



# Marine Safety Information Bulletin

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## Employment of Non-U.S. Credentialed Personnel Onboard Certain U.S.-Documented Vessels

An analysis of recent arrival notifications has revealed several cases of U.S.-documented vessels calling on U.S. ports with non-U.S. credentialed personnel in lieu of U.S. citizens. The intent of this MSIB is to provide information and guidance regarding the provisions for employment of non-U.S. credentialed personnel on board certain U.S. documented vessels. Please refer to the applicable cites in the Code of Federal Regulations (CFR) for the complete disclosure of the regulations referred to in this bulletin.

The Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (hereinafter referred to as "the Act") revised the requirements regarding U.S. citizenship and/or permanent resident alien status for crewmembers of U.S.-documented vessels in certain circumstances. Despite its title, the Act contained provisions applicable to other vessel types and provided authority to waive, with certain exceptions, the requirements that licensed individuals and 75 percent of the total number of unlicensed seamen on board U.S.-documented vessels be citizens of the United States. The Coast Guard amended the regulations concerning the use of non-U.S. citizens (except for the Master and radio officer) on U.S.-documented vessels, to provide a general waiver for offshore supply vessels (OSVs) operating from a foreign port and mobile offshore drilling units (MODUs) operating beyond the waters above the U.S. Outer Continental Shelf (OCS). See 46 CFR § 15.720(b). This action was necessary to allow these vessels to operate in areas subject to foreign jurisdiction where local citizenship requirements may apply and where recruitment of U.S. citizens may be impractical. The intent of this action was to allow these operations to be conducted without obligating the operators to request individual waivers for each situation in which a non-U.S. citizen may be employed or engaged. With respect to other vessel types, the Coast Guard ordinarily considers waivers from the citizenship requirements on an individual basis.

Vessel operators should be cognizant of the citizenship waiver limitations for vessels returning to the United States after operating from a foreign port. The citizenship waiver found in 46 CFR § 15.720(b)(1) applies only to OSVs operating from a foreign port. While it is beyond the scope of this MSIB to describe every situation that constitutes "operating from a foreign port," any voyage that begins, terminates or includes intermediate port calls at a U.S. port or place is not considered "operating from a foreign port." The citizenship waivers in 46 CFR § 15.720(b) do not apply to any vessel operating in the waters above the U.S. OCS. See 46 CFR § 15.720(c). The term "operating" in that subsection is not limited solely to resource exploration or exploitation activities but includes field or ocean transits. Subject vessels must be manned with a crew that is fully compliant with the U.S. citizenship, credentialing, and TWIC requirements.

In addition to the citizenship waiver provisions, the Act tightened the crew replacement requirements applying to U.S. vessels operating on foreign voyages. Under the revised regulations, vessels on a foreign voyage that are deprived of a crewmember (except for the Master and radio officer) are allowed to employ a non-U.S. citizen only until "the vessel's return to a port at which in the most expeditious manner a replacement who is a

citizen of the United States can be obtained,” as opposed to “the vessel’s first return to a United States port” as stated in previous versions of the law. *See* 46 CFR 15.720(a). This language is specific, in that it applies to U.S. vessels while on a foreign voyage and outside the jurisdiction of the United States. House Report (H.R.) No. 423, 100th Cong., 1ST Session 1987, emphasized that 46 U.S.C., Section 8103(e) made it clear that “whenever a vessel of the United States is deprived for any reason of the services of an individual during a foreign voyage—a citizen replacement must be obtained in the most expeditious manner before the vessel may depart from an [*sic*] port or place in the world. *The operation of a vessel on a foreign voyage with non-citizen crewmembers until the vessel returns to a United States port is no longer permissible.*” (Emphasis added)

Operators are reminded that, whenever a vessel is deprived of the service of a member of its complement and the master or person in charge is unable to find appropriately credentialed personnel to man the vessel, a report of sailing short must be filed in writing with the Officer in Charge, Marine Inspection (OCMI) having cognizance for inspection in the area in which the vessel is operating, or the OCMI within whose jurisdiction the voyage is completed. *See* 46 CFR 15.725.

Subject to the circumstances discussed herein, 46 CFR 15.720(d) requires the master to assure that any replacements of crewmembers by non-U.S. citizens be with an individual who holds a credential that is equivalent in experience, training, and other qualifications to the U.S. credential required for the position. The United States has yet to officially recognize, by endorsement in accordance with STCW Regulation I/2 paragraph 5, a certificate issued by or under the authority of another Party to an officer under STCW Regulation I/10 paragraph 1. However, current policy stipulates that the master of the vessel should "ensure that the mariner's qualifications as stated on his or her STCW-95 certificate are equivalent or superior to the license qualifications required by the certificate of inspection." *See* NMC Policy Letter 10-02. Operators of vessels required to comply with the provisions of SOLAS Chapter IX are reminded that, in accordance with clause 6.2 of the ISM Code, it is the responsibility of the Company to "ensure that each ship is manned with qualified, certificated and medically fit seafarers in accordance with national and international standards."

Coast Guard Sector Commanders and arrival desk personnel are reminded to scrutinize the arrival notices for U.S. vessels returning after operating from a foreign port, keeping in mind the scope of the citizenship waivers as discussed herein.

For more information, please contact LT Cory Heard, Office of Vessel Activities, Commandant (CG-543), U.S. Coast Guard, at (202) 372-1208.

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