



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 259

[Docket No. 080410551-4596-01]

RIN 0648-AW57

Capital Construction Fund; Fishing Vessel Capital Construction Fund Procedures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the Capital Construction Fund (CCF) regulations to eliminate provisions that no longer meet the needs of CCF participants, and to simplify and clarify the regulations to better implement the purposes of the underlying statute. These amendments would eliminate the minimum cost and maximum allowable completion time for reconstruction projects, requirements for minimum annual deposits and the requirement that any vessel acquired with CCF funds must be reconstructed, regardless of vessel condition. The new regulations would also add a restriction that the CCF program (program) would not allow withdrawals of funds for projects that increase harvesting capacity.

DATES: NMFS invites the public to comment on this proposed rule. Comments on the proposed rule must be received by [Insert date 45 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2013-0144, by any one of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to: <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0144>, Click the "Comment Now!" icon, complete the required fields and enter or attach your comments.
- Mail: Submit written comments to Paul Marx, Financial Services Division (FSD), NMFS-MB5, 1315 East-West Highway, Silver Spring, MD 20910; or
- Fax: 301-713-1939; Attn: Richard VanGorder.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or

otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action may be obtained from the mailing address above or by calling Richard VanGorder (see FOR FURTHER INFORMATION CONTACT).

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Richard VanGorder at the address specified above and also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer) or e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7825.

FOR FURTHER INFORMATION CONTACT: Richard VanGorder at 301-427-8784 or via email at Richard.VanGorder@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule revises and replaces the CCF regulations found at 50 CFR part 259.

The program was established by the Merchant Marine Act of 1970. The CCF was authorized by Section 607 of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1177 (now at 46 U.S.C. 53503) and is administered pursuant to 50 CFR part 259.

The purpose of the program is to assist owners and operators of United States flagged vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine fleet and to provide economic support for the U.S. fishing industry. The extensive vessel reconstruction requirements in the current regulations no longer make sense given the improved status of the merchant marine fleet.

The program encourages construction, reconstruction, or acquisition of vessels through deferment of Federal income taxes. Owners and operators of vessels deposit income from fishing into CCF accounts prior to paying income taxes. All deferred taxes are eventually recovered upon the sale of the vessel because the cost basis of the vessel is reduced by the dollar amount of CCF funds used for its purchase or improvements. The program was deemed necessary because operators of U.S.-flagged vessels are faced with a competitive disadvantage in the construction and replacement of their vessels relative to foreign-flagged operators, whose vessels are registered in countries that do not tax fishing income.

The program helps counterbalance this situation through its tax-deferral privileges.

To participate in the program, a vessel owner submits an application to the Financial Services Division of the National Marine Fisheries Service in advance of the relevant Federal tax filing due date. The application identifies the income earning vessel(s), the type of project(s) anticipated and the financial institution that will hold the CCF deposits. Once the Secretary of Commerce deems an application compliant with the CCF statute and regulations, a CCF Agreement is executed between the United States and the vessel owner or operator.

Currently, there are 1,634 CCF Agreements with a total of approximately \$263M on deposit. Many of these CCF Agreements were established years ago and identify scheduled projects that are no longer viable. Consequently, CCF participants are faced with either having funds languish on deposit for nonviable scheduled projects or making a non-qualified withdrawal of funds and paying deferred taxes at the highest marginal rate.

The authority to make regulatory changes to the program is granted under 46 U.S.C. 53502(a), which permits the Secretary of Commerce to prescribe regulations (except for the determination of tax liability) to carry out the program. The

program regulations were last amended in 1997 to permit reconstruction projects for safety improvements.

The proposed changes to the CCF regulations are intended to ease the current restrictions on the allowable uses of CCF funds while remaining consistent with current agency priorities of maintaining sustainable fisheries. For example, currently, reconstruction is required when using CCF funds to acquire a used vessel. Reconstruction is mandated regardless of the condition of the vessel. Consequently, the CCF participant must often invest money in unnecessary capital improvements. If this requirement is eliminated and the definition of a "qualified reconstruction" is changed, a large portion of the funds that are currently on deposit could be used for projects that are actually needed, rather than required by now-outdated regulations. Additionally, these changes would allow the Government to recapture deferred taxes.

The Proposed Rule:

1. Revises § 259.31(a) to eliminate the requirement that the Agreement holder reconstruct a used vessel acquired with CCF funds (redesignated § 259.3(a)). This would eliminate the requirement to reconstruct vessels, because not all purchased vessels need improvement;

2. Revises § 259.31(b) to eliminate the requirement that the minimum cost of a reconstruction project be the lesser of \$100,000 or 20% of the reconstructed vessel's acquisition cost. This provision would eliminate making excessive capital improvements to vessels based upon an arbitrary amount. Instead, program participants would use the CCF to spend what is needed to improve the vessel. It also would remove § 259.31(b)(2), which tiers off of the minimum cost requirement (redesignated § 259.3(c)), now eliminated;

3. Revises § 259.31(b)(1) to add material increases in safety, reliability, or energy efficiency to the list of qualified reconstruction items.

4. Revises § 259.31(c) to specify that a reconstruction or construction be completed within 12 months of commencement. The original regulations allowed for up to 18 months to complete reconstruction projects in order to allow program participants an extended period of time to meet the minimum cost requirements. Since the minimum cost requirement for reconstructions is eliminated, there would be no need for an extended period to complete planned projects.

5. Eliminates the requirement in § 259.34(a) that the Agreement holder annually make a minimum deposit of 2% of the anticipated cost of the scheduled Agreement objectives. The Proposed rule would also eliminate paragraphs (a)(1) and (2)

of § 259.34 pertaining to the minimum cost requirement, now eliminated. This proposed change would be consistent with our attempt to reduce the amount of CCF funds on deposit by not requiring excess deposits to meet an annual deposit requirement;

6. Adds the requirement that any project done with CCF funds cannot add to the harvesting capacity of any fishery. This addition would ensure consistency with the agency's larger responsibility to maintain sustainable fisheries (new § 259.3(a), (b), and (c)), and reflects the CCF's current policy; and

7. Removes § 259.32 pertaining to "Conditional Fisheries." "Conditional Fisheries" regulations were part of the Financial Aid Program Procedures contained in 50 CFR part 251 and were eliminated on April 3, 1996, under the authority of 16 U.S.C. 742.

Sections are redesignated as necessary due to these changes.

In addition to the changes easing restrictions on CCF projects, program regulations would be amended as follows for purposes of simplicity, clarity, and brevity:

1. A Definitions section would be added (new § 259.1);
2. Existing § 259.1 would be removed because it deals only with deposits for taxable years beginning after December

31, 1969, and before January 1, 1972, and no such deposits remain;

3. Section 259.30 would be redesignated as § 259.2. Proposed § 259.2(b)(1) would add the requirement that the application for an Agreement include the name and Tax Identification Number of the applicant, pursuant to the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701, et seq.);

4. Section 259.31 is redesignated as § 259.3 and would add a prohibition against using CCF funds for any vessel acquisition, construction, or reconstruction that increases fisheries harvesting capacity, to be consistent with the agency's larger responsibility to maintain sustainable fisheries;

5. Proposed § 259.3(a) would simplify the term "Acquisition" by removing the existing requirements when acquiring a used vessel and would add the requirement that the acquired vessel must replace an existing or recently sunken vessel, to ensure that the acquired vessel does not add to the fisheries' harvesting capacity (the replaced vessel must lose its fisheries trade endorsement);

6. Proposed § 259.3(b) is a new section pertaining specifically to the term "Construction," which had been omitted as a separate section in the existing regulations, and to clarify that Construction of a vessel, like Acquisition,

could not add fisheries harvesting capacity, in accordance with current NMFS fisheries policy;

7. Proposed § 259.3(c) replaces old § 259.31(b), and would simplify the definition of Reconstruction by incorporating the relevant language regarding energy and safety improvements from the deleted Sections 259.31(d) and (e);

8. Proposed § 259.3(d) replaces old § 259.31(c) and would change the time permitted for construction and reconstruction projects from 18 months to 12 months.

9. Section 259.33 would be redesignated as § 259.4;

10. Section 259.34 would be redesignated as § 259.5 and would eliminate the minimum deposit requirement;

11. Proposed § 259.6 would be added to provide for termination of inactive accounts and accounts with zero balances on deposit, and to detail the notification procedures and time limit for resolving Agreement deficiencies to avoid termination;

12. Section 259.35 would be redesignated as § 259.7, and the requirement to submit a preliminary deposit and withdrawal report at the end of each calendar year would be removed, because the preliminary report no longer serves a useful purpose and is not required by the Internal Revenue Service;

13. Section 259.36 would be redesignated as § 259.8, and provisions relating to non-cash deposits or investments would be dropped because they have never occurred;

14. Section 259.37 would be redesignated as § 259.9; and

15. Section 259.38 would be redesignated as § 259.10.

Classification

This proposed rule is published under the authority of, and is consistent with, Chapter 535 of the Shipping Act. The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, as amended, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

In addition to public comment about the proposed rule's substance, NMFS also seeks public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

In compliance with the National Environmental Policy Act, NMFS prepared an environmental assessment (EA) for this proposed rule. The assessment discusses the impact of this proposed rule on the natural and human environment and

integrates a Regulatory Impact Review (RIR) and an Initial Regulatory Flexibility Analysis (IRFA). NMFS will send the assessment, the review and analysis to anyone who requests a copy (see ADDRESSES).

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), to describe the economic impacts this proposed rule, if adopted, would have on small entities. The analysis will aid us in considering regulatory alternatives that could minimize the economic consequences on affected small entities. The proposed rule does not duplicate or conflict with other Federal regulations.

Summary of IRFA

The RFA defines a small business as having the same meaning as a "small business concern" which is defined under Section 3 of the Small Business Act (SBA). Additionally, "small governmental jurisdictions" are defined as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000. As defined in the RFA, the small entities that this rule may affect include vessel owners, vessel operators, fish dealers, individual fishermen, small corporations, others engaged in commercial and recreational activities regulated by NOAA and native Alaskan governmental jurisdictions. In addition, the rule would affect some larger businesses.

Notably for new participants, since the CCF is a voluntary program that provides tax deferred benefits to qualified applicants, we assume that no entities large or small would be negatively impacted by this rule. For current participants, the changes allow more flexibility in the use of the funds and, therefore, would only positively affect those entities.

Description of the Number of Small Entities

Most participants in the program have annual gross revenues of less than \$5.5 million for shellfish, \$20.5 million for finfish and \$7.5 million for other fishing. The IRFA analysis estimates that most of the 1634 active program participants are considered small entities. Furthermore, because analysts cannot quantify the exact number of small entities that may be directly regulated by this action, a definitive finding of non-significance for the proposed action under the RFA is not possible. However, because the proposed action would not result in additional compliance obligations, operating costs or any other costs on small entities, the net effects would be expected to be minimal relative to the status quo.

Since the new regulations merely simplify existing CCF regulations and policies, this action will not create new reporting requirements for small entities participating in the CCF. Although the CCF requires certain supporting

documentation during the life of the Agreement, the CCF's requirements do not impose unusual burdens. Those supporting documents are usually within the normal business records already maintained by small business entities, and include income tax returns, tax basis schedules, vessel ownership documents, etc. Depending on circumstances, the CCF may require other supporting documents that can be acquired at reasonable cost if they are not already available. We estimate it will take small entities fewer than 3.5 hours per application to meet these requirements.

Because participation is voluntary and requires an average of 3.5 hours to prepare an application, all CCF applicants are assumed to have made a determination that using the program incurs a benefit. Consequently, it is assumed that the CCF's tax deferrals provide a positive economic impact. Importantly, the CCF does not regulate or manage the affairs of its program users, and the regulations impose no additional compliance obligations, operating costs or any other costs on small entities.

Because these regulations will impose no significant costs on any small entities, but rather will provide small and large entities with benefits, negative economic impacts on small entities, if any, are expected to be minimal at worst. The impact is likely to be positive. Accordingly, this rule will

not substantially impact a significant number of small businesses.

Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains no new collection of information requirements subject to the PRA. Existing collections have been approved by OMB under OMB Control No. 0648-0041. This collection includes the Deposit/Withdrawal Report, the Interim Capital Construction Fund Agreement and Certificate. The estimate of the annual total program public reporting burden for the Deposit/Withdrawal report is 1,200 hours. This equates to an average of less than 1 hour of annual reporting burden per program user. The estimates of the annual total program public reporting burden for the Interim Capital Construction Fund Agreement and Certificate is 2,250 hours. This equates to an average of 1 hour of annual reporting burden per existing program user and 3.5 hours of reporting burden for new applicants to the CCF program. The response time estimates above include the time needed for

reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information.

Send comments regarding the burden hour estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see ADDRESSES).

The Assistant Administrator for Fisheries, NMFS, determined that this proposed rule will not affect the coastal zone of any state.

The Assistant Administrator for Fisheries, NMFS, determined that this proposed rule will not affect endangered or threatened species, marine mammals, or critical habitat.

This proposed rule does not contain policies with federalism implications under E.O. 13132.

List of Subjects in 50 CFR Part 259

Fisheries, Fishing vessels, Income taxes, Reporting and recordkeeping requirements.

Dated: September 18, 2014.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to revise 50 CFR part 259 to read as follows:

PART 259--CAPITAL CONSTRUCTION FUND TAX REGULATIONS

Sec.

259.1 Definitions.

259.2 Applying for a Capital Construction Fund Agreement ("Agreement").

259.3 Acquisition, construction, or reconstruction.

259.4 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary's consent; first tax year for which an Agreement is effective.

259.5 Maximum deposits and time to deposit.

259.6 Termination of inactive and zero balance accounts.

259.7 Annual deposit and withdrawal reports required.

259.8 CCF accounts.

259.9 Conditional consents to withdrawal qualification.

259.10 Miscellaneous.

Authority: 46 U.S.C. 53501, formerly 46 U.S.C. App. 1177 and 1177-1.

§ 259.1 Definitions.

Act means Chapter 535 of Title 46 of the U.S. Code (46 U.S.C. 53501-53517), as may be amended from time to time.

Agreement means the contract to participate in the program between the approved CCF applicant (party) and the Secretary.

Agreement vessel means any eligible vessel or qualified vessel which is subject to an Agreement.

Citizen of the United States means any person who is a United States citizen and any corporation or partnership organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade.

Commercial fishing means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

Depository means the bank or brokerage account(s) listed in the Agreement where the CCF funds will be physically held.

Eligible vessel means -

(1) A vessel -

(i) Constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside of the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;

(ii) Documented under the laws of the United States; and

(iii) Operated in the foreign or domestic commerce of the United States or in the fisheries of the United States; and

(2) A commercial fishing vessel -

(i) Constructed in the United States and, if reconstructed, reconstructed in the United States;

(ii) Of at least 2 net tons but fewer than 5 net tons;

(iii) Owned by a citizen of the United States;

(iv) Having its home port in the United States; and

(v) Operated in the commercial fisheries of the United States.

Extension period means the first day following the end of the Filing period and ending on the last day of the party's last filing extension.

Filing period means the first day following the end of the Tax Year and ending on the party's last day to file their tax return absent a filing extension.

Qualified vessel means -

(1) A vessel -

(i) Constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside of the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United

States foreign trade pursuant to a contract made before April 15, 1970;

(ii) Documented under the laws of the United States; and

(iii) Agreed, between the Secretary and the person maintaining the capital construction fund established under 46 USC 53503, to be operated in the fisheries of the United States; and

(2) A commercial fishing vessel -

(i) Constructed in the United States and, if reconstructed, reconstructed in the United States;

(ii) Of at least 2 net tons but fewer than 5 net tons;

(iii) Owned by a citizen of the United States;

(iv) Having its home port in the United States; and

(v) Operated in the commercial fisheries of the United States; and

(3) Gear which is permanently fixed to the vessel. The expenditure for gear and certain nets which are not fixed to the vessel (pots, traps, longline, seine nets, gill set nets and gill drift nets) is excluded from the amount eligible for qualified withdrawals of CCF funds.

Schedule A means the section of the Agreement that designates the income producing vessel from which deposits are made to a designated account

Schedule B means the section of the Agreement that designates the qualified project for which the CCF funds are to be expended.

Secretary means the Secretary of Commerce with respect to eligible or qualified vessels operated or to be operated in the fisheries of the United States.

Tax due date means the date the party's Federal tax return must be filed, including extensions, with the Internal Revenue Service.

Tax year means the period between January 1 and December 31 for Calendar year filers or the designated fiscal year for fiscal year filers.

United States means the United States of America and, for citizenship purposes, includes the Commonwealth of Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States, or any political subdivision of any of them.

§ 259.2 Applying for a Capital Construction Fund Agreement ("Agreement").

(a) General qualifications. To be eligible to enter into an Agreement an applicant must:

(1) Be a citizen of the United States (citizenship requirements are those necessary for documenting vessels in the coastwise trade within the meaning of section 2 of the Shipping Act, 1916, as amended);

(2) Own or lease one or more eligible vessels (as defined at 46 U.S.C. 53501) operating in the foreign or domestic commerce of the United States;

(3) Have an acceptable plan to acquire, construct, or reconstruct one or more qualified vessels (as defined at 46 U.S.C. 53501). The plan must be a firm representation of the applicant's actual intentions. Qualified vessels must be for commercial operation in the fisheries of the United States. If the vessel is 5 net tons or over, it must be documented with a fishery trade endorsement. Dual documentation in both the fisheries and the coastwise trade of the United States is permissible. Any vessel which will carry fishing parties for hire must be inspected and certified (under 46 CFR part 176) by the U.S. Coast Guard as qualified to carry more than six passengers. If the vessel weighs fewer than 5 net tons the party must demonstrate to the Secretary's satisfaction that the carrying of fishing parties for hire will constitute its primary activity.

(b) Content of application. Applicants seeking an Agreement must submit a formal application providing the following information:

(1) Name and Tax Identification Number (TIN) of applicant;

(2) Proof of U.S. citizenship;

(3) The first taxable year for which the Agreement is to apply (see §259.4 for the latest time at which applications for an Agreement relating to the previous taxable year may be received);

(4) The following information regarding each eligible vessel which is to be incorporated in Schedule A of the Agreement:

(i) Name of vessel,

(ii) Official number or, in the case of vessels weighing under 5 net tons, the State registration number, where required,

(iii) Type of vessel (i.e., catching vessel, processing vessel, transporting vessel, charter vessel, barge, passenger carrying fishing vessel, etc.),

(iv) General characteristics (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of passengers carried or in the case of vessels operating in

the foreign or domestic commerce the various uses of the vessel, etc.),

(v) Whether it is owned or leased and, if leased, the name of the owner, and a copy of the lease,

(vi) Date and place of construction,

(vii) If reconstructed, date of redelivery and place of reconstruction,

(viii) Trade (or trades) in which the vessel is documented and date last documented,

(ix) The fishery of operation (which in this section means each species or group of species). Each species must be specifically identified by the acceptable common names of fish, shellfish, or other living marine resources which each vessel catches, processes, or transports or will catch, process, or transport for commercial purposes such as marketing or processing the catch),

(x) The area of operation (which for fishing vessels means the general geographic areas in which each vessel will catch, process, or transport, or charter for each species or group of species of fish, shellfish, or other living marine resources),

(5) The specific objectives to be achieved by the accumulation of assets in a Capital Construction Fund (to be incorporated in Schedule B of the Agreement) including:

- (i) Number of vessels,
- (ii) Type of vessel (i.e., catching, processing, transporting, or passenger carrying fishing vessels),
- (iii) General characteristics (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of passengers carried),
- (iv) Cost of projects,
- (v) Amount of indebtedness to be paid for vessels to be constructed, acquired, or reconstructed (all notes, mortgages, or other evidence of indebtedness must be submitted as soon as available, together with sufficient additional evidence to establish that full proceeds of the indebtedness to be paid from a CCF account under an Agreement, were used solely for the purpose of the construction, acquisition, or reconstruction of Schedule B vessels),
- (vi) Date of construction, acquisition, or reconstruction,
- (vii) Fishery of operation (which in this section means each species or group of species must be specifically identified by acceptable common name of fish, shellfish, or other living marine resources), and
- (viii) Area of operation (which in this section means the general geographic areas in which each vessel will operate for

each species or group of species of fish, shellfish, or other living marine resources),

(c) Filing. The application must be signed and submitted to the Financial Services Division of the National Marine Fisheries Service. As a general rule, the Agreement must be executed and entered into by the taxpayer on or prior to the due date for the filing of the Federal tax return in order to be effective for the tax year to which that return relates. It is manifestly in the Applicant's best interest to file at least 45 days in advance of such date.

§ 259.3 Acquisition, construction, or reconstruction.

CCF funds cannot be used for any vessel acquisition, construction, or reconstruction that increases harvesting capacity.

(a) Acquisition. CCF funds can be used to replace an existing or a recently sunken vessel and its existing harvesting capacity. The replaced vessel must lose its fisheries trade endorsement and the vessel owner must notify the Coast Guard Documentation Center of that fact.

(b) Construction. CCF funds can be used to construct a vessel to replace an existing vessel, or a recently sunken vessel and its existing harvesting capacity.

(c) Reconstruction. Reconstruction may include rebuilding, replacing, reconditioning, refurbishing,

repairing, converting and/or improving any portion of a vessel. A reconstruction project must, however, either substantially prolong the useful life of the reconstructed vessel, increase its value, materially increase its safety, reliability, or energy efficiency, or adapt it to a different commercial use in the fishing trade or industry. No vessel more than 25 years old at the time of withdrawal shall be a qualified vessel for the purpose of reconstruction unless a special showing is made, to the Secretary's discretionary satisfaction, that the type and degree of reconstruction intended will result in an efficient and productive vessel with an economically useful life of at least 10 years beyond the date reconstruction is completed.

(d) Time permitted for construction or reconstruction.

Construction or reconstruction must be completed within 12 months from the date construction or reconstruction first commences, unless otherwise consented to by the Secretary.

§ 259.4 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary's consent; first tax year for which an Agreement is effective.

(a) Constructive deposits and withdrawals (before Agreement executed date). Constructive deposits and withdrawals are deemed to have been deposited to and withdrawn

from a designated CCF account even though the funds were not physically deposited. Constructive deposits and withdrawals shall be permissible only during the "Tax Year" for which a written application for an Agreement is submitted to the Secretary. Once the Secretary executes the Agreement, the constructive deposit and withdrawal period ends. All deposits must be physically deposited into a designated CCF account.

(1) All qualified deposits and expenditures occurring within the period specified directly above, that are within the eligible ceilings specified at 46 U.S.C. 53505, may be consented to by the Secretary as constructive deposits and withdrawals. In order for the Secretary to provide his or her consent for constructive deposit and withdrawal treatment, the applicant must include a written request with the application and provide sufficient supporting data to enable the Secretary to evaluate the request. This written request must be submitted no later than the "Extension Period" for that party's initial tax year.

(2) [Reserved]

(b) Constructive deposits and withdrawals (after the Agreement effective date). The Secretary shall not permit constructive deposits or withdrawals after the effective date of an Agreement. Deposits made after the effective date of an

Agreement must be physically deposited into a dedicated CCF account.

(c) First tax year for which an Agreement is effective.

In order for an Agreement to be effective for any applicant's "Tax Year," the written application must be submitted to the Secretary before the end of the "Filing Period" or "Extension Period" for that tax year, whichever applies. If the written application is received by the Secretary, after the end of the "Filing Period" or "Extension Period," whichever applies, then the Agreement will be first effective for the next succeeding "Tax Year."

(1) It is in the applicant's best interest to submit his or her written application at least 45 days in advance of the end of his or her tax due date. If the written application is submitted too close to the tax due date, and the Secretary is not ultimately able to execute the Agreement, the applicant must bear the burden of negotiating with the Internal Revenue Service for relief. The Secretary shall regard any penalties related to this denied application as due to the applicant's failure to apply for an Agreement in a timely manner.

(2) [Reserved]

(d) Ratification of withdrawals, as qualified, made without first having obtained Secretary's prior consent. Any withdrawals made after the effective date of an Agreement

without the Secretary's consent are automatically non-qualified withdrawals, unless the Secretary subsequently consents to them by ratification.

(1) The Secretary may ratify, as qualified, any withdrawal made without the Secretary's prior consent, provided the withdrawal would have resulted in the Secretary's consent had it been requested before withdrawal.

(2) The Secretary may issue his or her retroactive consent, if appropriate, as work priorities permit. However, if the Secretary is unable to issue retroactive consent for withdrawals made without his or her consent, then those withdrawals, and any associated penalties, will be deemed due to the party's failure to apply in a timely manner.

(3) It is recommended that a party submit his or her request for withdrawal at least 45 days in advance of the expected date of withdrawal. Withdrawals made without the Secretary's consent, in reliance on obtaining the Secretary's consent, are made purely at a party's own risk. Should any withdrawal made without the Secretary's consent prove, for any reason, to be one which the Secretary will not or cannot consent to ratify, then the result will be an unqualified withdrawal and/or an involuntary termination of the Agreement.

(4) Should a party withdraw CCF funds for a project not previously deemed an eligible Schedule B objective without

having first obtained the Secretary's consent, the Secretary may entertain an application to amend the Agreement's Schedule B objectives as the prerequisite to consenting by ratification to the withdrawal.

(5) Redeposit of any withdrawals made without the Secretary's consent, and for which such consent is not subsequently given (either by ratification or otherwise), shall not be permitted. If the non-qualified withdrawal adversely affects the Agreement's general status the Secretary may terminate the Agreement.

§ 259.5 Maximum deposit amounts and time to deposit.

(a) Other than the maximum annual ceilings established by the Act, the Secretary shall not establish an annual ceiling. However, deposits can no longer be made once a party has deposited 100 percent of the anticipated cost of all Schedule B objectives unless the Agreement is then amended to establish additional Schedule B objectives.

(b) Ordinarily, the Secretary shall permit deposits to accumulate prior to commencement of any given Schedule B objective for a maximum of ten years. However, at the Secretary's sole discretion and based on good and sufficient cause shown, the time period may be extended.

§ 259.6 Termination of inactive and zero balance accounts.

(a) If a Schedule B objective has not commenced within 10 years from the date the Agreement was established, and has not been extended by written approval of the Secretary, the Agreement is considered inactive and subject to termination.

(b) If the account balance of all depositories of an Agreement is zero dollars 10 years after the date it was established, and has not been extended through amendment, the Agreement is considered inactive and subject to termination unless its Schedule B objective has commenced.

(c) A certified letter will be sent to holders of Agreements identified for termination informing them that the agreement will terminate 60 days after the date of the letter unless the deficiencies identified in the letter are addressed.

§ 259.7 Annual deposit and withdrawal reports required.

(a) The Secretary will require from each party an annual deposit and withdrawal report for each CCF depository. Failure to submit such reports may be cause for involuntary termination of the party's Agreement.

(1) A final deposit and withdrawal report at the end of the tax year, which shall be submitted not later than 30 days after expiration of the due date, for filing the party's Federal income tax return. The report must be made on a form

prescribed by the Secretary using a separate form for each CCF depository.

(2) Each report must bear a certification that the deposit and withdrawal information given includes all annual deposit and withdrawal activity for each CCF depository. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity.

(b) The Secretary, at his or her discretion, may, after due notice, disqualify withdrawals and/or involuntarily terminate the Agreement for the participant's failure to submit the required annual deposit and withdrawal reports.

(c) Additionally, each party shall submit, not later than 30 days after expiration of the party's tax due date, a copy of the party's Federal Income Tax Return filed with IRS for the preceding tax year. Failure to submit the Federal Income Tax Return shall, after due notice, be cause for the same adverse action specified in the paragraph above.

§ 259.8 CCF accounts.

(a) General. Each CCF account in a scheduled depository shall have an account number, which must be reflected on the reports required by §259.7. All CCF accounts shall be reserved only for CCF transactions. There shall be no intermingling of CCF and non-CCF transactions and there shall be no pooling of 2 or more CCF accounts without the prior

consent of the Secretary. Safe deposit boxes, safes, or the like shall not be eligible CCF depositories without the Secretary's consent, which shall be granted solely at his or her discretion.

(b) Assignment. The use of funds held in a CCF depository for transactions in the nature of a countervailing balance, compensating balance, pledge, assignment, or similar security arrangement shall constitute a material breach of the Agreement unless prior written consent of the Secretary is obtained.

(c) Depositories. Section 53506(a) of the Act provides that amounts in a CCF account must be kept in a depository or depositories specified in the Agreements and be subject to such trustee or other fiduciary requirements as the Secretary may require. Unless otherwise specified in the Agreement, the party may select the type or types of accounts in which the assets of the Fund may be deposited.

§ 259.9 Conditional consents to withdrawal qualification.

The Secretary may conditionally consent to the qualification of a withdrawal. This consent is conditioned upon the timely submission, to the Secretary, of the items requested by the Secretary in the withdrawal approval letter. Failure to provide these items in a timely manner, and after

due notice, will result in nonqualification of the withdrawal and/or involuntary termination of the Agreement.

§ 259.10 Miscellaneous.

(a) Wherever the Secretary prescribes time constraints, the postmark date shall control if mailed. If a private delivery service is used, including Federal Express or United Parcel Service, the date listed on the label shall control. Submission of CCF transactions by email or facsimile is only allowable when an original signature is not required.

(b) All CCF information received by the Secretary shall be held strictly confidential to the extent permitted by law, except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the identity of the fund holder.

(c) While recognizing that precise regulations are necessary in order to treat similarly situated parties similarly, the Secretary also realizes that precision in regulations can sometimes cause inequitable effects to result from unavoidable, unintended, or minor discrepancies between the regulations and the circumstances they attempt to govern. The Secretary will, consequently, at his or her discretion, as a matter of privilege and not as a matter of right, attempt to afford relief to parties where literal application of the purely procedural, as opposed to substantive, aspects of these

regulations would otherwise work an inequitable hardship. This privilege will be sparingly granted and no party should act in reliance on its being granted.

(d) These §§ 259.1 through 259.10 are applicable to all Agreements first entered into (or amended) on or after the date these sections are adopted.

(e) These §§ 259.1 through 259.10 are specifically incorporated in all present Agreements.

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