



B-207399

June 10, 1982

The Honorable George Miller
Chairman, Subcommittee on Labor
Standards
Committee on Education and Labor
House of Representatives

Dear Mr. Chairman:

This is in response to your letter of April 29, 1982, concerning the Department of Transportation, Coast Guard, manning regulations for off-shore platforms and rigs. These regulations require the employment of American citizens or legally resident aliens for activities on the Outer Continental Shelf after April 5, 1983. You request that we answer the following questions:

1. Has the Department of Transportation complied with the timetable for the promulgation of regulations as mandated by the Outer Continental Shelf Amendments of 1978?
2. Is the Department of Transportation complying with the law by postponing the effective date of the manning requirements until April 1983 and,
3. Is the Department of Transportation complying with the law by creating, through regulation, an automatic 90-day exemption to the Outer Continental Shelf Amendments?

In order that we provide an expedited response, you request that we not wait for Transportation's comments on these questions. Accordingly, we have only discussed these questions with the Coast Guard informally.

For the reasons explained below we have concluded (a) that the Secretary of Transportation did not comply with the timetable for promulgating regulations, (b) that the April 1983 date for compliance is required by the authorizing legislation and (c) that the exemption referred to in the third question is a reasonable exercise of administrative discretion given Transportation under the statute.

1. Has the Department of Transportation complied with the timetable for the promulgation of regulations as mandated by the 1978 Amendments?

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Section 30(a) of the Outer Continental Shelf Lands Act, as added, Pub. L. No. 95-372, 92 Stat. 669 (1978), (43 U.S.C. § 1356(a) (Supp. III, 1979)) directs the Secretary of Transportation to issue manning regulations applicable to vessels, rigs and platforms engaged in oil and mineral development on the Outer Continental Shelf within 6 months from the date of its enactment, September 18, 1978. In fact, the regulations implementing the statute were not issued until April 5, 1982 (47 Fed. Reg. 9366, April 4, 1982), (to be placed at 33 C.F.R. Part 141). Clearly, the Department of Transportation failed to comply with the 6-month requirement for the issuance of regulations.

- 2. Is the Department of Transportation complying with the law by postponing the effective date of the manning requirements until April, 1983?

Section 30(a)(3) of the Act specifies that the manning regulations issued by the Secretary shall apply to

"* * * any vessel, rig, platform or other vehicle or structure--

* * * * *

"(3) which is used at any time after the one-year period beginning on the effective date of such regulations * * *"
(Emphasis added)

Thus the Congress has directed that the manning regulations which the Secretary issues are not to be enforced until 1 year after the date they are issued. The statute does not indicate that this 1-year delay is in any way contingent on the Secretary fulfilling his mandate to issue regulations within 6 months of passage of the Act. Therefore, under the statute, the Secretary is not authorized to move up the enforcement date of the regulations.

It is true, as you point out, that the legislative history of section 30 makes clear the expectation by the conference committee that the regulations would be in force "no later than 18 months after enactment of the 1978 amendments." H. Rep. No. 95-1474, 95th Cong. 2d Sess. 125 (1978). Certainly the failure of the Secretary to issue the regulations within 6 months will leave this congressional expectation unfulfilled. However, the Congress did not incorporate its expectation into the Act by stating that the regulations were to be enforced within 18 months. Rather, the Act provides that the regulations are not to be enforced until 1 year after they are issued. The Secretary's failure to issue the regulations on time does not provide him the authority to ignore this statutory requirement.

* 43 U.S.C. 1356(a)(3)

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For the above reasons, it is our opinion that the Department of Transportation has complied with the Act by providing that the manning regulations are to be enforced as of April 5, 1983.

- 3. Is the Department of Transportation complying with the law by creating, through regulation, an automatic 90-day exemption to the Outer Continental Shelf Amendments?

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 Section 30(c)(1)(B) provides an exception to the manning requirement when there are not sufficient citizens or resident aliens available and qualified for Outer Continental Shelf work. Transportation's regulations implementing this exception provide, 47 Fed. Reg. at 9380-9381:

"§ 141.20 Exemptions from restrictions on employment.

- "(a) An employer may request an exemption from the restrictions on employment in § 141.15 in order to employ persons other than citizens of the United States or resident aliens as part of the regular complement of the unit under the following circumstances.

* * * * *

- "(2) When there is not a sufficient number of citizens of the United States or resident aliens qualified and available for the work.

* * * * *

- "(g) If, within 30 days of receipt by the Coast Guard of a request under paragraph (a)(2) of this section, the Coast Guard does not make a determination or advise the employer that additional time for consideration is necessary, the request is considered approved for a period of 90 days from the end of the 30 day period."

Under this procedure the only time an automatic exemption from the manning requirements would occur is when the Coast Guard within 30 days of receiving the application does not make a determination or inform the applicant that it needs more time to make its determination. The Transportation discussion of the comments to the regulations provide this explanation:

- "(d) Another comment suggested that requests for an exemption under proposed paragraph (c) should not have to await the formulation of an advisory opinion by the Department of Labor and that the

* 43 U.S.C. 1352(c)(1)(B) ✓

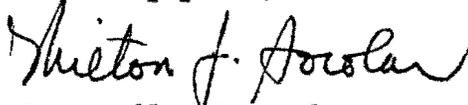
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Coast Guard should be limited to a 10 day processing time. The same comment suggested establishing an emergency request procedure to provide for temporary exemption of an individual or position subject to later confirmation by the Coast Guard. Because consultation with other federal agencies is necessary, a 10 day time frame could not always be met. However, the section has been revised to provide an automatic temporary exemption if the Coast Guard does not respond to a request within 30 days." 47 Fed. Reg. at 9371

We understand that the Coast Guard has established the 30-day period so that it will have ample time to respond to each request. The Coast Guard expects that the 90-day exemption will only come into effect through some administrative error such as a misplaced or lost request. The exemption is designed to avoid a possible emergency where an off-shore platform or rig could not be manned because of the failure of the Coast Guard to respond.

From our reading of section 30 we believe that Transportation's regulations providing the 90-day exemption are within the Department's administrative discretion. Given the circumstances as we understand them, we are unable to say that regulations designed to avoid disruption of Outer Continental Shelf activities in unusual circumstances, where the Coast Guard has failed to respond to a legitimate request, are unreasonable.

Sincerely yours,



Acting Comptroller General
of the United States

1. OUTER CONTINENTAL SHELF LANDS ACT
Offshore platforms, rigs, etc.
Manning regulations
Delay in issuance
Effect

2. OUTER CONTINENTAL SHELF LANDS ACT
Offshore platforms, rigs, etc.
Manning regulations
Exemption
Reasonable