

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[NH-046a; A-1-FRL-7171-8]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Post-1996 Rate-of-Progress Plans**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision establishes post-1996 rate-of-progress (ROP) plans for the Portsmouth-Dover-Rochester serious ozone nonattainment area, and for the New Hampshire portion of the Boston-Lawrence-Worcester serious ozone nonattainment area. The intended effect of this action is to approve this SIP revision as meeting the requirements of the Clean Air Act.

DATES: Written comments must be received on or before May 16, 2002.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA—New England, One Congress Street, Suite 1100, Boston, MA 02114-2023. Copies of the state submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA—New England, One Congress Street, 11th floor, Boston, MA and at the Air Resources Division, New Hampshire Department of Environmental Services, 6 Hazen Drive, Concord, New Hampshire, 03302-0095.

FOR FURTHER INFORMATION CONTACT: Robert McConnell, (617) 918-1046.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments in response to this action, the Agency contemplates no further activity. If EPA receives adverse comments, the Agency will withdraw the direct final rule and will address all public comments received in a

subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: April 4, 2002.

Ira W. Leighton,*Acting Regional Administrator, EPA—New England.*

[FR Doc. 02-9067 Filed 4-15-02; 8:45 am]

BILLING CODE 6560-50-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:** Notice of proposed rulemaking ("NPRM").

SUMMARY: The Maritime Administration ("MARAD, we, our, or us") is soliciting public comments on amendments to its regulations which implement the U.S. citizenship 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.

On July 24, 2001, the Congress passed a package of amendments to the AFA as section 2202 of the Supplemental Appropriations Act, 2001. This NPRM proposes to implement 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"), amend the requirements to hold a Preferred Mortgage on such Fishing Industry Vessels, and make 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: You should submit your comments early enough to ensure that Docket Management receives them not later than June 17, 2002.

ADDRESSES: Comments should refer to docket number MARAD-2002-11984. Written comments may be submitted by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all other documents entered into this docket are available on the World Wide Web at <http://dms.dot.gov>. A redline/strikeout version of the amended regulations that tracks the added and deleted text can also be obtained from the docket at <http://dms.dot.gov> or from MARAD's website at <http://www.marad.dot.gov/afa.html>.

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:**Who May File Comments?**

Anyone may file written comments about proposals made in any rulemaking document that requests public comments, including any state government agency, any political subdivision of a State, or any interested person.

How Do I Prepare and Submit Comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this NPRM in your comments.

We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under

ADDRESSES. If possible, one copy should be in an unbound format to facilitate copying and electronic filing.

In addition to comments on the proposed rule, we specifically request that you address in your 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.

How Can I Be Sure That My Comments Were Received?

If you want Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. If you send comments by e-mail, you will receive a message by e-mail confirming receipt of your comments. Your e-mail address should be noted with your comments.

Is Information That I Submit to MARAD Made Available to the Public?

When you submit information to us as part of this NPRM, during any rulemaking proceeding, or for any other reason, we may make that information publicly available unless you ask that we keep the information confidential. If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, at the address given above under **FOR FURTHER INFORMATION CONTACT**. You should mark "CONFIDENTIAL" on each page of the original document that you would like to keep confidential.

In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under

ADDRESSES. When you send comments containing information claimed to be confidential business information, you should also include a cover letter setting forth with specificity the basis for any such claim (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. 552).

We will decide whether or not to treat your information as confidential. You will be notified in writing of our decision to grant or deny confidentiality before the information is publicly

disclosed and you will be given an opportunity to respond.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and during the hours provided above under **ADDRESSES**.

Comments may also be viewed on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System ("DMS") Web page of the Department of Transportation (<http://dms.dot.gov/>). On that page, click on "search." On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket number shown on the first page of this document. The docket number for this NPRM is 11984. After typing the docket number, click on "search." On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Accordingly, we recommend that you periodically check the Docket for new material.

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 effective date of the AFA approached, it became apparent that many traditional lenders in the fishing industry were having problems 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, Public Law 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 and the extent to which they could exercise control over vessel owners through loan or mortgage covenants, 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, and directed MARAD, in determining whether a vessel owner complies with the requirements of section 46 U.S.C. 12102(c), not to consider the citizenship status of a lender, in its capacity as a lender with respect to that vessel owner, until after April 1, 2003. Accordingly, we have not reviewed loan transactions in determining whether a vessel owner will qualify as a U.S. Citizen and will not begin to consider loan or mortgage transactions in our analysis 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.

Discussion of Proposed Rule

Section 356.3 Definitions

Three new terms are being added to the definitions in § 356.3. The new terms are “Commercial Lender,” “Fishing Industry Vessel,” and “Lender Syndicate.” The definitions of “Commercial Lender” and “Lender Syndicate” mirror the definitions provided by Congress in sections 2202(g) and (h), respectively, of the Supplemental Appropriations Act, 2001. 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.

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 implements 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. The paragraphs under § 356.3 have been renumbered to incorporate the new definitions that have been added to the section.

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 insure 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 state or federally chartered financial institution that is acting as a Mortgage. The amendments to the American Fisheries Act deleted this standard to qualify as a Preferred Mortgage.

Section 356.11 Impermissible Control by a Non-Citizen

Paragraph 356.11(a)(7) has been amended to make it clear that an entity that has not been approved as a U.S. Citizen, but which is eligible to hold a

Preferred Mortgage pursuant to 46 CFR 356.19(a)(2)–(5), may exercise mortgage or loan covenants to cause the sale of a Fishing Industry Vessel. Similarly, a Mortgage Trustee that is qualified to hold a Preferred Mortgage pursuant to 46 CFR 356.19(a)(2)–(5) may exercise mortgage or loan covenants for a Non-Citizen or an entity that does not qualify under 46 CFR 356.19(a)(2)–(5), provided that the Citizenship Approval Officer has approved the use of such loan or mortgage covenants.

Section 356.13 Information Required To Be Submitted by Vessel Owners

Section 356.13(a) has been amended 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 46 CFR 356.21.

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. The new requirement is a certification for vessels that exceed 165 feet in registered length or 750 tons or that have engines capable of producing more than 3,000 horsepower. The vessel owner must provide a statement indicating whether such vessels meet 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. 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 356.15 Filing of Affidavit of U.S. Citizenship

Section 356.15 has been amended by deleting sections 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

Section 356.17 is amended by deleting the requirement that owners of multiple Fishing Industry Vessels file a certification prior to the renewal date for the certificate of documentation for each vessel. Therefore, a vessel owner will be allowed to file one consolidated Affidavit of U.S. Citizenship on an annual basis for all of its Fishing Industry Vessels. The Affidavit must be filed in conjunction with first certificate of documentation renewal for one of the owner's Fishing Industry Vessels in a calendar year. Although the vessel owner is not required to file a separate certification before the documentation renewal date for each vessel, the vessel owner is still required to notify the Citizenship Approval Officer during the course of the year if there are any changes with respect to the information submitted for particular vessels.

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 the definition of a Preferred Mortgage for Fishing Industry Vessels of 100 feet or greater where the mortgagee is a state or federally chartered financial institution that meets the controlling interest requirement of the 1916 Act, and by expanding the definition of Preferred

Mortgage for such 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. A new paragraph (c) requires the certification for each entity to be submitted on an annual basis for as long as the entity holds a Preferred Mortgage on a Fishing Industry Vessel.

A new paragraph (d) was also added 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. However, an entity that has not been determined by the Citizenship Approval Officer to be a U.S. Citizen that is eligible to own a Fishing Industry Vessel may not operate such a vessel except as authorized in 46 CFR 356.25. The ability of a Mortgage Trustee that holds a Preferred Mortgage on a Fishing Industry Vessel to exercise loan or mortgage covenants is addressed separately under § 356.27.

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

Section 356.21 has been amended to allow lenders that are not able to hold a Preferred Mortgage directly to get approval of the standard loan or mortgage agreements that they will use

in conjunction with a Mortgage Trustee. This approval was available before for "Non-Citizen Lenders;" however, 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 loan and mortgage covenants without requiring approval from MARAD. Accordingly, the term "Non-Citizen Lender" is replaced with the term "lender" throughout the section, and we have made it clear that the approval of standard loan and mortgage covenants is available to those entities that are not eligible to hold a Preferred Mortgage directly.

Finally, we have also 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.

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.

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.

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 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 § 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 or 750 gross 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 tenants in a tenancy by the entirety ownership arrangement, and the owner does 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 § 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 § 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.

We also propose to amend § 356.47 by adding a new paragraph (e) that will require the owners of vessels that are greater than 165 feet in registered length or 750 gross tons 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.

§ 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 final regulation. The Official Number for the vessel EXCELLENCE was corrected in § 356.51(a)(1) and (c). Section 356.51(e) was deleted and a reworded version of the section 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. Furthermore, upon 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 are proposing to delete 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.

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 propose to amend 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.

The proposed amendments also include the deletion of paragraph (b)(5), which addresses the timing of submissions prior to October 1, 2001.

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 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 with respect to the vessel owner. 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 July 24, 2001. This requirement is incorporated in the regulations in paragraph (g)(2). Paragraph (g)(2) states that we will consider a "transfer of ownership interest" to be a transfer of interest in the primary vessel owner. We believe that our original regulatory interpretation of what constitutes a transfer of ownership interest is too narrow and should be defined more broadly in the regulation. Accordingly, we propose to delete paragraph (g)(2) and to replace it with new paragraphs (g)(2)-(4).

As amended, paragraph (g)(2) will broaden our interpretation of what constitutes a transfer of ownership interest from merely a transfer of interest in the primary vessel owning entity, to both: (1) A transfer of direct ownership interest in the primary vessel owning entity; and (2) a transfer of an indirect ownership interest at any tier where such transfer would result in a transfer of 5% or more of the interest in the primary vessel owning company. Furthermore, the proposed paragraph (g)(2) clarifies that a vessel owner can not circumvent these requirements by creating additional ownership layers. Accordingly, if the primary vessel owning entity is wholly owned by another entity, we will consider the parent entity to be the primary vessel owner.

Rulemaking Analysis and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have reviewed this NPRM under Executive Order 12866 and have determined that this is not a significant regulatory action. Additionally, this NPRM is not likely to result in an annual effect on the economy of \$100 million or more. The purpose of this NPRM 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 NPRM 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 proposed regulations relating to vessel owners are of a technical nature that will not result in a significant economic impact. Furthermore, this NPRM 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 NPRM will not have a significant economic impact on a substantial number of small business entities.

Environmental Impact Statement

We have analyzed this NPRM 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 NPRM establishes a new requirement for the collection of information. OMB will be 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.

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 Vessel, Fish Processing Vessel, or Fish Tender 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 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, 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.

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: 1000 hours.

Unfunded Mandates Reform Act of 1995

This proposed 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 proposed 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, Fishery endorsement, Fishing industry vessels, Fishing vessels, International investment agreements, Mortgages, Mortgage trustee, Preferred mortgages.

Accordingly, we propose to amend 46 CFR part 356 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 App. U.S.C. 12102; 46 App. U.S.C. 31322; Public Law 105-277, Division C, Title II, Subtitle I, section 203 (46 App. U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; Public Law 107-20, section 2202, 115 Stat. 168-170; 49 CFR 1.66.

Subpart A—General Provisions

§ 356.3 [Amended]

2. Section 356.3 is amended as follows:

- a. Paragraphs (g) and (h) are redesignated as paragraphs (h) and (i).
 - b. Paragraphs (i) through (k) are redesignated as paragraphs (k) through (m).
 - c. Paragraphs (l) through (x) are redesignated as paragraphs (o) through (aa).
 - d. Paragraph (e)(2) and newly designated paragraphs (h)(2), (u) and (y)(2) are revised.
 - e. New paragraphs (g), (j), and (n) are added.
 - 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 "Fishing" following the word "Industry".
 - h. In newly designated paragraph (s), remove the second sentence.
- The additions and revisions read as follows:

§ 356.3 Definitions.

* * * * *

(e) * * *
(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 Vessel, Fish Processing Vessel, or Fish Tender 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;
 - (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) * * *

(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 paragraph 46 U.S.C. 31322(f), no one of which may exercise powers thereunder without the concurrence of at least one other unaffiliated beneficiary.

* * * * *

(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 356.27–356.31.

* * * * *

(y) * * *

(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 § 356.3, and that is authorized to act on behalf of a beneficiary in accordance with the requirements of §§ 356.27–356.31.

* * * * *

Subpart B—Ownership and Control

3. 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:²

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

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

² Strike inapplicable paragraph 4.

_____ (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.]

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

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 ³

[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 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 7 should be included in the Affidavit of U.S. Citizenship submitted by an entity that is listed as the owner on the Certificate of Documentation for 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).

* * * * *

³ Strike inapplicable paragraph 5.

§ 356.7 [Amended]

4. Section 356.7(c)(1)(ii) is amended by removing “in the case of a state or federally chartered financial institution acting as a Mortgagee”.

§ 356.11 [Amended]

5. Section 356.11(a)(7) is amended as follows:

- a. By removing “through approved loan covenants where there is a Preferred Mortgage on the vessel”; and
- b. By inserting after the word “than” the following: “by an entity that is eligible to hold a Preferred Mortgage on the vessel pursuant to § 356.19(a)(2) through (5); by an approved Mortgage Trustee that meets the requirements of § 356.19(a)(2) through (5) and that is exercising loan or mortgage covenants on behalf of a beneficiary that does not qualify as a U.S. Citizen or that does not satisfy the requirements of § 356.19(a)(2) through (5), provided that the loan or mortgage covenants have been approved by the Citizenship Approval Officer;”.

Subpart C—Requirement for Vessel Owners

§ 356.13 [Amended]

6. 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 standard 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.
* * * * *

7. 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 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]

8. Section 356.17 is amended in paragraph (b) as follows:

a. By removing the word “only” in the first sentence and the entirety of the third sentence; and

b. By removing the word “vessels” after “multiple” in the second sentence and inserting in lieu thereof the term “Fishing Industry Vessels”.

Subpart D—Mortgages

9. 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 Vessel, Fish Processing Vessel, or Fish Tender 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 356.31.

(b) A Mortgagee must demonstrate to the Citizenship Approval Officer that it satisfies one of the requirements set forth in § 356.19(a) before it will qualify to hold a Preferred Mortgage on a Fishing Industry Vessel. The required information that must be submitted in order to make such a demonstration for each category in paragraph (a) of this section 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 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. In

addition, a Commercial Lender must submit an affidavit to the Citizenship Approval Officer to demonstrate that it qualifies under one of the following criteria:

(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 (4) 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 filing.

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

or mortgage covenants with respect to a Fishing Industry Vessel without any approval from MARAD. However, if the Mortgagee has not been approved by the Citizenship Approval Officer as a U.S. Citizen eligible to own a Fishing Industry Vessel, it may only operate such vessel to the extent provided for in § 356.25.

10. Section 356.21 is amended as follows:

- a. By removing "Non-Citizen Lender's" in 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 qualified to hold a Preferred Mortgage on Fishing Industry Vessels pursuant to § 356.19(a)(2) through (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 Vessel, Fish Processing Vessel, or Fish Tender 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 will review and approve all 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 Vessel, Fish Processing Vessel, or Fish Tender 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.

11. Section 356.23 is amended as follows:

- a. By removing the term "Non-Citizen Lenders" in the section heading and

adding in its place the term "lenders;" and
b. By revising paragraph (a) 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 does not meet the requirements of § 356.19(a)(1) through (5) and that is using an approved Mortgage Trustee to hold the mortgage and debt instrument for the benefit of the lender, so long as the lender's consent is not unreasonably withheld:

* * * * *

Subpart E—Mortgage Trustees

12. Section 356.27 is amended by revising paragraphs (a), (b)(1), (c)(2) 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 (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;

* * * * *

(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 Vessel, Fish Processing Vessel, or Fish Tender Vessels 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) Notify the Citizenship Approval Officer in writing, of any changes in its name, address, officers, directors, stockholders, articles of incorporation or bylaws within 30 calendar days of such changes;

(3) 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 current copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents;

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

(iv) A list of the Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels and the respective lenders for which it is acting as Mortgage Trustee;

(4) 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 the transaction if the beneficiary under a trust arrangement is not a Commercial Lender, a Lender Syndicate or eligible to be hold a Preferred Mortgage under 46 CFR 356.19(a)(1) through (5);

(5) 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,

(6) 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 Vessel, Fish Processing Vessel, or Fish Tender 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 Vessel, Fish Processing Vessel, or Fish Tender 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 _____

13. Section 356.31 is amended by revising paragraph (a)(1) to read as follows:

§ 356.31 Maintenance of Mortgage Trustee approval.

(a) * * *

(1) 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;

* * * * *

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

§ 356.45 [Amended]

14. Section 356.45(a)(2)(iv) is amended by adding at the end thereof the following: “, 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

15. Section 356.47 is amended by adding a sentence to the end of paragraph (b)(3) and adding a new paragraph (e) to read as follows:

§ 356.47 Special requirements for large vessels.

* * * * *

(b) * * *

(3) * * * 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, 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 form of the certification will be available on the MARAD website at <http://www.marad.dot.gov/afa.html> or may be obtained by contacting the Citizenship Approval Officer.

16. Section 356.51 is amended as follows:

a. By adding “after October 1, 2001,”

after “such time” in paragraph (a);
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 paragraph (e);

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

f. By revising newly designated paragraphs (e) introductory text and (e)(1).

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 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 § 356.51(e); 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.

(e) The following Fishing Industry Vessels are exempt from the new ownership and control standards under the AFA and part 356 for vessel owners and Mortgagees:

(1) Fishing Industry Vessels engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)); and

* * * * *

(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 § 356.51(e). 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 § 356.51(e).

Subpart H—International Agreements

17. Section 356.53 is amended as follows:

a. By adding "July 24, 2001" in place of "October 1, 2001" in both places where it appears in paragraph (a) and by removing the last sentence of paragraph (a);

b. By adding "July 24, 2001" in place of "October 1, 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 adding "July 24, 2001" in place of "October 1, 2001" and in place of "September 30, 2001" in paragraph (b)(4);

e. By removing the word "and" at the end of paragraph (b)(4);

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 adding "July 24, 2001" in place of "September 30, 2001" in paragraph (f)(4);

i. By adding "July 24, 2001" in place of "October 1, 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 Vessel, Fish Processing Vessel, or Fish Tender 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;

(ii) There is a transfer of indirect ownership at any tier that results in a transfer of 5% or more of the interest in the primary vessel owning entity.

(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: April 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02-9005 Filed 4-15-02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[CI Docket No. 02-32, CC Docket No. 94-93, CC Docket No. 00-175; FCC 02-46]

Establishment of Rules Governing Procedures To Be Followed When Informal Complaints Are Filed by Consumers Against Entities Regulated by the Commission

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on whether to establish a consumer complaint mechanism to apply to all entities regulated by the Commission. The complaint mechanism will be patterned after our existing rules for informal complaints filed against common carriers pursuant to section 208 of the Act.

DATES: Comments are due May 16, 2002 and reply comments are due May 31, 2002. Written comments by the public on the proposed information collections are due May 16, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection on or before June 17, 2002.

ADDRESSES: Parties who choose to file comments by paper must file an original and four copies to the Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be

accessed via the Internet at www.fcc.gov/e-file/ecfs.html. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jbHerman@fcc.gov, and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to jthornto@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Lynn Remly or Margaret Egler (202-418-1400), Consumer Information Bureau. For additional information concerning the information collection(s) contained in this document, contact Judith Boley Herman at 202-418-0214, or via the Internet at jbHerman@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CI Docket No. 02-32, CC Docket Nos. 94-93 and 00-175, FCC 02-46, released February 28, 2002. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. On February 14, 2002, the Commission released a Notice of Proposed Rule Making (NPRM) requesting comment on proposals to establish a unified, streamlined process for the intake and resolution of informal complaints filed by consumers in order to promote maximum compliance with the requirements of the Communications Act of 1934, as amended, (the Act) and our implementing rules and orders.

2. We propose to establish a uniform, streamlined consumer complaint process that will be applicable to all services regulated by the Commission that are not currently covered by the common carrier informal complaint rules. We also propose changes to the common carrier informal complaint process, including specifying the type of documentation that should accompany informal complaints as well as prescribing a specific time frame within which a carrier must respond to such a complaint.