



CIRCULAR MCO – 027-2021

DATE: SEPTEMBER 25th, 2021
FROM: MCO HEAD OFFICE – TECHNICAL DEPARTMENT
TO: SURVEYORS/ MANagements/ OWNERS/ OPERATORS
SUBJECT: GUIDELINES FOR APPEALS PROCESS AGAINST PORT STATE CONTROL DEFICIENCIES/DETENTIONS

Dear All:

By this means we would like to inform you about circular **MMC-384** regarding the mechanisms to be used if any deficiency and/or detention want to be appealed.

In order to present a formal appeal, it is important to understand the internal appeal process clearly established in the majority of Memorandum of Understanding (MoU). All necessary information, documents, statements and others related to the inspections and deficiency finding must be available to be presented at the moment of the formal appeal as evidence and supporting information.

For easy reference a summary has been prepared with the most important information related to the different appeal procedures of all MoU and USCG.

Paris MoU on Port State Control; the National appeal procedure of the Paris MoU member States.

When deficiencies are found which render the ship unsafe to proceed to sea or that pose an unreasonable risk to safety, health or the environment, the ship may be detained. The PSCO will issue a notice of detention to the master.

The PSCO will inform the master that the ship's owner/operator has the right of appeal. Appeal notice details can be found on the reverse side of the notice of the detention form and are different in each of the Paris MoU member States.

In case an owner or operator declines to use the official National appeal procedure but still wishes to complain about a detention decision, such a complaint should be sent to the flag State or the Recognized Organization, which issued the statutory Certificates on behalf of the flag State. The flag State or R.O. may then ask the port State to reconsider its decision to detain the ship. If the flag State or the R.O. disagrees with the outcome of the investigation as mentioned above, a request for review may be sent to the Paris MOU Secretariat. Please refer to National appeal procedure of the Paris MoU member States: <https://www.parismou.org/inspections-risk/appeal-procedure/national-appealprocedures>

Tokyo MoU Asia-Pacific PSC; Appeal Procedures of Member Authorities.

In accordance with the provisions of the Memorandum, the company of a ship or its representative will have a right of appeal against a detention taken by the Authority of the port State. The port State control officer should properly inform the master of the right of appeal. The shipmaster should be advised to use the official national procedure if they wish to appeal against a detention order. For member Authorities of the Tokyo MoU, the particulars necessary to submit a National appeal are listed in Appeal Procedures of Member Authorities of the Tokyo

MoU. Please refer to Appeal Procedures of Member Authorities of the Tokyo MoU:
http://www.tokyo-mou.org/inspections_detentions/appeal_procedures.php

Viña del Mar Agreement; Latin American Agreement on Port State Control of Vessels; Treatment of Appeals.

The purpose of this Guidance is to have a General Procedure of Review of the Appeals, as determined by Section 3.15 of the Viña del Mar Agreement Text which states that —The Company or its representative have the right to appeal against the detention order issued by a Port State Control Authority. The appeal should not give rise to the suspension of the detention. The port State control for the Viña del Mar Agreement member Authorities, the particulars necessary and contact information to submit an appeal are listed in Viña del Mar Agreement Treatment of Appeals.

Please refer to Viña del Mar Agreement; Treatment of Appeals:

<https://alvm.prefectura naval.gob.ar/cs/Satellite?c=Page&cid=1459056094692&pagename=CIALA%2FPAGE%2FtemplateSeccionCialaFULLTEXT>

Caribbean MoU on Port State Control; Refusal of Access Review Panel Procedure.

Owners and operators who wish to appeal against a detention order are advised to use the official national procedures of the port State. If an owner or operator declines to use the appeal procedures of the port State but nevertheless wishes to have the detention decision reviewed it may submit a complaint to the flag State or Recognized Organization (RO) authorized to act on behalf of flag State.

The flag State or the RO may then request the port State to reconsider its decision to detain the ship. The port State on receipt of the request should investigate the refusal of access decision and inform the flag State or the RO of the results of the investigation. Where the port State agrees to reverse its decision, it should also inform the CMOU Secretariat (secretariat@caribbeanmou.org) and the CMOU database manager (majambia@mas.sr).

For the Caribbean MoU member, the particulars necessary to submit a Detention Review are listed in Caribbean MOU Refusal of Access Review Panel Procedure. Please refer to the Caribbean MOU Refusal of Access Review Panel Procedure:

<https://www.caribbeanmou.org/content/publications>

Abuja MoU Detention Review Panel; Guidelines.

Section 3.12 of the Abuja MoU Memorandum states that —the owner or the operator of a ship or his representative in the State concerned will have a right of appeal against a detention decision taken by the Authority of that State. An appeal will not cause the detention to be suspended. The Authority will properly inform the master of a ship of the right of appeal.

For the Abuja MoU member Authorities, the particulars necessary to submit a Detention Review are listed in Guidelines for Abuja MoU Detention Review. Please refer to the Guidelines for Abuja MoU Detention Review: <http://www.abujamou.org/index.php?pid=ds6hdr78d7h2gfh78ds>

Black Sea MoU; National Detention Appeal.

Section 3.14 of the BS MoU states that —the owner or the operator of a ship will have the right of appeal against a detention decision to higher administrative Authority or to the court of competent jurisdiction, according to the law in each country. However, an appeal shall not cause the detention to be suspended.

Owners or operators should be advised to use official national procedure according the national jurisdiction of the country where the detention order was issued, if they wish to appeal against a detention order. For Black Sea MoU Member States, the particulars necessary to submit a

National appeal are listed in Detention Appeal Procedures of Member Authorities of the Black Sea MoU. Please refer to Detention Appeal Procedures of Member Authorities of the Black Sea MoU: <http://www.bsmou.org/detention-review-board/>

Riyadh MoU; Appeal Procedure

Section 3.24 of the Riyadh MoU Section 3: Inspection procedures, rectification and detention establish that; The owner or the operator of a ship will have the right of appeal against a detention decision to higher administrative Authority or to the Court of competent jurisdiction, according to the law in each country. However, an application for appeal shall not cause the detention to be suspended.

Please refer to Riyadh MoU members contact information:

<https://www.riyadhmo.org/aboutmoutext.html>

<https://www.riyadhmo.org/aboutmoumembers.html>

Med MoU; Appeal and Review Procedures.

Section 3.12 of the Med MoU memorandum states that "the owner or the operator of a ship will have the right of appeal against a detention decision to higher administrative Authority or to the Court of competent jurisdiction, according to the law in each country. However, an appeal shall not cause the detention to be suspended."

Owners or operators are advised to use the official Authority's procedure if they wish to appeal against a detention order. The basic appeal procedures in the Med MoU member States are listed in the document called: Appeal procedures in Med MoU member States.

Please refer to Appeal procedures in Med MoU member States:

http://www.medmou.org/Basic_Principles.aspx#9

<http://www.medmou.org/PDF/Appeal.pdf>

India Ocean MoU on Port State Control; National Appeal Procedure.

In accordance with the provisions of the Memorandum, the company of a ship or its representative will have a right of appeal against a detention taken by the Authority of the port State. The port State control officer should properly inform the master of the right of appeal. The shipmaster should be advised to use the official national procedure if they wish to appeal against a detention order.

For the Indian Ocean MoU member Authorities, the particulars necessary to submit a National appeal are listed in appeal procedures of the Indian Ocean MoU member Authorities: Please refer to the basic appeal procedures of the Indian Ocean MOU member Authorities:

https://www.iomou.org/HOMEPAGE/pdf/Detention_Rev_Panel.pdf?l1=4&l2=39

The United States Coast Guard Port State Control in the United States; appeal process.

Port State Control Appeal Process: Any directly affected party wishing to dispute the validity of or their association with a detention should follow the appeal procedures outlined in Title 46 Code of Federal Regulations Subpart 1.03—Rights of Appeal. The appeal process allows for three separate levels of review starting with the cognizant Officer in Charge, Marine Inspection (OCMI) / Captain of the Port (COTP), District, and finally Headquarters. At each level, the appellant has an opportunity to present new or additional information, as to why the appeal should be granted. Coast Guard officials responsible for the review and determination of an appeal remain objective as both positions are reviewed and weighed carefully. We value the role of the appeal process in the overall fairness of our Port State Control program, and emphasize that there will be no repercussions to the appellant for seeking reconsideration or requesting to appeal a decision or detention.

For Recognized Organization (RO) Related Detentions: Appeals from ROs must be submitted within 30 days of detention notification. All appeals shall be in writing and can be submitted electronically to: PortStateControl@uscg.mil

Appeals may also be submitted to the following postal address: Commandant (CGCVC-2) Attn: Office of Commercial Vessel Compliance U.S. Coast Guard STOP 7501 2703 Martin Luther King Jr Ave S.E. Washington, D.C. 20593-7501.

For All Merit Detentions: Any person affected by a decision or action (e.g., PSC detention), may request reconsideration without delay by communicating directly with the OCMI/COTP especially if a delay caused by submitting an appeal in writing would have an adverse impact. Any person who receives an unfavorable decision, may then submit a formal appeal in writing to the District Commander via the OCMI/COTP. The same process follows for submitting a formal appeal in writing to the Headquarters Office of Commercial Vessel Compliance (CG-CVC) via the District Commander. CGCVC serves as the final agency action for appeals involving vessel inspection issues and will consider any additional information that was not included in the former appeals.

Please refer to Title 46 CFR Subpart 1.03 - Rights of Appeal for more details on the appeal process and the Coast Guard Homeport website to obtain OCMI/COTP and District Commander contact information at <https://www.dco.uscg.mil/OurOrganization/Assistant-Commandant-for-Prevention-Policy-CG-5P/InspectionsCompliance-CG-5PC-/Commercial-Vessel-Compliance/Foreign-OffshoreCompliance-Division/>

Note: **Circular MMC-384** attached for reference.

All related documents can be found on our website: <https://macosnar.com/>.

Should you have any further questions, please do not hesitate to contact us.

Best Regards,



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