S. flag vessel; if a commercial vessel, a Coast Guard issued Certificate of Inspection; its shipping articles; and its official crew list.
- m. **Shipment** – means the signing of a crew member on board a vessel under shipping articles.
- n. **Shipping articles** – means a written contract of employment entered into by a master of a U.S. flag vessel and a seaman employed on the vessel.
- o. **Small passenger vessel** – means a vessel of less than 100 gross tons authorized to carry more than 6 passengers including at least one passenger for hire (a person providing consideration for passage) in addition to the master, crew, or other persons employed or engaged on board a vessel in any capacity connected with the business of the vessel, or a vessel chartered without crew provided and carrying more than 12 passengers. (See 46 U.S.C. 2101(35).)
- p. **Straggler** – means a seaman who fails to join the ship without the intent to desert.
- q. **U.S. public vessel** – means any vessel, except a warship, owned or demise chartered, and operated by a U.S. Government Agency and not

engaged in commercial service, e.g., some of the vessels in service to the U.S. Navy's Military Sealift Command. (See 46 U.S.C. 2101(24).)

- r. **U.S. undocumented vessel** – means any U.S. vessel, not having and not required to have a certificate of documentation issued under Federal law. (See 46 U.S.C., Chapter 121.)
- s. **Vessel** – for the purpose of statutes and regulations concerning this manual, includes every kind of water craft used as a means of transportation by water except seaplanes or other aircraft.
- t. **Vessel of the United States** (also known as a U.S. flag vessel) – means a vessel documented or numbered under the laws of the United States or titled under the law of a state. (See 46 U.S.C. 2101(46).)

7 FAM 712.3 What Is the Role of the Consular Officer Regarding Shipping and Seamen Services for U.S. Flag Vessels?

(CT:CON-091; 09-03-2004)

Consular involvement with maritime affairs was intricately tied to the development of our national defense policy and to the early history of the Department of State. For U.S. flag vessels, you have been given the authority to:

- Respond to casualties (disasters and seizures) affecting seamen of the United States
- Extend certain expired international certificates issued under the International Convention for the Safety of Life at Sea or request the host country, if it is party to the Convention, to reissue a new certificate so the vessel may proceed to a U.S. port
- Receive protests and declarations regarding the material condition of vessels as well as other situations seamen and/or others bring to your attention (see 46 U.S.C. 10905)
- Provide copies of documents, e.g., protests under the consular seal;
- Settle the affairs of U.S. citizens who die aboard U.S. flag vessels within the limits of the consular district
- Secure property saved from wrecks
- Protect the interests and property of U.S. citizens involved in maritime disasters
- Provide for the deposit of ships' papers
- Give relief to and repatriate destitute seamen
- Receive shipment of seamen

- Oversee engagement and discharge of seamen when necessary

When assistance/intervention is requested after hours, you should provide the same consideration as you do other consular matters bearing in mind that delay may cause disruption and considerable expense to the operation of the vessel.

7 FAM 712.4 What Is the Role of CA/OCS/PRI?

(CT:CON-091; 09-03-2004)

The Office of Policy Review and Interagency Liaison (PRI) is the Department's liaison with other government agencies concerned with U.S. flag vessel shipping and seamen services and consular posts overseas as well as with members of the public and Congress. PRI provides guidance, disseminates information and implements new procedures regarding U.S. flag vessel documentation and shipping and seamen services.

7 FAM 712.5 Are There Limitations on Consular Officers Regarding Seaman Services and Disclosure of Information?

(CT:CON-091; 09-03-2004)

Information contained in a name-retrievable system of records concerning seamen services for American citizens and legal permanent residents may not be disclosed except:

- By written authorization of the individual who is the subject of the record
- In accordance with the 12 exceptions to the conditions of disclosure in the Privacy Act, as amended (5 U.S.C. 552a (b)1-12)

Any unauthorized disclosure is subject to criminal penalties pursuant to 5 U.S.C. 552a (Privacy Act, as amended) (link to 7 FAM 000-090).

7 FAM 713 SHIPMENT AND DISCHARGE OF SEAMEN

7 FAM 713.1 Shipment (Signing of a Crew Member)

7 FAM 713.1-1 Documentation

(CT:CON-091; 09-03-2004)

- a. The Coast Guard issues qualified seamen (U.S. citizens and permanent resident aliens) a Merchant Mariner's Document (MMD) - Form CG-2838. 46 U.S.C. 8701 (and 46 CFR 12.02-7) requires all seamen on vessels of the U.S. above 100 gross tons to have an MMD. The MMD is sometimes referred to colloquially as a "Z card" because in the past an MMD number began with the letter "Z". The MMD is a plastic, credit-card type credential containing among other items, photograph, signature of the mariner and the seaman's Social Security number. They are valid for 5 years from the date of issue.
- b. MMDs issued after February 3, 2003, include a serial number and the letters USCG in variable-optical print. The top and bottom lines on the face of the new MMD contain the phrase US COAST GUARD in microprinting and the CG seal that is only visible under ultra-violet light.
- c. Any MMDs believed to be fraudulent should be sent to:

Commanding Officer
U.S. Coast Guard
National Maritime Center
4200 Wilson Boulevard, Suite 630
Arlington, VA 22203

and a copy of the transmitting communication should be forwarded to CA/OCS/ACS.

- d. MMDs show the position(s) on the ship for which the seaman is eligible to serve. A ship's complement of crewmen usually consists of the deck, the engine department, and the steward's department. The qualified work categories, e.g., ordinary seaman, able bodied seaman, wiper, appear on the reverse side of the MMD card.

7 FAM 713.1-2 What Is the Role of the Consular Officer?

(CT:CON-091; 09-03-2004)

- a. Masters of U.S. vessels shall engage a seaman at a foreign port in the presence of a consular officer. Failure to do so renders the master liable to a civil penalty. (See 46 U.S.C. 10308, 10321.)
- b. When available at the port of engagement, you should:
 - (1) Ensure that the seaman understands the terms of the contract and the nature of the work involved;
 - (2) Observe the seaman signing the shipping articles in the section entitled "Particulars of Engagement;"
 - (3) Attest to the seaman's signature by initialing in the space provided, and by impressing the consular rubber seal over it; and

- (4) Report all known cases of illegal shipment of seamen whether they are made in U.S. or foreign ports and provide supporting evidence including affidavits.
- (5) Also include:
 - the name of the seaman
 - the scheduled port of debarkation
 - the date of departure from the foreign port
- c. **If a consular officer is not available at the port of engagement**, a seaman may be engaged and the agreement shall be signed at the next port at which a consular officer is available.
- d. If the vessel is **outside of your immediate geographic area**, the master is empowered:
 - (1) To make crew changes, and
 - (2) To take other actions required by U.S. maritime laws and regulations to provide for the effective and safe operation of the vessel.

For required deck or engineering watchstanding positions: The replacement must hold a certificate issued in accordance with the International Convention or Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW). The STCW certificate must authorize service in the position in which the replacement will be employed.

7 FAM 713.2 Discharge of Seamen

(CT:CON-091; 09-03-2004)

In a foreign port where there is a consular officer, a seamen or master may request that you discharge a seaman in accordance with 46 U.S.C. 10318. See Exhibit A for specific conditions and responsibilities.

7 FAM 713.2-1 Grounds for Discharge

(CT:CON-091; 09-03-2004)

- Mutual consent between master and seaman
- Illness or injury of seaman
- Misconduct
- Voyage delays
- Unsuitable provisioning

(On a request by the crew or any member following a report by inspectors (representatives of a classification society or other reputable marine surveyor), and approved by you that the vessel was sent to sea unsuitably provisioned.)

- Shipwreck or sale of vessel abroad, Miscellaneous grounds, Violation of law regarding watches or duties, cruel or unusual treatment or transfer or disrating of a seaman
- End of voyage

Seek CA/OCS/PRI guidance when non-routine discharge problems are encountered.

7 FAM 713.2-2 What Is the Role of the Consular Officer?

(CT:CON-091; 09-03-2004)

- a. You are authorized to discharge a seaman upon the application of the master or seaman of a U.S. vessel if you are satisfied that good reasons exist for a discharge. The seaman must be physically present.
- b. Before discharging a seaman, you must:
 - Obtain the ship's agent's assurance that the local **immigration authorities** have no objection to the seaman's discharge (having an immigration officer present may more easily facilitate the discharge of the seaman)
 - Ensure that proper repatriation arrangements have been made
- c. When discharge is due to **cruel treatment**:
 - (1) You may require the master to pay the wages due the seaman plus one month's additional wages and shall discharge the seaman.
 - (2) The master shall provide the seaman with adequate employment on another vessel or passage on board another vessel to the port of original engagement, to the most convenient port of the United States, or to some port agreeable to the seaman.
 - (3) You should enter on the shipping articles and in the log book the cause of the discharge and the particulars of any cruel and unusual treatment.
 - (4) You should sign and seal the entries and replies. (See 46 U.S.C. 1106.)
- d. The seaman must concur with all the arrangements and should be advised of any local penalties such as immigration detention if his/her flight or sailing is missed.

If the seaman objects to removal by you citing unfair treatment, suggest

that he/she write "I sign off under protest" on the Shipping Articles on the "Release" line. This protects any legal remedies he/she may wish to pursue at a later date. If he/she refuses to sign off the articles, so indicate on the "Release" line by stating the reason.

7 FAM 713.3 Certificate of Discharge

(CT:CON-091; 09-03-2004)

- a. Upon discharge of any seaman at a foreign port, the master shall make the proper entries on a Certificate of Discharge to Merchant Seaman USCG Form CG-718A or by providing the following information in writing.

Date and Place of Shipment

Date and Place of Discharge

Name of Ship

Name of Employer

Official Number and Class of Vessel

Nature of Voyage (Foreign, Intercoastal or Coastwise)

If you are present, attest to the entries.

- b. After the master and seaman sign the form, the original should be given to the seaman, a copy to the master, a one copy should be retained at post and a copy should be forwarded to:

Commanding Officer, USCG
National Maritime Center
4200 Wilson Blvd, Suite 630
Arlington, VA 22203

7 FAM 713.4 Wages Paid upon Discharge

(CT:CON-091; 09-03-2004)

- a. When a seaman is being discharged in your presence, the master is required to provide a full account of all **regular wages** due the seaman, all deductions (including a signed receipt showing income tax and Social Security deductions), and any charges against the wages.

You must be satisfied that wages earned have been paid. Do not discharge the seaman unless he provides evidence of wages paid. If you fail to see that wages due a seaman are paid upon discharge or if you fail to give the seaman the wages collected on his/her behalf, you become accountable to the U.S. Government for the amount. (See 46 U.S.C. 10318(b).)

- b. **Overtime wages** are governed by union agreements and are paid at the end of the voyage. The seaman may indicate in writing on the discharge that he is receiving payment of wages under protest concerning the overtime due to preserve his rights.
- c. Once the master makes payment in your presence, his duty regarding wages is complete.

7 FAM 714 DESERTION/FAILURE TO REJOIN SHIP

(CT:CON-091; 09-03-2004)

- a. Desertion occurs:
 - (1) When a seaman without leave quits the service of a vessel and does not intend to return to duty; or
 - (2) When a seaman signs shipping articles, agrees to join a vessel waiting in port and then fails to do so, unless the failure was beyond his/her control.
- b. Desertion does not occur:
 - (1) When a mariner is absent without leave or overstays leave time, but has not refused or neglected to comply with an order to return and had no intention to sever connection with the vessel;
 - (2) When a seaman goes ashore without permission, but intends to return;
 - (3) When a seaman openly leaves the ship with the consent of the master or leaves under circumstances showing the master's desire or intention to terminate the seaman's services; or
 - (4) When the seaman leaves the ship because of cruel or oppressive treatment, for want of sufficient provisions in port when they can be procured by the master, or when the voyage is altered in the articles without consent.

The master is obliged to report desertions in a foreign port where they occur if we have consular representation there or to the first port he enters having consular representation.

7 FAM 714.1 What Is the Role of the Consular Officer?

(CT:CON-091; 09-03-2004)

- a. You must investigate alleged desertions. You may have to go to the vessel and consult more than one source, i.e., the master and the union representative.
- b. You should immediately communicate with the post having jurisdiction (port of desertion) for details concerning the seaman's absence from the vessel.
- c. A master's desertion statement should not be certified by you until you are satisfied that the desertion was not consented to or abetted by the master or justified by conduct on the part of the master or other officers toward the seaman and that the claim of the master is factual. If you are not so satisfied, you should simply notarize the statement.
- d. If it is subsequently determined that a seaman was **not** a deserter, inform CA/OCS/ACS of the circumstances and identify the vessel's next port so the appropriate action may be taken.

7 FAM 714.2 Arrest of Deserters

(CT:CON-091; 09-03-2004)

The "La Follette Act" of March 4, 1915 forbids the imprisonment of merchant seamen charged with desertion. However, deserters are subject to the local laws and may be detained as unlawfully admitted immigrants. You should offer appropriate assistance to seamen of the U.S. who are charged with desertion. (See 7 FAM 400.)

7 FAM 715 REPATRIATION OF SEAMAN

(CT:CON-091; 09-03-2004)

- a. U.S. owners or operators of U.S. merchant ships are responsible for the repatriation of all seamen (seamen of any nationality who are serving on a vessel of the U.S.) separated from their vessels at foreign ports for any reason (ill or injured) including stragglers, except in cases of desertion, shipwreck or other acts of misconduct by the mariner. You should inform the seamen needing assistance or the individual/organization that contacted you that your office is available to assist seamen of the U.S. as appropriate. (See 46 U.S.C. 10318(e).)
- b. You should attempt to place destitute seamen of the U.S. on board another U.S. flag vessel bound for a port in the U.S. as indicated in 7 FAM 705.1.

7 FAM 715.1 Destitute Seamen of the U.S.

(CT:CON-091; 09-03-2004)

- a. If a seaman who is a U.S. citizen or permanent resident alien contacts you for assistance because he/she is destitute, by statute, you must first contact the ship owners or their agents, to determine whether the seaman is in fact destitute. If so, try to place him/her on another ship bound for the U.S. if there is a position available by contacting any U.S. flag vessel that may be in port. Local Port Control Officers of the foreign state (or their equivalent) may be able to provide information about vessels in port.
- b. The USCG's National Maritime Center may provide addresses and information such as next of kin for routine and emergency situations.

National Maritime Center
4200 Wilson Blvd. Suite 630
Arlington, VA 22203
Telephone: 202-493-1022
FAX 202-493-1060
E-mail: Bchubb@Ballston.uscg.mil

Otherwise, you should assist him/her in the manner you would any other destitute American (see 7 FAM 300 and 46 U.S.C. 11104) (link). Permanent resident aliens should also be directed to the nearest consular office representing his/her nationality (see 7 FAM 705.3).

- c. You should ask the following questions:
 - The circumstances under which the condition of being left destitute occurred
 - The name of the vessel on which he/she last shipped
 - The name of the master
 - The time, place and cause of the discharge or separation from the vessel
- d. A seaman may be considered destitute, for example, when:
 - The vessel has been sold in a foreign country
 - There has been a loss of the vessel
 - The vessel is unseaworthy
 - The seaman has suffered cruel treatment aboard the vessel
 - The ship owner has declared bankruptcy or is insolvent

From: Admiralty and Maritime Law 2nd ed. by Schoenbaum,
Chapter 6 "Seaman Protection and Welfare"

7 FAM 715.2 Deserters

(CT:CON-091; 09-03-2004)

A seaman of the U.S. who deserts ship without cause and becomes destitute is not entitled to assistance under the shipping laws, **but**, under the Department's rules, shall be assisted in the same manner as any other destitute U.S. citizen. (See 7 FAM 705.1 and 7 FAM 300.)

7 FAM 715.3 Aliens

(CT:CON-091; 09-03-2004)

If an alien is returning to the United States, in addition to any passport and/or visa requirements, you should provide him/her with a certified statement for use by the immigration authorities listing biographic data and indicating that the individual was on board a vessel of the U.S. (name) and is now bound for the U.S.

7 FAM 715.4 Military Sealift Command (MSC)

(CT:CON-091; 09-03-2004)

- a. The U.S. Navy's Military Sealift Command (MSC) operates ships in support of the Department of Defense. Some of the ships are operated by private shipping companies, while others are operated by U.S. Civil Service seamen. Seamen employed by private shipping companies are members of the U.S. merchant marine entitled to protection and assistance as seamen of the U.S.
- b. U.S. Civil Service seamen that operate vessels for the MSC do not fall under the jurisdiction of overseas posts. However, where a MSC disbursing officer is not available, relief may be extended to them via the Navy Department account and the MSC should provide the necessary fiscal data. If these seamen become destitute, provide assistance, relief, or repatriation as you would other seaman of the U.S. The seaman's identification card DD Form 489; or U.S. DoD/Uniformed Services Identification Card may provide evidence of employment with MSC.
- c. Personnel of U.S. Naval vessels, although not entitled to relief as merchant seamen, may be assisted if distressed or in need of transportation upon written/electronic authorization from the commanding officer or from the Department of the Navy. Assistance should also be rendered to distressed or stranded U.S. Coast Guard personnel upon the written/electronic authorization from the U.S. Coast Guard in the same manner as rendered to the Navy personnel. The military member's branch of service will provide funding or reimbursement for such costs.
- d. **The MSC Staff Duty Officer may be reached by:**

Telephone: 202- 685-5155,

Fax: 202- 685-5375, or
E-mail: sdo.msc@msc.navy.mil.

7 FAM 716 DECEASED SEAMEN AND THEIR EFFECTS

7 FAM 716.1 Notification of Death

(CT:CON-091; 09-03-2004)

a. U.S. Citizen Seamen:

The master of the vessel or the ship's agent usually will advise you of the death on the high seas or in port of a seaman who is a U.S. citizen or national, and they may also advise the next of kin. **You also have a statutory obligation to advise the next of kin and prepare a report of death.** (See 7 FAM 200.)

"A presumptive death" determination of a U.S. citizen is made pursuant to the laws of the host country. (See 7 FAM 235.)

b. Seamen of Foreign Nationalities aboard a U.S. Flag Vessel:

The master of the vessel or the ship's agent usually will advise you of the death of a seaman of foreign nationality and they may also advise the next of kin.

You must report the death to:

- CA/OCS/ACS
- The next of kin, if known
- The officials of the seaman's country of nationality

c. No Report of Death is prepared for non-United States citizens/nationals.

7 FAM 716.2 Disposition of Remains

(CT:CON-091; 09-03-2004)

- a. According to maritime custom and union contracts, the owner or operator of a vessel is normally responsible for the burial expenses of a seaman, provided that the seaman is still in the service of the vessel or is still entitled to maintenance and repatriation at the time of death.
- b. Burial expenses may not be deducted from the seaman's wages.

- c. Whether the family or owner/operator pays the disposition of remains expenses, you should follow the same procedures for the shipment of remains as you do for other U.S. citizens. (See 7 FAM 200.)

7 FAM 716.3 Effects of a Seaman of the U.S.

7 FAM 716.3-1 What Are the Responsibilities of the Master of the Vessel?

(CT:CON-091; 09-03-2004)

- a. When a seaman dies during a voyage, the master:
- Takes possession of the deceased seaman's property and money
 - Makes an entry in the ship's official log book containing an inventory of the property and money and a statement of the wages due the seaman as well as a total of the deductions from the wages
 - With the chief mate, and a crew member, must sign the log book entry
 - You then provide the master with a written certificate of compliance
- b. Upon direct return to the U.S., the master or the ship's agent forwards the property and money to the responsible U.S. District Court for administration.

The responsible U. S. District Court is the court for the district in which the voyage begins or ends. (See 46 U.S.C. 10705.)

- c. When a ship remains in or enters a foreign port, the master should report the death to the nearest consular post. Depending on the length of the voyage and destination or if the ship is sold in the foreign port, **you** may:
- Take possession of the property and money, including wages
 - (When you do not take possession of the property, the master should provide a statement of the seaman's account for your case file.)
 - Provide the master with a Receipt for Effects (see 7 FAM 643)
 - Endorse and certify the ship's articles indicating the disposition of the effects, and forward a copy to CA/OCS/ACS. (See 46 U.S.C. 10703.)

7 FAM 716.3-2 What Is Your Role when You Take Possession of a Deceased Seaman's Effects?

(CT:CON-091; 09-03-2004)

- a. Create an inventory.
- b. Prepare a statement of details (see 46 U.S.C. 10702 and 10703) showing:
 - The unsold effects and money of the deceased being held
 - A description of items sold and amount received
 - The wages due the deceased and deductions to be made. (The master must verify in the log book any allowable deductions.)
- c. Forward the effects expeditiously under the consular seal to the responsible U.S. district court for administration and request a receipt. (Money should be sent by bank draft or check payable to the clerk of the district court in accordance with post procedures.)
- d. Inform the next of kin of the location of the U.S. district court where wages and effects will be sent and the estimated date of arrival.
- e. Advise the next of kin to correspond directly with the court for further information.
- f. Inform CA/OCS/ACS of the disposition of effects including an accounting of financial transactions.
- g. When a seaman dies ashore, you should take possession of the effects and money not aboard ship and forward them to the responsible U.S. district court for administration. (See 46 U.S.C. 10704.)

Expenses incurred in transmitting effects and money to the U.S. District Court should be deducted from available funds from the estate. If adequate funds are not available either from money received or from items sold, request the shipping company or the next of kin to provide assistance. (See 7 FAM 200/600 (Death and Estates Chapter).)

7 FAM 717 PROTESTS, DISPUTES, AND OFFENSES

(CT:CON-091; 09-03-2004)

- a. U.S. law allows merchant mariners the right to protest, dispute and report offenses whether serious or incidental that involve seamen of the U.S. These situations may occur in a variety of ways and instances, and

may indirectly affect the safety of life at sea, the welfare of seamen, and the protection of property aboard ship.

- b. The USCG is responsible for the safety of life and property at sea on U.S. flag vessels. It is the USCG's policy to initiate action to ensure the safety of life at sea, the welfare of seaman, and the protection of property aboard ship.
- c. In addition, various international agreements, such as the International Convention for the Safety of Life at Sea of 1974 (SOLAS) grant port states the authority to enforce the terms of the agreement on applicable vessels.

Crimes committed by seamen of the U.S. aboard a vessel in foreign ports and involving the peace of the port, in territorial waters or ashore in foreign ports are subject to the jurisdiction of the local government. Questions about territorial water boundaries should be referred to CA/OCS/PRI. (See 7 FAM 400.)

Crimes committed by seamen of the U.S. aboard a vessel not involving the peace of the port are usually handled by officers of the vessel and consular representatives of the country of registry.

Crimes and other offenses committed on the high seas generally are subject to the jurisdiction of the courts of the country of the vessel's registry. (Consult with CA/OCS/PRI prior to protesting the assertion of jurisdiction by foreign authorities over crimes committed aboard U.S. flag vessels on the high seas regardless of the nationality of the offenders.)

7 FAM 717.1 Marine Notes of Protest

(CT:CON-091; 09-03-2004)

- a. Different laws, union contracts, collective bargaining agreements, and treaties and consular conventions cover marine notes of protest. Since consular involvement occurs so infrequently, we refer you to the USCG at 202-267-2200 or by FAX: 202-267-4839; 46 U.S.C. (shipping) link, and/or to **ASKPRI@STATE.gov** for guidance.
- b. Marine Notes of Protest, although rarely filed in the United States any more, do exist in other countries. They are used to report any incident that occurred during the voyage and may be used by the operators or insurance companies in future claims regarding damage to the ship or cargo caused by conditions beyond the master's control.
- c. Taking of a marine note of protest is a notarial service for the owner and the operators of a vessel. You are not to investigate the protest. There is no fee for American vessels, but for foreign vessels fees are charged in

accordance with the Schedule of Fees (see 22 CFR Part 22). The original is filed with the ship's entry/clearance papers and certified copies are given to the master.

- d. There is no requirement that a marine note of protest be filed under any circumstances, although the master, owner, operators or agent of a vessel may elect to do so. If so, you must require the master (or an officer designated in writing by the owner, agent or the operators) of a vessel to make the protest in person before you. You may not waive the personal appearance by the master/officer without the specific authorization of the ship's owner, operators or agent.
- e. Information may be taken in the form of a letter or memorandum indicating:
 - The date and place of the protest
 - The name of the protester (master)
 - Name of the vessel and its tonnage
 - Type of cargo
 - The date of the occurrence and date of arrival in local port
 - The nature of the incident

Sign and notarize the "Note of Protest."

7 FAM 717.2 Minor Offenses

(CT:CON-091; 09-03-2004)

Generally, the master of the vessel has considerable disciplinary power under the statutes to cope with minor offenses of which seamen may be guilty aboard ship.

7 FAM 717.3 Complaints and Protests

(CT:CON-091; 09-03-2004)

- a. The provisions cited above regarding complaints of unfitness, while still law, were developed for an earlier time, when vessels were away from the United States for very long periods of time and could not communicate easily or quickly. Today the likelihood of a consular officer encountering such a situation is rare, given that most merchant mariners on deep draft commercial vessels are covered by collective bargaining agreements, and can communicate quickly with their unions, the Coast Guard, or other organizations even when in remote areas of the world. It is important to remember that complaints may be a part of an overall labor disagreement in which you generally should avoid involvement.
- b. By law, American merchant mariners serving on all U.S. vessels (except

fishing or whaling vessels or yachts) are entitled to present complaints and protests to you regarding, for example, the vessel's provisions, the vessel's seaworthiness or the continuance of the voyage contrary to agreement. Depending on the location of the vessel, the subject matter of the complaint, and the number and type of merchant mariner making the complaint, these complaints may be made to a consular officer, the cabinet Secretary with authority over the Coast Guard, chief official of the "Customs Service," or even the commanding officer of a U.S. naval vessel.

- c. When seamen's written complaints concerning alleged problems with the seaworthiness of a vessel are received, you must arrange to have an appropriate survey conducted. Most ports have representatives of classification societies such as the American Bureau of Shipping or Lloyds of London, and you may arrange with them to conduct a survey, or report the matter to the local port authorities. The master must pay all costs of the survey.
- d. Most disputes may be settled informally and often verbally by you, acting as a mediator rather than as arbitrator. Seamen should be advised that you are required to protect their rights under the statutes, but are not authorized to intervene in disputes between parties signatory to collective bargaining agreements. However, you may take statements without becoming a party to the dispute.

7 FAM 717.4 Jurisdiction of the United States in Offenses Committed on Vessels or the High Seas

(CT:CON-091; 09-03-2004)

- a. 22 U.S.C. 256 is a law originally codified in the Revised Statutes Section 4079 derived from the Act of June 11, 1864, ch. 116, Sec. 1, 13, Stat 121. It gives consular officers jurisdiction over disputes between seamen on a U.S. vessel if it is stipulated by treaty or convention between the United States and any foreign nation. While Articles 5(k) and (l) of the Vienna Convention on Consular Relations pertain to consular functions in shipping and seaman matters, that Convention does not include reference to exclusive consular jurisdiction in disputes between seamen. Certain treaties of Friendship, Commerce and Navigation, which pre-date the Vienna Convention do include such provisions. See *Treaties in Force, Consular practice regarding this statute is described in Hackworth, Digest of U.S. Practice in International Law, Vol. IV, 876-877 and Whiteman, Digest of U.S. Practice in International Law, Vol. 7, 699-700.*
- b. In such a case, you should advise CA/OCS/ACS of the circumstances so that they may consult with CA/OCS/PRI and the Office of the Legal Adviser, and the Department of Justice as appropriate. Do not undertake

investigations or other activities without specific guidance from the Department.

- c. 18 U.S.C. 7 defines the Special Maritime and Territorial Jurisdiction of the United States. Questions concerning offenses committed on the high seas or in foreign ports should be directed to CA/OCS/ACS which will consult with CA/OCS/PRI and the Office of the Legal Adviser, and U.S. Department of Justice as appropriate. Consular officers should coordinate closely with the Regional Security Officer and Legal Attache in such cases.

7 FAM 717.4-1 What Is the Role of the Consular Officer?

(CT:CON-091; 09-03-2004)

- a. Inform CA/OCS/ACS immediately of serious crimes allegedly committed by seamen on board U.S. vessels on the high seas, in the territorial seas of other countries, or in foreign ports, and crimes committed by seamen of the U.S. ashore in foreign ports. (See 7 FAM 400.)
- b. Identify the seaman by his MMD number.
- c. Report the facts of the incident (not your personal opinion), in as much detail as possible and include any statements taken.
- d. CA/OCS/ACS will consult with CA/OCS/PRI and the Office of the Legal Adviser, and the U.S. Department of Justice as appropriate. You should coordinate closely with the Regional Security Officer and the Legal Attache in such cases.

7 FAM 717.5 Mutiny and Piracy Cases

7 FAM 717.5-1 What Is Mutiny?

(CT:CON-091; 09-03-2004)

- a. Mutiny occurs:

When one or more members of the crew unlawfully and with force, or by fraud, or intimidation, usurps the command of a vessel from the master or other lawful officer in command thereof, or deprives the master of authority and command on board, or resists or prevents the master in the free and lawful exercise of the vessel, or transfers such authority and command to another not lawfully entitled. (See 18 U.S.C. 2193.)

- b. Mutiny does not occur:

When insubordination, disobedience, or violence against the master are not accompanied by intent to remove the master from command.

7 FAM 717.5-2 What Is the Role of the Consular Officer?

(CT:CON-091; 09-03-2004)

Statutes, treaty provisions, established usage and jurisdictional cooperation between the Bureau of Consular Affairs and other bureaus, and other agencies govern your role and jurisdiction when mutiny occurs. Report mutinies to CA/OCS/ACS for guidance.

7 FAM 717.5-3 What Is Piracy?

(CT:CON-091; 09-03-2004)

U.S. law references the “law of nations” in defining piracy (see 18 U.S.C. 1651). Under Article 101 of the United Nations Convention on the Law of the Sea of 1982 (which has not been ratified by the U.S. but is accepted as reflective of existing maritime law and practice), occurs when illegal acts of violence or depredation against property committed for private ends by the crew or passengers of a private ship and directed against another ship on the high seas or place outside the jurisdiction of any State or against the persons or property on that ship.

7 FAM 717.5-4 What Is the Role of the Consular Officer?

(CT:CON-091; 09-03-2004)

- a. Respond to casualties to U.S. citizens and seaman of the United States that occur on board vessels of the United States that are on the high seas when the incident occurs and provide appropriate assistance (see 7 FAM 706.1);
- b. Consult with the Department if questions regarding treaties, conventions and consular agreements affecting your posts, and/or jurisdiction in international waters and in foreign ports are unclear; and
- c. Report incidents to the local authorities and to the Crime Victim Assistance Officer in CA/OCS/ACS.

7 FAM 718 MARITIME DISASTERS AND SEIZURES

(CT:CON-091; 09-03-2004)

- a. Statutes, treaty provisions, established usage and jurisdictional cooperation between the Bureau of Consular Affairs and other bureaus, and other agencies govern your role and jurisdiction in maritime disasters or vessel seizures.
- b. Various international agreements, such as the International Convention on Maritime Search and Rescue, establish common approaches and cooperation for search and rescue and responding to maritime disasters.

The U.S. Coast Guard Rescue Coordination Centers (RCC) have 24-hour live watches and can provide a point of contact for your specific area. They may be contacted as follows:

- c. USCG RCC Norfolk covers the Atlantic Region:

Telephone: 757-398-6231

FAX: 757-398-6392

USCG RCC Alameda covers the Pacific and Asia Region:

Telephone: 510-437-3701

FAX: 510-437-3017

7 FAM 718.1 What Is the Role of the Consular Officer?

(CT:CON-091; 09-03-2004)

The foreign sovereign will likely exercise port state control for marine casualties occurring in their internal waters, ports, harbors, territorial sea, and exclusive economic zone. The port state may board and detain the vessel to conduct an investigation, particularly if the casualty involves loss of life, obstruction of a navigable waterway, or environmental pollution. You may not have access to the vessel, cargo, and personal effects until the investigation and possible legal action are concluded.

- a. Become familiar with all pertinent conventions and treaties in force between the United States and the host country or the custom of the host country regarding consular jurisdiction covering wrecked or stranded U.S. vessels and their cargoes and effects. (See CA/OCS/PRI intranet treaty site and the Vienna Convention, Treaties in Force)

If the captain or owner of the vessel, cargo, or effects is present and capable of taking possession, or if there is a salvage claim attached to the property, you cannot assume jurisdiction.

- b. Report the incident immediately to the Operations Center and follow-up with an immediate cable.
- You must include
 - Name of vessel, owner of the vessel and home port
 - Information concerning the safety of the passengers and crew
 - Names and available biographic data of those rescued, killed,

injured or missing

- Circumstances surrounding the disaster
 - Nature of disaster
 - Date of disaster
 - Exact location of disaster
 - Information indicating whether the vessel is an actual or a total constructive loss
- c. Attempt to collect the ship's papers and documents relating to the vessel, its cargo, and passengers and deliver them to the owners or operators. In their absence, forward them to CA/OCS/ACS.
- d. Send a detailed follow-up report including a statement whether the ship's papers have been saved;
- e. Protect the interests and property of U.S. citizens involved in a maritime disaster (see 7 FAM 600 link);
- f. Advise CA/OCS/ACS when you are empowered to assume jurisdiction over a salvaged vessel or cargo and that you require instructions from the owners as to action to be taken. If owners of the vessel, cargo, or effects are unknown, submit a complete report to CA/OCS/ACS requesting instructions or authorization to dispose of effects by procedures established for the disposition of effects of deceased U.S. citizens (see 7 FAM 610); and
- g. Advise CA/OCS/PRI when consular jurisdiction rights granted by treaty or acquired by established usage are denied.

7 FAM 718.2 What Is the Effect of Local Court Jurisdiction?

(CT:CON-091; 09-03-2004)

- a. When a local court assumes jurisdiction, you must be satisfied that the court is competent to adjudicate the claim and that U.S. interests are being accorded fair treatment. If not, report any inconsistencies to CA/OCS/ACS.
- b. In the absence of the party of interest, you may take possession of any effects or monies remaining after settlement of a salvage claim provided the tribunal will permit their delivery to a consular officer.
- c. Submit a complete report to CA/OCS/ACS requesting further instructions regarding the disposition of the effects or authorization to dispose of effects by procedures established for the disposition of effects of a deceased U.S. citizen.

7 FAM 719 OTHER SEAMAN SERVICES

7 FAM 719.1 Personal Mail

(CT:CON-091; 09-03-2004)

You may accept personal mail addressed to seamen on vessels of the United States and either hold it or forward it as appropriate. A ship's officer or a crew member may pick up mail for the vessel.