

U.S. Department
of Transportation

United States
Coast Guard

U.S. Coast Guard (G-MVP)
Washington, D.C. 20593
Phone: (202) 426-2240

NVIC 7-84
7 AUG 1984

NAVIGATION AND VESSEL INSPECTION CIRCULAR NO. 7-84

Subj: Outer Continental Shelf (OCS) Citizenship Requirements; Exemptions from

1. PURPOSE. This Circular establishes the Coast Guard procedures for seeking exemptions from the Outer Continental Shelf Lands Act Amendment for employing American citizens or resident aliens.
2. BACKGROUND. The Outer Continental Shelf Lands Act Amendments of 1976 were enacted on 18 September 1978. 43 USC 1356 of the act directs, that with specified exceptions, all units operating on the Outer Continental Shelf (OCS) must employ only American citizens or resident aliens. Subsequently, the Coast Guard issued regulations, (33 CFR 141,) which became effective on 5 April 1983. The statutes and regulations recognized the need to prevent a disruption of mineral and oil exploration and production, and specify certain circumstances wherein exemptions to the citizenship requirements may be granted. The regulations addressing these exemptions, however, do not specify a working procedure.
3. DISCUSSION.
 - a. By reviewing 43 USC 1356 and 33 CFR 141 four classes of exemptions can be identified.
 - (1) A foreign-flag, foreign-owned unit or a foreign-flag, American-owned unit may receive exemptions from the citizenship requirements if the unit is, or will be, under the effective control of foreign citizens (unless the President determines that either the vessel's flag country, or the nation that the owners or charters are citizens of or incorporated within, are discriminating against American units by excluding U.S citizen and resident aliens from U.S. units engaged in offshore activities off its shore. If the latter, exemptions may be reciprocally denied or modified.) A foreign-flag, foreign-owned unit is exempt from the citizenship requirements. Such a unit must be more than 50% owned and controlled by a foreign citizen(s) or entity to be considered foreign owned, and the foreign owner cannot have a subordinate relationship to any U.S. citizen or entity. A foreign-flag, American-owned unit may receive an exemption if the unit is under a long term bareboat charter to a foreign citizen or corporation.
 - (2) A foreign-flag, American-owned unit may receive an exemption for the marine crew from the citizenship requirements if the flag country of the unit had a national registry manning requirement in effect before 18 September 1978 that requires that flag country's nationals aboard her flag units. Contractual agreements made on an individual basis for a specific unit may warrant the issuance of an exemption if such agreements were in effect before 18 September 1978.

- (3) A temporary exemption may be granted if there are not a sufficient number of United States citizens or resident aliens qualified and available for work on a unit. Congress has made the Coast Guard the agency responsible for accepting such exemption requests and granting such exemptions if no American citizens or resident aliens can be located for employment.
- (4) The President of the United States may grant an exemption for any position aboard a unit if he determines that employment of American citizens or resident aliens would not be consistent with the national interest. This exemption is primarily envisioned for times of national emergency.

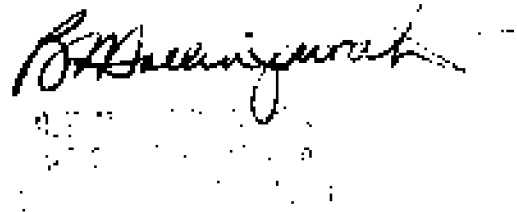
4. ACTION.

- a. All owner/operators who believe their unit is eligible for the exemptions mentioned in 3a(l) (2) and (4), must submit the necessary information to the Commandant (G-MVP) in order for a determination to be made. No unit will be granted an exemption until it has been demonstrated to the Commandant's satisfaction that the unit is indeed eligible for exemption from the citizenship requirements.
- b. For all owner/operators who believe they qualify for the exemption from the citizenship requirements referenced in 3a(3), the following procedures are to be followed to obtain exemptions for members of the regular complement of the crew, such as marine crew and industrial personnel who are aboard for the routine functioning of the unit.
 - (1) The regulations require that at least 30 days prior to a project start up date, an employer must demonstrate to the Coast Guard his attempts to employ U.S. citizens.
 - (a) An exemption request is not considered complete until the following information is submitted:
 - 1. A detailed job description, with list of qualifications, for each position requiring a waiver including the catalog number of the position requested from the Dictionary of Occupational Titles (DOT). If the position requested cannot be specifically identified, then its nearest approximation. If no DOT title number bears any resemblance to the sought after job, the employer should so state. The DOT may be obtained from the Superintendent of Documents, Stock No. 029-013-00079-9, U.S. Government Printing Office, Washington, D.C. 20402.
 - 2. In reviewing qualifications required for the positions where there is an obvious seniority relationship, the listed experience factors should reflect this. For example; the senior electrician would normally be expected to need more experience and knowledge than one of his assistants. Further, qualifications being requested should not be any more stringent than those required of recent non-U.S. citizen personnel hired at the time such personnel were first hired.

3. Documented proof of attempts to find employees through normal private sources including advertisements in widely circulated newspapers for at least three days; advertising in at least one edition of a large mineral and oil industry trade magazine and proof of correspondence with maritime and/or oil industry related employment agencies and other appropriate suppliers of workers. Included should be, by position, a summation of numbers of applications received, numbers of interviews granted, numbers hired, and reasons workers not qualified. A description of the owner/operators training program should be submitted to show their intended efforts to train U.S. citizens for employment on the Shelf.
- (2) The Coast Guard will, upon receipt of this information, decide if the exemption is needed and if recruitment via the private sector was actively pursued. In the event that this information is judged insufficient, the owner/operator will be contacted for any additional material.
- (3) If it is determined that the provided information is adequate, then this material will be forwarded to Department of Labor (DOL).
- (4) DOL will then review all the information they have received and determine if any qualified U.S. workers are available. If there are none, the Coast Guard will be notified, pursue the matter no further and issue the exemption. However, if DOL locates prospective employees, the Coast Guard will forward to the employer the name of the State Employment Service where the worker(s) can be found.
- (5) If the worker(s) from the State Employment Service are not suitable for employment, the owner/operators must notify the Coast Guard of this. fact.
 - (a) An explanation of the reasons for not hiring this person(s) is required to include:
 1. Names, addresses and resumes (if provided) of individual(s) not hired.
 2. Whether the person was interviewed, and if not, why.
 3. The reasons the workers were not considered suitable.
- (6) If after evaluating the explanation given, the Coast Guard is satisfied that personnel identified by DOL were not suitable for employment, the exemption will be granted.
- (7) The Labor Department estimates that once initial information is provided to them it will take approximately 60 days for DOL to process the exemption request. Therefore, in order to assure a timely response, it is recommended that requests be submitted at least 90 days in advance of a project start up date.

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- (8) Regulations require applications be submitted 30 days prior to the date to start work on the OCS. Variances from the 30 day notice will only be considered when particularly unusual circumstances can be justified by the owner/operators. In such cases, an interim approval to start work will be specifically required. The provisions of 33 CFR 141.20(g), regarding temporary 90 day approval, apply to all cases.
 - (9) Waivers are issued for one year periods and must be reapplied for at the end of that year. The procedures followed for the initial waiver will be applicable to renewals with the addition of an update on what efforts have been made to recruit and/or train personnel in the intervening year. Proof of advertisements for the past year should be submitted as well as a summary of the effects such advertisements have had. Further, if any new foreign nationals were hired to any exempted positions listed for the previous year, and for which another exemption is sought, it will be necessary to attach that employee's qualifications and experience to the new request.
- c. All exemption requests are to be submitted to Commandant (G-MVP-5), U.S. Coast Guard, 2100 Second Street, S.W., Washington, D.C. 20593.



R. H. Cunningham

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