



## **CITIZENSHIP REQUIREMENTS- THE 75/25 RULE**

*Written By CAPT R. Trabocchi*

### **Application of the law.**

46 U.S. Code 8103, also referred to as the 75/25 Rule, is a complex regulation with several sub-levels of requirements. 46 USC 8103 has nine subsections (a through i) that cover documented vessels, passenger vessels, fishing vessels and waivers. In this article we will discuss the three subsections (a, b, and i) most commonly violated. We will break down these three subsections for discussion and then bring it all together at the end. The references used in this article are the Coast Guard Maritime Law Enforcement Manual (MLEM) COMDTINST M16247.D and 46 U.S. Code 8103.

### ***46 USC 8103 (a) and (b):***

46 USC 8103 (a) and (b) pertain to documented vessels only. Subsection (a) reads “Only a citizen of the United States may serve as master, chief engineer, radio officer, or officer in charge of a deck watch or engineering watch on a documented vessel.” This subsection is straight forward; you must be a U.S. citizen to hold any one of the above positions on a documented vessel; no exceptions.

Subsection (b) takes some more thought before determining if the regulation applies to the situation at hand. This subsection defines the citizenship status and number of lawfully admitted aliens that may serve as unlicensed seamen on board documented vessels.

Subsection (b) reads:

(b)(1) Except as otherwise provided in this section, on a documented vessel-

(A) each unlicensed seaman must be-

(i) a citizen of the United States;

(ii) an alien lawfully admitted to the United States for permanent residence; or

(iii) a foreign national who is enrolled in the U.S. Merchant Marine Academy

(B) not more than 25 percent of the total number of unlicensed seamen on the vessel may

be aliens lawfully admitted to the U.S. for permanent residence

When applying subsection (b), the Coast Guard Hearing Office will look for evidence in the case file that shows whether the unlicensed seaman fit into one of the categories listed in subsection (b)(1)(A). If the evidence shows there are unlicensed seamen that do not fit into one of these three categories, then a violation of 46 USC 8103(b)(1)(A) has occurred. Note, if you suspect an unlicensed seaman may be in the United States unlawfully, follow your chain of command's guidance on how to proceed with the disposition of that person(s).

The MLEM provides a list of documents commonly relied on as indicators of a valid U.S. citizenship claim: Citizenship Certificate, Birth Certificate, Naturalization Certificate, U.S. Passport, Licenses and Permits issued by Governmental Agencies only to U.S. Citizens (e.g., pilot's license), Voter Registration Cards, Merchant Mariner Documents, U.S. Citizen ID Card, Department of State Certificate of Identity and Registration, and the U.S. merchant seamen "Z" card.

The MLEM also provides a list of documents commonly relied on as indicators that an alien is lawfully admitted to the U.S. for permanent residence: Immigrant visa issued by an American Consul, Valid Re-entry Permit, Alien Registration Receipt Card (Forms I-151 or I-551), Employment Authorization Card, and the Temporary Resident Card.

After determining the category of each unlicensed seamen, the Coast Guard Hearing Office will apply 46 USC 8103 (b)(1)(B). This subsection states that not more than 25% of the total number of unlicensed seamen on the vessel may be aliens lawfully admitted to the U.S. for permanent residence. For application of this subsection, the number of unlicensed seamen from the three categories listed in (b)(1)(A)(i, ii, and iii) are added together. Remember, unlicensed seamen that do not fit into one of these three categories are not included. The Coast Guard Hearing Office will look for evidence to determine if the total number of aliens lawfully admitted to the U.S. for permanent residence is greater than 25% of the total number of unlicensed seamen from these categories. If the percentage is

greater than 25% (rounded down to a whole number), then 46 USC 8103 (b)(1)(B) has been violated.

***46 USC 8103(i):***

Subsection (i) is another section that takes some thought before determining if the regulation applies to the situation at hand. This subsection applies to a fishing, fish processing or fish tender vessel engaged in fisheries.

Subsection (i) reads:

(i)(1) Except as provided in paragraph (3) of this subsection, each unlicensed seaman on a fishing, fishing processing, or fish tender vessel that is engaged in the fisheries in the navigable waters of the United States or the EEZ must be -

(A) a citizen of the United States;

(B) an alien lawfully admitted to the United States for permanent residence;

(C) any other alien allowed to be employed under the Immigration and Nationality Act (8 USC 1101 et seq.); or

(D) an alien allowed to be employed under the immigration laws of the Commonwealth of the Northern Mariana Islands if the vessel is permanently stationed at a port within the Commonwealth and the vessel is engaged in the fisheries within the EEZ surrounding the Commonwealth or another U.S. territory or possession.

(2) Not more than 25% of the unlicensed seaman on a vessel subject to paragraph (1) of this subsection may be aliens referred to in clause (C) of that paragraph.

(3) This subsection 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)).

When applying subsection (i), the evidence must show that the vessel is one of the types of vessels identified above and was fishing in the navigable waters of the U.S. or the EEZ. Next the Coast Guard Hearing Office will look for evidence that all of the unlicensed seamen on board fit into one of the categories listed above in subsection (i)(1) (A) through (D). If the evidence shows that one or

more of the unlicensed seamen do not fit into one of these four categories, (i)(1)(A) through (D), then a violation of 46 USC 8103(i)(1) has occurred. Note, if you find unlicensed seamen that you suspect are in the United States unlawfully, follow your chain of command's guidance on how to proceed with the disposition of that person(s).

Documentation acceptable for determining whether persons fall within categories i(1)(A) and (B) above are the same as previously identified in the MLEM. The determination of whether persons fall within categories (i)(1)(C) and (D) may require assistance from other federal agencies as well as your local chain of command.

Subsection (i)(1)(C) refers to unlicensed seamen holding a nonimmigrant visa which allows foreign nationals to enter into the U.S. temporarily and engage in short-term, nonagricultural employment. An example of this is a nonimmigrant holding an H2B visa. Part (D) is self explanatory.

Once it is determined which category each unlicensed seaman falls within, the Coast Guard Hearing Office turns its attention to the application of 46 USC 8103 (i)(2). Not more than 25% of the total unlicensed seamen on board a vessel subject to this part may hold a nonimmigrant visa as described above. In applying this subsection, the number of unlicensed seamen from the four categories listed in subsection (i)(1)(A) through (D) are added together. Remember any unlicensed seamen that do not fall within categories (A) through (D) are not included as part of this calculation. The total number of unlicensed seamen holding a nonimmigrant visa as described above cannot be greater than 25% of the total number of unlicensed seamen. If the evidence shows that the percentage is greater than 25% (rounded down to a whole number), then 46 USC 8103 (i)(2) has been violated.

***The case file for Coast Guard Hearing Office adjudication.***

It is critical that the Activity Summary Report (ASR) and Enforcement Summary (ES) contain all essential information necessary for the Coast Guard Hearing Office to determine if there is a prima facie case. In other words, the case file must include sufficient evidence to satisfy all jurisdictional elements and factually support that a violation has occurred.

***The Activity Summary Report:***

Preparation of the ASR requires close attention to the details and facts of the boarding. Each part is designed to provide details of the boarding to the CG Hearing Officer adjudicating the case. Each subsection of 46 USC 8103 must be reviewed for its applicability to the situation at hand. 46 USC 8103(f) sets forth that the party violating this law must be a person employing an individual in violation of this law. It fails to specify whether the party to be charged is the owner, master, or operator; this must be determined based on the facts. A Hearing Officer reviewing an alleged violation of this subsection will review the evidence to determine whether the correct party was charged. Evidence regarding the appropriate party to be charged should be obtained prior to the boarding team's departure from the vessel. The narrative section of the ASR is reviewed by the Coast Guard Hearing Office for the name, citizenship, and position held of each person on board the vessel. The location of the boarding is also critical and should be found in the ASR. Was the vessel engaged in fishing inside or outside the navigable waters of the U. S or inside or outside of the EEZ? This evidence is necessary to determine applicability of the law regarding citizenship. Other important information that should be contained in the ASR includes: accurate size of the vessel, boarding time and date, boarding outcome, complete name and address of the owner and/or other charged parties. The narrative summary should always be accompanied by an electronic signature of the boarding officer or boarding team member. Without such a signature, the narrative statement may be rejected as evidence. Typically, the case file will be returned for lack of an electronic signature. The following is an sample narrative summary when applying subsection 8103(b):

### *The Enforcement Summary.*

It is critical that the correct citation for the violation is reflected on the ES. The evidence must directly support the citation on the ES. With respect to violations of 46 USC 8103, citing the entire section is incomplete. The case package must cite the specific subsection alleged to have been violated such as 46 USCG 8103(i). Cases submitted to the Coast Guard Hearing Office without the correct cite will typically be returned to the program manager.

One of the more common problems that the Coast Guard Hearing Office sees is when a vessel has a mix of aliens lawfully admitted to the United States for permanent residence, other lawful aliens, or others not lawfully in the United States. In order to properly apply the 75/25 rule, there must be a correct determination of the number of unlicensed seamen that may be counted for application of a particular subsection of this law. The calculations are different for subsection (b) than they are for subsection (i). For subsection (b), the Coast Guard Hearing Office must be able to determine whether a crewmember is a citizen of the U. S, an alien lawfully admitted to the U.S. for permanent residence, or a foreign national enrolled in the U.S. Merchant Marine Academy. This is demonstrated in the following example pertaining to subsection (b): during a routine boarding on a documented vessel it is discovered that, there are 3 U.S. citizens (one is the Master who is licensed and two are unlicensed seaman), 1 alien lawfully admitted for permanent residence (an unlicensed seaman) and 2 aliens (unlicensed seaman) that do not fall within the categories stated in (b)(1)(A)(i)-(iii). Too often the Coast Guard Hearing Office receives a case file wherein the the total crew complement, in this case 6, is used to find that a violation has occurred. In this example, the boarding team uses 6 (the total crew complement) divided by 3 (the 3 non-U.S. citizens) and gets a result of 50% of the crew as non-U.S. citizens. The owner is cited for violation of 46 USC 8103(b)(1)(B). This method of applying this subsection is incorrect and will cause the case to be

returned to the unit without penalty action. The calculations are incorrect because the total number used for the calculation included the master and 2 illegal alien unlicensed seamen that do not fit within one of the categories of (b)(1)(A)(i) through (iii).

The correct method of calculation to determine a violation of (b)(1)(B) would be to add up the unlicensed seaman that fall within the categories identified in (b)(1)(A)(i) through (iii). These are the 2 U.S. citizens and the 1 alien lawfully admitted to the U.S. for permanent residence. The total persons then for application of this subsection in our example would be 3. If more than 25% of these 3 unlicensed seamen are aliens lawfully admitted to the U.S. for permanent residence, there is a violation of this subsection. 3 multiplied by 25% is .75. This means that the vessel cannot have more than .75 of an alien lawfully admitted to the U.S. for permanent residence. Remember the rule requires that the result be

rounded down to the nearest whole number which in this case is zero (.75 rounded down is zero). Since there is 1 alien lawfully admitted to the U. S. for permanent residence on board and 1 is more than zero, 46 USC 8103(b)(1)(B) has been violated.

There is also a violation of 46 USC 8103(b)(1)(A) because the documented vessel has two unlicensed seamen that are neither citizens of the U. S., aliens lawfully admitted to the U.S. for permanent residence, nor foreign nationals enrolled in the Merchant Marine Academy.



The ES would reflect:

	Summary of Current Violation(s)	
Law/Regulation	Description	Recommended Penalty
46 USC 8103(b)(1)(A)	Failure to comply with Citizenship requirements for unlicensed seaman (failure to fall within categories (i) – (iii).	Consider all aggravating, extenuating, and mitigating factors (see note below)
46 USC 8103(b)(1)(B)	Exceeded 25% of the total number of unlicensed seaman who are aliens lawfully admitted to the U.S. for permanent residence.	

Note: The Coast Guard Hearing Office will review the case file for documentation to support a recommendation for the maximum penalty. Evidence, including aggravating factors or circumstances, submitted in support of a recommendation for the maximum penalty are carefully reviewed.

Similar calculations are required to apply 46 USC 8103(i). For example, a routine boarding is conducted on the F/V SLIMY WORM. This vessel is engaged in fishing 10nm southeast of Galveston, TX. There are 4 persons on board (POB). Evidence collected indicates that two are U. S. Citizens, one is an alien with a nonimmigrant visa as described above, and one is an alien without any documentation listed in the MLEM as acceptable for determining citizenship. The following personnel were onboard: Bill Norton (Master) U. S. Citizen, Steve Johnson (unlicensed seaman) U.S. Citizen, Sally Parks (unlicensed seaman) alien nonimmigrant visa as described above, and Manuel Ora (unlicensed seaman) alien with a State of Texas ID Card.

The Coast Guard Hearing Office will look for evidence that shows that the vessel was a fishing vessel engaged in fisheries in the navigable waters of the U.S. or in the EEZ. Without this evidence, the jurisdictional elements are not satisfied.

In applying subsection (i)(1), the Coast Guard Hearing Office will look for evidence to determine whether each unlicensed seaman on the fishing vessel falls within one of the categories (i)(1)(A) through (D) of this subsection. If there is an unlicensed seaman on board that does not fall within one of these categories, subsection (i)(1) has been violated. There may also be a violation of (i)(2) if more than 25% of the unlicensed seamen on board a fishing vessel falling within the categories (i)(1)(A) through (D) hold the

nonimmigrant visa described above. This is calculated as follows using the example of the F/V SLIMY WORM. 1 (the unlicensed seaman falling within category C because she holds a nonimmigrant visa described above) divided by 2 (the total number of unlicensed seamen falling within categories (i)(1)(A)-(D) resulting in 50% of the unlicensed seamen that can be counted holding a nonimmigrant visa described above. Subsection (i)(2) is violated because 50% is greater than the 25% allowed by (i)(2).

This is also a violation of 46 USC (i)(1) because the F/V has one illegal unlicensed seaman that does not fit in to categories (i)(1) (A) thru (D).

	Summary of Current Violation(s)	
Law/Regulation	Description	Recommended Penalty
46 USC 8103(i)(1)	Failure to comply with Citizenship requirements for unlicensed seaman (failure to fall within categories (A) – (D).	Consider all aggravating, extenuating, and mitigating factors (see note above)
46 USC 8103(i)(2)	Exceeded 25% of the total number of unlicensed seaman who are allowed to be employed under the Immigration and Nationality Act.	

**Note:** Whether applying subsection 8103(b) or 8103(i), the master must be included in the calculation of unlicensed seamen when, and only when, the master is not licensed AND falls within the categories specified for unlicensed seamen under subsection 8103(b) and 8103(i).

Remember, evidence submitted in the “Narrative Overview of the Activity” in the ES must be detailed and support the charges with detailed information. It is acceptable to cut and paste the narrative from the ASR. The ES and ASR should say the same thing (not reflect inconsistencies in the evidence) and both should have an electronic signature.

The different examples listed above are designed to show how important it is to categorize the factual elements of the case in relation to the citizenship of each person onboard, where the

violation occurred and what percentage of unlicensed seaman caused the violation of the various subsections. The precise development of the jurisdictional and factual elements in the narrative, the appropriate citation of the law or regulation violated, and the complete inclusion of all relevant evidence are the factors that the Coast Guard Hearing Office seeks to find for the successful and timely adjudication of a case.