



REQUESTS FOR WAIVER OF CITIZENSHIP REQUIREMENTS ABOARD COMMERCIAL FISHING VESSELS

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Occasionally in response to a preliminary assessment letter (PAL) regarding an alleged violation of the citizenship requirements aboard commercial fishing vessels (46 U.S.C. § 8103(i)), the Hearing Officer has been asked to grant a waiver or has been sent an official request for a waiver.

This request stems from 46 U.S.C. § 8103(b)(3), which states: “The Secretary may waive a citizenship requirement under this section, other than a requirement that applies to the master of a documented vessel, with respect to—... (C) any other vessel if the Secretary determines, after an investigation, that qualified seamen who are citizens of the United States are not available.” This authority has been delegated to the Commandant, and, with respect to commercial fishing vessels, it was further delegated to the Director of Prevention Policy, Office of Vessel Activities, Fishing Vessels Division (CG-5433). Hearing Officers have no authority to grant a waiver.

The current procedure is to submit official waiver requests directly to Commandant CG-5433 (formerly “G-MOC-3”), according to a Commandant policy letter dated June 28, 2001. Please keep in mind that although a copy of an official waiver request to CG-5433 may indicate the charged party’s efforts to comply with applicable law, more helpful to the Hearing Officer would be to include evidence of the date the waiver request was sent, and whether or not the waiver request was approved by CG-5433.

When CG-5433 grants/approves a waiver request, it sends a letter to the party saying so, a copy of which is placed in MISLE.

During vessel inspections, boarding officers can be on the lookout for these waiver requests. If there is evidence that the waiver was approved for the vessel and the individuals in question, then it is likely that a violation did not occur.

The Coast Guard has initiated the rulemaking process to incorporate its waiver request policy into federal regulations. The proposed rule is at 76 Federal Register 51317 and comments must be submitted to the Coast Guard by November 16, 2011.