

The procedures that were in these regulations will continue to exist, unchanged, in our policy statement on the Admission and Orientation Program. Any requirement imposed on our staff in these rules will remain a Bureau-wide requirement in our policy.

Because this change maintains current Bureau policy and practice while eliminating rule text from the CFR, we find that normal notice-and-comment rulemaking is unnecessary. We are, however, allowing the public to comment on this rule change by publishing it as an interim final rule.

Where To Send Comments

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534.

We will consider comments received during the comment period before taking final action. We will try to consider comments received after the end of the comment period. In light of comments received, we may change the rule.

We do not plan to have oral hearings on this rule. All the comments received remain on file for public inspection at the above address.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons,

and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make Bureau documents easier to read and understand. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi at the telephone number or address listed above.

List of Subjects in 28 CFR Part 522

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we are amending 28 CFR part 522, chapter V, subchapter B, as follows:

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 522—ADMISSION TO INSTITUTION

1. Revise the authority citation for 28 CFR part 522 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

Subpart E—[Reserved]

2. Remove §§ 522.40 through 522.42 and reserve Subpart E.

[FR Doc. 03–2517 Filed 2–3–03; 8:45 am]

BILLING CODE 4410–25–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 356

[Docket No. MARAD–2002–11984]

RIN 2133–AB46

Requirements to Document U.S. Flag Fishing Industry Vessels of 100 Feet or Greater in Registered Length and To Hold a Preferred Mortgage on Such Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration ("MARAD, we, our, or us") is amending its regulations that implement the U.S. citizenship requirements and mortgage requirements set forth in the American Fisheries Act of 1998 ("AFA") for vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is sought.

Section 2202 of the Supplemental Appropriations Act, 2001, amended the AFA on July 24, 2001. This rule implements the new statutory requirements for the owners of fishing vessels, fish processing vessels and fish tender vessels of 100 feet or greater in registered length (collectively referred to as "fishing industry vessels"), amends the requirements to hold a preferred mortgage on such fishing industry vessels, and makes other minor amendments to the regulations to address issues that arose during the early stages of MARAD's implementation of the new AFA regulations.

DATES: *Effective Date:* March 6, 2003.

Compliance Date: Mortgagees and mortgage trustees will not be required to comply with the new requirements of this final rule until April 1, 2003.

ADDRESSES: The complete file for this rule is available for inspection with the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001, between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. You may also view the comments submitted to the

docket via the Internet at <http://dms.dot.gov> by using the search function and entering the docket number 11984.

FOR FURTHER INFORMATION CONTACT: John T. Marquez, Jr. of the Office of Chief Counsel at (202) 366-5320. You may send mail to John T. Marquez, Jr., Maritime Administration, Office of Chief Counsel, Room 7228, MAR-222, 400 Seventh St., SW., Washington, DC 20590-0001, or you may send e-mail to John.Marquez@marad.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

The AFA imposed new citizenship requirements for both the owners of fishing industry vessels of 100 feet or greater in registered length as well as entities that hold a preferred mortgage on such vessels. The AFA raised the U.S. citizen ownership and control standard for U.S. flag fishing industry vessels operating in U.S. waters from a controlling interest standard (greater than 50%) to a 75 percent interest requirement as set forth in section 2(c) of the Shipping Act, 1916, as amended ("1916 Act"). In addition to the requirements of section 2(c) of the 1916 Act, the AFA specifically delineated certain criteria for purposes of determining whether "control" of the owner of a fishing industry vessel is vested in citizens of the United States.

Section 202(b) of the AFA also imposed new requirements to hold a preferred mortgage on fishing industry vessels of 100 feet or greater by amending the definition of "preferred mortgage" at 46 U.S.C. 31322(a)(4) with respect to such vessels. Section 31322(a)(4) of title 46, United States Code, as amended by the AFA on October 21, 1998, defined a preferred mortgage with respect to a fishing industry vessel of 100 feet or greater as one that is held by a mortgagee that: (1) Is a person that meets the 75% U.S. citizen ownership and control standard for fishing industry vessels under 46 U.S.C. 12102(c); (2) is a State or Federally chartered financial institution that satisfies the controlling interest criteria of section 2(b) of the Shipping Act, 1916, 46 U.S.C. 802(b); or (c) is a person that complies with the mortgage trustee provisions of 46 U.S.C. 12102(c)(4).

As the October 1, 2001, effective date of the AFA approached, it became apparent that many traditional lenders in the fishing industry were having difficulty either complying with or demonstrating that they complied with the new standards to hold a preferred mortgage. Therefore, Congress amended

the requirements to broaden the category of lenders that will qualify to hold a preferred mortgage on fishing industry vessels of 100 feet or greater and to limit the extent to which a demonstration of U.S. citizenship would be required.

Section 2202(b) of the Supplemental Appropriations Act, 2001, Pub. L. 107-20, amended the definition of "preferred mortgage" at 46 U.S.C. 31322(a)(4) with respect to fishing industry vessels of 100 feet or greater. As amended, 46 U.S.C. 31322(a)(4), defines a preferred mortgage with respect to such vessels as a mortgage that has as its mortgagee:

(1) A person eligible to own a vessel with a fishery endorsement under 46 U.S.C. 12102(c);

(2) A State or Federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;

(3) A farm credit lender established under title 12, chapter 23, of the United States Code (12 U.S.C. 2001 *et seq.*);

(4) A commercial fishing and agriculture bank established pursuant to State law;

(5) A commercial lender organized under the laws of the United States or of a State and eligible to own a vessel under 46 U.S.C. 12102(a) of this title; or

(6) A mortgage trustee that complies with the requirements of 46 U.S.C. 31322(f).

In addition, the amendments to the AFA defined the terms "commercial lender" and "lending syndicate" and relocated the mortgage trustee provisions from 46 U.S.C. 12102(c)(4) to 46 U.S.C. 31322(f).

In order to ensure that MARAD would have time to implement new regulations related to the eligibility of lenders to hold a preferred mortgage on fishing industry vessels, Congress delayed the effective date of 46 U.S.C. 31322(a), as amended by section 202(b) of the AFA and section 2202 of the Supplemental Appropriations Act, 2001, until April 1, 2003. MARAD was also directed not to consider the citizenship status of a lender, in its capacity as a lender, when determining whether a vessel's owner complies with the requirements of 46 U.S.C. 12102(c) prior to April 1, 2003. Accordingly, we suspended our review of loan transactions in determining whether a vessel owner qualifies as a U.S. citizen until April 1, 2003, when the new requirements become effective.

Finally, section 2202(e) of the Supplemental Appropriations Act, 2001, included changes to section 213(g) of the AFA. As originally enacted, section 213(g) of the AFA stated that if the requirements of 46 U.S.C. 12102(c) or 46 U.S.C. 31322(a), as amended by

the AFA, were determined to be inconsistent with the provisions of an international investment agreement to which the United States was a party with respect to the owner or mortgagee of a fishing industry vessel on October 1, 2001, the requirements of the AFA would not apply to the owner or mortgagee of that specific vessel to the extent of the inconsistency. Congress amended section 213(g) of the AFA to change the date upon which an ownership or mortgage interest was required to be in place in order for an owner or mortgagee to claim the protection of an international investment agreement. The date was changed from October 1, 2001, to July 24, 2001.

We issued a notice of proposed rulemaking on April 16, 2002, 67 FR 18547, that proposed amendments to our regulations at 46 CFR part 356 and requested comments from the public. Seven commenters responded to the NPRM.

Comments on the Proposed Rule

Subpart A—General Provisions

Section 356.3 Definitions

Section 356.3 has been amended by adding several new terms to the definitions, amending several existing definitions and renumbering the definitions accordingly. The three new terms that have been added to the definitions are "commercial lender," "fishing industry vessel," and "lender syndicate." The term "fishing industry vessel" is a new term that is being added to the regulation to refer to a fishing vessel, fish tender vessel or fish processing vessel as defined in § 356.3. In the NPRM, we proposed to replace the phrase "*fishing vessel, fish processing vessel, or fish tender vessel*" with the term "fishing industry vessel" in sections and paragraphs that we were amending. One commenter suggested that we make this change throughout part 356 in order to avoid confusion. We agree with the commenter that use of the term "fishing industry vessel" throughout part 356 would be preferred; therefore, we have amended part 356 to replace the phrases "fishing vessel, fish processing vessel, or fish tender vessel" and "fishing vessel, fish tender vessel, or fish processing vessel" in each place that either phrase appears with the term "fishing industry vessel".

The proposed definitions of "commercial lender" and "lender syndicate" mirrored the definitions provided by Congress in sections 2202(g) and (h), respectively, of the Supplemental Appropriations Act, 2001. Although the proposed definition

of lender syndicate tracked the language of the statute, two commenters urged that we provide some amplification in the definition to indicate what powers may be exercised under a trust arrangement without the concurrence of more than one beneficiary. The definition of lender syndicate states that it must be made up of four or more entities with a beneficial interest, held through an agent, under a trust arrangement, established pursuant to 46 U.S.C. 31322(f), "no one of which may exercise powers thereunder without the concurrence of at least one other unaffiliated beneficiary." The commenters suggested that the definition be amended to clarify that an agent can exercise routine administrative functions associated with the day-to-day administration of the loan without the consent of multiple beneficiaries, and that consent of more than one beneficiary should only be required to exercise substantive powers such as decisions on how to proceed in the event of default or bankruptcy, release of collateral or guarantors, and amendment or removal of loan covenants.

We agree with the commenter that the purpose of an agent is to handle routine administrative matters for the lender syndicate associated with the extension of credit. Therefore, we have amended the regulatory definition of lender syndicate to clarify that "other than the exercise by the agent of powers related to routine administrative matters, none of the entities in a lender syndicate may exercise powers related to the lender syndicate's extension of credit without the concurrence of at least one other unaffiliated beneficiary." In addition, we have stated in the definition that the routine administrative powers include those matters concerning the day-to-day management of the extension of credit such as monitoring compliance with loan covenants, collateral inspections and similar matters; however, more substantive powers such as amending loan and mortgage documents, releasing guarantors or collateral, or administering the loan in the event of a default are not considered routine.

The definition of lender syndicate does not define who may qualify as a beneficiary; however, entities that plan to form a lender syndicate are advised that if they are engaged in the fishing industry and have contractual relationships with the vessel owner, such as to purchase, process or market the vessel's catch, they may not use the formation of a lender syndicate as a means of avoiding MARAD review of the mortgage trustee transaction and the loan and mortgage covenants. Therefore,

if the beneficiaries of a lender syndicate have such contractual relationships with the vessel owner, we will review the mortgage trustee arrangement, including the loan and mortgage covenants, to determine whether it constitutes an impermissible transfer of control.

Paragraph (3) under the definition of "controlling interest" has been deleted because a State or Federally chartered financial institution no longer has to qualify as a U.S. citizen under the controlling interest standard in order to hold a preferred mortgage on a fishing industry vessel.

The definition of the term "mortgage trustee" has been amended by removing the requirement in paragraph (2) that a mortgage trustee qualify as a U.S. citizen and replacing that paragraph with language requiring the mortgage trustee to be eligible to hold a preferred mortgage pursuant to 46 CFR 356.19(a)(1)-(4). This change expands the definition of mortgage trustee to encompass the broader range of parties that are now eligible to serve as a mortgage trustee.

The term "preferred mortgage" is amended to track the definition of 46 U.S.C. 31322(a)(4), as amended. Part of the definition states that a preferred mortgage is one where the mortgagee is a mortgage trustee that qualifies under 46 U.S.C. 31322(f) and 46 CFR 356.27-31. One commenter suggested that this definition could cause uncertainty with respect to the use of mortgage trustees because a violation of the regulations by the mortgage trustee could endanger the preferred status of the mortgage. The commenter suggested that we amend the definition to eliminate reference to the statute and regulations and simply state that a preferred mortgage is one where the mortgagee is an approved mortgage trustee. We intend for the preferred status of the mortgage to be at risk if a mortgage trustee fails to be in compliance with the regulations; however, we have addressed the concerns of the commenter by clarifying in § 356.27 that a mortgage trustee will have an opportunity to cure a defect in its approved status and by including a provision for MARAD notification of beneficiaries where there is a problem with the mortgage trustee's approved status. The preferred status of the mortgage will not be at risk until 30 days after notification of the beneficiary that there is a problem with the mortgage trustee's approval.

The second sentence in the definition of "non-citizen" has been deleted because there is no longer any special citizenship status for a State or Federally chartered financial institution

that satisfies the controlling interest requirements of section 2(b) of the Shipping Act, 1916. Finally, the definition of "trust" is amended to conform the definition of a mortgage trust to the new requirements for mortgage trustees.

Section 356.5 Affidavit of U.S. Citizenship

Paragraph 356.5(d) provides the form of the affidavit of U.S. citizenship to be used by a corporation. The form is amended to add a new paragraph 6 which indicates that the vessel owner has submitted the documents required by 46 CFR 356.13 of MARAD's regulations. The existing paragraph 6 is renumbered as paragraph 7. The inclusion of this new paragraph in the affidavit of U.S. citizenship was deemed to be necessary to help ensure that vessel owners have reviewed the requirements and have submitted the required documentation.

Section 356.7 Methods of Establishing Ownership by United States Citizens

Paragraph 356.7(c)(1)(ii) has been amended by removing the language that applies the fair inference method to a State or Federally chartered financial institution that is acting as a preferred mortgagee. The amendments to the AFA deleted this standard for qualification as a preferred mortgagee, so it was no longer needed in the regulation.

Section 356.11 Impermissible Control by a Non-Citizen

The NPRM proposed an amendment to paragraph 356.11(a)(7) to clarify that we would not consider impermissible control to exist if the sale of a vessel is caused through the exercise of loan or mortgage covenants that are exercised either (i) by an entity that has not been approved as a U.S. citizen, but which is otherwise eligible to hold a preferred mortgage pursuant to 46 CFR 356.19(a)(2) through (5) or (ii) by an approved mortgage trustee that is exercising the loan or mortgage covenants for a non-citizen or an entity that does not qualify under § 356.19(a)(2) through (5), provided that the Citizenship Approval Officer has approved the use of such loan or mortgage covenants. Several commenters noted that this amendment implies that review of loan documents would be required in a mortgage trustee arrangement where the beneficiary is a commercial lender or lender syndicate, contrary to the intent of the statutory amendments to 46 U.S.C. 31322(f). We did not intend to require mortgage and loan documents related to loans from lender syndicates and commercial

lenders to be subject to MARAD review where a mortgage trustee is being utilized; therefore, we have specifically excluded such review in other parts of the regulations. We have also amended paragraph 356.11(a)(7) to clarify that loan and mortgage documents will not be subject to review where a mortgage trustee is holding a preferred mortgage for the benefit of a commercial lender or lender syndicate.

Section 356.13 Information Required To Be Submitted by Vessel Owners

The NPRM proposed an amendment to § 356.13(a) by clarifying in paragraph (5) that financing documents will only be required from entities that have not been approved to hold a preferred mortgage on fishing industry vessels or that have not received general approval for their loan documents pursuant to § 356.21. Several commenters noted that this section implies that review of loan documents may be required from commercial lenders or lender syndicates that are using an approved mortgage trustee. Again, we did not intend to include a review of financing documents where a mortgage trustee is holding a preferred mortgage for the benefit of a commercial lender or lender syndicate. Accordingly, we have added language to paragraph 356.13(a)(5) to specify that financing documents are not required to be submitted if the transaction is specifically exempted under paragraph 356.19(d), which specifically sets forth those preferred mortgage transactions for which no review of the loan or mortgage documents is required.

A new element has also been added to the list of material that vessel owners are required to submit with their affidavit of U.S. citizenship. For vessels that exceed 165 feet in registered length, 750 gross registered tons (as measured under 46 U.S.C. chapter 145) or 1900 gross registered tons (as measured under the International Tonnage Convention, 46 U.S.C. chapter 143) or that have engines capable of producing more than 3,000 horsepower, the vessel owner is required to provide a statement indicating whether the vessel meets certain requirements set forth in § 356.47 in order to be eligible for documentation with a fishery endorsement. While this information can be obtained by researching Coast Guard files on specific vessels, it was determined that we would not be able to research the information in a timely manner for all of the vessels that are subject to these new restrictions.

Section 356.15 Filing of Affidavit of U.S. Citizenship

Section 356.15 has been amended by deleting paragraphs 356.15(a), (b), and (c) that dealt with filing requirements prior to October 1, 2001. It is no longer necessary to maintain these requirements in the regulations now that the October 1, 2001, date has passed. The remaining paragraphs have been reordered in order to present the requirements for filing an affidavit of U.S. citizenship in a logical order.

A more significant amendment to § 356.15 is the addition of a new paragraph (d) that allows vessel owners or prospective vessel owners to request a letter ruling to determine whether a proposed ownership structure will meet the requirements of the regulations and allow the owner to document a vessel with a fishery endorsement. In the preamble to the final regulations (65 FR 44860, 44865–66 (July 19, 2000)), we stated that we would issue letter rulings for vessel owners prior to June 1, 2001, but that we did not plan to issue letter rulings after October 1, 2001, because letter rulings necessarily involve hypothetical transactions and can absorb an inordinate amount of time and resources. While we continue to be concerned about the burden on limited resources that may be presented by requests for letter rulings, we recognize that the ability to obtain a letter ruling before a transaction is finalized is extremely useful to vessel owners and other parties that are required to qualify as U.S. citizens. Therefore, we have amended the regulations to indicate that we will continue to issue letter rulings after October 1, 2001, to vessel owners and other entities that are required to qualify as U.S. citizens under these regulations. If the process of issuing letter rulings becomes too burdensome, it may be necessary to reconsider this position in the future.

Section 356.17 Annual Requirements for Vessel Owners

The NPRM included a proposed amendment to § 356.17 that would delete the requirement for owners of multiple fishing industry vessels to file a certification prior to the renewal date for the certificate of documentation for each vessel. Therefore, a vessel owner would be allowed to file one consolidated affidavit of U.S. citizenship on an annual basis for all of its fishing industry vessels. One commenter supported this amendment, but suggested that we broaden the language to clarify that if vessel owners have the same ultimate common ownership they may file a consolidated

affidavit. The commenter noted that such an amendment would better address the common practice in the maritime industry where companies set up separate subsidiaries to own individual vessels. We agree with the commenter and have amended paragraph 356.17(b) to clarify that one affidavit may be filed for multiple vessels that have the same owner or where the owners ultimately have the same common ownership.

Section 356.19 Requirements To Hold a Preferred Mortgage

Section 2202(b) of the Supplemental Appropriations Act, 2001, amended 46 U.S.C. 31322(a)(4) by deleting from the definition of a preferred mortgage for fishing industry vessels of 100 feet or greater a mortgage that is held by a mortgagee that is a State or Federally chartered financial institution that meets the controlling interest requirement of the 1916 Act. Section 2202(b) of the Supplemental Appropriations Act also expanded the definition of preferred mortgage for fishing industry vessels by increasing the universe of entities that can act as the mortgagee. Accordingly, § 356.19 has been amended by deleting the requirements to hold a preferred mortgage in §§ 356.19(a)(2) through (d) and by adding new language to incorporate the new entities that will qualify to hold a preferred mortgage. The list of entities that will now qualify to hold a preferred mortgage includes: (1) Citizens of the United States who are eligible under 46 U.S.C. 12102(c) to own a vessel with a fishery endorsement; (2) State or Federally chartered financial institutions that are insured by the Federal Deposit Insurance Corporation; (3) farm credit lenders established under title 12, chapter 23, of the United States Code (12 U.S.C. 2001 *et seq.*); (4) commercial fishing and agriculture banks established pursuant to State law; (5) commercial lenders organized under the laws of the United States or of a State and eligible to own a vessel under 46 U.S.C. 12102(a); and (6) mortgage trustees that comply with the requirements of 46 U.S.C. 31322(f) and 46 CFR 356.27–356.31.

A new paragraph (b) has been added to the section to describe the information that the various entities must submit to the Citizenship Approval Officer so that a determination can be made as to whether the entities are qualified to hold a preferred mortgage on a fishing industry vessel. Several commenters suggested that the proposed paragraph (b)(5) be amended to clarify that there are different requirements for a commercial lender to

hold a preferred mortgage depending on whether it is holding the mortgage directly as a mortgagee or through a mortgage trustee. We agree with the commenters and have amended paragraph (b) to clarify that a commercial lender must demonstrate that it is in the business of financing and that it has a loan portfolio in excess of \$100 million, not more than 50 percent of which is to borrowers in the commercial fishing industry. This requirement applies whether the commercial lender is holding the preferred mortgage directly or is using a mortgage trustee to hold the preferred mortgage for its benefit. If a commercial lender is holding a preferred mortgage directly, it must also file an affidavit of U.S. citizenship to demonstrate that it qualifies as a documentation citizen pursuant to 46 U.S.C. 12102(a).

We have also amended proposed paragraph 356.19(b) to address the required timing of submissions for a mortgagee. A mortgagee, including a mortgage trustee, that is holding a preferred mortgage on a fishing industry vessel prior to April 1, 2003, will be required to demonstrate that it meets the requirements of § 356.19(a) before the next renewal date after April 1, 2003, for the vessel's certificate of documentation. However, if a mortgagee wishes to confirm that it is in compliance with the requirements to hold a preferred mortgage before the certificate of documentation renewal date for the vessel, the mortgagee may request a letter ruling from the Citizenship Approval Officer pursuant to paragraph 356.19(e) at any time after the publication of this regulation. A mortgagee that wishes to enter into a new preferred mortgage after April 1, 2003, will be required to demonstrate that it meets the requirements of § 356.19(a) before it will be eligible to obtain a preferred mortgage on a fishing industry vessel.

Finally, several commenters noted that more guidance is needed regarding the form in which information must be submitted in order for a mortgagee to demonstrate that it is qualified to hold a preferred mortgage directly and for a lender syndicate or commercial lender to demonstrate that it qualifies as such an entity when it is using a mortgage trustee to hold a preferred mortgage for its benefit. We have set forth the requirements in the regulations that each entity must meet, and we have amended paragraph 356.19(b) to state that we will provide sample formats on MARAD's website that can be used for the various entities to submit the required information.

One commenter argued that the requirements of proposed § 356.19(b) are inconsistent with the Ship Mortgage Act because the regulation requires MARAD approval before a mortgage will qualify as a preferred mortgage. The commenter stated that the Ship Mortgage Act, 46 U.S.C. 31322(a)(4) does not require a mortgagee to demonstrate its eligibility to hold a preferred mortgage; therefore, the requirements of § 356.19(b) are inconsistent with the statute. Further, the commenter stated that the mortgagee has the most to lose by the loss of the preferred status of its mortgage. Consequently, the commenter believes that self regulation by mortgagees would be sufficient to ensure compliance with the statute.

We do not agree with the commenter. Requiring mortgagees to demonstrate that they meet the requirements of the statute is not inconsistent with statutory requirements. The certification that mortgagees would be required to submit under § 356.19 is not complicated and should not present a substantive or administrative burden that would hinder the ability of vessel owners to obtain financing or that would restrict the ability of a lender to obtain adequate security for its loans. Therefore, we are finalizing our proposed amendments to § 356.19 to require mortgagees to submit certain information to the Citizenship Approval Officer before they may obtain a new preferred mortgage or in order to maintain an existing preferred mortgage on a fishing industry vessel.

A new paragraph (c) has also been added to the regulations to require the certification from paragraph (b) to be submitted for each entity on an annual basis for as long as the entity holds a preferred mortgage on a fishing industry vessel. The annual certification must be filed at least 30 days prior to the annual anniversary date of the original approval. In order to address concerns of some commenters regarding the loss of the preferred status of a mortgage if the mortgagee fails to file the annual certification, we have amended paragraph (c) to require the Citizenship Approval Officer to notify a mortgagee if it fails to submit the required annual certification. The preferred status of the mortgage will be maintained for 30 days following the mailing date of the delinquency notice.

A new paragraph (d) was also proposed in the NPRM to make clear that an entity, other than a mortgage trustee, that is eligible to hold a preferred mortgage on a fishing industry vessel may exercise rights and covenants under loan or mortgage agreements and is not required to obtain

approval from MARAD. Several commenters noted that this paragraph was too narrow because it did not state that a mortgage trustee may exercise loan or mortgage covenants without obtaining prior MARAD approval when it is holding a preferred mortgage for the benefit of an entity that is otherwise qualified to hold a preferred mortgage or for the benefit of a commercial lender or lender syndicate. We agree with the commenter and have revised paragraph (d) to specifically set forth which entities may exercise rights under loan or mortgage covenants without obtaining MARAD approval.

Several commenters suggested that lenders should be allowed to request a letter ruling in the same way that vessel owners may request a letter ruling from the Citizenship Approval Officer under § 356.15. We agree with the commenter that letter rulings should be available to lenders and mortgage trustees and have added a new paragraph 356.19(e) that will allow entities to request a letter ruling from the Citizenship Approval Officer to determine whether a mortgage or mortgage trust arrangement will comply with the requirements of 46 CFR part 356. If a letter ruling is issued, the date of the letter ruling may be deemed to be the approval date of the transaction and to be the required date for the annual approval.

Section 356.21 General Approval of Non-Citizen Lender's Standard Loan or Mortgage Agreements

Section 356.21 allowed non-citizen lenders that were using a mortgage trustee to get MARAD approval of their standard loan or mortgage covenants. The amendments to the AFA expanded the class of lenders that may hold a preferred mortgage directly to allow various entities that do not qualify as U.S. citizens to hold a preferred mortgage directly. If the beneficiary under a mortgage trust arrangement is allowed to hold a preferred mortgage directly, or qualifies as a commercial lender or lender syndicate, no review of the loan or mortgage covenants is required, notwithstanding the fact that the beneficiary may not qualify as a U.S. citizen. Accordingly, the term "non-citizen lender" is replaced with the term "lender" throughout the section.

Several commenters noted that paragraph 356.21(a) could be interpreted to require review of standard loan or mortgage agreements involving a mortgage trustee and a beneficiary that is either a commercial lender or lender syndicate. We did not intend to imply that MARAD review of such loan or mortgage documents would be mandated; therefore, we have amended

paragraph 356.21(a) to clarify that the approval of standard loan and mortgage covenants is available for entities that are not eligible to hold a preferred mortgage directly and that do not otherwise qualify as a commercial lender or lender syndicate.

Finally, we amended paragraph (d) by deleting the penalty imposed on the owner of a fishing industry vessel if a lender uses loan or mortgage covenants that were not approved by the Citizenship Approval Officer. Instead, we have added language to indicate that the Citizenship Approval Officer may determine that the transaction results in an impermissible transfer of control to a non-citizen and that therefore, the arrangement does not satisfy the requirements to qualify as a preferred mortgage. Furthermore, the lender will lose its general approval and will be required to obtain approval of its loan and mortgage covenants on a case-by-case basis in the future.

Section 356.23 Restrictive Loan Covenants Approved for Use by Lenders

Section 356.23 has been amended by deleting the term "non-citizen lender" in the title and the body of the section and substituting the term "lenders" in its place. As noted above, the amendments to the AFA have created a class of lenders that may or may not qualify as U.S. citizens, but who are nevertheless eligible to hold a preferred mortgage directly and to exercise restrictive loan and mortgage covenants without requiring approval from MARAD. Accordingly, the term "lender" has been substituted for "non-citizen lender" throughout the section because the approval of these restrictive loan covenants is not required for all "non-citizen lenders" but rather only for those who do not meet the requirements to hold a preferred mortgage directly.

Several commenters noted that as proposed in the NPRM, the amendments to paragraph 356.23(a) could be interpreted to require MARAD review of loan or mortgage covenants where a commercial lender or lender syndicate is using a mortgage trustee to hold the preferred mortgage for its benefit. We have therefore amended paragraph 356.23(a) to clarify that this section is intended to apply to lenders that are not otherwise exempt from MARAD review of their loan or mortgage covenants pursuant to paragraph 356.19(d).

Section 356.25 Operation of Fishing Industry Vessels by Mortgagees

Paragraph 356.25(c) provides that a mortgagee that is not eligible to own a fishing industry vessel may operate the vessel for a non-commercial purpose to

the extent necessary for the immediate safety of the vessel or for repairs, drydocking or berthing changes; provided, that the vessel is operated under the command of a citizen of the United States and for no longer than 15 calendar days. One commenter suggested that there is no need for an iron-clad 15 day limit and that the regulations should be amended to allow a non-citizen mortgage trustee to operate a vessel for longer than 15 days if the Citizenship Approval Officer grants approval. There is no need to amend paragraph 356.25(c) because paragraph 356.25(b) already provides leeway for the Citizenship Approval Officer to grant written authorization for operation of a vessel beyond what is specifically allowed in paragraph 356.25(c). Paragraph 356.25(b) states that, except as provided in paragraph 356.25(c), the vessel may not be operated for any purpose without the prior written approval of the Citizenship Approval Officer. Therefore, if a mortgagee that is not eligible to own a fishing industry vessel wishes to operate such a vessel for the purposes enumerated in 356.25(c) for a period in excess of 15 days, it may do so with written authorization of the Citizenship Approval Officer.

Section 356.27 Mortgage Trustee Requirements

The mortgage trustee requirements were amended to delete references to a requirement that the mortgage trustee demonstrate that it qualifies as a U.S. citizen because mortgage trustees are no longer required to qualify as a U.S. citizen if they otherwise meet one of the requirements of 46 U.S.C. 31322(a)(4)(A)–(E). Where references to proving citizenship were included in § 356.27, we have substituted a requirement that the mortgage trustee supply the appropriate information to demonstrate that it complies with the requirements of 46 CFR 356.19(b)(1)–(5) to be eligible to hold a preferred mortgage on fishing industry vessels.

A new paragraph (4) was also added to the trustee application which requires the mortgage trustee to agree to furnish the Citizenship Approval Officer with copies of the trust agreement as well as any other issuance, assignment or transfer of an interest related to the transaction if the beneficiary under the trust arrangement is not a commercial lender, a lender syndicate or an entity eligible to hold a preferred mortgage under 46 CFR 356.19(a)(1)–(5). This submission is necessary so that the Citizenship Approval Officer can make a determination that the trust

arrangement does not result in an impermissible transfer of control.

Several commenters noted that some entities may be reluctant to qualify as a mortgage trustee because of the risk of liability that is imposed by paragraph (d) of the mortgage trustee application, which states that a mortgage trustee "shall not assume any fiduciary duty in favor of non-citizen beneficiaries that is in conflict with any restrictions as requirements of the regulation." The commenters suggested that paragraph (d) be deleted. However, paragraph 356.27(e) provides for review by the Citizenship Approval Officer of the form of trust agreement to be used, and the Citizenship Approval Officer will review and approve the loan and mortgage documents where the beneficiary is not a commercial lender, a lender syndicate or an entity otherwise qualified to hold a preferred mortgage. This review should limit the liability exposure of a mortgage trustee; therefore, we have decided to retain paragraph (d) in the mortgage trustee application.

One commenter suggested that the requirement in paragraphs 356.27(c)(3) and (g) to submit a copy of the mortgage trustee's articles of incorporation and bylaws should be deleted as there is no need to examine these documents unless the mortgage trustee is seeking to qualify as a U.S. citizen. The requirement for a mortgage trustee that is seeking to qualify as a U.S. citizen to submit its articles of incorporation and bylaws is addressed by reference to the need to comply with § 356.19; therefore, we have deleted paragraph 356.27(c)(3) and paragraphs (a)(2) and (a)(3)(ii) of the mortgage trustee application in § 356.27(g).

Several commenters remarked that the beneficiaries under a trust agreement have the most to lose if a mortgage trustee fails to continue to qualify as a mortgage trustee. Consequently, the beneficiaries should be notified of the mortgage trustee's failure to qualify. We agree with the commenters and have added a new paragraph (a)(3)(iv) to the mortgage trustee application at § 356.27(g). The new paragraph requires mortgage trustees to provide the identity and address of all beneficiaries for which it is acting as mortgage trustee, so that the Citizenship Approval Officer can notify the beneficiaries if the mortgage trustee fails to qualify under the regulations.

Finally, one commenter suggested that the proposed requirements of § 356.27 serve no apparent purpose and that the requirements of the statute should be self executing. The commenter stated that there should be

no requirement for MARAD approval of mortgage trustees except in cases where the mortgage trustee is holding a preferred mortgage for the benefit of a lender that is not qualified to hold a preferred mortgage directly or that does not qualify as a commercial lender or lender syndicate. We disagree with the commenter that the statutory requirements for an entity to qualify as a mortgage trustee must be self-executing. The AFA placed restrictions on the entities that can hold a preferred mortgage on fishing industry vessels in order to insure that non-citizen entities cannot use loan or mortgage covenants to control fishing industry vessels that they are otherwise not eligible to own. While the amendments to the Ship Mortgage Act were intended to broaden the universe of entities that could hold a preferred mortgage directly and that could act as a mortgage trustee, the statute does not restrict MARAD from determining whether or not an entity is eligible to qualify as a mortgage trustee. In fact, the statute sets forth specific criteria that must be met and states that a mortgage trustee must also satisfy any other requirements that the Secretary of Transportation may require. Therefore, we do not agree with the commenter, and we will continue to require mortgage trustees to demonstrate that they meet certain requirements.

Section 356.31 Maintenance of Mortgage Trustee Approval

Section 356.31 was amended by deleting the requirement in paragraph (a)(1) that a mortgage trustee provide an affidavit of U.S. citizenship on an annual basis. A mortgage trustee is no longer required to qualify as a U.S. citizen, provided that it is otherwise qualified to hold a preferred mortgage on a fishing industry vessel. Accordingly, mortgage trustees will be required to submit the appropriate documentation required under § 356.19(b)(1)–(5) to demonstrate that they are qualified to hold a preferred mortgage on fishing industry vessels.

One commenter suggested that the requirement in paragraph 356.31(a)(2) to submit a copy of the mortgage trustee's articles of incorporation and bylaws on an annual basis should also be deleted as there is no need to examine these documents unless the mortgage trustee is seeking to qualify as a U.S. citizen. We agree with the commenter since the requirement for U.S. citizens to submit any changes to these documents is covered under the § 356.19; therefore, paragraph 356.31(a)(2) has been deleted and the section has been renumbered accordingly.

Paragraph 356.31(b) has also been amended by deleting any reference to the requirement for a mortgage trustee to make an annual filing within 30 days of its annual stockholders meeting. Several commenters noted that the correlation of the filing date to the annual stockholders meeting is a carryover from when the mortgage trustee was required to file an affidavit of U.S. citizenship. Accordingly, the annual filing date will be tied to the date of the mortgage trustee approval by the Citizenship Approval Officer.

Several commenters stated that paragraph 356.31(c) should be amended to provide a mortgage trustee with an opportunity to cure a deficiency in its approval within 30 days and to require the Citizenship Approval Officer to notify the beneficiaries when a mortgage trustee fails to comply with the regulations and is no longer qualified to act as a mortgage trustee. The commenters also suggested that the preferred status of the mortgage remain intact until 30 days after the beneficiaries are notified, rather than 30 days after publication of the disapproval of the mortgage trustee in the **Federal Register**.

We agree with the commenter that the beneficiaries should be notified because the beneficiaries under a mortgage trust arrangement are the entities that would suffer the greatest harm from the loss of the preferred status of a mortgage held by a mortgage trustee. Therefore, we have added a new paragraph 356.31(a)(4) that requires a mortgage trustee to provide the identity and address of all beneficiaries for which it is acting as mortgage trustee. We have also amended paragraph 356.31(c) to require the Citizenship Approval Officer to notify the beneficiaries if the mortgage trustee fails to qualify under the regulations. Such notice will be provided by mailing a copy of the **Federal Register** notice through standard U.S. mail to the beneficiary at the address provided by the mortgage trustee. During the 30 day period following publication of the disapproval notice in the **Federal Register**, the mortgage trustee must either transfer its responsibilities to an approved mortgage trustee or cure the defect in its approval or the mortgage will no longer be qualified as a preferred mortgage. While we have amended paragraph 356.31(c) to require the Citizenship Approval Officer to notify the beneficiary of a mortgage trustee's failure to qualify, we will continue to use the date that the disapproval notice is published in the **Federal Register** as the date from which the 30 day period for the mortgage trustee to cure the defect or transfer its

responsibilities will begin to run in order to minimize confusion over multiple compliance dates and to provide an absolute date with which to work.

Section 356.37 Operation of a Fishing Industry Vessel by a Mortgage Trustee

Section 356.37 provides that a mortgage trustee may only operate a fishing industry vessel where such operation is necessary for the immediate safety of the vessel. One commenter suggested that section 356.37 should be amended to provide mortgage trustees with the same flexibility to operate a fishing industry vessel as that which is granted to preferred mortgagees in paragraph 356.25(c). We agree with the commenter that these sections could be more closely aligned; therefore, we have amended section 356.37 to clarify that a mortgage trustee may operate a fishing industry vessel where non-commercial operation is necessary for the immediate safety of the vessel, as well as for repairs, drydocking or berthing changes; provided, that the vessel is operated under the command of a citizen of the United States for a period of no more than 15 calendar days.

Section 356.45 Advance of Funds

Section 356.45(a)(2)(iv) does not currently allow non-citizens to advance funds to a vessel owner and to obtain a security interest in property of the vessel owner in order to secure the debt. Because non-citizens will now be allowed to utilize a mortgage trustee to hold a preferred mortgage on a vessel for the benefit of the non-citizen lender, we propose to amend paragraph 356.45(a)(2)(iv) by inserting language at the end that would allow a non-citizen to advance funds to a vessel owner and to have a security interest in the vessel or other collateral, provided that the non-citizen uses a qualified mortgage trustee to hold the mortgage and debt instrument for the benefit of the non-citizen.

Section 356.47 Special Requirements for Large Vessels

Section 356.47 implements special requirements for certain large vessels. Vessels that exceed 165 feet in registered length, 750 gross registered tons or that have engines capable of producing in excess of 3000 horsepower are ineligible for documentation with a fishery endorsement pursuant to 46 U.S.C. 12102(c)(5), as redesignated by section 2202(a)(2) of the Supplemental Appropriations Act, 2001. A vessel that meets any of the above criteria can be exempted from the prohibition on obtaining a fishery endorsement if it

meets all of the following requirements: (1) A certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997; (2) the vessel is not placed under foreign registry after October 21, 1998; and (3) in the event of the invalidation of the fishery endorsement after October 21, 1998, application is made for a new fishery endorsement within 15 business days of the invalidation.

There are a number of events that can render a vessel's documentation and fishery endorsement immediately invalid under Coast Guard regulations. If one of these events occurs, such as the death of one of the owners in a tenancy by the entirety ownership arrangement, and the remaining owners do not apply for a new fishery endorsement within 15 business days, the vessel could potentially suffer a permanent loss of its eligibility to be documented with a fishery endorsement. Because of the harsh result that could occur if one of these events occurred and the vessel owner did not address the issue within the prescribed time period, MARAD's regulations state that the 15 day period will not begin to run until the vessel owner receives written notification from MARAD or the Coast Guard identifying the reason for such invalidation. In other words, the vessel's fishery endorsement will not be deemed invalid for purposes of complying with paragraph 356.47(b)(3) until notice is given. This requirement ensures that a vessel owner is aware of the consequences of failing to apply for a new fishery endorsement within the specified period of time in the event of an invalidation.

We believe that the sale in bankruptcy of a fishing industry vessel that meets the criteria of paragraph 356.47(a) can also lead to an unintended and harsh result if the vessel is purchased by a mortgagee that is not qualified to own a vessel with a fishery endorsement. A mortgagee is permitted under 46 U.S.C. 31329 to purchase a vessel on which it holds a preferred mortgage, even though the mortgagee may not be qualified to own a documented vessel. The Coast Guard's regulations at 46 CFR 67.161 provide that such a sale to a mortgagee is not deemed to be a foreign sale or to invalidate the vessel's documentation for purposes of complying with certain specified statutory provisions; however, the endorsement on the vessel is not deemed to remain valid. Therefore, as a practical matter, a mortgagee that is not qualified to own a fishing industry vessel is restricted from purchasing such a vessel on which it holds a mortgage and subsequently holding the

vessel for resale to a qualified buyer, as permitted by 46 U.S.C. 31329(b), because the vessel would lose its eligibility to be documented with a fishery endorsement if an application for a new fishery endorsement is not submitted within 15 business days by a qualified owner. Consequently, a mortgagee would be deprived of using a statutorily permitted means of protecting the value of its collateral by purchasing the vessel and subsequently selling the vessel to a qualified buyer. Furthermore, this could adversely impact the ability of vessel owners to obtain financing from entities that are eligible to hold a preferred mortgage on fishing industry vessels, but which are not eligible to own fishing industry vessels. Accordingly, we have amended paragraph 356.47(b)(3) to clarify that a fishing industry vessel's fishery endorsement will not be deemed invalid for purposes of complying with this paragraph, if the vessel is purchased pursuant to 46 U.S.C. 31329 by a mortgagee that is not eligible to own a vessel with a fishery endorsement, provided that the mortgagee is eligible to hold a preferred mortgage on such vessel at the time of the purchase.

Following the publication of the NPRM, the AFA was amended by section 1103 of Public Law 107-206 by striking the phrase "of more than 750 gross registered tons" in each place it appears, and inserting in lieu thereof, "of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons (as measured under chapter 143 of that title)". This change was deemed to be necessary because newly constructed fishing industry vessels would not be eligible for documentation with a fishery endorsement if the vessel was over approximately 60 feet in registered length. Newly constructed fishing industry vessels are required to be measured pursuant to 46 U.S.C. chapter 143 for purposes of complying with the AFA. The tonnage measurement of a vessel measured under chapter 145 is much higher than that which would be obtained for a vessel of comparable length that was measured under chapter 143; therefore, newly constructed vessels that are much smaller than 165 feet would not be eligible for documentation with a fishery endorsement prior to the amendment to the AFA. The amendment allows vessels of up to 165 feet to be eligible for documentation if the vessel meets the corresponding tonnage threshold under the tonnage measurement system that applies to the particular vessel. We

have amended § 356.47 to incorporate this technical change.

We are also amending § 356.47 by adding a new paragraph (e) that will require the owners of vessels that are greater than 165 feet in registered length, 750 gross tons (as measured under 46 U.S.C. chapter 145) or 1,900 gross registered tons (as measured under the International Tonnage Convention, 46 U.S.C. chapter 143), or that have engines capable of producing in excess of 3,000 shaft horsepower to submit with their annual affidavit of U.S. citizenship a certification that the vessel is eligible to be documented with a fishery endorsement because it complies with § 356.47(b), (c) or (d) of these regulations. While this information can be obtained by researching Coast Guard files on specific vessels, we have determined that we would not be able to research the information in a timely manner for all of the vessels that are subject to these new restrictions. Therefore, the vessel owner will be required to certify that the vessel is eligible for documentation pursuant to one of the exceptions in § 356.47.

Section 356.51 Exemptions for Specific Vessels

Paragraph (a) states that certain vessels will be exempt from the requirements of 46 U.S.C. 12102(c) "until such time as 50% of the interest owned and controlled in the vessel changes." We added the phrase "after October 1, 2001," after "such time" in paragraph (a) in order to clarify that the ownership structure on October 1, 2001, is the baseline from which we will measure any change in ownership of a vessel that is exempt from the requirements of 46 U.S.C. 12102(c) pursuant to this section.

In addition, there were several technical amendments to § 356.51 to correct typographical errors in the regulation. The official number for the vessel EXCELLENCE was corrected in paragraphs 356.51(a)(1) and (c). Paragraph 356.51(e) was deleted and a reworded version of the paragraph was inserted as a new paragraph (d).

The current paragraph (d) relates to the exemption from the ownership and control requirements for fishing industry vessels engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council and for purse seine vessels that are engaged in tuna fishing in the Pacific Ocean outside of the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty. Such vessels are exempted, pursuant to 46 U.S.C. 12102(c)(4), as redesignated by

section 2202 of the Supplemental Appropriations Act, 2001, from complying with the new ownership and control requirements of the AFA. Our current regulations exempt the vessels from the requirement to meet the higher ownership and control standard of the AFA; however, the regulations require the owners of such vessels to file an affidavit of U.S. citizenship with MARAD to demonstrate that the vessel complies with the ownership and control standard that existed prior to the passage of the AFA. Because many of these vessels and the vessel owners are located in remote areas, the requirement to file an affidavit of U.S. citizenship with MARAD has proven to be a difficult requirement for many vessel owners to satisfy. After further consideration, we have determined that the intent of the statutory exemption was to allow the owners of such vessels to forgo the requirement to file an affidavit of U.S. citizenship with MARAD. Accordingly, we have deleted the requirement to file an affidavit of U.S. citizenship with MARAD, and we are adding a new paragraph (f) that will require the vessel owner to notify both MARAD's Citizenship Approval Officer and the Coast Guard's National Vessel Documentation Center that it is claiming the exemption available to the vessel under 46 CFR 356.51(e). Vessel owners will then be required to follow the Coast Guard's regulatory procedures that were in effect prior to the passage of the AFA to document the vessel with a fishery endorsement. Furthermore, vessels covered by 46 CFR 356.51(e) are not subject to the restrictions of § 356.47 during the time that the vessel is engaged in the fisheries as outlined in paragraph 356.51(e).

Only one party provided comments on the amendments to § 356.51. The commenter supported the proposed changes and noted that the changes would relieve an administrative burden that has complicated efforts for the owners of such vessels to raise capital for their operations.

Section 356.53 Conflicts with International Agreements

Section 213(g) of the AFA states that if the requirements of 46 U.S.C. 12102(c) or 46 U.S.C. 31322(a), as amended by the AFA, are determined to be inconsistent with the provisions of an international investment agreement to which the United States was a party with respect to the owner or mortgagee of a fishing industry vessel on October 1, 2001, the requirements of the AFA will not apply to the owner or mortgagee of that specific vessel to the extent of the inconsistency. Section

2202(e) of the Supplemental Appropriations Act, 2001, amends section 213(g) of the AFA to change the date upon which an ownership or mortgage interest must be in place in order for an owner or mortgagee to claim the protection of an international investment agreement. The date was changed from October 1, 2001, to July 24, 2001. Accordingly, we have amended § 356.53 by substituting the July 24, 2001 date for "October 1, 2001" and "September 30, 2001" where those dates appear in the section.

We have also amended paragraph (d) to give the Chief Counsel the discretion as to whether a petition under this section should be published in the **Federal Register**. The decision as to whether a petition should be published in the **Federal Register** will hinge on whether the petition contains new and unique arguments on which the Chief Counsel believes that the public should be given an opportunity to comment. Because of the expense and time involved in publishing these petitions in the **Federal Register** and the fact that no comments were received in response to any of the petitions that were published in the last year, we determined that it would be best to provide discretion to the Chief Counsel to determine whether a petition warrants publication and public comment.

Paragraph (b)(5), which addresses the timing of submissions prior to October 1, 2001, has also been removed. This section is no longer necessary now that October 1, 2001, has passed.

Finally, section 213(g) of the AFA provides that a vessel owner is not subject to the requirements of the AFA with respect to a particular vessel to the extent that those requirements are found to be inconsistent with an international agreement relating to foreign investment to which the United States is a party. However, section 213(g) also states that the requirements of the AFA shall apply to the owner if any ownership interest in the vessel owner is transferred to or otherwise acquired by a foreign individual or entity after the effective date of the AFA. Section 2002(e) of the Supplemental Appropriations Act, 2001, further amended section 213(g) to require that the provisions of 46 U.S.C. 12102(c) and 46 U.S.C. 31322, as amended by the AFA, shall apply to a vessel owner or mortgagee that is subject to an exemption under section 213(g) if the percentage of foreign ownership in the vessel is increased after the effective date of this subsection.

Section 356.53(g) sets forth the requirement that the provisions of the

AFA will apply to all owners and mortgagees that acquire an interest after the effective date of the AFA in a fishing industry vessel that is subject to a section 213(g) exemption. Paragraph 356.53(g)(2) states that the requirements of the AFA will apply to all owners and mortgagees in a fishing industry vessel that is subject to a section 213(g) exemption if any ownership interest in that vessel owner is transferred to or otherwise acquired by a non-citizen after the effective date of the AFA. The existing paragraph 356.53(g)(2) provides that an ownership interest in a vessel would be considered to be transferred under this subsection when an interest in the primary vessel owner is transferred. However, we stated that we would not consider a transfer in the primary vessel owner to occur where: (1) The transfer is of disparately held shares of a publicly traded company that equal less than 5 percent of the shares in any class of stock; (2) the transfer is between subsidiary companies under one parent; or (3) the transfer is pursuant to a divorce or death.

We proposed several changes to paragraph 356.53(g) in the NPRM in order to incorporate the new statutory amendments that dictate that the requirements of the AFA should be applied to a vessel owner or mortgagee if the percentage of foreign ownership in the vessel is increased after the effective date of section 213(g), as amended. We also proposed an amendment to tighten our interpretation of what constitutes a change in ownership interest. Specifically, we proposed to add a new paragraph (g)(3) to clarify that an ownership interest is deemed to be transferred if: (1) There is a transfer of direct ownership interest in the primary vessel owning entity or the parent of the primary vessel owning entity where the primary vessel owning entity is a wholly owned subsidiary; or (2) there is a transfer of ownership at any tier that results in a transfer of five percent or more of the ownership interest in the primary entity. A new paragraph (g)(4) was also proposed and the provisions of paragraph (g)(2) relating to transfers of disparately held shares in a publicly traded vessel owning entity and transfers made pursuant to divorce or death were moved there.

One party submitted comments on the proposed changes to § 356.53. The commenter objected to our proposed amendments in paragraph 356.53(g)(3)(ii) to further restrict our interpretation of what constitutes a transfer of ownership. The commenter stated that transfers of ownership should be limited to transfers of the

primary vessel owning entity and that we should not and could not restrict transfers of ownership in entities that are farther up the ownership chain. The commenter objected to our proposal for the following reasons: (1) That the plain language of section 213(g) provides that the treaty exemption will be lost only if there is a transfer of interest in the primary vessel owning entity; (2) that section 213(g) provides that the treaty exemption will be lost if there is a transfer of "any" interest in the vessel owner; (3) that the proposed rule would adopt an insupportable interpretation of the words "foreign individual or entity;" (4) that the 2001 amendment to section 213(g) does not provide support for proposed paragraph 356.53(g)(3)(ii); and (5) that MARAD proposes to take inconsistent positions in evaluating the percentage of "foreign ownership" under 46 U.S.C. 12102(c) and AFA section 213(g).

We disagree with the commenter regarding our authority to regulate transfers of ownership beyond the first tier of vessel ownership. The increase in U.S. citizen ownership and control of fishing industry vessels that is mandated by the AFA was intended to increase the U.S. citizen ownership and control of fishing industry vessels and to address a loophole that was created in 1987 by the Commercial Fishing Industry Vessel Anti Reflagging Act of 1987 ("Anti-Reflagging Act"), Pub. L. 100-239. The Anti-Reflagging Act reduced the U.S. citizen ownership and control requirement for fishing industry vessels from a "documentation citizen" standard to a "controlling interest" standard. However, section 7(b) of the Anti-Reflagging Act provided a savings clause for the owners of vessels that were documented with a fishery endorsement prior to the passage of the Anti-Reflagging Act. The savings clause allowed the vessel owner to continue to document a particular vessel with a fishery endorsement if the vessel had been documented with a fishery endorsement prior to the passage of the Act. This grandfather provision was subsequently determined in *Southeast Shipyard Ass'n v. United States*, 979 F.2d 1541 (D.C. Cir. 1992), to run with the vessel rather than the vessel owner. Therefore, the increased U.S. ownership and control in these vessels could not be assured as U.S. entities continued to buy into the grandfathered vessels over time because a grandfathered vessel could always be sold back to an entity that could be wholly owned by non-citizens, provided that the entity qualified as a documentation citizen.

Section 204 of the AFA repealed the ownership savings clause of the Anti-

Reflagging Act and required vessel owners to comply with the new 75 percent U.S. citizen ownership and control standard imposed by the AFA. Vessel owners and mortgagees are exempted from complying with the new requirements of the AFA if the requirements are inconsistent with the provisions of an international investment agreement to which the United States is a party. However, the exemption provided for in section 213(g) is limited in several ways. First, the exemption is limited to the ownership or mortgage interest of a particular owner or mortgagee with respect to a particular vessel, and it applies only to the extent of the inconsistency with the international agreement. Secondly, 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 or if the percentage of foreign ownership in the vessel is increased after July 24, 2001, the effective date of section 213(g), as amended.

The purpose of the exemption under section 213(g) is twofold. First, the exemption for specific vessels ensures that the AFA cannot be deemed unenforceable in its entirety because it is in conflict with U.S. obligations under an international investment agreement. Secondly, it provides an exemption for the owners and mortgagees of vessels that do not meet the new ownership and control requirements, provided that when any interest is sold or transferred, it is sold or transferred to U.S. citizens so that, over time the U.S. citizen ownership and control of the vessel comes into compliance with the requirements of the AFA.

The commenter states that the plain language of section 213(g) provides that the treaty exemption will be lost only if there is a transfer of an interest in the primary vessel owning entity. Furthermore, the commenter asserts that section 213(g) does not provide statutory authority for MARAD to regulate transfers of ownership interest above the first tier of vessel ownership. We disagree with the commenter.

Section 213(g) refers to the "vessel owner" and in no way specifically addresses the primary vessel owner or limits our authority to govern transfers of ownership at various levels of the ownership structure. The term "owner" as used in the context of the AFA implicitly applies to the complete ownership structure and therefore covers the owners at each tier. The fact that section 213(g) does not explicitly refer to the owner "at each tier and in

the aggregate" as is done in 46 U.S.C. 12102(c) does not mean that we are prohibited from looking beyond the first tier owner in evaluating the ownership structure of a vessel subject to a section 213(g) exemption. Acceptance of the commenter's interpretation that the term "owner" applies only to the first tier vessel owner would allow a vessel owner to easily circumvent the restrictions in section 213(g) on transfers of interest to foreign individuals or entities by simply having a tiered ownership structure and selling an interest in the vessel ownership structure above the first tier. For example, a vessel that is subject to a 213(g) exemption and that was grandfathered under the Anti-Reflagging Act could be owned by a U.S. corporation that is wholly owned by a foreign entity, provided that the U.S. corporation qualifies as a documentation citizen. Under the commenter's interpretation, all or part of the interest in the non-citizen parent of the documentation citizen could be freely transferred to another non-citizen entity because the non-citizen parent is not the primary vessel owner. The restrictions on transfers of sale in section 213(g) were designed to ensure that any transfers of ownership in a vessel subject to a section 213(g) exemption would be to U.S. citizens until such time as the entire ownership structure came into compliance with the new ownership and control requirements of the AFA. The commenter's interpretation would completely frustrate this intended result.

The commenter also argues that the proposed regulation would adopt an insupportable interpretation of the words "foreign individual or entity." Section 213(g) provides that the exemption will be lost if there is a transfer of an ownership interest in the vessel owner "to a foreign individual or entity." The commenter suggests that our proposed regulations essentially substitute the term non-citizen for the terms "foreign individual or entity" and that this cannot be supported by the statute. The commenter states that a corporation or partnership formed under the laws of the United States does not become a "foreign * * * entity" because more than 25 percent of the ownership of the entity is owned by persons who do not meet the AFA test of citizenship. Therefore, the commenter suggests that we are incorrect in determining that a transfer of an ownership interest in a vessel to an entity that does not qualify as a U.S. citizen under the AFA should be treated

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

State and local officials was not necessary.

Regulatory Flexibility Act

This rulemaking will not have a significant economic impact on a substantial number of small entities. The amendments to the regulations relating to vessel owners are of a technical nature that will not result in a significant economic impact. Furthermore, this rule will make it easier for owners of fishing industry vessels to obtain financing for their vessels by expanding the universe of lenders that are eligible to hold a preferred mortgage on a fishing industry vessel as security for a loan. Therefore, we certify that this rule will not have a significant economic impact on a substantial number of small business entities.

Environmental Impact Statement

We have analyzed this rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order ("MAO") 600-1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this rulemaking is not required. This rulemaking involves administrative and procedural regulations which clearly have no environmental impact.

Paperwork Reduction Act

The Office of Management and Budget ("OMB") previously reviewed the information collection requirements under 46 CFR part 356 and assigned OMB control number 2133-0530. This rule establishes a new requirement for the collection of information. OMB has been requested to review and approve the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). We request that commenters address in their comments whether the information collection in this proposal is necessary for the agency to properly perform its functions and will have practical utility, the accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. Comments should be sent not later than 30 days following publication of this notice in the **Federal Register**. Comments should refer to the docket number that appears at the top of this

document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at <http://dmses.dot.gov/gov/submit>. All comments received will be available for examination at the above referenced address between 10 a.m. and 5 p.m. e.d.t. (or e.s.t.), Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at <http://dms.dot.gov>.

In accordance with the Paperwork Reduction Act, this notice announces MARAD's intentions to request an amendment to its approval for the subject information collection to allow processing of applications to determine the eligibility of owners of vessels of 100 feet or greater in registered length to obtain a fishery endorsement to the vessel's documentation, to determine the eligibility of lending institutions to hold a preferred mortgage on a fishing vessel, a fish processing vessel, or a fish tender vessel of 100 feet or greater in registered length and to determine the eligibility of mortgage trustees to hold a preferred mortgage on such vessels for the benefit of a non-citizen lender. Copies of this request may be obtained from the Office of Chief Counsel at the address given above under **ADDRESSES**.

Title of Collection: (Eligibility of U.S.-Flag Vessels of 100 Feet or Greater In Registered Length to Obtain a Fishery Endorsement to the Vessel's Documentation) 46 CFR part 356.

Type of Request: Modification of existing information collection.

OMB Control Number: 2133-0530.

Form Number: None.

Expiration Date of Approval: Three years following approval by OMB.

Summary of the Collection of Information: Owners of vessels of 100 feet or greater in registered length who wish to obtain a fishery endorsement to the vessel's documentation are currently required to file an affidavit of United States citizenship demonstrating that they comply with the requirements of section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c) and with the requirements of 46 U.S.C. 12102(c). Other documentation that must be submitted with the affidavit includes a copy of the articles of incorporation, bylaws or other comparable documents, a description of any management agreements entered into with non-citizens, a certification that any management contracts with non-citizens do not convey control in a fishing industry vessel to a non-citizen, and a

copy of any time charters or voyage charters with non-citizens.

Mortgagees who plan to finance vessels of 100 feet or greater in registered length that have a fishery endorsement or for which a fishery endorsement to the vessel's documentation is sought must submit a certification to demonstrate that they meet the statutory definition of a "preferred mortgagee" at 46 U.S.C. 31322(a)(4). Prior to this rulemaking a preferred mortgagee was required to submit an affidavit of United States citizenship to demonstrate that it complies with the United States citizen ownership and control requirements of section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c), or in the case of a State or Federally chartered financial institution, the controlling interest requirements of section 2(b) of the 1916 Act. If a mortgagee does not comply with the definition of a "preferred mortgagee," it must use a mortgage trustee that qualifies as a citizen of the United States to hold the preferred mortgage for the benefit of the non-citizen lender. The mortgage trustee must file an application for approval as a mortgage trustee that includes evidence that it is eligible to hold a preferred mortgage and that it complies with the requirements of 46 U.S.C. 31322. In addition to the affidavit of United States citizenship, corporations and other entities must submit documents which demonstrate that the entity is organized and existing under the laws of the United States, such as articles of incorporation and bylaws, or other comparable documents. Annually, owners of vessels, mortgagees and applicable mortgage trustees must submit prescribed citizenship or other qualifying information to MARAD's Citizenship Approval Officer.

Need and Use of the Information: The information collection will be used to verify statutory compliance with the United States citizen ownership and control requirements under section 2(b) and section 2(c) of the 1916 Act and 46 U.S.C. 12102(c) for owners, charterers, mortgagees, and mortgage trustees of vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is being sought. The information collection is being modified to require owners of vessels that are greater than 165 feet or 750 gross tons or that have engines capable of producing more than 3000 horsepower to submit a certification indicating that the vessel was documented with a fishery endorsement on September 25, 1997 and that the fishery endorsement has remained valid, therefore the vessel

is eligible for continued documentation with a fishery endorsement. In addition, rather than demonstrate that they meet specific U.S. citizenship standards, most preferred mortgagees will now be required to submit information to demonstrate that they comply with the new statutory definition of a preferred mortgagee at 46 U.S.C. 31322(a)(4). Without the information it would be impossible to know whether certain vessels are eligible for documentation with a fishery endorsement and whether a preferred mortgagee is eligible to hold a preferred mortgage on a fishing industry vessel. This amendment to the collection of information does not result in an increased burden, but it does result in a change in the type of information that is being collected.

One commenter suggested that the requirements under section 356.19 are inconsistent with the Paperwork Reduction Act and the Ship Mortgage Act. The regulations require a lender to file a certification with MARAD to demonstrate that the lender complies with the statutory requirements to hold a preferred mortgage on a fishing industry vessel before the mortgage will qualify as a preferred mortgage. The commenter states that a lender has the most to lose if it does not comply with the statutory requirements; therefore, self regulation by the industry should be sufficient. In addition, the commenter states that the Ship Mortgage Act, as amended, does not give MARAD specific authority to require such a certification from preferred mortgagees, so the certification requirement is inconsistent with the requirements of both the Ship Mortgage Act and the Paperwork Reduction Act.

While we agree with the commenter that a lender has the most to lose if a determination is made that it does not qualify as a preferred mortgagee, self regulation of preferred mortgagees is not adequate to satisfy the spirit of the law and MARAD's mandate to ensure that non-citizens do not acquire impermissible control of fishing industry vessels. Because a preferred mortgagee can exercise control over a fishing industry vessel, it is important that MARAD establish that the mortgagee complies with the requirements of the statute and that it is not an entity that is prohibited from exercising control over the vessel. There is no language in the statute to indicate that MARAD is limited in any way regarding the information that it can or should require from preferred mortgagees. Furthermore, as discussed in the preamble to section 356.19, we have created a simple certification that

should not be burdensome to lenders that wish to file a preferred mortgage.

Description of Respondents: Owners, bareboat charterers, mortgagees, and mortgage trustees of vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is being sought.

Annual Responses: Responses will be required on an occasional and an annual basis. Updates will be required during the year if there are changes to the ownership or financing of the vessel. There are approximately 550 vessels and 400 vessel owners that are subject to this regulation. Approximately 450 responses are expected from owners and bareboat charterers and less than 50 responses are expected from mortgagees and mortgage trustees.

Annual Burden: 2950 hours.

Unfunded Mandates Reform Act of 1995

This rule would not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It would not result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This rule is the least burdensome alternative that achieves the objective of the rule.

Regulatory Identification Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number is contained in the heading of this document to cross-reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 356

Citizenship and naturalization, Fishery endorsement, Fishing vessels, International investment agreements, Mortgages, Penalties, Reporting and recordkeeping requirements.

Accordingly, 46 CFR part 356 is amended as follows:

PART 356—REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL'S DOCUMENTATION

1. The authority citation for part 356 is revised to read as follows:

Authority: 46 U.S.C. 12102; 46 U.S.C. 31322; Pub. L. 105-277, division C, title II, subtitle I, section 203 (46 U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; Pub. L. 107-20, section 2202, 115 Stat. 168-170; 49 CFR 1.66.

2. Part 356 is amended by revising the phrases "Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel" and "Fishing Vessel, Fish Tender Vessel, or Fish Processing Vessel" to read "Fishing Industry Vessel" in every place that either phrase appears in part 356 except as used in newly added § 356.3(j).

Subpart A—General Provisions

356.3 [Amended]

3. Section 356.3 is amended as follows:

- a. Paragraphs (l) through (x) are redesignated as paragraphs (o) through (aa).
- b. Paragraphs (i) through (k) are redesignated as paragraphs (k) through (m).
- c. Paragraphs (g) and (h) are redesignated as paragraphs (h) and (i).
- d. New paragraphs (g), (j) and (n) are added.
- e. Paragraph (e)(2) and newly designated paragraphs (h)(2), (u) and (y)(2) are revised.
- f. In newly designated paragraph (q), paragraph (q)(2) is removed, paragraph (q)(3) is redesignated as paragraph (q)(2), and new paragraph (q)(3) is added.
- g. In newly designated paragraphs (p) and (q), add the word "Industry" following the word "Fishing".
- h. Newly designated paragraph (s) is revised.

The additions and revisions read as follows:

356.3 Definitions

* * * * *

(e) *Citizen of the United States, Citizen or U.S. Citizen:*

* * * * *

(2) Other criteria that must be met by entities other than individuals include:

- (i) In the case of a corporation:
 - (A) The chief executive officer, by whatever title, and chairman of the board of directors and all officers authorized to act in the absence or disability of such persons must be Citizens of the United States; and
 - (B) No more of its directors than a minority of the number necessary to constitute a quorum are Non-Citizens;
- (ii) In the case of a partnership all general partners are Citizens of the United States;
- (iii) In the case of an association:
 - (A) All of the members are Citizens of the United States;
 - (B) The chief executive officer, by whatever title, and the chairman of the board of directors (or equivalent committee or body) and all officers authorized to act in their absence or

disability are Citizens of the United States; and,

(C) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(iv) In the case of a joint venture:

(A) It is not determined by the Citizenship Approval Officer to be in effect an association or a partnership; and,

(B) Each co-venturer is a Citizen of the United States;

(v) In the case of a Trust that owns a Fishing Industry Vessel:

(A) The Trust is domiciled in the United States or a State;

(B) The Trustee is a Citizen of the United States; and

(C) All beneficiaries of the trust are persons eligible to document vessels pursuant to the requirements of 46 U.S.C. 12102(c);

(vi) In the case of a Limited Liability Company (LLC) that is not found to be in effect a general partnership requiring all of the general partners to be Citizens of the United States:

(A) Any Person elected to manage the LLC or who is authorized to bind the LLC, and any Person who holds a position equivalent to a Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors in a corporation are Citizens of the United States; and,

(B) Non-Citizens do not have authority within a management group, whether through veto power, combined voting, or otherwise, to exercise control over the LLC.

* * * * *

(g) *Commercial Lender* means an entity that is primarily engaged in the business of lending and other financing transactions and that has a loan portfolio in excess of \$100,000,000, of which not more than 50 per centum in dollar amount consists of loans to borrowers in the commercial fishing industry, as certified by the Commercial Lender to the Citizenship Approval Officer.

* * * * *

(h) *Controlling Interest*:

* * * * *

(2) Other criteria that must be met by entities other than an individual include:

(i) In the case of a corporation:

(A) The Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States; and,

(B) No more than a minority of the number of its directors, or equivalent,

necessary to constitute a quorum are Non-Citizens;

(ii) In the case of a partnership all general partners are Citizens of the United States;

(iii) In the case of an association:

(A) The Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States; and,

(B) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(iv) In the case of a joint venture:

(A) It is not determined by the Citizenship Approval Officer to be in effect an association or partnership; and

(B) A majority of the equity is owned by and vested in Citizens of the United States free and clear of any trust or fiduciary obligation in favor of any Non-Citizen;

(v) In the case of a Limited Liability Company (LLC) that is not found to be in effect a general partnership requiring all of the general partners to be Citizens of the United States:

(A) Any Person elected to manage the LLC or who is authorized to bind the LLC, and any Person who holds a position equivalent to the Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors in a corporation and any Persons authorized to act in their absence are Citizens of the United States; and,

(B) Non-Citizens do not have authority within a management group, whether through veto power, combined voting, or otherwise, to exercise control over the LLC;

* * * * *

(j) *Fishing Industry Vessel* means a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

* * * * *

(n) *Lender Syndicate* means an arrangement established for the combined extension of credit of not less than \$20,000,000 made up of four or more entities that each have a beneficial interest, held through an agent, under a trust arrangement established pursuant to 46 U.S.C. 31322(f). Other than the exercise by the agent of powers related to routine administrative matters, none of the entities in a Lender Syndicate may exercise powers related to the Lender Syndicate's extension of credit without the concurrence of at least one other unaffiliated beneficiary. Powers related to routine administrative matters include those concerning the day-to-day management of the extension of credit

such as monitoring compliance with loan covenants, collateral inspections and similar matters; however, more substantive powers such as amending loan and mortgage documents, releasing guarantors or collateral, or administering the loan in the event of a default are not considered routine.

* * * * *

(q) *Mortgage Trustee*, * * *

* * * * *

(2) Is authorized under those laws to exercise corporate trust powers;

(3) Is eligible to hold a Preferred Mortgage under 46 U.S.C.

31322(a)(4)(A)-(E);

* * * * *

(s) *Non-Citizen Lender* means a lender that does not qualify as a Citizen of the United States.

* * * * *

(u) *Preferred Mortgage* means a mortgage on a Fishing Industry Vessel that has as the Mortgagee:

(1) A person eligible to own a vessel with a fishery endorsement under 46 U.S.C. 12102(c);

(2) A state or federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;

(3) A farm credit lender established under title 12, chapter 23, of the United States Code [12 U.S.C. 2001 *et seq.*];

(4) A commercial fishing and agriculture bank established pursuant to State law;

(5) A commercial lender organized under the laws of the United States or of a State and eligible to own a vessel under 46 U.S.C. 12102(a); or

(6) A Mortgage Trustee that complies with the requirements of 46 U.S.C. 31322(f) and 46 CFR 356.27 through 356.31.

* * * * *

(y) *Trust* means:

* * * * *

(2) In the case of a mortgage trust, a trust that is domiciled in and existing under the laws of the United States, or of a State, that has as its trustee a Mortgage Trustee as defined in this section, and that is authorized to act on behalf of a beneficiary in accordance with the requirements of §§ 356.27 through 356.31.

* * * * *

Subpart B—Ownership and Control

4. In § 356.5, revise paragraph (d) to read as follows:

§ 356.5 Affidavit of U.S. Citizenship.

* * * * *

(d) The prescribed form of the Affidavit of U.S. Citizenship is as follows:

State of _____ County of _____ Social Security Number: _____ 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 45 days of the annual documentation renewal date for vessel owners. Other parties required to provide evidence of U.S. citizenship status must file 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, the Chairman of the Board of Directors, all Vice Presidents or other individuals who are authorized to act in the absence or disability of the Chief Executive Officer or Chairman of the Board of Directors, and the Directors of the Corporation are as follows:¹

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.) 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 all Non-Citizen officers and directors, if any). The By-laws of the Corporation provide that _____ (Number) of the directors are necessary to constitute a quorum; therefore, the Non-Citizen directors named represent no more than a minority of the number necessary to constitute a quorum.

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

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) the only class 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. [If different classes of stock exist, give the same information for each class issued and outstanding, showing the monetary value and voting rights per share in each class. If

there is an exception to the statement in clause (b), the name, address, and citizenship of the stockholder and the amount and class of stock owned should be stated and the required citizenship information on such stockholder must be submitted.] That the registered addresses of _____ owners of record of _____ shares of the issued and outstanding _____ (Class) 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). [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 for a corporation that must satisfy the controlling interest requirements of section 2(b) of the Shipping Act, 1916, 46 App. U.S.C. § 802(b), or not less than 95 per centum for an entity that is demonstrating ownership in a vessel for which a fishery endorsement is sought. 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 of stock, if there is more than one class.)

or

[**Note:** An entity that has less than 30 stockholders should use the following alternate paragraph (4) and strike the inapplicable paragraph (4).]

4. Information as to stock, where Corporation has less than 30 stockholders: That the information as to stock ownership, upon which the Corporation relies to establish that 75% of the stock ownership is vested in Citizens of the United States, is as follows:

Name of stockholder	Date and place of birth	Number of shares owned (each class)	Percentage of shares owned (each class)

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 and the appropriate percentage of shares held, with statement that they are all U.S. citizens. Nominee holders of record of 5% or more of any class of stock and the beneficial owners thereof should be named and their U.S. citizenship information submitted to MARAD.

5. That 75% of the interest in (each) said Corporation, as established by the information hereinbefore set forth, is owned by Citizens of the United States; that the title

to 75% of the stock of (each) class 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 more than 25% 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 any interest in said Corporation in excess of 25% conferred upon or permitted to be exercised by any person who is not a Citizen of the United States; and

or
[**Note:** An entity that is required to comply with the controlling interest requirements of section 2(b) of the Shipping Act, 1916, 46 App. U.S.C. § 802(b), should use the

following alternate paragraph (5) and strike the inapplicable paragraph (5).]

5. That the Controlling Interest in (each) said Corporation, as established by the information hereinbefore set forth, is owned by Citizens of the United States; that the title to a majority 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 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 Corporation conferred upon or permitted to

¹ Offices that are currently vacant should be noted when listing Officers and Directors in the Affidavit.

be exercised by any person who is not a Citizen of the United States; and

6. That the affiant has submitted all of the necessary documentation required under 46 CFR § 356.13 in connection with this Affidavit of U.S. Citizenship for the vessels herein identified.

Vessel Name	Official Number
1.	
2.	

[Note: Paragraph 6 should be included in the Affidavit of U.S. Citizenship submitted by an entity that owns a Fishing Industry Vessel.]

7. 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.

(Name and title of affiant)

(Signature of affiant)

Date

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).

* * * * *

§ 356.7 [Amended]

5. Section 356.7(c)(1)(ii) is revised to read as follows:

§ 356.7 Methods of establishing ownership by United States Citizens.

* * * * *

(c) * * *
(1)(i) * * *

(ii) At least 65% of the stock (each class) of the corporation be held by Persons having a registered U.S. address in order to infer at least 51% ownership by U.S. Citizens; and

* * * * *

§ 356.11 [Amended]

6. Section 356.11(a)(7) is revised to read as follows:

§ 356.11 Impermissible control by a Non-Citizen.

(a) * * *

(7) Has the right to cause the sale of a Fishing Industry Vessel other than:
(i) By an entity that is eligible to hold a Preferred Mortgage on the vessel pursuant to § 356.19(a)(2) through (a)(5);
(ii) By an approved Mortgage Trustee that is exercising loan and mortgage covenants on behalf of a beneficiary that qualifies as a Commercial Lender, a Lender Syndicate or an entity eligible to hold a Preferred Mortgage under § 356.19(a)(2) through (a)(5);

(iii) By an approved Mortgage Trustee that is exercising loan or mortgage

covenants for a beneficiary that is not qualified to hold a Preferred Mortgage, provided that the loan or mortgage covenants have been approved by the Citizenship Approval Officer; or

(iv) Where it is necessary in order to allow a Non-Citizen to dissolve its interest in the entity;

* * * * *

Subpart C—Requirements for Vessel Owners

§ 356.13 [Amended]

7. Section 356.13 is amended as follows:

- a. By removing the word “and” at the end of paragraph (a)(11);
- b. By removing the period at the end of paragraph (a)(12) and inserting in lieu thereof a semicolon followed by the word “and”;
- c. By revising paragraph (a)(5); and
- d. By adding a new paragraph (a)(13).
The additions read as follows:

§ 356.13 Information required to be submitted by vessel owners.

(a) * * *

(5) Any loan agreements or other financing documents applicable to a Fishing Industry Vessel where the lender has not been approved by MARAD to hold a Preferred Mortgage on Fishing Industry Vessels, excepting financing documents that are exempted from review pursuant to § 356.19(d) and loan documents that have received general approval from the Citizenship Approval Officer pursuant to § 356.21 for use with an approved Mortgage Trustee.

* * * * *

(13) A copy of the Large Vessel Certification required by § 356.47.

* * * * *

§ 356.15 [Amended]

8. Section 356.15 is amended as follows:

- a. By removing paragraphs (a), (b), and (c);
- b. By redesignating paragraphs (e) and (f) as paragraphs (a) and (b);
- c. By redesignating paragraph (d) as paragraph (c) and by removing the words “will necessarily” from the third sentence and inserting in lieu thereof the word “may”; and
- d. By adding a new paragraph (d) to read as follows:

§ 356.15 Filing of Affidavit of U.S. Citizenship.

* * * * *

(d) The owner of a Fishing Industry Vessel or a prospective owner of such a vessel may request a letter ruling from the Citizenship Approval Officer in

order to determine whether the owner under a proposed ownership structure will qualify as a U.S. Citizen that is eligible to document the vessel with a fishery endorsement. A complete request for a letter ruling must be accompanied by an Affidavit of U.S. Citizenship and all other documentation required by “ 356.13. The Citizenship Approval Officer will issue a letter ruling based on the ownership structure that is proposed; however, the Citizenship Approval Officer reserves the right to reverse the determination if any of the elements of the ownership structure, contractual arrangements, or other material relationships are altered when the vessel owner submits the executed Affidavits and supporting documentation.

§ 356.17 [Amended]

9. Section 356.17(b) is revised to read as follows:

§ 356.17 Annual requirements for vessel owners.

* * * * *

(b) The annual certification required by paragraph (a) of this section must be filed at least 45 days prior to the renewal date for the vessel’s documentation and fishery endorsement. Where multiple Fishing Industry Vessels are owned by the same entity or by entities that ultimately have common ownership, an Affidavit of U.S. Citizenship and supporting documentation may be filed for all of the vessels in conjunction with the first vessel documentation renewal during each calendar year. Any information or supporting documentation unique to a particular vessel that would normally be required to be submitted under § 356.13 or any other provision of this part 356 such as charters, management agreements, loans or financing agreements, sales, purchase or marketing agreements, or exemptions claimed under this part must be submitted with the annual filing for that vessel if the documents are not already on file with the Citizenship Approval Officer.

* * * * *

Subpart D—Mortgages

10. Section 356.19 is revised to read as follows:

§ 356.19 Requirements to hold a Preferred Mortgage.

- (a) In order for a Mortgagee to be eligible to obtain a Preferred Mortgage on a Fishing Industry Vessel, it must be:
 - (1) A Citizen of the United States;
 - (2) A state or federally chartered financial institution that is insured by

the Federal Deposit Insurance Corporation;

(3) A farm credit lender established under title 12, chapter 23, of the United States Code (12 U.S.C. 2001 *et seq.*);

(4) A commercial fishing and agriculture bank established pursuant to State law;

(5) A Commercial Lender organized under the laws of the United States or of a State and eligible to own a vessel under 46 U.S.C. 12102(a); or

(6) A Mortgage Trustee that complies with the requirements of 46 U.S.C. 31322(f) and 46 CFR 356.27 through 356.37.

(b) A Mortgagee must demonstrate to the Citizenship Approval Officer that it satisfies one of the requirements set forth in paragraph (a) of this section before it will be qualified to obtain a Preferred Mortgage on a Fishing Industry Vessel after April 1, 2003. A Mortgagee that has an existing Preferred Mortgage on a Fishing Industry Vessel prior to April 1, 2003, will be required to demonstrate that it satisfies one of the requirements set forth in paragraph (a) of this section before the vessel's next certificate of documentation renewal date after April 1, 2003. Failure to submit the required information may result in the loss of the preferred status for the mortgage. A sample format that may be used to submit the required information for Mortgagees, Commercial Lenders and Lender Syndicates is available on the MARAD website at <http://www.marad.dot.gov/afa.html>. The required information that must be submitted in order to make such a demonstration for each category in paragraph (a) is as follows:

(1) If a Mortgagee plans to qualify as a United States Citizen under paragraph (a)(1) of this section, the Mortgagee must file an Affidavit of United States Citizenship demonstrating that it complies with the citizenship requirements of 46 U.S.C. 12102(c) and section 2(c) of the 1916 Act, which require that 75% of the ownership and control in the Mortgagee be vested in U.S. Citizens at each tier and in the aggregate. In addition to the Affidavit of U.S. Citizenship, a certified copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents must be submitted to the Citizenship Approval Officer.

(2) A state or federally chartered financial institution must provide a certification that indicates whether it is a state chartered or federally chartered financial institution and that certifies that it is insured by the Federal Deposit Insurance Corporation ("FDIC"). The certification must include the FDIC

Certification Number assigned to the institution.

(3) A farm credit lender must provide a certification indicating that it qualifies as a farm credit lender established under title 12, chapter 23, of the United States Code (12 U.S.C. 2001 *et seq.*);

(4) A commercial fishing and agriculture bank must provide a certification indicating that it has been lawfully established as a commercial fishing and agriculture bank pursuant to State law and that it is in good standing;

(5) A Commercial Lender that seeks to be qualified to hold a Preferred Mortgage directly or through a Mortgage Trustee must provide evidence that it is engaged primarily in the business of lending and other financing transactions and a certification that it has a loan portfolio in excess of \$100 million, of which no more than 50 percent of the dollar amount of the loan portfolio consists of loans to borrowers in the commercial fishing industry. The certification must include information regarding the approximate size of the loan portfolio and the percentage of the portfolio that consists of loans to borrowers in the commercial fishing industry. A Commercial Lender that seeks to be qualified to hold a Preferred Mortgage directly must also submit an Affidavit of U.S. Citizenship to the Citizenship Approval Officer to demonstrate that it qualifies as one of the following:

(i) An individual who is a citizen of the United States;

(ii) An association, trust, joint venture, or other entity—

(A) All of whose members are citizens of the United States; and

(B) That is capable of holding title to a vessel under the laws of the United States or of a State;

(iii) A partnership whose general partners are citizens of the United States, and the controlling interest in the partnership is owned by citizens of the United States;

(iv) A corporation established under the laws of the United States or of a State, whose chief executive officer, by whatever title, and chairman of its board of directors are citizens of the United States and no more of its directors are Non-citizens than a minority of the number necessary to constitute a quorum;

(v) The United States Government; or

(vi) The government of a State.

(6) A Mortgage Trustee must submit the Mortgage Trustee Application and other documents required in § 356.27. If the beneficiary under the trust arrangement has not demonstrated to the Citizenship Approval Officer that it qualifies as a Commercial Lender, a

Lender Syndicate or an entity eligible to hold a preferred mortgage under paragraphs (a)(1) through (5) of this section, the Mortgage Trustee must submit to the Citizenship Approval Officer copies of the trust agreement, security agreement, loan documents, preferred mortgage, and any issuance, assignment or transfer of interest so that a determination can be made as to whether any of the arrangements results in an impermissible transfer of control of the vessel to a person not eligible to own a vessel with a fishery endorsement under 46 U.S.C. 12102(c).

(c) A Mortgagee is required to provide the certification required by paragraph (b) of this section to the Citizenship Approval Officer on an annual basis during the time in which it holds a preferred mortgage on a Fishing Industry Vessel. The annual certification must be submitted at least 30 calendar days prior to the annual anniversary date of the original approval. The Citizenship Approval Officer will notify a Mortgagee if the Mortgagee fails to submit the required annual certification. If the Mortgagee does not provide the certification within 30 calendar days of the mailing date of the delinquency notice, the mortgage will no longer qualify as a Preferred Mortgage.

(d) The following entities may exercise rights under loan or mortgage covenants with respect to a Fishing Industry Vessel without obtaining MARAD approval:

(1) An entity that is deemed qualified to hold a Preferred Mortgage under paragraphs (a)(1) through (5) of this section and that has submitted the appropriate certification to the Citizenship Approval Officer under paragraph (b) of this section; and

(2) An approved Mortgage Trustee that is holding a Preferred Mortgage for a beneficiary that is qualified to hold a Preferred Mortgage under paragraphs (a)(1) through (a)(5) of this section or for a beneficiary that qualifies as a Commercial Lender or a Lender Syndicate and that has made an appropriate certification to the Citizenship Approval Officer that it meets the requirements of either § 356.3(g) or § 356.3(n).

(e) An entity that holds a Preferred Mortgage on a Fishing Industry Vessel or that is using a Mortgage Trustee to hold a Preferred Mortgage for its benefit may request a letter ruling from the Citizenship Approval Officer in order to determine whether a mortgage or mortgage trust arrangement is in compliance with the regulations in this part. The Citizenship Approval Officer reserves the right to reverse any advice

given under a letter ruling if any of the elements of the proposed loan or mortgage are materially altered or if the entity requesting the letter ruling has failed to fully disclose all relevant information.

§ 356.21 [Amended]

11. Section 356.21 is amended as follows:

a. By revising the heading of the section;

b. By removing the term "Non-Citizen Lender" everywhere that it appears in the section and adding in its place the term "lender"; and

c. By revising paragraphs (a) introductory text and (e) to read as follows:

§ 356.21 General approval of standard loan or mortgage agreements.

(a) A lender that is engaged in the business of financing Fishing Industry Vessels and that is not a Commercial Lender or Lender Syndicate using a Mortgage Trustee to hold a Preferred Mortgage for its benefit or an entity that is otherwise qualified to hold a Preferred Mortgage on Fishing Industry Vessels pursuant to § 356.19(a)(2) through (a)(5), may apply to the Citizenship Approval Officer for general approval of its standard loan and mortgage agreements for such vessels. In order to obtain general approval for its standard loan and mortgage agreements, a lender using an approved Mortgage Trustee must submit to the Citizenship Approval Officer:

* * * * *

(e) A lender that has received general approval for its lending program and that uses covenants in a loan or mortgage on a Fishing Industry Vessel that have not been approved by the Citizenship Approval Officer will be subject to loss of its general approval and the Citizenship Approval Officer may review and approve all of the lender's mortgage and loan covenants on a case-by-case basis. The Citizenship Approval Officer may also determine that the arrangement results in an impermissible transfer of control to a Non-Citizen and therefore does not meet the requirements to qualify as a Preferred Mortgage. If the lender knowingly files a false certification with the Citizenship Approval Officer or has used covenants in a loan or mortgage on a Fishing Industry Vessel that are materially different from the approved covenants, it may also be subject to civil and criminal penalties pursuant to 18 U.S.C. 1001.

§ 356.23 [Amended]

12. Section 356.23 is amended as follows:

a. By revising the section heading; and

b. By revising paragraph (a) introductory text to read as follows:

§ 356.23 Restrictive loan covenants approved for use by lenders.

(a) We approve the following standard loan covenants, which may restrict the activities of the borrower without the lender's consent and which may be included in loan agreements or other documents between an owner of a Fishing Industry Vessel and an unrelated lender that is using an approved Mortgage Trustee to hold the mortgage and debt instrument for the benefit of the lender and that is not exempted under § 356.19(d) from MARAD review of its loan and mortgage covenants, so long as the lender's consent is not unreasonably withheld:

* * * * *

Subpart E—Mortgage Trustees

§ 356.27 [Amended]

13. Section 356.27 is amended by revising paragraphs (a), (b)(1), (c)(2), (c)(3), (c)(4) and (g) to read as follows:

§ 356.27 Mortgage Trustee requirements.

(a) A lender who is not qualified under § 356.19(a)(1) through (5) to hold a Preferred Mortgage directly on a Fishing Industry Vessel may use a qualified Mortgage Trustee to hold, for the benefit of the lender, the Preferred Mortgage and the debt instrument for which the Preferred Mortgage is providing security.

(b) * * *

(1) Be eligible to hold a Preferred Mortgage on a Fishing Industry Vessel under § 356.19(a)(1) through (a)(5);

* * * * *

(c) * * *

(2) The appropriate certification and documentation required under § 356.19(b)(1) through (5) to demonstrate that it is qualified to hold a Preferred Mortgage on Fishing Industry Vessels;

(3) A copy of the most recent published report of condition of the Mortgage Trustee; and,

(4) A certification that the Mortgage Trustee is authorized under the laws of the United States or of a State to exercise corporate trust powers and is subject to supervision or examination by an official of the United States or of a State;

* * * * *

(g) An application to be approved as a Mortgage Trustee should include the following:

The undersigned (the "Mortgage Trustee") hereby applies for approval as Mortgage Trustee pursuant to 46 U.S.C. 31322(f) and the Regulation (46 CFR part 356), prescribed by the Maritime Administration ("MARAD"). All terms used in this application have the meaning given in the Regulation. In support of this application, the Mortgage Trustee certifies to and agrees with MARAD as hereinafter set forth:

The Mortgage Trustee certifies:

(a) That it is acting or proposing to act as Mortgage Trustee on a Fishing Industry Vessel documented, or to be documented under the U.S. registry;

(b) That it—

(1) Is organized as a corporation under the laws of the United States or of a State and is doing business in the United States;

(2) Is authorized under those laws to exercise corporate trust powers;

(3) Is qualified to hold a Preferred Mortgage on Fishing Industry Vessels pursuant to 46 CFR 356.19(a);

(4) Is subject to supervision or examination by an official of the United States Government or a State; and

(5) Has a combined capital and surplus of at least \$3,000,000 as set forth in its most recent published report of condition, a copy of which, dated _____, is attached.

The Mortgage Trustee agrees:

(a) That it will, so long as it shall continue to be on the List of Approved Mortgage Trustees referred to in the Regulation:

(1) Notify the Citizenship Approval Officer in writing, within 20 days, if it shall cease to be a corporation which:

(i) Is organized under the laws of the United States or of a State, and is doing business under the laws of the United States or of a State;

(ii) Is authorized under those laws to exercise corporate trust powers;

(iii) Is qualified under 46 CFR. 356.19(a) to hold a Preferred Mortgage on Fishing Industry Vessels;

(iv) Is subject to supervision or examination by an authority of the U.S. Government or of a State; and

(v) Has a combined capital and surplus (as set forth in its most recent published report of condition) of at least \$3,000,000.

(2) Furnish to the Citizenship Approval Officer on an annual basis:

(i) The appropriate certification and documentation required under § 356.19(b)(1)–(5) to demonstrate that it is qualified to hold a Preferred Mortgage on Fishing Industry Vessels;

(ii) A copy of the most recent published report of condition of the Mortgage Trustee;

(iii) A list of the Fishing Industry Vessels for which it is acting as Mortgage Trustee; and,

(iv) The identity and address of all beneficiaries for which it is acting as a Mortgage Trustee.

(3) Furnish to the Citizenship Approval Officer copies of each Trust Agreement as well as any other issuance, assignment or transfer of an interest related to each transaction where the beneficiary under a trust arrangement is not a Commercial Lender, a Lender Syndicate or an entity that is eligible to hold a Preferred Mortgage under 46 CFR 356.19(a)(1)–(5);

(4) Furnish to the Citizenship Approval Officer any further relevant and material information concerning its qualifications as Mortgage Trustee under which it is acting or proposing to act as Mortgage Trustee, as the Citizenship Approval Officer may from time to time request; and,

(5) Permit representatives of the Maritime Administration, upon request, to examine its books and records relating to the matters referred to herein;

(b) That it will not issue, assign, or in any manner transfer to a person not eligible to own a documented vessel, any right under a mortgage of a Fishing Industry Vessel, or operate such vessel without the approval of the Citizenship Approval Officer; except that it may operate the vessel to the extent necessary for the immediate safety of the vessel, for its direct return to the United States or for its movement within the United States for repairs, drydocking or berthing changes, but only under the command of a Citizen of the United States for a period not to exceed 15 calendar days;

(c) That after a responsible official of such Mortgage Trustee obtains knowledge of a foreclosure proceeding, including a proceeding in a foreign jurisdiction, that involves a documented Fishing Industry Vessel on which it holds a mortgage pursuant to approval under the Regulation and to which 46 App. U.S.C. 802(c), 46 U.S.C. 31322(a)(4) or 46 U.S.C. 12102(c) is applicable, it shall promptly notify the Citizenship Approval Officer with respect thereto, and shall ensure that the court or other tribunal has proper notice of those provisions; and

(d) That it shall not assume any fiduciary obligation in favor of Non-Citizen beneficiaries that is in conflict with any restrictions or requirements of the Regulation.

This application is made in order to induce the Maritime Administration to grant approval of the undersigned as Mortgage Trustee pursuant to 46 U.S.C. 31322 and the Regulation, and may be relied on by the Citizenship Approval Officer for such purposes. False statements in this application may subject the applicant to fine or imprisonment, or both, as provided for violation of the proscriptions contained in 18 U.S.C. 286, 287, and 1001.

Dated this _____ day of _____, 20__.

ATTEST:

(Print or type name below)

(SEAL)

MORTGAGE TRUSTEE'S NAME & ADDRESS

By:

(Print or type name below)

TITLE

§ 356.31 [Amended]

14. Section 356.31 is revised to read as follows:

§ 356.31 Maintenance of Mortgage Trustee approval.

(a) A Mortgage Trustee that holds a Preferred Mortgage on a Fishing

Industry Vessel must submit the following information to the Citizenship Approval Officer during each calendar year that it is acting as a Mortgage Trustee:

(1) The appropriate certification and documentation required under § 356.19(b)(1) through (b)(5) to demonstrate that it is qualified to hold a Preferred Mortgage on Fishing Industry Vessels;

(2) A copy of the most recent published report of condition of the Mortgage Trustee;

(3) A list of the Fishing Industry Vessels for which it is acting as Mortgage Trustee; and

(4) The identity and address of all beneficiaries for which it is acting as a Mortgage Trustee.

(b) The Mortgage Trustee must file the documents required in paragraph (a) of this section within 30 calendar days prior to the anniversary date of the original approval from the Citizenship Approval Officer.

(c) If at any time the Mortgage Trustee fails to meet the statutory requirements set forth in the AFA, the Mortgage Trustee must notify the Citizenship Approval Officer of such failure to qualify as a Mortgage Trustee not later than 20 calendar days after the event causing such failure. Upon learning that a Mortgage Trustee fails to meet the statutory or regulatory requirements to qualify as a Mortgage Trustee, we will publish a disapproval notice in the **Federal Register** and will notify the U.S. Coast Guard, the Mortgage Trustee, and the beneficiary of each Preferred Mortgage of such disapproval by providing them a copy of the disapproval notice. The notice to beneficiaries will be provided by standard U.S. mail to the address supplied to the Citizenship Approval Officer by the Mortgage Trustee. Within 30 calendar days of publication in the **Federal Register** of the disapproval notice, the disapproved Mortgage Trustee must either transfer its fiduciary responsibilities to a successor Mortgage Trustee that has been approved by the Citizenship Approval Officer or cure the defect in its approval. The preferred status of the mortgage will be maintained during the 30 day period following publication of the notice in the **Federal Register** and pending transfer of the Mortgage Trustee's fiduciary responsibilities to a successor Mortgage Trustee or cure of the defect.

§ 356.37 [Amended]

15. Section 356.31 is revised to read as follows:

§ 356.37 Operation of a Fishing Industry Vessel by a Mortgage Trustee.

An approved Mortgage Trustee cannot operate a Fishing Industry Vessel without the approval of the Citizenship Approval Officer, except where non-commercial operation is necessary for the immediate safety of the vessel, or for repairs, drydocking or berthing changes; provided, that the vessel is operated under the command of a Citizen of the United States for a period of no more than 15 calendar days.

Subpart F—Charters, Management Agreements and Exclusive or Long-Term Contracts

§ 356.45 [Amended]

16. Section 356.45(a)(2)(iv) is amended by adding the following after the word "funds": ", unless a qualified Mortgage Trustee is used to hold the debt instrument for the benefit of the Non-Citizen".

Subpart G—Special Requirements for Certain Vessels

§ 356.47 [Amended]

17. Section 356.47 is amended by revising paragraphs (a)(2) and (b)(3) and by adding a new paragraph (e) to read as follows:

§ 356.47 Special requirements for large vessels.

(a) * * *

(2) It is more than 750 gross registered tons (as measured pursuant to 46 U.S.C. Chapter 145) or 1900 gross registered tons (as measured pursuant to 46 U.S.C. Chapter 143); or

* * * * *

(b) * * *

(3) In the event of the invalidation of the fishery endorsement after October 21, 1998, application is made for a new fishery endorsement within 15 business days of the receipt of written notification from MARAD or the Coast Guard identifying the reason for such invalidation. The fishery endorsement of a Fishing Industry Vessel that meets the criteria of paragraph (a) of this section is not deemed to be invalid for purposes of complying with this paragraph (a)(3), if the vessel is purchased pursuant to 46 U.S.C. 31329 by a Mortgagee that is not eligible to own a vessel with a fishery endorsement, provided that the Mortgagee is eligible to hold a preferred mortgage on such vessel at the time of the purchase;

* * * * *

(e) The owner of a vessel that meets any of the criteria in paragraph (a) of this section is required to submit a

certification each year in conjunction with its Affidavit of U.S. Citizenship in order to document that the vessel is eligible for documentation with a fishery endorsement. The certification should indicate that the vessel meets the criteria of paragraph (a) of this section; however, it is eligible to be documented with a fishery endorsement because it complies with the requirements of either paragraph (b), (c), or (d) of this section. A sample form for the certification is available on the MARAD Web site at <http://www.marad.dot.gov/afa.html> or may be obtained by contacting the Citizenship Approval Officer.

§ 356.51 [Amended]

18. Section 356.51 is amended as follows:

a. By adding “after October 1, 2001,” after “such time” in paragraph (a) introductory text;

b. By removing the number “296779” following the vessel name “EXCELLENCE” in paragraphs (a)(1) and (c) and adding in its place the number “967502”;

c. By removing paragraph (e).

d. By redesignating paragraph (d) as paragraphs (e);

e. By adding paragraphs (d) and (f); and

f. By removing the phrase “Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels” from newly designated paragraphs (e) introductory text and (e)(1) and adding in its place the term “Fishing Industry Vessels”.

The additions read as follows:

§ 356.51 Exemptions for specific vessels.

* * * * *

(d) Owners of vessels that are exempt from the new ownership and control requirements of the AFA and this part 356 pursuant to paragraph (a) of this section must still comply with the requirements for a fishery endorsement under the federal law that was in effect on October 21, 1998. The owners must submit to the Citizenship Approval Officer on an annual basis:

(1) An Affidavit of United States Citizenship in accordance with § 356.15 demonstrating that they comply with the Controlling Interest requirements of section 2(b) of the 1916 Act. The Affidavit must note that the owner is claiming an exemption from the requirements of this part 356 pursuant to paragraph (e) of this section; and

(2) A description of the current ownership structure, a list of any changes in the ownership structure that have occurred since the filing of the last Affidavit, and a chronology of all

changes in the ownership structure that have occurred since October 21, 1998.

* * * * *

(f) Fishing Industry Vessels that are claiming the exemption provided for in paragraph (e) of this section must certify to the Citizenship Approval Officer that the vessel is exempt from the ownership and control requirements of this part 356 pursuant to the exemption in paragraph (e) of this section. The vessel owner will be required to follow the U.S. Coast Guard's procedures for documenting a vessel with a fishery endorsement, as in effect prior to the passage of the AFA. The vessel owner must also notify the Coast Guard's National Vessel Documentation Center that it is claiming an exemption from the ownership and control requirements of this part 356 pursuant to paragraph (e) of this section.

Subpart H—International Agreements

§ 356.53 [Amended]

19. Section 356.53 is amended as follows:

a. By revising “October 1, 2001” to read “July 24, 2001” in both places where it appears in paragraph (a) and by removing the last sentence of paragraph (a);

b. By revising “October 1, 2001” to read “July 24, 2001” in both places where it appears in paragraph (b)(1);

c. By adding the word “and” at the end of paragraph (b)(3);

d. By revising “October 1, 2001” and “September 30, 2001” to read “July 24, 2001” in paragraph (b)(4);

e. By removing the semicolon and the word “and,” at the end of paragraph (b)(4) and adding a period in its place;

f. By removing paragraph (b)(5);

g. By removing the word “will” in the first sentence of paragraph (d) and adding the word “may” in lieu thereof; by adding “if the petition presents unique issues that have not been addressed in previous determinations” after the word “comment” in the first sentence of paragraph (d); and by inserting “,if any,” after the word “comments” in the third sentence of paragraph (d);

h. By revising “September 30, 2001” to read “July 24, 2001” in paragraph (f)(4);

i. By revising “October 1, 2001” to read “July 24, 2001” in paragraph (g)(1);

j. By revising paragraph (g)(2); and

k. By adding new paragraphs (g)(3) and (g)(4).

The revisions and additions read as follows:

§ 356.53 Conflicts with international agreements.

* * * * *

(g) * * *

(2) To the owner of a Fishing Industry Vessel on July 24, 2001, if any ownership interest in that owner is transferred to or otherwise acquired by a Non-Citizen or if the percentage of foreign ownership in the vessel is increased after such date.

(3) An ownership interest is deemed to be transferred under this paragraph (g) if:

(i) There is a transfer of direct ownership interest in the primary vessel owning entity. If the primary vessel owning entity is wholly owned by another entity, the parent entity will be considered the primary vessel owning entity; or

(ii) There is a transfer of indirect ownership at any tier.

(4) A transfer of interest in a vessel owner does not include:

(i) Transfers of disparately held shares of a vessel-owning entity if it is a publicly traded company and the total of the shares transferred in a particular transaction equals less than 5% of the shares in that class. An interest in a vessel owning entity that exceeds 5% of the shares in a class can not be sold to the same Non-Citizen through multiple transactions involving less than 5% of the shares of that class of stock in order to maintain the exemption for the vessel owner; or

(ii) Transfers pursuant to a divorce or death.

Dated: January 28, 2003.

By Order of the Maritime Administrator

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–2312 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–03–153; MB Docket No. 02–287, RM–10569]

Radio Broadcasting Services; Stuart, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Robert Fabian, allots Channel 228A to Stuart, Oklahoma, as the community's first commercial FM transmission service. See 67 FR 63875, October 16, 2002. Channel 228A can be allotted to Stuart in compliance with the Commission's minimum distance separation requirements at the city