

MEMORANDUM OF AGREEMENT
between the
UNITED STATES COAST GUARD
and
NATIONAL CARGO BUREAU
GOVERNING THE DELEGATION OF CERTAIN SURVEY
AND CERTIFICATION SERVICES

1. PARTIES.

This Memorandum of Agreement delegates authority and sets forth guidelines for cooperation between the United States Coast Guard (Coast Guard) and the National Cargo Bureau (NCB).

2. AUTHORITY.

The Coast Guard is statutorily authorized to administer laws and promulgate and enforce regulations for the promotion of the safety of life and property at sea and the protection of the marine environment. In accordance with the authority granted by Title 46, United States Code, Section 3103(1), and as implemented under the regulations in Title 46, United States Code of Federal Regulations, part 31.10-16(e)(1), 71.25-25(c)(2), 91.25-25(c)(2) and 172 Subpart B . The Coast Guard may delegate the authority to perform those functions listed in the regulations including plan review and approval, inspections and examinations, and issuance of certain certificates.

3. PURPOSE.

3.1 The purpose of this Agreement is to define the terms and conditions under which NCB can perform specified vessel survey, inspection, plan review and approval, and certification functions on U.S. flagged vessels on behalf of the Coast Guard

3.2 This Agreement defines the scope, terms and conditions and requirements of the authority delegated to NCB.

3.3 The term "Agreement" in this document refers to this Memorandum of Agreement and its Annex or subsequent amendments that may be agreed upon by NCB and the Coast Guard. In this Agreement, the term "Commandant" refers to the United States Coast Guard Assistant Commandant for Prevention Policy.

3.4 This Agreement relates to surveys or examinations of "Vessels of the United States," as that term is defined by 46 United States Code, Section 116, both in the United States and in foreign countries and to foreign vessels located in US Ports and waterways that are being surveyed to obtain a grain loading certificate. Nothing in this Agreement alters in any way the statutory or regulatory authority of the Coast Guard.

3.5 This Agreement shall be governed by and conducted in accordance with United States law.

4. RESPONSIBILITIES: GENERAL CONDITIONS.

4.1 Delegated functions performed by, and certificates issued by, NCB will be accepted as functions performed or certificates issued by the Coast Guard, provided that NCB remains in compliance with all provisions of this Agreement and Federal Regulations.

4.2 The Coast Guard has delegated to NCB the authority to conduct the initial and subsequent surveys, periodic re-inspections and examinations and the authority to issue and endorse certain certificates as specified in the Code of Federal Regulations, Navigation and Vessel Inspection Circular 5-94, the International Code for the Safe Carriage of Grain in Bulk (International Grain Code) and SOLAS Chapter VI, Part C. In carrying out these functions, NCB shall comply with any restrictions, special instructions or supplemental requirements as required by this Agreement.

4.3 The Coast Guard will accept the review and approval of vessel plans by NCB in the same manner as if approved by the Coast Guard for those plans related to the functions authorized by this Agreement. NCB will provide copies of approved plans or manuals to the Marine Safety Center for oversight in accordance with the process specified by MSC.

4.4 The Coast Guard retains the authority to revoke or suspend any certificates issued by NCB on behalf of the Coast Guard

5. RESPONSIBILITIES: DEVELOPMENT OF RULES AND/OR REGULATIONS

5.1 NCB shall provide for review and comment by the Coast Guard any proposed changes to NCB procedures that may affect any inspection or certification activities by NCB under this Agreement.

5.2 NCB shall allow the Commandant of the Coast Guard or his duly appointed representatives to participate in the development of its procedures.

5.3 Where NCB adopts changes to its procedures for certification that are determined by the Coast Guard to be inconsistent with Title 46, United States Code of Federal Regulations, Chapter I or Coast Guard policy, the Coast Guard shall require NCB to administer corrective measures or provisions to any procedures or activities that affect any delegated activities on behalf of the Coast Guard.

5.4 The Coast Guard may require supplemental requirements to NCB procedures when, in the opinion of the Commandant the procedures established by either NCB procedures or applicable international conventions are not adequate.

6. RESPONSIBILITIES -- OTHER CONDITIONS.

6.1 Remuneration for delegated survey and certification services carried out by NCB on behalf of the Coast Guard will be charged by NCB directly to the party requesting such services.

6.2 NCB shall provide the Commandant, upon request, with a current copy of fee schedules, including changes to the schedule, for all functions delegated under this Agreement.

6.3 In issuing certificates or performing other functions on behalf of the Coast Guard under this Agreement, NCB shall apply Coast Guard interpretations of international regulations, when they exist.

6.4 NCB shall ensure that its employees engaged in the performance of functions delegated under this Agreement are appropriately certified using a qualification scheme and are familiar with and require compliance with applicable United States laws and regulations, Coast Guard policies, interpretations, and instructions, including, but not limited to:

- (1) as authorized, applicable international conventions to which the United States is a party;
- (2) United States statutes;
- (3) United States federal regulations;
- (4) NCB procedures; and
- (5) any restrictions, special instructions, and supplemental requirements as required by this Agreement.

6.5 Unless specifically stated otherwise, the functions described in this agreement shall be carried out only by individuals employed by NCB to perform such services exclusively for NCB.

6.6 NCB shall honor any appeal decision made by the Commandant on issues related to delegated functions under this Agreement.

6.7 In the event the Coast Guard is found liable in a court of law for losses or damages sustained due to a negligent act or omission by NCB, its officers, employees or others who were acting on behalf of NCB pursuant to this Agreement, the Coast Guard is entitled to obtain compensation from NCB up to, but not exceeding, the amount of the Coast Guard's financial liability.

6.8 While acting on behalf of the Coast Guard under this Agreement, NCB shall be free to create contracts directly with clients and such contracts may contain NCB's normal contractual conditions for limiting its legal liability.

6.9 The interpretation by the Coast Guard of the technical aspects of this Agreement shall be final.

6.10 NCB, in exchange for express assurances of confidentiality, will provide the Coast Guard with information which is otherwise not available to private or public parties. The Coast Guard agrees to withhold such confidential business information from public disclosure in accordance with 5 U.S.C. § 552(b) (4) and 6 C.F.R. part 5, § 5.8. It is further expressly agreed that the Coast Guard will promptly notify NCB in writing upon receipt of any request for NCB records, and provide NCB with reasonable opportunity to protect its confidential information prior to any release of same.

6.12 NCB shall affect adequate policies of insurance against any liabilities aforesaid and shall keep such policies in force during the continuance of this Agreement. NCB shall produce satisfactory evidence of such policies upon the Coast Guard's request.

7. RESPONSIBILITIES -- SPECIFICATION OF DELEGATED FUNCTIONS.

7.1 This Agreement applies to any delegated function performed by NCB for U.S. flagged vessel at any location and to foreign vessels when located in US ports that are issued grain loading certificates by NCB.

7.2 Coast Guard retains the authority to grant equivalencies and exemptions from the requirements of US or international regulations, and any applicable U.S. supplemental requirements to NCB rules as these requirements and rules relate to any authorized functions performed on behalf of the Coast Guard under this Agreement.

7.3 NCB shall attend any U.S. flagged or foreign vessel located in a US port for which it has performed any delegated function on behalf of the Coast Guard at the request of an appropriate Coast Guard official with the cost of attendance to be borne by the client.

7.4 NCB shall accept all requests to perform delegated services without regard to the vessel's location within the United States and its territories contingent upon NCB being paid for such services and related expenses as well as being paid for any outstanding amounts owed to NCB for previous services and expenses.

7.5 All documentation issued by or requested from NCB pursuant to this Agreement shall be in the English language.

7.6 NCB shall maintain a corporate office in the United States that has adequate resources and staff to support all delegated functions.

7.7 All records of survey, inspection, examination, review and approval related to delegated functions conducted on behalf of the Coast Guard shall be maintained in the United States for at least two years after issuance of a certificate. NCB shall make all

records and files related to delegated functions available to Coast Guard personnel for examination.

8. **RESPONSIBILITIES -- SUPERVISION OF DELEGATED FUNCTIONS.**

8.1 NCB shall allow the Coast Guard to accompany and observe NCB surveyors upon request. NCB shall provide advance notice and details of upcoming surveys to the Coast Guard upon request.

8.2 NCB shall provide the Coast Guard sufficient access necessary to oversee NCB to ensure that it continues to comply with the minimum standards outlined in this agreement and in regulation.

8.3 NCB shall provide expeditious access to its instructions, survey procedures, circulars, guidelines and other documents that are related to the performance of the delegated functions under this Agreement to the Commandant.

8.3.1 NCB shall make available to the Coast Guard written documents related to the performance of the delegated functions. These include, but are not limited to, the following:

- (a) approvals,
- (b) surveys,
- (c) certificates,
- (d) report forms,
- (e) vessel deficiencies, and
- (f) NCB vessel recommendations.

8.4 NCB shall grant, upon request, the Coast Guard access to all plans and documents, including survey reports, on the basis of which actions are performed under the delegation or on the basis of which international certificates are issued or endorsed by NCB on behalf of the Coast Guard.

8.5 NCB shall provide information and access to the Coast Guard which may conduct oversight of those activities performed under or related to delegated functions conducted on behalf of the Coast Guard pursuant to this Agreement.

8.6 At the request of the Commandant, NCB shall provide any information, statistics and data related to U.S. and foreign flagged vessels and their compliance with any of the requirements that are related to the services that are the subject of this agreement.

9. **REPORTING AND DOCUMENTATION.**

9.1 If a surveyor of NCB, while performing the delegated functions of this Agreement, discovers any deficiency that poses a significant risk to the safety of life or a threat to the marine environment and which directly or indirectly affects the validity of any aspect of a certificate issued by or on behalf of the US flag administration, NCB shall notify the Coast Guard Officer in Charge, Marine Inspection for that area as soon as

practicable, but no later than 15 days following discovery, a copy of the written notice to the OCMI shall be simultaneously provided to the Commandant (CG-CVC-1).

10. POINTS OF CONTACT.

NCB shall designate appropriate persons employed exclusively by NCB to serve as points of contact with the appropriate Coast Guard personnel on matters of interpretation, policy, and the working relationship. The points of contact for matters related to this Agreement are listed below.

Commandant (CG-CVC)

U.S. Coast Guard

Office of Commercial Vessel Compliance
2703 Martin Luther King Jr. Ave Stop 7581.
Washington, DC 20593-7581
Tel: (202) 372-1231
Fax: (202) 372-1224

National Cargo Bureau, Inc.
180 Maiden Lane
New York, NY 10038
Tel: (212) 785-8300
Fax: (212) 785-8333

5. MODIFICATION.

Amendments to this Agreement or the acceptance of revised annexes shall become effective only after consultation and written agreement between the Coast Guard and NCB. Amendments and revised annexes shall go into effect upon authorized signature of both parties. EFFECTIVE DATE.

This Agreement becomes effective upon authorized signature of both the Coast Guard and NCB.

6. TERMINATION.

14.1 Termination of this Agreement, any delegated functions under this Agreement and any amendments to this Agreement will occur sixty (60) days after written notice has been given by either party.

14.2 Revocation and termination of this Agreement, any delegated functions under this Agreement and any amendments to this Agreement may be made under the following conditions:

14.2.1 Failure of NCB to maintain the minimum standards set forth in Title 46, Code of Federal Regulations.

14.2.2 Termination of NCB as a Recognized Organization by the Coast Guard will terminate this Agreement.

14.2.3 Breach of any terms or conditions of this Agreement may be cause for termination of this Agreement.

For the United States Coast Guard

 on July 20, 2017

PAUL F. THOMAS
Rear Admiral,
U.S. Coast Guard
Assistant Commandant for Prevention Policy

For the National Cargo Bureau

 on July 20, 2017

IAN LENNARD
President
National Cargo Bureau