

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

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

Section 356.53 Conflicts with International Agreements

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

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

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

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

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

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

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

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

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