



WORLD SHIPPING COUNCIL
PARTNERS IN AMERICA'S TRADE

**COMMENTS OF
THE WORLD SHIPPING COUNCIL**

**BEFORE THE
DEPARTMENT OF STATE**

**IN THE MATTER OF:
DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION
AND NATIONALITY ACT, AS AMENDED – ELIMINATION OF CREW LIST
VISAS**

[Public Notice 4215]

FEBRUARY 11, 2003

1. Introduction

The World Shipping Council (“the Council” or “we”) submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued by the Department of State (“State Department” or “the Department”) on December 13, 2002 (*67 Fed.Reg. 76711 et seq.*). By that Notice, the State Department solicited comments on its proposal to amend its current regulation at 22 CFR 41.42 to eliminate the crew list visa.

The Council, a non-profit association of over forty international ocean carriers, was established to address public policy issues of interest and importance to the international liner shipping industry. The Council’s members include the full spectrum of ocean common carriers, from large global operators to trade-specific niche carriers, offering container, roll-on roll-off, car carrier and other international transportation services. They carry more than 90% of the United States’ imports and exports transported by the international liner shipping industry, or roughly \$500 billion worth of American foreign commerce per year.¹

International liner shipping provides regular, scheduled services connecting U.S. exporters and importers with virtually every country in the world. Liner shipping vessels make more than 22,000 calls at ports in the United States each year or more than 60 vessel calls a day. Most crew members on these liner shipping vessels are foreign citizens whose visa status and requirements are regulated by the Immigration and Nationality Act, including Section 221(f) of the Act that permits a foreign crew member to enter the United States on the basis of a crew manifest that has been visaed by a consular officer.

The members of the World Shipping Council and the crews that operate their ships, therefore, have a direct and substantial interest in this proceeding.

2. The stated reasons for the proposal to eliminate the crew list visa

The State Department provides in the Supplementary Information to the NPRM a number of reasons why it is proposing to eliminate the crew list visa. Essentially, these reasons fall in two main categories. One reason is that the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub.L. 107-173) “requires that all visas issued after October 26, 2004 have a biometric indicator”², which – because the crew list visas do not have biometric indicators – in the Department’s view means that crew list visas “would necessarily be eliminated by that date”³.

¹ A list of the Council’s members is attached as Appendix A.

² *67 Fed.Reg. 76712.*

³ *Ibid.*

The other category of reasons pertain to alleged difficulties for consular officers with regard to both verifying the identity of the individual crew member listed on a crew list visa application, and – because the individual crew member on the crew list visas is ordinarily not interviewed by a consular officer – conducting reliable background checks on crew list applicants, including establishing the applicants’ employment history and knowledge of their trade.⁴

The above-mentioned reasons lead the Department to conclude that it “can no longer justify issuance of a visa without the full application process”.⁵ The term “the full application process” is not defined in the Supplementary Information. We assume that the Department uses the term to mean the submission of the Form DS-156 Nonimmigrant Visa Application, the Form DS-157 Supplemental Nonimmigrant Visa Application, and a valid passport, and the completion of an interview and background checks.⁶

The Council fully supports the U.S. government’s commitment and obligation to strengthen the nation’s homeland security. The Council and its Member companies are working cooperatively with the government in a wide number of areas in this regard. Furthermore, the Council does not question the Department’s assessment that the *existing* crew list visa does not adequately ensure the verification of the identity of individual seafarers and does not adequately ensure that undesirable persons are not allowed entry to the United States.

We, however, urge the State Department to carefully consider, before a final rule is promulgated, whether on-going international initiatives -- all initiated by the United States -- in combination with domestic legislative initiatives could provide such assurances against admitting undesirable persons on a crew list visa. These initiatives are discussed below. We respectfully request that the State Department not finalize the proposed rule until such an analysis is performed and a coherent, comprehensive U.S. government policy is developed on seafarer credentialing.

First, it is relevant to consider the number of seafarers engaged on internationally operating vessels. Most estimates put the number between 1.2 – 1.5 million seafarers employed globally. Of these, and based on U.S. Coast Guard calculations, approximately 200,000 seafarers arrive on vessels calling at U.S. ports each year.⁷ This number is a small portion of the approximately 36 million foreign visitors that come to the United States each year.

Second, seafarers – with the exception of those rare instances of fraudulent and criminal behavior and intent, which by no means are confined to the maritime sector but pertain to all occupations and job categories – constitute a hardworking and bona fide

⁴ *Ibid.*

⁵ 67 *Fed.Reg.* 76711.

⁶ The Department is proposing to eliminate the crew list visa to “ensure that each crewmember entering the United States will complete the nonimmigrant visa application forms, submit a valid passport and undergo an interview and background checks”. 67 *Fed.Reg.* 76712.

⁷ This number is comparable to the approximately 8,000 crew list visas and the approximately 200,000 individual visas (including both seafarers and air crews) issued by the State Department in 2002.

workforce that has an important role in making international maritime commerce possible, and which must endure the hardship of sometimes very long stays at sea, limited contact with families, and limited ability to recreate or take care of personal needs.

Seafarers share the same concerns as their employers and the U.S. and like-minded governments of protecting and enhancing the security of international transportation while at the same time keep legitimate international trade moving. The seafarers' central role in protecting the international maritime transportation system, which is such an essential component of the international supply chain, has explicitly been recognized in the International Ship and Port Facility Security (ISPS) Code that was recently agreed at the International Maritime Organization, and which reflects key U.S. objectives and requirements. Also the recently enacted Maritime Transportation Security Act of 2002 explicitly confirms that seafarers have very important roles and responsibilities for developing and maintaining appropriate vessel security programs both while on the high seas and while in, and approaching, U.S. ports.

Seafarers understand – as do the member companies of the Council – that a “new normalcy” came into being after September 11th, requiring increased efforts for U.S. homeland security. Care should be taken, however, not to undermine the seafarers' role as first line defenders of the homeland security by implementing measures and requirements that would be unnecessarily difficult or prejudicial to seafarers.

3. International and domestic initiatives to verify the identity of seafarers

The interrelationship between enhanced security and facilitation of trade was highlighted in the declaration on “Cooperative G8 Action on Transport Security” issued by the G8 Heads of State and Government at the recent G8 Summit in Kananaskis, Canada. The preamble to the declaration -- introduced by the President of the United States -- states, in pertinent part, that the set of cooperative G8 actions are intended to promote *the dual goals* of “greater security of land, sea and air transport while facilitating the cost-effective and efficient flow of people, cargo and vehicles for legitimate economic and social purposes”.

Among the agreed cooperative G8 actions are three that are of direct relevance for the issue at hand, namely, the verification of a seafarer's identity in order to screen out undesirable foreigners from admittance to the United States. They are joint G8 commitments to:

- “Implement as expeditiously as possible a common global standard based on UN EDIFACT for the collection and transmission of advance passenger information (API)”
- “Work towards agreement...by June 2003 on minimum standards for issuance of seafarers' identity documents for adoption at the [International Labor Organization (ILO)]”

- “Work towards developing recommendations on minimum standards for the application of biometrics in procedures and documents by the spring of 2003, with a view to forwarding them to standards organizations”.⁸

Progress is being made internationally on developing a worldwide UN EDIFACT format for the electronic transmission of arrival and departure manifests for both passengers and crew members.

Meanwhile, the Immigration and Naturalization Service (INS) has published a proposed rule that would require the advance electronic transmission of arrival and departure crew manifests to the Advanced Passenger Information System (APIS), allowing the Service and other U.S. government law enforcement agencies up to 96 hours advance notice to verify the identity of, and conduct background checks on, foreign seafarers on vessels that will be arriving at U.S. ports.⁹ When implemented, the advance electronic crew manifest information would be a significant tool for the agencies in screening out undesirable seafarers from admittance to the United States.

The G8 initiative in regard to seafarers’ identity documents, and following a specific request by the United States, led to a decision by the competent ILO bodies to initiate, on an expedited basis, a review of the existing ILO Seafarers’ Identity Documents Convention of 1958 with a view to developing, by June 2003, a new global instrument on the “Improved Security of Seafarers’ Identification Documents”. Based on information provided during very recent meetings in Washington, D.C., with senior representatives of the ILO Secretariat and State Department officials, the objective of the new ILO instrument is to provide for a meaningful solution to specific maritime security concerns, as expressed by the G8 and the United States government, in the form of internationally recognized seafarers’ identity documents that would allow for positive verification of a document holder’s identity through the incorporation of biometric data. Other requirements and safeguards for the issuance of the envisaged new international seafarers’ identification documents, including storage of information about the individual seafarer in databases of the issuing government providing for real-time access from another (port state) jurisdiction, are expected to provide for the availability of a document that would significantly surpass the integrity of existing seafarers’ identification documents (normally referred to as “seaman’s book”). As such, the new documents

⁸ The G8 declaration on “Cooperative G8 Action on Transport Security” can be accessed at <http://www.g8.gc.ca/kananaskis/tranterror-en.asp>. A fourth, joint G8 commitment – to improve procedures and practices for sharing data on, *inter alia*, denied entry – would also seem of relevance for the purpose of screening out undesirable foreigners.

⁹ 68. *Fed. Reg. 292 et seq.*. For UN EDIFACT developments, see *Ibid.* 294 and 297. The U.S. Coast Guard already receives crew member information 96 hours before arrival in the so-called Notices of Arrival that all vessels entering a U.S. port from a foreign port are required to submit to the Coast Guard. We have been assured by the INS, Customs Service and Coast Guard that efforts are in hand to arrange for one, single advance electronic transmission of crew member information to APIS from which the three agencies would be able to import to their databases information needed to fulfill their respective statutory obligations in regard to foreign vessels and their crews. We strongly support these efforts and hope they will be completed without further delay.

would be expected to allow another jurisdiction to verify more reliably the identity, employment history and credentials of a foreign seafarer, including for visa application purposes.

The latter objective is explicitly supported in the U.S. government's response to a questionnaire by the ILO Secretariat in preparation for upcoming key ILO meetings that are scheduled to draft an instrument for approval in June 2003. In its response to one of the questions in the ILO questionnaire¹⁰, the U.S. government has stated that U.S. immigration laws requires a foreign seafarer to hold a valid visa unless the INS waives this requirement. The response then continues: "The United States Government does, however, support the principle that a new seafarer identification document, including biometric identifiers, should to the maximum extent possible be designed so that it contains, or provides direct electronic access to, information elements needed to initiate the visa application process where applicable".

The Council strongly supports the principle expressed in the response quoted above. We note that the U.S. government in its response stresses that the new seafarers' identification document should include biometric identifiers – a requirement we also support. We also note that the government's response clearly implies that the identification document can not replace the issuance of a visa, but can initiate -- and, we would add, facilitate -- the visa application in that the document should contain the necessary information to establish and verify the identification of the seafarer and his or her employment history and seafarer credentials, *and* provide electronic access to other information relevant for the visa application process. The latter element is important in that not all information necessary for the visa application process may be included in the document itself. Some of the additional information will reside in the issuing government's databases. Other additional information will reside in law enforcement sensitive U.S. government databases. But because of the inclusion of biometric identifiers in the document, it would it be possible for the consular officer to access and verify information needed to establish the identity and bona fides of the visa applying seafarer, including employment history and seafarer credentials, i.e., information elements that are mentioned in the Supplementary Information as critically missing on the current crew list visa application process.

The inclusion of biometric identifiers in the envisaged new international seafarers' identification documents is also noteworthy in regard to the Enhanced Border Security and Visa Entry Reform Act's requirements mentioned in the Supplementary Information to the NPRM.

Section 303 (c) of that Act requires that a country participating in the visa-waiver program no later than October 26, 2004, must certify that it has established a program for the issuance of passports that are machine-readable, tamper-resistant and incorporate biometric identifiers. No similar requirement exists for passports issued to citizens of non-visa waiver countries. The assumption must therefore be that many of these latter

¹⁰ The question (B4 (a)) reads: "Does the requirement to admit the bearers of seafarers' identity documents for the purposes of shore leave raise any problems for Members?"

countries would, in the near term at least, continue to issue passports without biometric identifiers. It could therefore be argued that it would be relatively easier, and more reliable, for a consular officer to verify the identity of seafaring citizens from such countries to whom seafarers' identification documents that conform with the new international ILO instrument have been issued - and therefore would contain biometric identifiers - than it would be having to rely on their passports.¹¹

Furthermore, the plain language of the Enhanced Border Security and Visa Entry Reform Act does not, *a priori*, appear to preclude the possibility that the biometric identifiers contained in seafarers' identification documents issued in accordance with the new ILO instrument could meet the statute's requirement that, no later than October 26, 2004, foreign aliens shall only be issued "machine-readable, tamper-resistant visas and other travel and entry documents that use biometric identifiers".¹²

In other words, it would appear that the statute does not necessarily require that the biometric identifiers be included in the visa itself, but could be included in accompanying travel documents, i.e., a seafarer's identification document.

We understand and accept that the U.S. government -- even if a new ILO instrument is implemented -- may reserve the right to question, or not accept, the validity of seafarers' identification documents issued by certain countries. Individual documents may also give rise to questioning. However, such concerns apply equally, if not more, to passports issued by these same jurisdictions or being presented by individuals. Also, suspicion about a seafarer's document could much more easily be confirmed via the use of biometric identifiers and the information embedded in, or accessed via, the new seafarers' documents. And suspicion of a forged document would presumably result either in outright denial of entry to the United States or in the bearer being requested to undergo an individual interview with a consular officer.

We suggest, however, that if the new ILO instrument were to meet the current expectations and U.S. objectives, it should -- for the overwhelming majority of the seafarers who come to the United States each year -- have the potential for an improved capability to reliably verify the crew members' identities, employment histories and credentials. It would therefore also have the potential for reducing the need for interviewing every foreign seafarer who seeks entry to the United States, just as not all foreign tourists from non-visa waiver countries are expected to undergo individual interviews before being issued a tourist visa to the United States.

For the above-mentioned reasons, we urge that the State Department to consider delaying the promulgation of a final rule on the crew list visa until the ILO decision by June 2003 on a new international instrument for seafarers' identification documents. This

¹¹ For that reason we find it difficult to understand why the State Department, in arguing for the need to replace the existing crew list visa with a "full application process" (see footnote 6 above), would insist on the submission of passports with no reference to seafarers' identification documents with biometric identifiers when many, if not most, of such passports are unlikely to include biometric identifiers.

¹² Section 303 (b); emphasis added.

would allow the Department to comprehensively assess to what degree the ILO instrument meets the U.S. government's objectives and requirements enumerated in its response of December 31, 2002, to the ILO questionnaire and in the Enhanced Border Security and Visa Entry Reform Act and other legislation enacted after September 11th as well as the objectives listed in the G8 declaration on "Cooperative G8 Action on Transportation Security".

Included in such an assessment should also be the above-mentioned INS proposed rule on the advance electronic transmission of crew member information and existing policies in regard to foreign seafarers instituted by the INS and the Coast Guard. A determination could then be made as to whether these international and domestic initiatives, taken together, would provide assurances against admitting undesirable persons under the *new conditions* surrounding the crew list visa system, or whether changes to that system would still be warranted.

4. Requirements to an individual visa-only system for seafarers

If the State Department determines that the crew list system needs to be terminated, difficulties in the existing crew visa process will be exacerbated. They warrant the Department's attention. The Council recommends that several requirements and concerns be addressed as discussed below.

A. Permission for vessels to call at U.S. ports

Today, most crew members on vessels calling at U.S. ports have valid visas to the United States, either by being on a crew list visa or having individual C1/D visas. However, some crew members may, for various reasons, not be in possession of a valid visa. In accordance with longstanding policy of the United States, vessels with non-visaed crew members are allowed to call at U.S. ports upon which the non-visaed crew members would either be detained aboard or granted a visa waiver if they seek shore privileges. In other words, crew members on vessels calling at U.S. ports are not required to have valid visas to the United States as long as the crew members do not seek shore privileges.

An elimination or curtailment of the crew list visa can be expected, at least in the near term, to result in an increase in the number of non-visaed crew members onboard vessels calling at U.S. ports. This should, however, not lead to any change in the longstanding policy of not making permission for a vessel to call at a U.S port dependent on possession of valid visas by all crew members on that vessel.

We respectfully request that the State Department, in its final rule, confirms that changes, if any, to the crew list visa system are not intended, and shall not be construed, to alter, change or otherwise impact this existing, longstanding policy.

B. Expedited and privileged visa application process for seafarers

Particularly if the crew list visa system is discontinued, we recommend that the government create a special visa application processing system for seafarers on internationally deployed vessels. Special processing of visa applications from foreign business people today provides the possibility of expedited issuance of multi-year, multiple entry visas. We are not aware of any reason why foreign seafarers should not be afforded a similar treatment and provided an expedited visa application process. We recommend that such an expedited process be developed and implemented before changes to the crew list visa system take effect.

We recommend that elements of such a visa application system for seafarers should include the following:

- **Place of application should not matter**

A seafarer may be employed for many months at a time on a vessel, which during that period does not make any calls of port in the seafarer's country of residence. Whereas there are no requirements for the place of application for crew list visas, seafarers seeking individual visas are today required to submit their visa applications at a U.S. diplomatic mission in their countries of residence. An individual visa must also today be picked up at the diplomatic mission where the application was submitted.

In order to continue the manning and operational flexibility provided by the current crew list visa system for internationally deployed vessels, a seafarer should be able to apply for an individual C1/D visa to the United States at any U.S. embassy or consulate abroad. Similarly, a seafarer should be allowed to pick-up the approved individual visa at another U.S. diplomatic mission than the one where the application was made. For example, a seafarer should be able to submit a visa application at the U.S. consulate general in Shanghai and then obtain the visa at the U.S. consulate in Kobe when the seafarer's vessel makes a call at that port en route to the west coast of the United States.

- **Significant reduction of visa processing time needed**

Member companies of the Council consistently report that, at many U.S. diplomatic missions overseas, particularly in major seafarer supplying countries in Asia, it can take several weeks, if not months, to process a seafarer's application for an individual C1/D visa. Unless consular resources within the State Department and at the U.S. diplomatic missions are reallocated to the processing of seafarers' visa

applications, changes to the crew list visa system could result in even longer visa processing times.

We respectfully request that the State Department, as a matter of priority, take the necessary steps to significantly reduce the visa processing time for seafarers. Furthermore, changes to the crew list visa system should not be made until such steps have been taken.

○ **Review of visa instructions to U.S. diplomatic missions abroad**

Member companies of the Council also consistently report that some U.S. diplomatic missions abroad will not today, as a matter of policy, issue any individual seafarer visas. Also today, other U.S. diplomatic missions can only issue an individual visa to a seafarer if that seafarer is to meet the vessel in a U.S. port, but not if the seafarer is scheduled to meet the vessel, bound for the U.S., in a foreign port. Yet other U.S. diplomatic missions appear to be under instructions only to issue e.g., individual C1 visas¹³, but not D visas¹⁴, or vice versa, but not dual-purpose C1/D visas.

The rationale for such apparent restrictions in the types of seafarer visas a diplomatic mission can issue is not apparent. There can be no doubt, however, that such restrictions can negatively impact the manning and operations of vessels in international traffic.

The Council therefore respectfully requests the State Department to review, and where necessary, amend its visa instructions to U.S. diplomatic missions abroad to allow them to issue individual C1/D visas to bona fide crew member applicants without conditions that negatively impact the manning and operations of vessels in international traffic. Furthermore, changes to the crew list visa system should be made after such a review has been undertaken.

○ **Appropriate role for, and use of, new international seafarers' identification documents in the visa application process**

We quoted above from the U.S. government's response to the ILO questionnaire that the U.S. is in support of the principle "that a new seafarer identification document, including biometric identifiers, should to the maximum extent possible be designed so that it contains,

¹³ A C1 visa permits the crew member to arrive in the U.S. (typically as an airline passenger) and request direct and immediate transit to the vessel. A C1 visa does not permit the crew member to apply for shore privileges.

¹⁴ A D visa permits the crew member to apply for shore privileges, and also permits the master or shipping agent to request discharge and repatriation of the crew member. The crew member is, however, not allowed to fly into the United States to sign onto a vessel. Dual-purpose C1/D visas, on the other hand, permit the bearer to arrive in the United in either the C1 or D classification.

or provides direct electronic access to, information elements needed to initiate the visa application process”.

As also stated above, we support this objective, including the inclusion of biometric identifiers in the new seafarer identification document. We do so because the establishment of a linkage between the new document and the visa application process would significantly assist in reducing the length of the visa application process and allow U.S. consular officers to prioritize screening resources on high-risk applicants who then could be subjected to more detailed background checks and individual interviews.

We regard this interface between the new document and the visa application process to be a most important feature of the new international instrument currently under discussion at the ILO. Not only would such an interface enhance homeland security efforts to screen out undesirable persons, but it would also facilitate the G8’s objective of “cost-effective and efficient flow of people, cargo and vehicles for legitimate economic and social purposes”.

Ideally, a new international seafarers’ identification document, which meets U.S. objectives at the ILO, should qualify as a primary travel document *in lieu of* a passport. Indeed, requiring a seafarer to possess both a new identification document and a passport for visa application purposes would raise questions about the purpose of the ILO negotiations. Not allowing any role for the new seafarers identification document in the visa application process at all -- which appears to be the State Department’s initial intention¹⁵ -- could, arguably, make the entire seafarer credentialing endeavor of questionable value for seafarers, their employers and their governments. Besides, as pointed out above,¹⁶ it would be difficult to understand, from a security perspective, why passports issued without any biometric identifiers at all should be relied upon in the visa application process for seafarers from non-visa waiver countries when those same seafarers’ identification documents are expected in the future to include biometric identifiers.

C. The need for a credible signing off/on visa waiver program

The operational nature and challenges of international shipping business are such that, even if a shipowner, as a matter of employment policy, requires all crew members to be in possession of valid individual visas to the United States, situations will unavoidably occur when – in order to keep the vessel deployed in international transportation – crew

¹⁵ See footnote 6 above and 67 *Fed.Reg.* 76712.

¹⁶ See footnote 11 above and the preceding discussion.

members without individual visas must be employed onboard vessels calling at U.S. ports.

A medical emergency, for example, can force the unplanned change of a crew member in the last foreign port of call before departure for the United States. While the shipowner and the crewing agent would do their utmost to find a replacement with a valid visa, that may not be possible in all situations and circumstances, and in particular not with continued long visa application times at U.S. diplomatic missions abroad. Mandatory vessel crewing requirements – enforced by the U.S. Coast Guard with understandable vigor and with the possibility of severe fines and detention of the vessel – can leave a ship owner with no other option than to hire a non-visaed replacement seafarer, possibly with the understanding that the replacement seafarer should sign-off in the first U.S. port of call to be replaced with either the original seafarer or another seafarer from within the shipping company with a valid visa.

Situations may also arise where a seafarer with a valid visa is scheduled to sign off the vessel when it arrives at the U.S. port, but, because of unplanned weather or operational reasons, the vessel arrives later than planned so that the visa has expired in the meantime.

A system should be in place that would allow for the signed-off seafarers in the examples above to proceed to the nearest U.S. airport for a flight back to their respective countries of residence. Using the new international seafarer's identification document would seem to provide the necessary assurances for the INS and other law enforcement agencies to verify the identity of the signed-off seafarers and their bona fide credentials, and thus form the basis for a decision to allow such seafarers -- perhaps with certain conditions such as proof of a ticket for a direct flight out of the U.S., escort by the local shipping agent until the plane has departed, etc. -- a temporary visa waiver for the sole purpose of departing the country.

Similarly, a replacement seafarer, who is to join the vessel in a U.S. port, may not have had the time or the opportunity to obtain an individual visa before proceeding by plane to the U.S. airport nearest to where the vessel is moored. This could occur, for example, because of the long time to process visa applications at the U.S. diplomatic mission in the seafarer's country of residence. Arrangements should also be in place allowing such a seafarer – perhaps with certain conditions, e.g., being met in the airport by the local shipping agent and escorted by that person directly to the vessel - to be granted permission, upon arrival in the United States, to proceed immediately to the vessel. Again, the new international seafarers' identification document, and in accordance with the U.S. government's positions quoted above from the government's response to the ILO questionnaire, could be used as the basis for approving such arrangements.¹⁷

For all the situations described above, we would also suggest that a seafarer from a visa waiver country should, as a matter of course, be allowed to precede to/from the vessel from/to the nearest U.S. airport. It would be difficult to comprehend why such a seafarer, if coming to the United States as a tourist, could be granted entry to the United

¹⁷ Formally known as "Transit Without Visa (TWOV)".

States for a period of up to 90 days without any visa requirements, whereas arrival to – or departure from – the United States in his or her seafaring occupation could lead to denial of entry, in particular when the purpose for seeking entry to the United States is to immediately join the vessel or to embark on a direct flight back to the country of residence.

Decisions to grant visa waivers are made by the INS officer at the port of arrival in the United States. They are therefore, technically, outside the scope of this particular rulemaking. However, until now, the crew list visa system has to a significant degree been used by shipowners and crewing agents for exactly the types of situations described above in order to avoid having to rely on the visa waiver facility, which has always had a degree of unpredictability attached to it. Elimination of the crew list system would, therefore, result in an increased need to rely on the visa waiver option. That option, however, has been severely restricted since the September 11th terrorist attacks to such a degree that the Council, based on reports from its member companies, has to conclude that visa waivers are now only being issued very sparingly by the INS and then almost entirely in acute medical emergencies only (to allow a non-visaed crew member on a vessel in a U.S. port to seek urgent medical care at the nearest U.S. hospital).

Because crew list visas have historically been used also to avoid having to seek last minute visa waivers, we respectfully request the State Department, in its final rule, to explicitly address the issue of how visa waivers for the situations described above could be obtained in a predictable, transparent way if the crew list visa system indeed is eliminated. Not addressing it in any final rule would, in the Council's view, not be satisfactory as it would leave a real need unsolved and unanswered – a need, which, as the Department itself observes, might have been the principal intention with the creation of the crew list visa system.¹⁸ The elimination of the crew list visa would not make that need disappear. Quite the contrary.

D. The cost of obtaining an individual C1/D visa should be kept at a minimum

The cost of obtaining an individual C1/D visa is borne by the individual seafarer.

We realize that there are certain statutorily defined criteria for establishing the State Department's visa processing fees, and also that it may not be possible to waive the fees entirely for seafarers. Within those criteria, the social and human needs of seafarers, who may spend extended periods at sea away from family and relatives under often arduous climatic conditions in the confined space of a vessel, should be considered when establishing visa processing fees.

We therefore urge the Department to keep the visa processing fees for seafarers at the minimum allowable under existing law.

¹⁸ 67 *Fed.Reg.* 76711.

E. Other countries' visa requirements for U.S. seafarers should be considered

Several of the Council's member companies operate U.S. flagged vessels with all-U.S. crews. These crew members have, up until now, not generally been required to obtain visas in order to obtain shore privileges in foreign ports of call even though the foreign jurisdictions concerned could – based on the principle of reciprocity – have imposed such visa requirements. Part of the reason for their not imposing such requirements has been the availability of crew list visas for their seafaring nationals on board vessels calling at U.S. ports.

Elimination of the crew list visa system could therefore induce foreign jurisdictions to impose reciprocal individual seafarer visa requirements on U.S. seafarers. In fact, we have seen public statements attributed to senior foreign officials in Asia and Europe confirming that such considerations are indeed being pursued. We also understand that some countries have made diplomatic representations to the U.S. government, expressing concerns about the possible elimination of the crew list visa system while implying that it could trigger a reciprocal individual visa requirement on U.S. seafarers.

If foreign jurisdictions follow through on such statements, it could have significant implications for U.S. flagged and manned vessels and crews calling at foreign ports overseas. Some foreign jurisdictions may, we understand, only issue individual seafarer visas with a duration of six months. Furthermore, some jurisdictions may require – as a condition for even begin the processing of visa applications – that an “invitation” be issued to the U.S. crewmembers from entities domiciled in those jurisdictions.

The U.S. government would have no recourse regarding such consequences as visa policies are typically based on the principle of reciprocity. The Supplementary Information to the NPRM does not address such concerns, but we believe the Department should consider them.

5. Conclusion

The Council appreciates the opportunity to submit these comments in response to the Department's NPRM.

For the reasons discussed above, the Council urges the Department to await promulgation of a final rule until the outcome of the ILO discussions on a new international instrument for seafarers' identification document is known and a determination is subsequently made as to whether this and other international and domestic initiatives, taken together, would provide assurances against admitting undesirable persons under the *new conditions* surrounding the crew list visa system, or whether changes to that system would still be deemed to be warranted.

Furthermore, if the State Department determines that elimination of the crew list visa system is warranted, we request that the Department address, before a final rule is promulgated, the requirements and concerns pertaining to the issuance of individual seafarer visas that we have identified above.

The Council provides these comments in the interest, which we share with the U.S. government and the G8, of enhancing maritime and homeland security, while facilitating the effective and efficient flow of people, cargo and transportation assets for legitimate economic and social purposes.

Appendix A**World Shipping Council Member Lines**

- [APL](#)
- [A.P. Møller-Maersk Sealand](#) (including *Safmarine and Torm Lines*)
- [Atlantic Container Line](#) (ACL)
- [CP Ships](#) (including *Canada Maritime, CAST, Lykes Lines, Italia Lines, Contship Containerlines, TMM Lines, and ANZDL*)
- [China Ocean Shipping Company](#) (COSCO)
- [China Shipping Group](#)
- [CMA-CGM Group](#)
- [Compania Sud-Americana de Vapores](#) (CSAV)
- [Crowley Maritime Corporation](#)
- [Dole Ocean Cargo Express](#)
- [Evergreen Marine Corporation](#) (including *Lloyd Triestino*)
- [Gearbulk Ltd.](#)
- [Great White Fleet](#)
- [Hamburg Sud](#) (including *Columbus Line, Crowley American Transport, Empresa, and Alianca*)
- [Hanjin Shipping Company](#)
- [Hapag-Lloyd Container Line](#)
- [HUAL](#)
- [Hyundai Merchant Marine Company](#)
- [Kawasaki Kisen Kaisha Ltd.](#) (*K Line*)
- [Malaysia International Shipping Corporation](#) (MISC)
- [Mediterranean Shipping Company](#)
- [Mitsui O.S.K. Lines](#)
- [NYK Line](#)
- [Orient Overseas Container Line, Ltd.](#) (OOCL)
- [P&O Nedlloyd Limited](#) (including *Farrell Lines*)
- [United Arab Shipping Company](#)
- [Wan Hai Lines Ltd.](#)
- [Wallenius Wilhelmsen Lines](#)
- [Yangming Marine Transport Corporation](#)
- [Zim Israel Navigation Company](#)