

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

Section 356.31 Maintenance of Mortgage Trustee Approval

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

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

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

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

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

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

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

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

Section 356.45 Advance of Funds

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

Section 356.47 Special Requirements for Large Vessels

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