



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 28

[Docket No. USCG-2010-0625]

RIN 1625-AB50

Waiver of Citizenship Requirements for Crewmembers on
Commercial Fishing Vessels

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard amends its regulations to include a description of the procedures for requesting and processing waivers of citizenship requirements on commercial fishing vessels. We seek to improve our efforts to inform the commercial fishing industry of this opportunity by codifying the application procedure policy into the Code of Federal Regulations.

DATES: This final rule is effective [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], except for §§ 28.1105 and 28.1110 which contain collection of information requirements that have not yet been approved by the Office of Management and Budget (OMB). The Coast Guard will publish a document in the Federal Register announcing the effective date of those sections/paragraphs.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2010-0625 and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2010-0625 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. David Belliveau, Office of Commercial Vessel Compliance, Fishing Vessel Safety Division (CG-CVC-3), Coast Guard; telephone 202-372-1247, e-mail David.J.Belliveau@uscg.mil. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

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I. Abbreviations

BLS	Bureau of Labor Statistics
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
INA	Immigration and Nationality Act, as amended (8 U.S.C. 1101 <u>et seq.</u>)
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
§	Section symbol
U.S.C.	United States Code

II. Regulatory History

On August 18, 2011, we published a notice of proposed rulemaking (NPRM) titled "Waiver of Citizenship Requirements for Crewmembers on Commercial Fishing Vessels" in the Federal Register (76 FR 51317). We received four comments on the proposed rule. No public meeting was requested and none was held.

III. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to provide relief from the citizenship requirements on fishing vessels. Title 46 United States Code (U.S.C.) 8103(b)(3)(C) authorizes the Secretary of the Department of Homeland Security to waive these citizenship requirements. The Secretary has delegated this authority to the Coast Guard.

Through this final rule, we amend 46 CFR part 28, Requirements for Commercial Fishing Industry Vessels, by adding a new subpart to specifically address the citizenship waiver program. This subpart will formally incorporate our policy, which has been in place since 2001, into the CFR.

IV. Background

Under 46 U.S.C. 8103(i)(1), each unlicensed seaman on a fishing, fish processing, or fish tender vessel who is engaged in the fisheries in the navigable waters of the United States or the exclusive economic zone must be--

1. A citizen of the United States;
2. An alien lawfully admitted to the United States for permanent residence; or
3. Any other alien allowed to be employed under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq.).

Furthermore, 46 U.S.C. 8103(i)(2) states that no more than 25 percent of the unlicensed seamen on these vessels may be non-permanent resident aliens authorized for employment in the United States under the INA, category 3 above.

Relief from these citizenship and permanent resident status requirements is provided in 46 U.S.C. 8103(b)(3)(C). If the Secretary of Homeland Security determines, after an investigation, that qualified seamen who are citizens of the United States are not available, the Secretary may waive these citizenship requirements.

Congress did not specify a procedure for requesting the waiver allowed under section 8103(b)(3). To fill the need for a procedure, we published a policy letter in June 2001 titled "Procedures for Waiver of Requirements for Citizenship Aboard Commercial Fishing Vessels" (G-MOC Policy Letter 01-02). This policy letter is available at <http://homeport.uscg.mil/mycg/portal/ep/programView.do?channelId=-17679&programId=12861>. This policy letter explains the steps involved in the request for a waiver process. We intended the letter to be the means of informing the fishing industry of the waiver opportunity and the application procedure.

In past years, we received between 125 and 200 waiver requests annually. In 2008, that volume slowed

appreciably.¹ Through experience gained during the 10 years since the publication of the 2001 policy letter and feedback received from the Commercial Fishing Safety Advisory Committee, we believe that not all fishing vessel owners, operators, and employers are aware they can request a waiver from citizenship requirements. As a result, these vessels either sail short-handed, creating potential safety issues, or choose to exceed the 25 percent limit for non-permanent resident aliens authorized for employment in the United States under the INA without an approved waiver. This rule mirrors the requirements that exist in the 2001 policy letter.

In the NPRM, we proposed a requirement for a mandatory dockside examination that was not required in the 2001 policy letter. That requirement has been removed from this final rule. See section V.C. of this preamble for a discussion of this change to the final rule. However, it is still incumbent on owners, operators, and employers to ensure the vessel is in full compliance with all safety, survival equipment, and systems requirements.

V. Discussion of Comments and Changes

We received four written comments on the NPRM to the docket. These comments are available for viewing in the

¹ In 2008, the Coast Guard received a total of 6 waiver requests.

public docket for this rulemaking, where indicated under ADDRESSES.

Below, we summarize these comments and our responses to them. Each of the four comments raised different issues, so each comment summary provides a response directly to the comment submitted.

A. Foreign workers

The first commenter does not favor allowing waivers for foreign workers, but suggests instead that fishing boat captains improve their searches for American workers. The commenter also stresses that the Coast Guard should not remove a 2001 policy that requires resident alien workers to present an H2B visa. The commenter also states that foreign workers should be required to speak English as a safety measure.

The purpose of this regulation is to codify procedures for requesting a waiver already allowed by law under 46 U.S.C. 8103(b)(3). This regulation is not an immigration, labor, or national security regulation per se, and intends no other purpose than what has been stated. However, these rules maintain the 2001 policy in regard to H2B visas. The remaining comments raise issues that fall outside of the scope of this rulemaking.

B. Availability of seamen

Despite the improvement to safety and efficiency that fully-staffed fishing vessels would provide, the second commenter is not convinced that this regulation would achieve its intended purpose. The commenter reasons that the pool of potential workers is limited because it is composed of those seamen who are already employed by other vessels.

This regulation allows a waiver so that non-resident aliens can be employed as unlicensed seamen aboard U.S. flag fishing vessels beyond the 25 percent limitation. Historically, companies and individual vessels that apply for citizenship waivers represent a very small cross section of the commercial fishing industry. Furthermore, requests usually coincide with seasonal manning requirements (e.g., shrimp fishery in the Gulf of Mexico, menhaden fishery in the Gulf of Mexico and mid-Atlantic). In essence, waivers are only requested to fulfill a temporary need. Additionally, the Coast Guard does not have evidence to support the assertion that the population of seamen from which candidates are selected comprises "seamen who are already employed, but whose employer is going out of business or no longer needs their services," since they are non-resident aliens. Therefore, the Coast Guard does not agree with the comment and no change to the rule was made.

C. Unnecessary burden of dockside inspection on employers

The third commenter supports the proposed rule as a means to inform commercial fishing vessel employers about the waiver requirements. However, the commenter states that the dockside safety examination is an unnecessary burden to employers and redundant, given that the Coast Guard already requires and enforces compliance of safety measures. The commenter claims that the dockside safety inspections unnecessarily target fishing vessels employing foreign workers.

We agree, in part, so the requirement for completion of the dockside examination has been removed in the final rule. We do not intend to target nor impose an additional burden on employers in the commercial fishing industry. However, commercial fishermen, vessel owners, and operators should be aware that the Coast Guard and Maritime Transportation Act of 2012 (Pub. L. 112-213) amended 46 U.S.C. 4502(f) to require a dockside safety examination at least once every 5 years for vessels operating beyond 3 nautical miles from the baseline from which the territorial sea of the United States is measured or beyond 3 nautical miles from the coastline of the Great Lakes. For the fishing vessels that operate inside 3 nautical miles from shore, the dockside examination remains voluntary. However, the Coast Guard does recommend

that those vessels operating inside 3 nautical miles complete the dockside examination for the safety of the vessel and crew.

D. Exception to foreign crew rule of the Magnuson-Stevens Act

The last commenter suggests that this rule does not mention, but should, the exception to the foreign crew rule of 46 U.S.C. 8103(i)(1) contained in the Magnuson-Stevens Act for U.S. flag fishing vessels fishing for highly migratory species on the high seas. Furthermore, the commenter states the long time periods provided for the Coast Guard to act under this rule are not conducive to the commercial fishing business, where crew replacements must be made within hours, or at most days, due to death, injury, or sickness.

We agree that the citizenship requirements in 46 U.S.C. 8103(i)(1) and (2) do not apply to fishing vessels fishing exclusively for highly migratory species (as that term is defined in the Magnuson-Stevens Fisheries Conservation and Management Act (16 U.S.C. 1802)). Title 46 U.S.C. 8103(i)(3) provides the exception to the citizenship requirements for these vessels. This exception is now included in the regulatory text. Additionally, companies and/or individual vessel owners that apply for these citizenship waivers do not do so to provide for urgent

manning needs caused by death, injury, or sickness, but rather have traditionally used the process for filling the anticipated, temporary manning requirements that coincide with seasonal needs (e.g., shrimp fishery in the Gulf of Mexico, menhaden fishery in the Gulf of Mexico and mid-Atlantic).

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below, we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility

This final rule has not been designated a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by

Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, the final rule has not been reviewed by the Office of Management and Budget (OMB).

Based on comments received, we have adjusted our policy to remove the dockside examination requirement when applying for a waiver. This will reduce the cost burden from that presented in the NPRM. No comments were received during the comment period addressing the regulatory assessment and thus no other changes to the rule were made.

The following table (Table 1) summarizes the costs and benefits of this rule. We estimated annual and 10-year costs of the rule and, based on data availability, we identified qualitative benefits of the rule.

Table 1: Summary of Costs and Benefits

Costs	
Category	Estimate
Annual Cost to Apply for Waiver	\$42,505
Ten Year Monetized Costs (rounded values, 7% discount rate)	\$298,538
Benefits	
Qualitative Benefits	This rule will provide industry greater awareness and knowledge of the waiver application procedures.

This rule will create a regulatory burden for those owners and operators of commercial fishing vessels electing to request a waiver. From 2005 to 2009, the Coast Guard received an average of 91 requests for waivers per year. Applications for waivers declined from a high of 203 in 2005 to 20 in 2009. The number of applications for waivers will vary from year to year based on many factors, such as national and regional economic conditions and management programs for specific fisheries. We use a 5-year average to reflect the range of conditions that may occur over the 10-year period of analysis. In addition, during the period of 2005 to 2009, the Coast Guard issued an average of 108 reports of violations of 46 U.S.C. 8103. Some of these violations were related to the citizenship requirements for the crew of fishing vessels and the citizenship requirements for the master and officer in charge of deck or engineering watches. During 2009, 75 such reports of violations were issued. Due to the variability in waiver requests, the five year average number of requests is used to provide a more conservative estimate when calculating the burden.

We estimate that it takes an owner or operator approximately 9.25 hours² to compile and submit the appropriate documentation to the Coast Guard per the 2001 policy letter. The Bureau of Labor Statistics (BLS) lists a

wage of \$33.89 for captains, mates, and pilots of water vessels.³ We apply a load factor of 1.49 to this wage to account for labor compensation and benefits, which makes the hourly wage for a captain, mate, or pilot approximately \$50.50.⁴ At a cost of \$50.50 per hour to the civilian sector, the cost is \$467 per request for a waiver (\$50.50 per hour x 9.25 hours). The total annual burden would be approximately 842 labor hours (9.25 hours per request x 91 requests per year), for a cost to industry of \$42,505⁵ (\$50.50 x 842 hours) to submit the request for a waiver. This cost is only borne if a vessel owner, operator, or employer chooses to seek relief of the citizenship requirement. The total annual cost to industry associated with this rule will be approximately \$42,505⁶.

Reviewing a waiver application currently takes a Coast Guard employee approximately 3 hours⁷, on average. We assume a wage rate equal to that of a GS-13 for the reviewer. Based on Commandant Instruction (COMDTINST) 7310.1M, Coast Guard Reimbursable Standard Rates, (available at http://uscg.mil/directives/ci/7000-7999/CI_7310_1M.PDF),

² Time estimates provided by Coast Guard Fishing Vessel Safety Division subject matter experts,

³ <http://www.bls.gov/oes/current/oes535021.htm> This wage information is from May 2010 and is the most recent figure from BLS.

⁴ The load factor is determined by dividing BLS total compensation (series CMU201000052000D) by BLS wages (series CMU202000052000D). <http://www.bls.gov/ncs/ect/data.htm>

⁵ Values may not total due to rounding.

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⁷ Time estimates provided by Coast Guard Fishing Vessel Safety Division subject matter experts,

the hourly wage for the reviewer is \$77. The total annual projected cost to the Coast Guard to review applications is \$21,021 (3 hours x \$77 x 91 requests). As with the costs to industry, government costs will only be incurred if owners, operators, or employers opt to apply for a waiver.

Although we cannot quantify benefits for this rulemaking, we do expect some functional benefits. By incorporating the current policy into regulation, we will promote greater awareness of the policy and provide commercial fishermen with one location for all rules governing their operations. Greater visibility of the application procedures may help reduce the number of crew requirement violations related to citizenship requirements onboard commercial fishing vessels. Furthermore, waiver applications are voluntary, and will only be made if the owner/operator/employer sees a net benefit to doing so. As such, the collective burden described previously is expected to be more than offset by the increased labor pool.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in

their fields, and governmental jurisdictions with populations of fewer than 50,000.

Based on 2009 data, we identified 74,337 entities owning fishing vessels. Of these, a small number (13) were owned by government entities or non-profits, all of which exceed the threshold for being classified as a small entity. The remaining owners are classified as businesses. Based on available revenue data, approximately 99.8 percent (74,228) of the commercial fishing businesses fall below the Small Business Administration threshold for a small business based on their primary North American Industry Classification System designation.

Based on historical data, we expect an average of 91 requests for a waiver per year. If we assume that all of these requests are from small commercial fishing businesses, we can assess the potential impacts of this rule on the industry. Our records show that the majority of vessels requesting waivers in the period from 2006-2009 were between 50 and 70 feet in length. By comparing the \$467 cost of the rule per vessel to the revenues for commercial fishing vessels in the 50 to 70 feet size range, we estimate that 38 percent of the affected population will have a revenue impact greater than 1 percent, and only 3 percent of all commercial fishing vessels will have a revenue impact greater than 3 percent from this rule. Table 2 shows the

percent of vessels by revenue impact.

Table 2: Revenue Impacts of Final Rule

Revenue Impact	Percent of Vessels
0% < Impact <= 1%	62%
1% < Impact <= 3%	35%
3% < Impact <= 5%	3%
5% < Impact <= 10%	0%
Above 10%	0%

The primary purpose of this rule is to codify existing policy into regulation. We estimate that only 91 of approximately 80,000 commercial fishing vessels apply for a waiver annually. Furthermore, because the waiver process is voluntary, we assume vessel owners, operators, or employers would apply for a waiver only if the benefits of doing so outweigh the costs. We can assume that if the approximate \$467 per vessel cost of this rule is prohibitive, vessel owners would choose to not pursue a waiver. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect

your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult with the Coast Guard personnel listed under the 'FOR FURTHER INFORMATION CONTACT' section of this rule. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This rule will call for a revision to an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). This revision is explained below under ESTIMATE OF TOTAL ANNUAL BURDEN. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

TITLE: Commercial Fishing Industry Vessel Safety Regulations.

OMB CONTROL NUMBER: 1625-0061.

SUMMARY OF THE COLLECTION OF INFORMATION: This information collection is intended to improve safety on board vessels in the commercial fishing industry. The requirements apply to those vessels and to seamen on them.

NEED FOR INFORMATION: We need to collect this information for all vessels requesting a waiver for relief of the citizenship requirements on a commercial fishing vessel.

PROPOSED USE OF INFORMATION: We will use this information solely to determine whether or not a vessel should be granted relief of the citizenship requirements on a commercial fishing vessel.

DESCRIPTION OF THE RESPONDENTS: The respondents are vessel owners, operators, and employers of U.S. commercial fishing vessels who opt to seek relief of the citizenship requirements on a commercial fishing vessel.

NUMBER OF RESPONDENTS: The existing OMB-approved number of respondents, as adjusted in July 2011, is 4,808. The rule would not change that total.

FREQUENCY OF RESPONSE: 91 respondents per year, based on a 5-year average.

BURDEN OF RESPONSE: Those vessels that voluntarily choose to request a waiver bear the burden of this collection. We estimate that a request for a waiver will take about 9.25 hours per response.

ESTIMATE OF TOTAL ANNUAL BURDEN: The existing OMB-approved total annual burden, as adjusted in July 2011, is 5,945 hours. The annual increase from the rule will be approximately 842 hours to the public, assuming 91 waiver requests are submitted per year. The total estimated annual burden is 6,787 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit a copy of this rule to OMB for its review of the collection of information.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this rule, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt state law or impose a substantial direct cost of compliance on them.

Congress charged the Secretary of Homeland Security with the authority to administer and enforce immigration laws. See 8 U.S.C. 1103(a)(1). With respect to this rulemaking, the Secretary delegated the authority to waive

the citizenship requirements found in 46 U.S.C. 8103 to the Commandant of the Coast Guard. It is well established that states do not have the authority to regulate immigration. Therefore, we have determined that this rule does not have implications for federalism under E.O. 13132.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded

under section 2.B.2, figure 2-1, paragraphs (34)(a), (c) and (d) of the Instruction. This rule involves regulations which are editorial or procedural and regulations concerning the qualifying of maritime personnel and the manning of vessels. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 46 CFR Part 28

Alaska, Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 28 as follows:

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

1. The authority citation for part 28 is revised to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 8103, 10603; Department of Homeland Security Delegation No. 0170.1.

Subpart H [Added and Reserved]

2. Add and reserve subpart H to part 28.

3. Add new subpart I to part 28 to read as follows:

Subpart I- Citizenship Waiver Procedures

Sec.

28.1100 General.

28.1105 Request for a waiver.

28.1110 Waiver approval.

28.1115 Waiver request and approval records.

Subpart I—Citizenship Waiver Procedures

§ 28.1100 General.

(a) As set forth in 46 U.S.C. 8103, a citizenship requirement, other than a requirement that applies to the master of a documented vessel, on commercial fishing vessels may be waived for unlicensed seamen when qualified seamen who are citizens of the United States are not available. Under the provisions of this subpart, the Coast Guard approves or denies requests for a waiver of the citizenship requirement from owners, operators, or employers seeking to exceed the 25 percent limit applicable to unlicensed seamen aboard fishing industry vessels who are non-permanent resident aliens authorized for employment in the United States under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq.).

(b) This subpart does not apply to a fishing vessel fishing exclusively for highly migratory species (as that term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)).

(c) The regulations in this subpart have preemptive effect over State or local regulation within the same field.

§ 28.1105 Request for a waiver.

(a) Vessel owners, operators, or employers who desire a waiver of citizenship requirements from the Coast Guard must submit a written request to the Commandant, United States Coast Guard, 2100 Second St. SW., Stop 7581, Washington, DC 20593-7581.

(b) The written request required under paragraph (a) of this section must contain--

(1) The vessel owner's, operator's, or employer's contact information--

(i) Full name (last, first, middle initial);

(ii) Address;

(iii) Work phone number;

(iv) Fax number (if applicable); and

(v) E-mail address (if applicable);

(2) Information on fishing vessel(s) for which the owner, operator, or employer requests a citizenship waiver. For each listed vessel, the owner's, operator's, or employer's must include--

(i) Fishing vessel name;

(ii) Fishing vessel official number;

(iii) Fishing vessel length (in feet);

(iv) Fishing vessel gross tonnage; and

(v) Each type of fishery in which the vessel is engaged;

(3) Information on persons who will work on the vessel. For each listed vessel, the owner, operator, or employer must include--

(i) The total number of unlicensed crew normally employed;

(ii) The name, nationality, birth place, position to be held, and basis for employment authorization in the United States of each alien who is not lawfully admitted for permanent residence but is otherwise authorized for employment in the United States under the Immigration and Nationality Act (INA); and

(iii) The number of alien seamen who are not lawfully admitted for permanent residence but are otherwise authorized for employment in the United States under the INA for which the waiver is requested; and

(4) The time period over which the 25 percent limit will be exceeded--

(i) Start date (MM/DD/YYYY); and

(ii) Expiration date (MM/DD/YYYY).

(c) The owner, operator, or employer submitting a request for a waiver under paragraph (a) of this section must include a statement certifying that the vessel(s) will operate in compliance with all other applicable citizenship requirements regarding the master or other officers in

charge of deck or engineering watches on U.S.-documented vessels.

(d) The owner, operator, or employer submitting a request for a waiver under paragraph (a) of this section must provide evidence that aliens who are not lawfully admitted for permanent residence are authorized for employment with the owner, operator, or employer under the INA and evidence that qualified seamen who are U.S. citizens are not available for employment. The following documentation for H2B non-immigrants is satisfactory evidence both of authorization for employment with the owner, operator, or employer under the INA and that qualified seamen who are U.S. citizens are not available:

(1) U.S. Citizenship and Immigration Services (USCIS) Form I-797, "Notice of Action: Approval Notice" classifying the alien as an H2B non-immigrant for purposes of employment with the owner, operator, or employer submitting a request for a waiver under paragraph (a) of this section.

(2) USCIS Form I-94, "Arrival/Departure Record" indicating that the alien has been lawfully admitted to the United States (or has been lawfully granted a change of nonimmigrant status or extension of non-immigrant stay in H2B classification) for the dates covered by the proposed employment.

(e) Upon receipt of a request submitted under paragraph (a) of this section and required information submitted in accordance with paragraphs (b) through (d) of this section, the Coast Guard will evaluate the information and may investigate further, as necessary, to determine the validity of the information provided.

§ 28.1110 Waiver approval.

(a) (1) If, within 30 days of receipt of a properly submitted request for a waiver, the Coast Guard does not make a determination whether to approve the request or does not advise the owner, operator, or employer that additional time is needed for consideration, the request will be considered provisionally approved for 90 days from the end of that 30-day period.

(2) If the Coast Guard does not make a determination whether to approve a properly submitted request for a waiver in writing within 30 days of receipt, the owner, operator, or employer must have a copy of the request and supporting documentation available on board the vessel as proof of submission of a request for waiver of the citizenship requirement for unlicensed seamen for that vessel.

(b) (1) If the Coast Guard determines, based on the waiver request, supporting documentation, and any other relevant information, that no qualified U.S. citizen seamen are available, the Coast Guard will grant the waiver to

exceed the 25-percent limit for employment of non-permanent resident alien seaman for the period of employment authorized for each alien under the Immigration and Nationality Act (INA). The Coast Guard will issue a letter of approval to the owner, operator, or employer for the applicable vessel(s).

(2) The owner, operator, or employer must have a copy of the waiver approval letter available on board the vessel as proof of waiver of the citizenship requirement for unlicensed seamen for that vessel.

§ 28.1115 Waiver request and approval records.

The Coast Guard will maintain a record of citizenship waiver requests and approvals. Approvals will be documented for the applicable vessel(s) in the Coast Guard's vessel information database.

Dated: **February 11, 2014**

J. C. BURTON
Captain, U. S. Coast Guard
Director of Inspections & Compliance

Date: 02/14/2014]