



Approved for Release
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Date

**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT**

HUMAN RESOURCES (HR) BULLETIN #071, FY 07

SUBJECT: Hiring of Non-Citizens

EFFECTIVE DATE: Upon release of this HR Bulletin

EXPIRATION DATE: Effective until canceled or superseded

BACKGROUND: Executive Order 11935 (September 2, 1976) restricts appointing non-citizens in competitive service positions covered by Title 5, United States Code (U.S.C.). Since the passage of the Immigration Reform Act of 1986, employers have been responsible for ensuring that the people they hire are eligible to work in the United States (U.S.). The Immigration and Nationality Act of 1990 added other requirements, one of which is that employers may not discriminate against employees by requesting more or different documents than are required. The Immigration and Nationality Act, as modified, provides at Title 8, U.S.C. § 1324(a), that it is unlawful for a person or other entity to employ an unauthorized alien. In 1996, Public Law 104-208 stated that the term "entity" includes an entity in any branch of the Federal Government. Regulations that implement immigration laws are published in Title 8, Code of Federal Regulations (CFR).

PURPOSE: The purpose of this HR Bulletin is to implement Title 5, CFR § 7.3, § 213.3102(bb), and § 338.101, in conjunction with the Immigration Reform Act of 1986, Immigration and Nationality Act of 1990, Public Law 104-208, Title 8, U.S.C. § 1324(a), Title 8, CFR § 274(a), Appropriations Act ban on paying certain non citizens, general statutory restrictions applicable to particular Operating Units, and general statutory restrictions on the expenditure of funds.

COVERAGE: This HR Bulletin applies to all positions within the Department of Commerce (the Department) and its Operating Units.

POLICY: It is the policy of the Department to employ only U.S. citizens or persons owing permanent allegiance to the U.S., except when qualified citizens are not available or when the services of a particular non-citizen are desired for a brief period because of his or her unusual qualifications or background. A non-citizen may only be employed after he or she is determined not to present a risk to the Department, and only after the Department's Office of

Security (OSY) conducts a risk assessment that considers the threat, consequences, and vulnerabilities related to such employment. Non-citizens may only be employed in positions that do not involve significant authority and responsibility in connection with the management of the Department or any Operating Unit thereof. The term “management” includes, but is not limited to, planning, programming, policy formulation, direction, supervision of operations, and control.

A non-citizen hired in the absence of a qualified citizen may only be given a Schedule A excepted appointment, authorized by Title 5, CFR § 213.3102(bb), and must be approved by the Office of Personnel Management (OPM). The position must be withdrawn from the competitive service for the period it is filled by the non-citizen. The employee does not acquire competitive status and may not be promoted or reassigned to another position in the competitive service, except in situations where a qualified citizen is not available.

Non-citizens may be employed in the excepted service if all of the requirements of general statutory restrictions on the expenditure of funds, special statutory restrictions applicable to particular Operating Units, Immigration law, and the Appropriations Act ban on paying certain non citizens are all met. However, in accordance with Title 5, CFR § 7.3, the OPM is authorized to approve exceptions to this rule and appoint non-citizens in the competitive service when necessary to promote the efficiency of the service in specific cases or for temporary appointments when the usual selection procedures are followed. In addition, the Immigration law, Appropriations Act ban on paying certain non citizens, and executive order restrictions on appointing non-citizens in the competitive service must all be met.

APPROVAL PROCESS: Requests to employ a non-citizen must be submitted to the Director for Human Resources Management (OHRM) for approval. Requests must include a detailed justification of the qualifications of the non-citizen, duties he or she will be performing, security level of the position, vacancy announcement, recruitment efforts and the results thereof, applications of other candidates, and a detailed justification of why other applicants were not selected. Once approved by the Director, OHRM, the request must be vetted and approved by the OSY. Upon approval from the OSY, the OHRM will submit a request to the OPM for final approval.

REFERENCES: Title 5 CFR § 7.3, § 213.3102(bb), § 338.101, Immigration Reform Act of 1986, Immigration and Nationality Act of 1990, Public Law 104-208, Title 8 U.S.C. § 1324(a), Title 8, CFR § 274(a),

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