

in the same manner as a transfer to a foreign entity.

We disagree with the commenter on this interpretation of what is covered by the term "foreign individual or entity" as used in section 213(g). As noted above, section 213(g) clearly contemplates that transfers of ownership in a vessel subject to a section 213(g) exemption must be to U.S. citizens that comply with the AFA citizenship standard until such time as the entire vessel ownership structure complies with the new ownership and control standard of the AFA. Following the commenter's reading of the statute could lead to results that would actually increase the foreign participation in the ownership structure. For example, an entity within the ownership structure that has 100 percent U.S. citizen ownership and control would be permitted to sell its interest under the commenter's interpretation to a documentation citizen that is wholly owned by a foreign corporation. Although the documentation citizen is a U.S. company with U.S. management, it is a foreign-owned entity and should be treated accordingly for purposes of complying with section 213(g). The commenter's suggested interpretation is inconsistent with the objective of section 213(g) to ratchet up the U.S. citizen participation in the ownership structure when a vessel owner transfers its ownership interests.

The commenter also suggests that proposed paragraph 356.53(g)(3)(ii) should not become part of the final rule because it is inconsistent with the standard that is applied to determining the aggregate U.S. citizen ownership when applying 46 U.S.C. 12102(c). The commenter notes that when we determine the percentage of non-citizen ownership in applying 46 U.S.C. 12102(c), we determine that any entity that does not qualify as a U.S. citizen under the AFA is a non-citizen. We do not look into the percentage of non-citizen ownership within that entity in order to determine the aggregate non-citizen participation. For example, an entity that is owned 74 percent by U.S. citizens and 26 percent by non-citizens would be deemed to be a non-citizen and would be treated the same as an entity that was owned 100% by a non-citizen for purposes of determining the aggregate U.S. citizen participation. In other words, no credit would be given for the U.S. ownership in an entity that does not qualify independently as a U.S. citizen. However, when applying section 213(g), we do not treat all non-citizen entities in the ownership chain equally because we continue to monitor the transfer of ownership in those non-

citizen entities. The commenter argues that we should treat non-citizens the same way in determining the amount of non-citizen ownership under section 213(g) and that once an entity is determined to be a non-citizen we should not be concerned with transfers of ownership in that entity.

We do not agree with the commenter that there is a requirement to apply the same standard when determining the level of non-citizen participation under section 213(g) as when we determine the level of aggregate non-citizen participation under 46 U.S.C. 12102(c). As noted above, the purpose of the restrictions on transfer of ownership interest in section 213(g) is to ensure that U.S. participation in the ownership structure is increased at any time that a non-citizen participant decides to exit the ownership structure and transfer its interest. Consequently, we believe that it is appropriate to apply a different standard under section 213(g) with respect to transfers of ownership interest.

Finally, the commenter states that the standard that we have applied in paragraph 356.53(g)(3)(ii) regarding transfers of indirect ownership is too liberal and exceeds the scope of our authority. The commenter notes that we have stated in proposed paragraph 356.53(g)(3)(ii) that we will deem a transfer of ownership interest to occur where there is a transfer of indirect ownership at any tier that results in a transfer of five percent or more of the interest in the primary vessel owning entity. The commenter points out that section 213(g) provides that the exemption will be lost if "any ownership interest in [the vessel] owner" is transferred to or otherwise acquired by a foreign individual or entity." Therefore, the commenter contends that if a transfer of an indirect ownership interest is deemed to be a constructive transfer of an ownership interest in the vessel owner, MARAD's proposal to permit transfers of less than five percent is flatly inconsistent with the statute. The only instance in which the commenter believes that the use of a five percent threshold is supportable is where a publicly traded entity holds an interest in the vessel, as currently provided for in the regulations.

We attempted to build some flexibility into the regulations regarding transfers of indirect interests, so that every transfer of an interest in the ownership chain, regardless of how small the interest is or how far removed it is from the primary vessel owner, would not potentially result in a loss of the exemption. However, we agree with the commenter's assertion that section

213(g) is intended to cover all transfers of ownership interest to another party. Therefore, we are amending our proposed language in paragraphs 356.53(g)(3)(i) and (ii) to address the commenter's objection and to clarify that an ownership interest is deemed to be transferred if: (i) There is a transfer of direct ownership interest in the primary vessel owning entity; or (ii) there is a transfer of indirect ownership interest at any tier. We will, however, continue to implement our policy with regard to transfers of disparately held shares in publicly traded companies as outlined in paragraph 356.53(g)(4).

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have reviewed this rule under Executive Order 12866 and have determined that this is not a significant regulatory action. Additionally, this rule is not likely to result in an annual effect on the economy of \$100 million or more. The purpose of this rule is: To implement amendments to the requirements to hold a preferred mortgage on fishing industry vessels of 100 feet or greater in registered length; to implement statutory changes to section 213(g) of the AFA, which allows vessel owners and mortgagees to petition MARAD for a determination that the AFA does not apply to them because it is inconsistent with an international investment agreement; and to make other technical changes and revisions to MARAD's regulations regarding the ownership and control of fishing industry vessels by U.S. citizens.

This rule is also not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and benefits associated with this rulemaking are so minimal that no further analysis is necessary. Because the economic impact should be minimal, further regulatory evaluation is not necessary.

Federalism

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with