

U.S. Maritime Administration Seeks to Streamline U.S. Citizenship Requirements



MAY 1, 2019

Today the U.S. Maritime Administration (MARAD) published two Advance Notices of Proposed Rulemaking ([Notice 1](#) / [Notice 2](#)) seeking public comment on how to improve the process of demonstrating U.S. citizenship for certain maritime programs.

A number of MARAD programs, such as the tax deferral Capital Construction Fund program or the U.S. Maritime Security Program, are restricted in part to persons who qualify as citizens under section 2 of the Shipping Act, 1916 as it exists today. Under that section there two types of U.S. citizens—a qualifying entity where the controlling interest is owned by U.S. citizens and a qualifying entity that is at least 75 percent owned by U.S. citizens which is the standard for the U.S. coastwise or Jones Act trade and for U.S. commercial fishing. Only a controlling interest citizen is required for participation in CCF or MSP and a number of other programs.

Regardless of the overall requirement, the citizenship standard is rigorous and requires, among other things, that each person who makes up the controlling interest or 75 percent ownership be in turn qualified as a U.S. citizen of that type. For a corporation to qualify, it must also be organized in the United States and have U.S. citizen management as required (which permits non-citizens to hold a certain number of Board of Directors seats). Moreover, citizenship is traced through corporate layers to the ultimate owners who must qualify and there can be “no other means by which control of the [entity] is given to or permitted to be exercised by a person not a citizen of the United States.”

The American Fisheries Act of 1998 enacted an even stricter standard for citizenship with respect to large commercial fishing vessels fishing in U.S. waters than is applicable to Jones Act vessels. Among other things, the AFA prohibited certain non-aggregation approaches to compliance whereas those approaches are permitted with respect to coastwise or Jones Act compliance.

MARAD has long had a form of citizenship affidavit in its regulations. By its ANPRMs, MARAD seeks information to be “used to evaluate the issues and determine whether to propose a change in how corporations evidence their citizenship.” Among other things, MARAD seeks information on the possible “recognition of modern business forms in addition to corporations” and “modern securities ownership practices (e.g. street name securities).”

MARAD also indicated that it “is not considering any changes” to the citizenship standards. Public comments are due on July 1, 2019.

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