

§ 355.2

46 CFR Ch. II (10-1-10 Edition)

(1) It is organized under the laws of the United States or of a State, Territory, District, or possession thereof;

(2) Its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States, and no more of its directors than a minority of the number necessary to constitute a quorum are non-citizens (except that in the case of corporations under title VI, Merchant Marine Act, 1936, as amended, all directors must be citizens of the United States) and

(3) The controlling interest therein is owned by citizens of the United States or, in the case of a corporation operating any vessel in the coastwise trade, on the Great Lakes, or inland lakes of the United States, 75 per centum of the interest in such corporation is owned by citizens of the United States.

(b) As used in this part, the term "primary corporation" includes, but not exclusively, an applicant, for, or one already receiving, benefits under the Merchant Marine Act, 1936, as amended, as well as participants in certain transactions, such as banking institutions designated as lenders, mortgagees, and trustees pursuant to Public Law 89-346 (73 Stat. 597), as amended.

(c) To satisfy the statutory requirements, an Affidavit of U.S. Citizenship of a primary corporation by one of its officers duly authorized to execute such Affidavit, should be submitted. This affidavit should contain facts from which the corporation's citizenship can be determined. MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable.

[General Order 89, Rev., 35 FR 11558, July 18, 1970, as amended at 68 FR 62538, Nov. 5, 2003; 69 FR 34311, June 21, 2004; 69 FR 61451, Oct. 19, 2004]

§355.2 Requirements regarding evidence of U.S. citizenship; affidavit guide.

(a) In order to establish that a corporation is a citizen of the United States within the meaning of section 2, Shipping Act, 1916, as amended, the form of affidavit to be used as a guide is hereby prescribed for execution in behalf of the primary corporation and

filing with an application or, if required, subsequent filing within 30 days after the annual meeting of the stockholders (if the primary corporation is a wholly owned subsidiary and contrary to the bylaw provision does not hold the annual meeting of stockholders, the subsequent filing should be annually and related to the date of the original filing) as evidence of the continuing U.S. citizenship of a "person" as defined in section 1, Shipping Act, 1916, as amended, which shall read as follows:

AFFIDAVIT OF U.S. CITIZENSHIP

State of _____ County of _____ SS:

I, _____, (Name) of _____, (Residence address) being duly sworn, depose and say:

1. That I am the _____ (Title of office(s) held) of _____, (Name of corporation) a corporation organized and existing under the laws of the State of _____ (hereinafter called the "Corporation"), with offices at _____, (Business address) in evidence of which incorporation a certified copy of the Articles or Certificate of Incorporation (or Association) is filed herewith (or has been filed) together with a certified copy of the corporate Bylaws. [Evidence of continuing U.S. citizenship status, including amendments to said Articles or Certificate and Bylaws, should be filed within 30 days after the annual meeting of the stockholders or annually, within 30 days after the original affidavit if there has been no meeting of the stockholders prior to that time.];

2. That I am authorized by and in behalf of the Corporation to execute and deliver this Affidavit of U.S. Citizenship;

3. That the names of the Chief Executive Officer, by whatever title, Vice Presidents or other individuals who are authorized to act in the absence or disability of the Chief Executive Officer, by whatever title, the Chairman of the Board of Directors, and the Directors of the Corporation are as follows:

Table with 3 columns: Name, Title, Date and place of birth

(The foregoing list should include the officers, whether or not they are also directors, and all directors, whether or not they are also officers.)

and that each of said individuals is a citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a

U.S. citizen prior to September 22, 1922, or as otherwise authorized by law, except (give name and nationality of alien directors, if any); however, the Bylaws of the Corporation provide that _____ (Number) of the directors are necessary to constitute a quorum; therefore, the alien directors named represent no more than a minority of the number necessary to constitute a quorum. [In the case of corporations under title VI, Merchant Marine Act, 1936, as amended, all directors must be citizens of the United States. Further, obtaining evidence necessary to support this Affidavit of U.S. Citizenship is the responsibility of the affiant.];

4. Information as to stock, where Corporation has 30 or more stockholders:¹

That I have access to the stock books and records of the Corporation; that said stock books and records have been examined and disclose (a) that, as of _____, (Date) the Corporation had issued and outstanding _____ (Number) shares of _____, (Class or series) the only class or series of stock of the Corporation issued and outstanding [if such is the case], owned of record by _____ (Number) stockholders, said number of stockholders representing the ownership of the entire issued and outstanding stock of the Corporation, and (b) that no stockholder owned of record as of said date five per centum (5%) or more of the issued and outstanding stock of the Corporation of any class or series. [If different classes or series of stock exist, give the same data for each class or series issued and outstanding, showing the monetary value and voting rights per share in each class or series. If there is an exception to the statement in clause (b), the name, address, and citizenship of the stockholder and the amount and class or series of stock owned should be stated.]

That the registered addresses of _____ owners of record of _____ shares of the issued and outstanding _____ (Class or series) stock of the Corporation are shown on the stock books and records of the Corporation as being within the United States, said _____ shares being _____ per centum (____%) of the total number of shares of said stock (each class or series). [The exact figure as disclosed by the stock books of the corporation must be given and the per centum figure must not be less than 65 per centum, except that for a corporation operating a vessel in the coastwise trade, the per centum figure must be not less than 95 per centum. These per centum figures apply to corporate stockholders as well as to the primary corporation.]

(The same statement should be made with reference to each class or series of stock, if there is more than one class or series.)

¹Strike inapplicable paragraph 4.

4. Information as to stock, where Corporation has less than 30 stockholders:¹

That the information as to stock ownership, upon which the Corporation relies to establish that the required percentage² of stock ownership is vested in citizens of the United States, is as follows:

| Name of stockholder | Number of shares owned (each class or series) | Percentage of shares owned (each class or series) |
|---------------------|---|---|
| | | |

and that each of said individual stockholders is a citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a U.S. citizen prior to September 22, 1922, or as otherwise authorized by law.

NOTE: If a corporate stockholder, give information with respect to State of incorporation, the names of the officers, directors, and stockholders in the appropriate percentage of shares held, with statement that they are all U.S. citizens. Nominee holders of record of 5 percent or more of any class or series of stock and the beneficial owners thereof should be named and their U.S. citizenship affirmed.

5. That the controlling interest (or 75% of the interest)³ in (each) said Corporation, as established by the data hereinbefore set forth, is owned by citizens of the United States; that the title to a majority (or 75%)³ of the stock of (each) said Corporation is vested in citizens of the United States free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; that such proportion of the voting power of (each) said Corporation is vested in citizens of the United States; that through no contract or understanding is it so arranged that the majority (or more than 25%)³ of the voting power of (each) said Corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; and that by no means whatsoever, is control of (each) said

²75% if Corporation is operating in the coastwise trade, on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States; and controlling interest if Corporation is operating solely in the foreign trade, both terms as defined in section 2, Shipping Act, 1916, as amended.

³Strike inappropriate language.

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Corporation (or any interest in said Corporation in excess of 25%)³ conferred upon or permitted to be exercised by any person who is not a citizen of the United States; and

6. That affiant has carefully examined this affidavit and asserts that all of the statements and representations contained therein are true to the best of his knowledge, information, and belief.

Dated: _____

(Name of affiant)

Subscribed and sworn to before me, a Notary Public, in and for the State and County aforesaid, this _____ day of _____ 19____.

(Notary Public)

My Commission expires: _____

PENALTY FOR FALSE STATEMENT: A fine or imprisonment, or both, are provided for violation of the proscriptions contained in 18 U.S.C. 1001 (see also 18 U.S.C. 286, 287).

(Approved by the Office of Management and Budget under control number 2133-0012)

[G.O. 89, Rev., 35 FR 11558, July 18, 1970, as amended at 35 FR 11686, July 22, 1970; 47 FR 25530, June 14, 1982; 69 FR 34311, June 21, 2004]

§ 355.3 Criteria to be applied in support of stock data in affidavit.

(a) The same criteria should be observed in obtaining information to be furnished for stockholders named (direct ownership of required percentage of shares of stock of each class or series) in the Affidavit as those observed for the primary corporation. If, on the other hand, the "fair inference rule" is applied with respect to stock ownership (see *Collier Advertising Service, Inc. v. Hudson River Day Line*, 14 Fed. Supp. 335), the extent of U.S. citizen ownership of stock should be ascertained in the requisite percentage (65 percent for foreign operation and 95 percent for coastwise operation) in order that the veracity of the statutory statements made in the Affidavit (paragraph 5) may be relied upon by the Maritime Administration.

(b) When applying the fair inference rule (where there are more than 30 stockholders, except where one or more of such number actually owns the controlling or 75 percent interest) in order to prove U.S. citizen ownership in the required percentages (1) for foreign operation, 65 percent of the shares of

stock of each class or series must be shown to be held by persons with registered addresses within the United States to prove that 51 percent or controlling interest is vested in citizens of the United States and (2) for coastwise operation, 95 percent of the shares of stock of each class or series must be shown to be held by persons having registered addresses within the United States to prove that 75 percent of the interest in the corporation is vested in citizens of the United States.

(c) If the primary corporation is consecutively owned by several "parent" corporations (holders of 100 percent of the stock of each or all classes or series of stock issued and outstanding), the facts should be given in proper sequence either by chart or in narrative form, revealing the facts of stock ownership. The information with respect to the ultimate parent should include data relative to the basis upon which controlling or 75 percent (depending upon whether the primary corporation operates in the domestic or foreign commerce) is established, together with the names of the owners of record or beneficial owners of 5 percent or more of each class or series of stock, if more than one class or series, and statement that such owners are citizens of the United States. In any case where different classes or series of stock exist, each class or series shall be treated depending upon whether "closely held" or "publicly held," individually in applying the fair inference rule, if applicable, or giving the relevant information with respect to United States citizens owning of record 51 percent or 75 percent of the interest.

§ 355.4 Changes in citizenship data.

It shall be incumbent upon the parties filing affidavits under this part to apprise the Maritime Administration promptly in writing relative to changes in data last furnished with respect to officers, directors, and stockholders holding 5 percent or more of the issued and outstanding stock of each class or series, together with statements concerning the citizenship status thereof.

§ 355.5 Additional material.

If additional material is determined to be essential to clarify or support the