

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

[65 FR 44877, July 19, 2000, as amended at 68 FR 5579, Feb. 4, 2003]

§ 356.17 Annual requirements for vessel owners.

(a) An owner of a Fishing Industry Vessel must submit a certification in the form of an Affidavit of United States Citizenship to the Citizenship Approval Officer on an annual basis as provided in paragraph (b) of this section. The vessel owner does not have to submit duplicate copies of documents that have already been submitted and that have not changed, provided a copy is still retained by us. This annual certification requirement does not excuse the owner from the requirements of § 356.5 to notify the Citizenship Approval Officer throughout the year when changes in the citizenship information occur.

(b) The annual certification required by paragraph (a) of this section must be filed at least 45 days prior to the renewal date for the vessel's documentation and fishery endorsement. Where multiple Fishing Industry Vessels are owned by the same entity or by entities that ultimately have common ownership, an Affidavit of U.S. Citizenship and supporting documentation may be filed for all of the vessels in conjunction with the first vessel documentation renewal during each cal-

endar year. Any information or supporting documentation unique to a particular vessel that would normally be required to be submitted under § 356.13 or any other provision of this part 356 such as charters, management agreements, loans or financing agreements, sales, purchase or marketing agreements, or exemptions claimed under this part must be submitted with the annual filing for that vessel if the documents are not already on file with the Citizenship Approval Officer.

(c) Failure to file the annual certification in a timely manner may result in the expiration of the vessel's fishery endorsement, which will prohibit the vessel from operating in the fisheries of the United States.

[65 FR 44877, July 19, 2000, as amended at 68 FR 5579, Feb. 4, 2003]

Subpart D—Mortgages

§ 356.19 Requirements to hold a Preferred Mortgage.

(a) In order for a Mortgagee to be eligible to obtain a Preferred Mortgage on a Fishing Industry Vessel, it must be:

- (1) A Citizen of the United States;
- (2) A state or federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;
- (3) A farm credit lender established under title 12, chapter 23, of the United States Code (12 U.S.C. 2001 *et seq.*);
- (4) A commercial fishing and agriculture bank established pursuant to State law;
- (5) A Commercial Lender organized under the laws of the United States or of a State and eligible to own a vessel under 46 U.S.C. 12102(a); or
- (6) A Mortgage Trustee that complies with the requirements of 46 U.S.C. 31322(f) and 46 CFR 356.27 through 356.37.

(b) A Mortgagee must demonstrate to the Citizenship Approval Officer that it satisfies one of the requirements set forth in paragraph (a) of this section before it will be qualified to obtain a Preferred Mortgage on a Fishing Industry Vessel after April 1, 2003. A Mortgagee that has an existing Preferred Mortgage on a Fishing Industry Vessel prior to April 1, 2003, will be required to demonstrate that it satisfies one of

the requirements set forth in paragraph (a) of this section before the vessel's next certificate of documentation renewal date after April 1, 2003. Failure to submit the required information may result in the loss of the preferred status for the mortgage. A sample format that may be used to submit the required information for Mortgagees, Commercial Lenders and Lender Syndicates is available on the MARAD website at <http://www.marad.dot.gov/afa.html>. The required information that must be submitted in order to make such a demonstration for each category in paragraph (a) is as follows:

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

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

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

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

(5) A Commercial Lender that seeks to be qualified to hold a Preferred Mortgage directly or through a Mortgage Trustee must provide evidence

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

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

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

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

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

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

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

(v) The United States Government; or

(vi) The government of a State.

(6) A Mortgage Trustee must submit the Mortgage Trustee Application and other documents required in § 356.27. If the beneficiary under the trust arrangement has not demonstrated to the Citizenship Approval Officer that it qualifies as a Commercial Lender, a Lender Syndicate or an entity eligible to hold a preferred mortgage under paragraphs (a)(1) through (5) of this section, the Mortgage Trustee must

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

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

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

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

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

(e) An entity that holds a Preferred Mortgage on a Fishing Industry Vessel or that is using a Mortgage Trustee to hold a Preferred Mortgage for its benefit may request a letter ruling from

the Citizenship Approval Officer in order to determine whether a mortgage or mortgage trust arrangement is in compliance with the regulations in this part. The Citizenship Approval Officer reserves the right to reverse any advice given under a letter ruling if any of the elements of the proposed loan or mortgage are materially altered or if the entity requesting the letter ruling has failed to fully disclose all relevant information.

[68 FR 5579, Feb. 4, 2003]

§ 356.21 General approval of standard loan or mortgage agreements.

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

(1) A copy of its standard loan or mortgage agreement for Fishing Industry Vessel, including all covenants that may be included in the loan or mortgage agreement; and,

(2) A certification that it will not use covenants or restrictions in the loan or mortgage agreement outside of those approved by the Citizenship Approval Officer without obtaining the prior approval of the Citizenship Approval Officer.

(b) A lender that receives general approval may enter into loans and mortgages on Fishing Industry Vessel without prior approval from us of each individual loan or mortgage; *provided*, that the loan or mortgage conforms to the standard agreement approved by the Citizenship Approval Officer and does not include any other covenants that have not been approved by the Citizenship Approval Officer.

(c) The lender must provide an annual certification to the Citizenship