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Chapter II —National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Subchapter F —Aid to Fisheries

Part 259 Capital Construction Fund Tax Regulations

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PART 259—CAPITAL CONSTRUCTION FUND TAX REGULATIONS

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

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§ 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 U.S.C. 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.