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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 259

[Docket No. 080410551-7410-02]

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: Final rule.

SUMMARY: NMFS hereby amends 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 eliminate the minimum cost 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 also prohibit withdrawals of funds under the CCF program (program) for projects that increase harvesting capacity, unless the project is subject to a limited access system in which the

fisheries management authority establishes harvesting limits.

DATES: Effective [*Insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from Paul Marx, Chief, Financial Services Division, NMFS, Attn: Capital Construction Fund Rulemaking, 1315 East-West Highway, Silver Spring, MD 20910 or by calling Richard VanGorder (see **FOR FURTHER INFORMATION CONTACT**) or on the Capital Construction Fund website at http://www.nmfs.noaa.gov/mb/financial_services/ccf.htm.

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final 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 final rule revises and replaces the CCF regulations found at 50 CFR part 259.

The program was established by the Merchant Marine Act of 1936 (MMA), ch. 858, title VI, sec. 607(a), 49 Stat. 2005 (1936) (current version at 46 U.S.C. 53503 (2007) 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 of the U.S. merchant marine fleet. 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.

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 1,394 CCF Agreements with a total of approximately \$270M 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 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.

Summary of Comments and Responses

The proposed rule (79 FR 57496, September 25, 2014) solicited public comments through November 10, 2014. During the comment period, NMFS received comments from eight individuals and twenty-six entities. The twenty-six entities include companies that currently participate in the CCF program, CCF representatives, trade associations and environmental groups. Most individuals and entities made multiple comments in one document. Comments were generally in favor of the changes made in the proposed rule

but many expressed concerns over certain provisions. The specific comments and our responses are as follows.

Comment 1: Four individuals and twenty-four entities are opposed to adding harvesting capacity restrictions to acquisition, construction and reconstruction projects.

Response: NMFS agrees that a purpose of the rule is to prohibit any project activity from increasing harvesting in a fishery, as opposed to affecting harvesting capacity. Therefore, the language is modified to prohibit CCF funds from being used for vessel acquisition, construction, or reconstruction that increases harvesting capacity other than in a limited access system in which the fisheries management authority establishes harvesting limits. In a limited access system in which the fisheries management authority establishes harvesting limits, increased capacity will not lead to increased harvesting above the limit set at the fishery level.

Comment 2: One entity believes that the proposed harvesting capacity restrictions are not restrictive enough.

Response: As indicated in the response to Comment 1, NMFS believes that prohibiting CCF funds from being used in a manner that increases harvesting capacity is only necessary for fisheries where there is not an established

limited access system under a management system which provides adequate safeguards to ensure the goal of maintaining sustainable fisheries is met.

Comment 3: Five individuals and nineteen entities are opposed to reducing the timeframe to complete construction and reconstruction from eighteen months to twelve months. In addition, one individual and four entities proposed increasing the allowable timeframe up to thirty six months.

Response: NMFS agrees that reducing the allowable timeframe to complete construction and reconstruction projects may cause an unintended burden on CCF program users. NMFS realizes that building new, safer and more fuel efficient vessels may take more than the proposed twelve month period. Thus, the final rule maintains the current eighteen month timeframe in accordance with existing regulations. NMFS believes that the majority of CCF projects will be completed in eighteen months. NMFS has the authority to grant extensions for projects which may require more time to complete.

Comment 4: One individual and six entities stated that the definition of an eligible and qualified vessel includes only vessels fewer than five net tons and excludes Coast Guard documented vessels.

Response: In response to public comments, NMFS has revised the rule to include vessels which are five net tons or greater and Coast Guard documented vessels as eligible and qualified. NMFS agrees that the exclusion of these vessels was unintended and erroneous.

Comment 5: Eight entities stated that the proposed changes were contrary to the original statutory intent of the CCF program to modernize the US fishing fleet and support domestic shipyards.

Response: The original statutory intent for the CCF program was to assist owners and operators of United States flagged vessels in accumulating the large amount of capital necessary for the modernization of the U.S. merchant marine fleet. The extensive vessel reconstruction requirements in the current regulations no longer make sense given the improved status of the merchant marine fleet. The changes made in this final rule eliminate provisions that no longer meet the needs of CCF participants and simplify the regulations to better implement the purposes of the underlying statute. These amendments eliminate the minimum cost 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. NMFS feels that this final rule is

consistent with the original purpose and intent of the statute.

Comment 6: Two individuals and seven entities opined that the stated rationale for the proposed changes were not justified and that the proposed changes impose unnecessary restrictions and less flexibility.

Response: NMFS disagrees and maintains that certain provisions of the current regulations no longer make sense given the status of the merchant marine fleet. These changes impose no additional burdens on program users. The changes reduce the burdens imposed by simplifying the regulations to eliminate the minimum cost 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. These changes should bring the program into greater alignment with the current needs of program users and retain flexibility when undertaking CCF projects.

Comment 7: One individual and one entity stated that the elimination of the minimum deposit requirement will interfere with the goals of the CCF program and may result in termination of CCF agreements.

Response: The intent of the changes is to prevent forcing participants to deposit funds that are not

necessary to complete qualified projects. These changes are consistent with the goals of the CCF program to set aside funds for specific projects to be completed in a timely manner. CCF Agreements will only be terminated if they are deemed inactive. While CCF Agreements may be terminated for inactivity, participants may apply again in the future for a new Agreement if desired.

Comment 8: One individual has requested that NMFS keep small businesses in mind when constructing the final regulations.

Response: The final rule has been constructed with the intent 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 changes are intended to benefit all CCF program users including small businesses.

Comment 9: Two individuals and eight entities stated that harvesting capacity is not defined in the proposed rule.

Response: NMFS agrees that harvesting capacity is not specifically defined. However, Agreements involving projects that occur within a limited access system in which fisheries management authority establishes harvesting

limits will not be affected by any limitations on harvesting capacity.

Comment 10: One individual stated that the CCF program should be shut down.

Response: The individual did not provide reasoning as to why the program should be eliminated. Congress has identified a need to modernize and expand the US fishing industry. The CCF program is designed to meet this need.

Comment 11: One entity requested that former 50 CFR 259.36(c)(3), which was removed in the proposed rule, be added back to the final rule.

Response: Former 50 CFR 259.36(c)(3) allowed for non-cash deposits or investments as approved depositories. The commenter stated that he had used this provision in the former regulation to include installment sales contracts as CCF assets when the required cash deposit from a vessel sale was not available in the year of sale. NMFS believes that this commenter's use of this provision is erroneous. 46 U.S.C. 53506 specifies that "Amounts in a capital construction fund shall be kept in the depository specified in the agreement and shall be subject to trustee and other fiduciary requirements prescribed by the Secretary. Except as provided in subsection (b) [stock investments], amounts in the fund may be invested only in interest-bearing

securities approved by the Secretary.” An installment sales contract does not meet the definition of an allowable CCF investment as specified in the statute.

Comment 12: One entity stated that the operation of charter vessels that allow customers to harvest fish for their own use does not appear to meet the proposed definition for a commercial fishing vessel and, therefore, would make them ineligible for CCF participation.

Response: NMFS has revised the definitions for eligible and qualified vessels to specifically allow for charter vessels.

Comment 13: One entity stated that the termination of inactive and zero balance accounts under 50 CFR 259.6 is contrary to Internal Revenue Code (IRC) section 7518(g)(5). The assertion was that such termination was contrary to this section because it provides that funds are only treated as non-qualified if they have been on deposit for more than twenty five years.

Response: The commenter is confusing two separate authorities that govern the CCF program relating to time constraints. The IRC section 7518(g)(5) allows for the Secretary to treat funds that have been on deposit for more than twenty five years as non-qualified in years twenty six through thirty at specified percentages and taxed

accordingly. Section 259.6 of this final rule separately allows for the Secretary to terminate CCF Agreements that have not undertaken a qualified project in the last ten years. The purpose of this section is to terminate inactive accounts. These two sections are not related and, therefore, do not contradict each other.

Comment 14: One entity stated that the ten year period to complete a project should commence as of the last amendment date and not the start date of the Agreement.

Response: NMFS disagrees that the ten year period to begin a project should start as of the last amendment date. The requirement to do at least one project every ten years existed in the prior CCF regulation. The final rule does not change this requirement. The CCF program was created to modernize the US fishing fleet and support domestic shipyards. NMFS believes that requiring CCF program users to utilize their CCF funds for a qualified project at least once every ten years is reasonable. Extending the project start date by amendment could lead to continual extensions without ever undertaking a project which would not be consistent with the underlying intent of the statute to modernize the US fishing fleet.

Comment 15: One entity believes that the rule prohibits electronically signed documents.

Response: NMFS agrees that it would be advantageous to permit electronic submission of documents that require an original signature. At this time, we do not have the capabilities to accept electronic signatures. NMFS is optimistic that the option to file using an electronic signature will be available to program users in the future.

Comment 16: One entity stated that there is no "grandfather" clause in the new regulations.

Response: The applicability of the final rule to all past, present and future Agreements can be found in 50 CFR 259.10(d) and (e).

Comment 17: One entity has requested that NMFS add a restriction to the rule that no project be allowed which does not reduce ocean noise pollution.

Response: NMFS is in support of projects that reduce ocean noise pollution. However, NMFS believes the more appropriate forum for limiting noise pollution is through the Magnuson-Stevens Fishery Conservation and Management Act Fisheries Management Plans.

Comment 18: Two entities believe that the Environmental Assessment prepared by NMFS lacked the detail required by the National Environmental Policy Act (NEPA) specifically in regards to the potential impacts of adding

the harvesting capacity restrictions and twelve month timeframe constraints.

Response: NMFS believes that the changes made in this final rule are largely administrative in nature and the implementation of this final action should have a nominal, if any, impact on the physical, biological, social and economic environments. Agreements involving projects that occur within a limited access system in which the fisheries management authority establishes harvesting limits will not be affected by any limitations on harvesting capacity. In addition, the final rule maintains the current eighteen month timeframe in accordance with existing regulations, rather than reducing the timeframe to twelve months as had been proposed.

Summary of Revisions in the Final Rule

1. Revises § 259.31(a) (redesignated § 259.3(a)) to eliminate the requirement that the Agreement holder reconstruct a used vessel acquired with CCF funds. This permits the acquisition of a used vessel without requiring that it be reconstructed;

2. Revises § 259.31(b) (redesignated § 259.3(c)) 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 eliminates making excessive capital improvements to vessels based upon an arbitrary amount. Instead, program participants will use the CCF to spend what is needed to improve the vessel. It also removes § 259.31(b) (2) because it was tied to the now eliminated minimum cost requirement;

3. Revises § 259.31(b) (1) (redesignated § 259.4(a)) to add material increases in safety, reliability, or energy efficiency to the list of qualified reconstruction items.

4. 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 Final rule also eliminates the minimum cost requirement in paragraphs (a) (1) and (2) of § 259.34. This change is consistent with our attempt to reduce the amount of CCF funds on deposit by not requiring excess deposits to meet an annual deposit requirement;

5. 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 are amended as follows for purposes of simplicity, clarity, and brevity:

1. A Definitions section is added (new § 259.1);
2. Existing § 259.1 is 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 is redesignated as § 259.2. Section 259.2(b)(1) adds 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 259.3(a) simplifies "Acquisition" requirements by removing the existing requirements when acquiring a used vessel;
5. Section 259.3(b) is a new section pertaining specifically to "Construction," which had been omitted as a separate section in the previous regulations;
6. Section 259.3(c) replaces old § 259.31(b), and simplifies the requirements related to "Reconstruction" by incorporating the relevant language regarding energy and

safety improvements from the deleted Sections 259.31(d) and (e);

7. Section 259.33 is redesignated as § 259.4;

8. Section 259.34 is redesignated as § 259.5 and eliminates the minimum deposit requirement;

9. Section 259.6 is 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;

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

11. Section 259.36 is redesignated § 259.8, and provisions relating to non-cash deposits or investments are dropped because they have never occurred;

12. Section 259.37 is redesignated as § 259.9; and

13. Section 259.38 is redesignated as § 259.10.

Classification

This final rule is published under the authority of, and is consistent with, Chapter 535 of the MMA. The NMFS

Assistant Administrator has determined that this final rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, as amended, and other applicable law.

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

In compliance with the National Environmental Policy Act, NMFS prepared an environmental assessment (EA) for this final rule. The assessment discusses the impact of this final rule on the natural and human environment and integrates a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA). NMFS will send the assessment, the review and analysis to anyone who requests a copy (see **ADDRESSES**).

NMFS prepared a FRFA, under section 604 of the Regulatory Flexibility Act (RFA), to describe the economic impacts this final rule has on small entities. The analysis aided us in considering regulatory alternatives that could minimize the economic consequences on affected small entities. The final rule does not duplicate or conflict with other Federal regulations.

Summary of FRFA

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). 5 U.S.C. 601(3). 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. 5 U.S.C. 601(5). 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 affects some larger businesses.

Because the CCF is a voluntary program that provides tax deferred benefits to qualified applicants, we assume that newly participating entities large or small will not be negatively impacted by this rule. For current participants, the changes allow more flexibility in the use of the funds and, therefore, will only positively affect those entities.

Description of the Number of Small Entities

The small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing is \$11 million in annual gross receipts (see 50 CFR part 200.2(a)). Most of the 1,394 participants in the program, all of who are fishers, have annual gross

revenues of less than \$11 million, and are thus considered to be small entities. However, analysts cannot quantify the exact number of small entities that may choose to participate in the program and be directly regulated by this action, the net effects are expected to be positive relative to the status quo.

Because the new regulations merely simplify existing CCF regulations and policies, this action does 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 they will incur a benefit by participating in the program.

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 that did not exist in the original regulations.

Because these regulations impose no significant costs on any small entities, but rather 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, we have determined this rule does not substantially impact a significant number of small businesses.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." Even though a FRFA was not required, one was prepared. Copies of the FRFA are available upon request (see **ADDRESSES**). The information in this FRFA supports a determination that this rule will have beneficial effects on affected small entities. Therefore,

NMFS has determined that this final rule will not have a substantial adverse economic impact on a substantial number of small entities. Since a FRFA was not required, "small entity compliance guides" will not be prepared.

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 final 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 final rule does not affect the coastal zone of any state.

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

This final 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: May 24, 2017.

Alan D. Risenhoover,
Acting Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR Chapter II by revising 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.

As used in this part:

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 if 5 net tons or greater; 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 or vessel which will carry fishing parties for hire -

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

(ii) State registered if at least 2 net tons but fewer than 5 net tons or Documented under the laws of the United States if 5 net tons or greater;

(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.

Limited Access System means a system that limits participation in a fishery to those satisfying certain eligibility criteria or requirements contained in a fishery management plan or associated regulation.

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 if 5 net tons or greater; 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 or vessel which will carry fishing parties for hire -

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

(ii) State registered if at least 2 net tons but fewer than 5 net tons or Documented under the laws of the United States if 5 net tons or greater;

(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 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 in a fishery or fisheries, other than in a limited access system in which the fisheries management authority establishes harvesting limits.

(a) *Acquisition.* CCF funds can be used to acquire any used qualified vessel that will fish in a limited access

system in which the fisheries management authority establishes harvesting limits. If the fishery or fisheries is not a limited access system, CCF funds can only be used to replace an existing, recently sunken, or scrapped 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 new qualified vessel that will fish in a limited access system in which the fisheries management authority establishes harvesting limits. If the fishery or fisheries is not a limited access system, CCF funds can only be used to replace an existing, recently sunken, or scrapped 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.

(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 18 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 paragraph (b) of this section.

§ 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 Agreements existing prior to the date these sections are adopted.

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