Diana Hynek 06/23/2006
Departmental Paperwork Clearance Officer
Office of the Chief Information Officer

14th and Constitution Ave. NW.

Room 6625

Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 04/18/2006.

TITLE: Capital Construction Fund - Deposit/Withdrawal

Report

AGENCY FORM NUMBER(S): 34-82

ACTION : APPROVED WITHOUT CHANGE

OMB NO.: 0648-0041

EXPIRATION DATE: 06/30/2009

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	3,600	1,200	20
New	3,600	1,200	20
Difference	0	0	0
Program Chang	ge	0	0
Adjustment		0	0

TERMS OF CLEARANCE: None

NOTE: The agency is required to display the OMB control number and inform respondents of its legal significance (see 5 CFR 1320.5(b)).

OMB Authorizing Official Title

John F. Morrall III Acting Deputy Administrator, Office of Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's

Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503. 1. Agency/Subagency originating request 2. OMB control number b. [] None 3. Type of information collection (*check one*) Type of review requested (check one) Regular submission a. [b. [Emergency - Approval requested by ____ a. [] New Collection Delegated b. [] Revision of a currently approved collection c. [] Extension of a currently approved collection 5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? [] Yes [] No d. [] Reinstatement, without change, of a previously approved collection for which approval has expired e. [] Reinstatement, with change, of a previously approved collection for which approval has expired 6. Requested expiration date f. [] Existing collection in use without an OMB control number a. [] Three years from approval date b. [] Other Specify: For b-f, note Item A2 of Supporting Statement instructions 7. Title 8. Agency form number(s) (if applicable) 9. Keywords 10. Abstract 11. Affected public (Mark primary with "P" and all others that apply with "x") 12. Obligation to respond (check one) a. __Individuals or households d. ___Farms
b. __Business or other for-profite. ___Federal Government] Voluntary Business or other for-profite. Federal Government

Not-for-profit institutions f. State, Local or Tribal Government Required to obtain or retain benefits 1 Mandatory 13. Annual recordkeeping and reporting burden 14. Annual reporting and recordkeeping cost burden (in thousands of a. Number of respondents b. Total annual responses a. Total annualized capital/startup costs 1. Percentage of these responses b. Total annual costs (O&M) collected electronically c. Total annualized cost requested c. Total annual hours requested d. Current OMB inventory d. Current OMB inventory e. Difference e. Difference f. Explanation of difference f. Explanation of difference 1. Program change 1. Program change 2. Adjustment 2. Adjustment 16. Frequency of recordkeeping or reporting (check all that apply) 15. Purpose of information collection (Mark primary with "P" and all others that apply with "X") a. [] Recordkeeping b. [] Third party disclosure] Reporting a. ___ Application for benefits Program planning or management 1. [] On occasion 2. [] Weekly Program evaluation f. Research 3. [] Monthly General purpose statistics g. Regulatory or compliance 4. [] Quarterly 5. [] Semi-annually 6. [] Annually 7. [] Biennially 8. [] Other (describe) 18. Agency Contact (person who can best answer questions regarding 17. Statistical methods Does this information collection employ statistical methods the content of this submission) [] Yes [] No Phone:

OMB 83-I 10/95

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee Date

OMB 83-I 10/95

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)			
Signature	Date		
Signature of NOAA Clearance Officer			
Signature	Date		

SUPPORTING STATEMENT CAPITAL CONSTRUCTION FUND – DEPOSIT/WITHDRAWAL REPORT OMB CONTROL NO.: 0648-0041

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

NOAA Form 34-82 is used to facilitate meeting the continuing record keeping requirements of the Fishing Vessel Capital Construction Fund (FVCCF) program, which is statutorily mandated under Section 607 of the Merchant Marine Act, 1936, as amended. The data collected is required pursuant to 50 CFR, Part 259.35, and P.L. 99-514 (The Tax Reform Act, 1986), and is needed for responsible program management. The FVCCF is a tax deferral program, which allows participating fishermen to defer the tax on vessel income deposited into the fund and provides for the recapture of the deferred tax by reducing the agreement vessel's basis for depreciation by the amount withdrawn for its construction, acquisition, and/or reconstruction. Deposited income is separated into one of three bookkeeping accounts as set forth in P.L. 91-469, Sec 607(e), and is withdrawn from them on a first-in first-out basis in accordance with the nature of the withdrawal as set forth in 26 CFR Part 3 Sec 3.6(b) and 3.7(c).

If withdrawn monies are not used for allowed purposes, the withdrawn amount (a non-qualified withdrawal) is considered income to the participant in the year withdrawn, and taxed at the highest rate for the account involved.

Under a Capital Construction Fund agreement, the participant must deposit a minimum amount per year, and cannot deposit more than a set amount. NMFS must approve any withdrawals before the withdrawal takes place.

It is essential that a reasonably detailed record be kept of each participant's deposit/withdrawal activity. Copies of pertinent regulations are attached. Those regulations require both a preliminary and final report, but the preliminary report is no longer required. Participants are aware of this, but the regulation has not yet been revised.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The information is used by the Government for the purpose of responsibly administering the FVCCF Program and for general program management purposes. NOAA Form 34-82 must be submitted by participants not later than 30 days after the deadline, with extensions, for filing the participant's tax return. A copy of the tax return must also be submitted at that time. NMFS compares the two documents to find any conflicting information on earned income, deductions taken for deposits, adjustments made to depreciation schedules, and the proper payment of additional tax for non-qualified withdrawals. The information is also checked to ensure that withdrawals have been approved, and that the deposited income meets minimum and maximum limits. There is no other way, except by direct audit, for us to check if participants are

complying with deposit/withdrawal requirements and properly accounting for FVCCF activity on their tax returns. Incorrect reporting can be costly to the Government in lost rather than deferred tax revenue.

As explained in the preceding paragraph, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of the Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. There is no plan to disseminate this information, but if dissemination is warranted the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. <u>Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.</u>

Although the Program, Automatic Data Processing (ADP) system, could be modified to accept electronic filing, there is no benefit in filing the reports electronically unless the copies of tax returns that must also be submitted at the same time also could be submitted electronically. The IRS does receive electronic tax return submissions in many different tax software programs that it converts into one format. We would have to acquire Internal Revenue Service's (IRS) electronic filing software if we were to allow agreement holders to submit their tax returns electronically at the same time as their Deposit/Withdrawal Reports.

4. Describe efforts to identify duplication.

There is no duplication. Information being collected is specific and relevant only to the FVCCF Program.

5. <u>If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden</u>.

The form is organized to help small entities such as businesses keep track of their annual deposit/withdrawal activity in a manner that will aid them in the timely preparation of their tax returns. The information collected is the minimum necessary to ensure participants are complying with program regulations and statute.

6. <u>Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.</u>

The information is collected at the end of each participant's tax year. Less frequent collection would allow improper deposit/withdrawal activity to go undetected for periods of more than one year and, in some cases, could prevent the IRS from protecting the Government's interest if they are not notified of tax liability situations in time to act before the expiration of the IRS 3-year statute of limitations. Not collecting the information would almost certainly result in the Government's not recovering substantial amounts of deferred taxes.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

There are no special circumstances that require the collection to be conducted in a manner inconsistent with Office of Management and Budget (OMB) guidelines.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice (copy attached) solicited public comment on this collection. One comment was received. The commenter objected to tax breaks for fishing vessels that the commenter asserts over fish our waters and denude the ocean of marine life. No other comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No gift or payment of any kind is provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

No assurance of confidentiality is given.

11. <u>Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.</u>

No sensitive questions are asked.

12. Provide an estimate in hours of the burden of the collection of information.

Estimate in hours of the burden of the collection of information:

Number of respondents = 3,600 Frequency of response = once a year Total number of responses expected = 3,600 Avg. response time per respondent = 20 minutes Total annual response time = 1,200 hours

13. Provide an estimate of the total annual cost burden to the respondents or recordkeepers resulting from the collection (excluding the value of the burden hours in #12 above).

Annualized costs per respondent are estimated at \$5.55 (\$3.05 for postage and \$2.50 for copying). Total annual cost to the respondents or recordkeepers based on 3,600 responses is \$20,000.

14. Provide estimates of annualized cost to the Federal government.

There is no annualized cost to the Federal government for this information collection.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

No change.

16. <u>For collections whose results will be published, outline the plans for tabulation and publication.</u>

The results of the collection are not published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

The date will be displayed.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

NOAA FORM 34-82

301/713-2393 ext. 194

OMB Control No.: 0648-0041 Expiration Date: 06/30/2006

Mail report and tax return copy to: NOAA Fisheries F/SF2

Capital Construction Fund Program 1315 East-West Highway Silver Spring, MD 20910-3282

U.S. DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION NOAA Fisheries

Capital Construction Fund Program DEPOSIT/WITHDRAWAL REPORT

Due 30 days after filing date of Federal Tax Return (including extensions). This report must be filed annually, whether or not agreement activity took place. Attach a signed copy of the Federal Income Tax Return, as filed with the IRS to this report

Prepare a separate Form 38-42 report for each account you maintain. DEPOSITORY BANK, OR INVESTMENT FIRM Name:	AGREEMENT HOLDER: Name:	CCF CASE NUMBER CCF
City and State:	Address:	
Account Number: Date Opened: Type of Investment Account: Q Savings Q Money Marker Q Checking Q Other: (describe)		REPORT OF DEPOSITORY ACTIVITY FOR TAX YEAR ENDED:
	Telephone No.:	, ,

with the 100, to this report.				Telephone No.:		,	,	
Did you reduce taxable income for the current tax year due to CCF activity? Amount deferred \$	CLASSIFICATION OF DEPOSITS:					Notes:		
Was a CCF deposit made during the current year for taxes deferred in the prior year? Q YES Q NO Clearly identify this deposit in Account Activity section.	ORDINARY INCOME (tax deferred)		CAPITAL GAIN (tax deferred)		CAPITAL (funds <u>not</u> tax deferred)		SUMMARY BALANCE	
	DEPOSIT	WITHDRAWAL	DEPOSIT	WITHDRAWAL	DEPOSIT	WITHDRAWAL		
BALANCE FORWARD-FROM PRIOR YEAR'S REPORT (Should be same as last year's "Balance - End of Year" amount. If different, attach a reconciling schedule.)								
ACCOUNT ACTIVITY FOR THE TAX YEAR Summarize interest and dividend deposits. For deposits of vessel income, provide name of vessel and Schedule A page number. For all withdrawals, provide name of vessel and Schedule B page number for project. DATE DESCRIBE SCH. B PAGE #								
1							1	
2							2	
3							3	
4							4	
5							5	
6							6	
7							7	
8							8	
9							9	
10							10	
TOTAL EACH COLUMN (include "Balance Forward" amount for each column)		()		()		()		
WITHDRAWALS FOR THE YEAR (copy totals from adjacent column)	()	←	()	4	()	←		
BALANCE - END OF TAX YEAR (net amounts and Summary Balance)								

Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NOAA Fisheries F/SF2 1315 East-West Hwy., Silver Spring,

NOAA FORM 34-82 CCF - DEPOSIT/WITHDRAWAL REPORT

I certify that for this tax year, there were no withdrawals or transfers other than those enumerated above for this Capital Construction Fund agreement. This report reflects true and complete statements in accordance with all applicable rules and regulations issued or adopted by the Secretary of Commerce pertaining to Section 607 of the Merchant Marine Act of 1936, as amended. Information on this report is complete, true, and correct to the best of my knowledge and belief. (Following information is required.)

DATE: Q Agreement holder or officer Q Authorized representative SIGNATURE: ____

NOAA FORM 34-82 - GENERAL INFORMATION

CAPITAL CONSTRUCTION FUND - DEPOSIT/WITHDRAWAL REPORT

(SEE REVERSE SIDE FOR LINE-BY-LINE INSTRUCTIONS FOR FILING NOAA FORM 34-82)

NOAA Form 34-82 is required each year, even if no deposits or withdrawals are made.

Failure to submit these required annual deposit/withdrawal reports shall be cause, after due notice, for disqualification of withdrawals or involuntary termination of the CCF agreement, at the Secretary=s [of Commerce] discretion.

CAUTION: Notify NOAA Fisheries in writing of any change in depository institutions. Entering this

information on Form 34-82 is not sufficient notice to amend your Agreement.

DUE DATE: 30 Days after the due date of the year-s tax return, including extensions.

SUPPORTING DOCUMENTS REQUIRED:

- A signed and *complete* copy (even if it shows no CCF activity) of the year-s federal tax return as submitted to the IRS. Attach it to Form 34-82; *always* submit the tax return copy and Form 34-82 together.
- If deposits relate to a S-corporation, partnership, or LLC, attach copy of K-1 from that entity.
- If depositing net proceeds from sale or disposition of a vessel, attach a Net Proceeds Worksheet. Contact the CCF staff to request this form.
- Transfers between agreements generally must be disclosed on transferee and transferor tax returns.
 Deposit/Withdrawal reports should clearly show these transfers and the related agreement number.

AVOID FREQUENT ERRORS:

- Each depository account should be reported on a separate Form 34-82. If useful, add a schedule summarizing the
 years transactions.
- Funds transferred between two CCF depository accounts during the year should be shown as withdrawals and deposits on the affected accounts. Explain the transfers in DESCRIPTION.
- Verify that last years ending balance agrees with this years beginning balance on Form 34-82. Do not use *Year-End Market Value* for balances.
- Reconcile tax return entries reducing taxable income to entries on Form 34-82. Attach schedule if necessary to explain differences, especially when they relate to pass-through entities.
- Verify all deposit and withdrawal entries against the depository statement. All deposits must be physically made to the depository account, except for those made in the first effective year of the agreement or the period before the agreement is finalized. Deposits/withdrawals made during this period are referred to as Aconstructive. (Supporting depository statements should be kept as part of your permanent records.)
- All withdrawals should reference a specific *approved* project give the type of project , vessel name, and Schedule B page number. *Example: AReconstruction of FV Dorothy; B-4*".
- Source of vessel income should appear on the report. Example: AVessel income from FV Jack; Sch. A-2".
- Interest and dividends earned for the year may be summarized as a single entry.
- Do not include *unrealized* gains and losses; list only *realized* gains and losses on investment transactions. Your tax advisor can assist you on this matter.

NOAA Form 34-82 is used to meet the continuing record keeping requirements of the Fishing Vessel Capital Construction Fund (FVCCF) program which is statutorily mandated under Section 607 of the Merchant Marine Act, 1936, as amended. The data collected is required pursuant to 50 CFR, Part 259.35, and P.L. 99-514 (The Tax Reform Act, 1986). NOAA Fisheries is required to provide information furnished on this form to the Internal Revenue Service.

The information is used by the Government for the purpose of responsibly administering the FVCCF Program and for general program management purposes. Assurance of confidentiality of information required to complete Form 34-82 is given in 50 CFR Part 259, Sec 259.38(b) of the FVCCF regulations.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

NOAA FORM 34-82 - LINE-BY-LINE INSTRUCTIONS

CAPITAL CONSTRUCTION FUND - DEPOSIT/WITHDRAWAL REPORT

(SEE REVERSE SIDE FOR GENERAL INFORMATION ON NOAA FORM 34-82)

NOAA Form 34-82 and tax return copy are required each year, even if no deposits or withdrawals are made.

NOAA Fisheries is required to provide information furnished on this form to the Internal Revenue Service.

DEPOSITORY BANK, OR INVESTMENT FIRM - Enter name, location, type of account, account number, and date opened. Use a separate Deposit/Withdrawal Report for **EACH** account at **EACH** approved depository.

AGREEMENT HOLDER - Enter the name exactly as shown on the agreement.

TAXABLE YEAR ENDING - Enter applicable calendar year (12/31/yr.)... Fiscal Year taxpayers enter the ending date of the fiscal year.

CCF CASE NUMBER - Enter assigned case number as shown on the agreement.

ACCOUNT ACTIVITY FOR THE TAX YEAR: (Report transaction amounts in whole dollars)

DATE - Enter actual date of the deposit, withdrawal, or transfer. If reimbursing general operating funds, also show actual date of original expenditures in Description column.

Deposits: Enter the tax year for which the deposit is made, source of income (which Schedule A vessel) or

details of transferred funds. EX: 1996 income - FV Dorothy. Summarize interest and dividend

income. For deposit of proceeds of vessel sale, attach Net Proceeds Worksheet.

Withdrawals: Qualified withdrawals should describe Sch. B objective vessel and project. EX: Reconstruction of

FV Dorothy. Every withdrawal should also be fully explained.

SCH. A or **SCH.** B Page # - Reference the appropriate page number of the Schedule A (income producing) vessel for each deposit, and the Schedule B objective vessel for each qualified withdrawal.

CLASSIFICATION OF DEPOSITS (and Withdrawals) - Use these columns to specify the bookkeeping classification to which each deposit and/or withdrawal relates. These bookkeeping classifications designate the ceiling defined by the Merchant Marine Act of 1936 (MMA) Sec. 607(e) and IRS Code Sec. 7518(a) under which deposits and withdrawals are made. (Also see information in IRS Publication 595). Since each ceiling classification is subject to different treatment for tax purposes, proper classification is important. Qualified withdrawals are made in the following classification order: First, from Capital; second, from Capital Gain; third, from Ordinary Income. Nonqualified withdrawals are made: First, from Ordinary Income; second, from Capital Gain; third from Capital.

ORDINARY INCOME - Deposits under this ceiling classification create an immediate deduction from taxable income. Generally, ordinary income deposits are limited to: (1) taxable income from operating the Schedule A vessel; (2) the ordinary income portion (depreciation recapture) on the sale of Agreement vessels; and (3) interest, dividend and short term capital gains and losses earned on investments of the FVCCF depository account.

CAPITAL GAIN - (long-term gains and losses). Deposits under this ceiling classification also create an immediate income tax deduction. Report long-term capital gain deposits of net proceeds made from the sale or insurance proceeds of Agreement vessels. Capital gains or losses from investment of the FVCCF deposits are also reported here.

CAPITAL - (non-tax deferred deposits). Valid deposits under this ceiling classification DO NOT generate a tax deduction. Generally, capital deposits are limited to vessel depreciation and the return of capital on the sale or other disposition of Schedule A vessels.

SUMMARY BALANCE - *IMPORTANT* Show beginning and end-of-year balance in the depository.

SIGNATURE AND DATE - Required certification by Agreement holder or Authorized Representative (with Power of Attorney, only) . Forms not signed will be returned for certifying signature.

§ 259.35

effected, in which case minimum annual deposit compliance shall be audited at the end of each 3 year taxable period. In any taxable year, a Party may apply any eligible amount in excess of the 2 percent minimum annual deposit toward meeting the party's minimum annual deposit requirement in past or future years: Provided, however, At the end of each 3 year period, the aggregate amount in the fund must be in compliance with 2 percent minimum annual deposit rule (unless the 50 percent of taxable income situation applies).

- (2) The Secretary may, at his discretion and for good and sufficient cause shown, consent to minimum annual deposits in any given tax year or combination of tax years in an amount lower than prescribed herein: *Provided*, The party demonstrates to the Secretary's satisfaction the availability of sufficient funds from any combination of sources to accomplish Schedule B objectives at the time they are scheduled for accomplishment.
- (b) Maximum deposits. Other than the maximum annual ceilings established by the Act, the Secretary shall not establish a maximum annual ceiling: Provided, however, That deposits can no longer be made once a party has deposited 100 percent of the anticipated cost of all Schedule B objectives, unless the Interim CCF Agreement is then amended to establish additional Schedule B objectives.
- (c) Maximum time to deposit. Ten years shall ordinarily be the maximum time the Secretary shall permit in which to accumulate deposits prior to commencement of any given Schedule B objective. A time longer than 10 years, either by original scheduling or by subsequent extension through amendment, may, however, be permitted at the Secretary's discretion and for good and sufficient cause shown.

§ 259.35 Annual deposit and withdrawal reports required.

(a) The Secretary will require from each Interim CCF Agreement holder (Party) the following annual deposit and withdrawal reports. Failure to submit such reports may be cause for involuntary termination of CCF Agreements.

- (1) A preliminary deposit and withdrawal report at the end of each calendar year, which must be submitted not later than 45 days after the close of the calendar year. The report must give the amounts withdrawn from and deposited into the party's CCF during the subject year, and be in letter form showing the agreement holder's name, FVCCF identification number, and taxpayer identification number. Each report must bear certification that the deposit and withdrawal information given includes all deposit and withdrawal activity for the year and the account reported. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity. If the party's tax year is the same as the calendar year, and if the final deposit and withdrawal report required under paragraph (a)(2) of this section is submitted before the due date for this preliminary report, then this report is not required.
- (2) 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, with extensions (if any), 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 FVCCF depository. Each report must bear certification that the deposit and withdrawal information given includes all deposit and withdrawal activity for the year and account reported. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity.
- (b) Failure to submit the required annual deposit and withdrawal reports shall be cause after due notice for either, or both, disqualification of withdrawals or involuntary termination of the Interim CCF Agreement, at the Secretary's discretion.
- (c) Additionally, the Secretary shall require from each Interim CCF Agreement holder, not later than 30 days after expiration of the party's tax due date, with extensions (if any), a copy of the party's Federal Income Tax Return filed with IRS for the preceding tax year. Failure to submit shall after due notice be cause for the same adverse

action specified in the paragraph

[39 FR 33675, Sept. 19, 1974, as amended at 48 FR 57302, Dec. 29, 1983; 53 FR 35203, Sept. 12, 1988]

§ 259.36 CCF accounts.

- (a) General: Each CCF account in each scheduled depository shall have an account number, which must be reflected on the reports required by §259.35. 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 prior consent of the Secretary. Safe deposit boxes, safes, or the like shall not be eligible CCF depositories without the Secretary's consent and then only under such conditions as the Secretary, in his discretion, prescribes.
- (b) Assignment: The use of Fund assets 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: (1) Section 607(c) of the Act provides that amounts in a CCF must be kept in the depository or depositories specified in the Agreements and be subject to such trustee or other fiduciary requirements as the Secretary may specify.
- (2) 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.
- (3) Non-cash deposits or investments of the Fund should be placed in control of a trustee under the following conditions:
- (i) The trustee should be specified in the Agreement;
- (ii) The trust instrument should provide that all investment restrictions stated in section 607(c) of the Act will be observed;
- (iii) The trust instrument should provide that the trustee will give consideration to the party's withdrawal requirements under the Agreement when investing the Fund;
- (iv) The trustee must agree to be bound by all rules and regulations

which have been or will be promulgated governing the investment or management of the Fund.

§ 259.37 Conditional consents to withdrawal qualification.

The Secretary may conditionally consent to the qualification of withdrawal, such consent being conditional upon the timely submission to the Secretary of such further proofs, assurances, and advices as the Secretary, in his discretion, may require. Failure of a party to comply with the conditions of such a consent within a reasonable time and after due notice shall, at the Secretary's discretion, be cause for either, or both, nonqualification of withdrawal or involuntary Interim CCF Agreement termination.

§ 259.38 Miscellaneous.

- (a) Wherever the Secretary prescribes time constraints herein for the submission of any CCF transactions, the postmark date shall control if mailed or, if personally delivered, the actual date of submission. All required materials may be submitted to any Financial Assistance Division office of the National Marine Fisheries Service.
- (b) All CCF information received by the Secretary shall be held strictly confidential, except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the identity of any fundholder.
- (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 often 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 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 before the fact attempt to act in reliance on its being granted after the fact.



-CITE-

46 USC APPENDIX - SHIPPING Sec. 1177

01/02/01

-EXPCITE-

TITLE 46 - SHIPPING

TITLE 46, APPENDIX - SHIPPING

CHAPTER 27 - MERCHANT MARINE ACT, 1936

SUBCHAPTER VI - VESSEL OPERATING ASSISTANCE PROGRAMS

Part A - Operating-Differential Subsidy Program

-HEAD-

Sec. 1177. Capital construction fund

-STATUTE-

(a) Agreement rules; persons eligible; replacement, additional, or reconstructed vessels for prescribed trade and fishery operations; amount of deposits, annual limitation; conditions and requirements for deposits and withdrawals

Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1) of this section) may enter into an agreement with the Secretary under, and as provided in, this section to establish a capital construction fund (hereinafter in this section referred to as the ''fund'') with

respect to any or all of such vessels. Any agreement entered into under this section shall be for the purpose of providing replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiquous domestic trade or in the fisheries of the United States and shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f) of this section. deposits in the fund, and all withdrawals from the fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary may by regulations prescribe or are set forth in such agreement; except that the Secretary may not require any person to deposit in the fund for any taxable year more than 50 percent of that portion of such person's taxable income for such year (computed in the manner provided in subsection (b)(1)(A) of this section) which is attributable to the operation of the agreement vessels.

- (b) Ceiling on deposits; lessees; ''agreement vessel'' defined
- (1) The amount deposited under subsection (a) of this section in the fund for any taxable year shall not exceed the sum of:
 - (A) that portion of the taxable income of the owner or lessee for such year (computed as provided in chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) but without regard to

the carryback of any net operating loss or net capital loss and without regard to this section) which is attributable to the operation of the agreement vessels in the foreign or domestic commerce of the United States or in the fisheries of the United States,

- (B) the amount allowable as a deduction under section 167 of the Internal Revenue Code of 1986 (26 U.S.C. 167) for such year with respect to the agreement vessels,
- (C) if the transaction is not taken into account for purposes of subparagraph (A), the net proceeds (as defined in joint regulations) from (i) the sale or other disposition of any agreement vessel, or (ii) insurance or indemnity attributable to any agreement vessel, and
- (D) the receipts from the investment or reinvestment of amounts held in such fund.
- (2) In the case of a lessee, the maximum amount which may be deposited with respect to an agreement vessel by reason of paragraph (1)(B) for any period shall be reduced by any amount which, under an agreement entered into under this section, the owner is required or permitted to deposit for such period with respect to such vessel by reason of paragraph (1)(B).
- (3) For purposes of paragraph (1), the term ''agreement vessel'' includes barges and containers which are part of the complement of such vessel and which are provided for in the agreement.
- (c) Investment requirements; depositories; fiduciary requirements;

issues, listing and registration, prudent acquisitions, value and percentage equilibrium, and treatment of preferred issues Amounts in any fund established under this section shall be kept in the depository or depositories specified in the agreement and shall be subject to such trustee and other fiduciary requirements as may be specified by the Secretary. They may be invested only in interest-bearing securities approved by the Secretary; except that, if the Secretary consents thereto, an agreed percentage (not in excess of 60 percent) of the assets of the fund may be invested in the stock of domestic corporations. Such stock must be currently fully listed and registered on an exchange registered with the Securities and Exchange Commission as a national securities exchange, and must be stock which would be acquired by prudent men of discretion and intelligence in such matters who are seeking a reasonable income and the preservation of their capital. If at any time the fair market value of the stock in the fund is more than the agreed percentage of the assets in the fund, any subsequent investment of amounts deposited in the fund, and any subsequent withdrawal from the fund, shall be made in such a way as to tend to restore the fund to a situation in which the fair market value of the stock does not exceed such agreed percentage. For purposes of this subsection, if the common stock of a corporation meets the requirements of this subsection and if the preferred stock of such

interest-bearing securities; stock: percentage for domestic

corporation would meet such requirements but for the fact that it cannot be listed and registered as required because it is nonvoting stock, such preferred stock shall be treated as meeting the requirements of this subsection.

- (d) Nontaxability of deposits; eligible deposits
 - (1) For purposes of the Internal Revenue Code of 1986 -
 - (A) taxable income (determined without regard to this section and section 7518 of such Code (26 U.S.C. 7518)) for the taxable year shall be reduced by an amount equal to the amount deposited for the taxable year out of amounts referred to in subsection (b)(1)(A) of this section,
 - (B) gain from a transaction referred to in subsection (b)(1)(C) of this section, shall not be taken into account if an amount equal to the net proceeds (as defined in joint regulations) from such transaction is deposited in the fund,
 - (C) the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund shall not be taken into account,
 - (D) the earnings and profits of any corporation (within the meaning of section 316 of such Code (26 U.S.C. 316)) shall be determined without regard to this section and section 7518 of such Code (26 U.S.C. 7518), and
 - (E) in applying the tax imposed by section 531 of such Code (26 U.S.C. 531) (relating to the accumulated earnings tax), amounts while held in the fund shall not be taken into account.

- (2) Paragraph (1) shall apply with respect to any amount only if such amount is deposited in the fund pursuant to the agreement and not later than the time provided in joint regulations.
- (e) Accounts within fund: capital account, capital gain account, and ordinary income account; limitation on capital losses
 For purposes of this section -
- (1) Within the fund established pursuant to this section three accounts shall be maintained:
 - (A) the capital account,
 - (B) the capital gain account, and
 - (C) the ordinary income account.
 - (2) The capital account shall consist of -
 - (A) amounts referred to in subsection (b)(1)(B) of this section,
 - (B) amounts referred to in subsection (b)(1)(C) of this section other than that portion thereof which represents gain not taken into account by reason of subsection (d)(1)(B) of this section,
 - (C) the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 243(a)(1)) of any dividend received by the fund with respect to which the person maintaining the fund would (but for subsection (d)(1)(C) of this section) be allowed a deduction under section 243 of the Internal Revenue Code of 1986 (26 U.S.C. 243), and
 - (D) interest income exempt from taxation under section 103 of

such Code (26 U.S.C. 103).

- (3) The capital gain account shall consist of -
- (A) amounts representing capital gains on assets held for more than 6 months and referred to in subsection (b)(1)(C) or (b)(1)(D) of this section reduced by
- (B) amounts representing capital losses on assets held in the fund for more than 6 months.
- (4) The ordinary income account shall consist of -
- (A) amounts referred to in subsection (b)(1)(A) of this section,
- (B)(i) amounts representing capital gains on assets held for 6 months or less and referred to in subsection (b)(1)(C) or (b)(1)(D) of this section, reduced by -
- (ii) amounts representing capital losses on assets held in the fund for 6 months or less,
- (C) interest (not including any tax-exempt interest referred to in paragraph (2)(D)) and other ordinary income (not including any dividend referred to in subparagraph (E)) received on assets held in the fund,
- (D) ordinary income from a transaction described in subsection(b)(1)(C) of this section, and
- (E) the portion of any dividend referred to in paragraph (2)(C) not taken into account under such paragraph.
- (5) Except on termination of a fund, capital losses referred to in paragraph (3)(B) or in paragraph (4)(B)(ii) shall be allowed

only as an offset to gains referred to in paragraph (3)(A) or (4)(B)(i), respectively.

- (f) Purposes of qualified withdrawals; nonqualified withdrawal treatment for nonfulfillment of substantial obligations
- (1) A qualified withdrawal from the fund is one made in accordance with the terms of the agreement but only if it is for:
 - (A) the acquisition, construction, or reconstruction of a qualified vessel,
 - (B) the acquisition, construction, or reconstruction of barges and containers which are part of the complement of a qualified vessel, or
 - (C) the payment of the principal on indebtedness incurred in connection with the acquisition, construction or reconstruction of a qualified vessel or a barge or container which is part of the complement of a qualified vessel.

Except to the extent provided in regulations prescribed by the Secretary, subparagraph (B), and so much of subparagraph (C) as relates only to barges and containers, shall apply only with respect to barges and containers constructed in the United States.

(2) Under joint regulations, if the Secretary determines that any substantial obligation under any agreement is not being fulfilled, he may, after notice and opportunity for hearing to the person maintaining the fund, treat the entire fund or any portion thereof as an amount withdrawn from the fund in a nongualified withdrawal.

- (g) Tax treatment of qualified withdrawals; basis: reduction
 - (1) Any qualified withdrawal from a fund shall be treated -
 - (A) first as made out of the capital account,
 - (B) second as made out of the capital gain account, and
 - (C) third as made out of the ordinary income account.
- (2) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the ordinary income account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.
- (3) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.
- (4) If any portion of a qualified withdrawal to pay the principal on any indebtedness is made out of the ordinary income account or the capital gain account, then an amount equal to the aggregate reduction which would be required by paragraphs (2) and (3) if this were a qualified withdrawal for a purpose described in such paragraphs shall be applied, in the order provided in joint regulations, to reduce the basis of vessels, barges, and containers owned by the person maintaining the fund. Any amount of a withdrawal remaining after the application of the preceding sentence shall be treated as a nonqualified withdrawal.
- (5) If any property the basis of which was reduced under paragraph (2), (3), or (4) is disposed of, any gain realized on

such disposition, to the extent it does not exceed the aggregate reduction in the basis of such property under such paragraphs, shall be treated as an amount referred to in subsection (h)(3)(A) of this section which was withdrawn on the date of such disposition. Subject to such conditions and requirements as may be provided in joint regulations, the preceding sentence shall not apply to a disposition where there is a redeposit in an amount determined under joint regulations which will, insofar as practicable, restore the fund to the position it was in before the withdrawal.

- (h) Tax treatment of nonqualified withdrawals; FIFO and LIFO bases; interest rate; amounts not withdrawn after 25 years; highest marginal rate of tax
- (1) Except as provided in subsection (i) of this section, any withdrawal from a fund which is not a qualified withdrawal shall be treated as a nonqualified withdrawal.
 - (2) Any nonqualified withdrawal from a fund shall be treated -
 - (A) first as made out of the ordinary income account,
 - (B) second as made out of the capital gain account, and
 - (C) third as made out of the capital account.

For purposes of this section, items withdrawn from any account shall be treated as withdrawn on a first-in-first-out basis; except that (i) any nonqualified withdrawal for research, development, and design expenses incident to new and advanced ship design, machinery

and equipment, and (ii) any amount treated as a nonqualified withdrawal under the second sentence of subsection (g)(4) of this section, shall be treated as withdrawn on a last-in-first-out basis.

- (3) For purposes of the Internal Revenue Code of 1986 -
- (A) any amount referred to in paragraph (2)(A) shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made,
- (B) any amount referred to in paragraph (2)(B) shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during such year from the disposition of an asset held for more than 6 months, and
- (C) for the period on or before the last date prescribed for payment of tax for the taxable year in which this withdrawal is made -
 - (i) no interest shall be payable under section 6601 of such Code (26 U.S.C. 6601) and no addition to the tax shall be payable under section 6651 of such Code (26 U.S.C. 6651),
 - (ii) interest on the amount of the additional tax
 attributable to any item referred to in subparagraph (A) or (B)
 shall be paid at the applicable rate (as defined in paragraph
 (4)) from the last date prescribed for payment of the tax for
 the taxable year for which such item was deposited in the fund,
 and
 - (iii) no interest shall be payable on amounts referred to in

- clauses (i) and (ii) of paragraph (2) or in the case of any nonqualified withdrawal arising from the application of the recapture provision of section 1176(5) of this Appendix as in effect on December 31, 1969.
- (4) For purposes of paragraph (3)(C)(ii), the applicable rate of interest for any nonqualified withdrawal -
 - (A) made in a taxable year beginning in 1970 or 1971 is 8 percent, or
 - (B) made in a taxable year beginning after 1971, shall be determined and published jointly by the Secretary of the Treasury and the Secretary and shall bear a relationship to 8 percent which the Secretaries determine under joint regulations to be comparable to the relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1970.
- (5) Amount not withdrawn from fund after 25 years from deposit taxed as nonqualified withdrawal. -
 - (A) In general. The applicable percentage of any amount which remains in a capital construction fund at the close of the 26th, 27th, 28th, 29th, or 30th taxable year following the taxable year for which such amount was deposited shall be treated as a nonqualified withdrawal in accordance with the following table:

 If the amount remains in the fund at the

 The applicable

close of the - percentage is
26th taxable year 20 percent

27th taxable year 40 percent

28th taxable year 60 percent

29th taxable year 80 percent

30th taxable year 100 percent.

- (B) Earnings treated as deposits. The earnings of any capital construction fund for any taxable year (other than net gains) shall be treated for purposes of this paragraph as an amount deposited for such taxable year.
- (C) Amounts committed treated as withdrawn. For purposes of subparagraph (A), an amount shall not be treated as remaining in a capital construction fund at the close of any taxable year to the extent there is a binding contract at the close of such year for a qualified withdrawal of such amount with respect to an identified item for which such withdrawal may be made.
- (D) Authority to treat excess funds as withdrawn. If the Secretary determines that the balance in any capital construction fund exceeds the amount which is appropriate to meet the vessel construction program objectives of the person who established such fund, the amount of such excess shall be treated as a nonqualified withdrawal under subparagraph (A) unless such person develops appropriate program objectives within 3 years to dissipate such excess.
 - (E) Amounts in fund on january 1, 1987. For purposes of this

paragraph, all amounts in a capital construction fund on January 1, 1987, shall be treated as deposited in such fund on such date.

- (6) Nonqualified withdrawals taxed at highest marginal rate. -
- (A) In general. In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) shall be determined -
 - (ii) by increasing the tax imposed by chapter 1 of such Code by the product of the amount of such withdrawal and the highest rate of tax specified in section 1 (section 11 in the case of a

(i) by excluding such withdrawal from gross income, and

corporation) of such Code (26 U.S.C. 1, 11).

With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(h) or 1201(a) of such Code (26 U.S.C. 1(h), 1201(a)) applies, the rate of tax taken into account under the preceding sentence shall not exceed 20 percent (34 percent in the case of a corporation).

(B) Tax benefit rule. - If any portion of a nonqualified withdrawal is properly attributable to deposits (other than earnings on deposits) made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax under chapter 1 (26 U.S.C. 1 et seq.) for any taxable year preceding

the taxable year in which such withdrawal occurs -

- (i) such portion shall not be taken into account under subparagraph (A), and
- (ii) an amount equal to such portion shall be treated as allowed as a deduction under section 172 of such Code (26 U.S.C. 172) for the taxable year in which such withdrawal occurs.
- (C) Coordination with deduction for net operating losses. Any nonqualified withdrawal excluded from gross income under subparagraph (A) shall be excluded in determining taxable income under section 172(b)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 172(b)(2)).
- (i) Corporate reorganizations and partnership changes

 Under joint regulations -
 - (1) a transfer of a fund from one person to another person in a transaction to which section 381 of the Internal Revenue Code of 1986 (26 U.S.C. 381) applies may be treated as if such transaction did not constitute a nonqualified withdrawal, and
 - (2) a similar rule shall be applied in the case of a continuation of a partnership (within the meaning of subchapter K (FOOTNOTE 1) of such Code (26 U.S.C. 701 et seq.)).
- (FOOTNOTE 1) So in original. Probably should be followed by ''of chapter 1''.
- (j) Treatment of existing funds; relation of old to new fund
 - (1) Any person who was maintaining a fund or funds (hereinafter

in this subsection referred to as ''old fund'') under this section

(as in effect before the enactment of this subsection) may elect to

continue such old fund but -

- (A) may not hold moneys in the old fund beyond the expiration date provided in the agreement under which such old fund is maintained (determined without regard to any extension or renewal entered into after April 14, 1970),
- (B) may not simultaneously maintain such old fund and a new fund established under this section, and
- (C) if he enters into an agreement under this section to establish a new fund, may agree to the extension of such agreement to some or all of the amounts in the old fund.
- (2) In the case of any extension of an agreement pursuant to paragraph (1)(C), each item in the old fund to be transferred shall be transferred in a nontaxable transaction to the appropriate account in the new fund established under this section. For purposes of subsection (h)(3)(C) of this section, the date of the deposit of any item so transferred shall be July 1, 1971, or the date of the deposit in the old fund, whichever is the later.

(k) Definitions

For purposes of this section -

- (1) The term ''eligible vessel'' means any vessel -
- (A) constructed in the United States and, if reconstructed, reconstructed in the United States,

- (B) documented under the laws of the United States, and
- (C) operated in the foreign or domestic commerce of the United States or in the fisheries of the United States.

Any vessel which (i) was constructed outside of the United States but documented under the laws of the United States on April 15, 1970, or (ii) constructed outside the United States for use in the United States foreign trade pursuant to a contract entered into before April 15, 1970, shall be treated as satisfying the requirements of subparagraph (A) of this paragraph and the requirements of subparagraph (A) of paragraph (2).

- (2) The term ''qualified vessel'' means any vessel -
- (A) constructed in the United States and, if reconstructed, reconstructed in the United States,
 - (B) documented under the laws of the United States, and
- (C) which the person maintaining the fund agrees with the Secretary will be operated in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States.
- (3) The term ''agreement vessel'' means any eligible vessel or qualified vessel which is subject to an agreement entered into under this section.
- (4) The term ''United States'', when used in a geographical sense, means the continental United States including Alaska, Hawaii, and Puerto Rico.
 - (5) The term ''United States foreign trade'' includes (but is not

limited to) those areas in domestic trade in which a vessel built with construction-differential subsidy is permitted to operate under the first sentence of section 1156 of this Appendix.

- (6) The term ''joint regulations'' means regulations prescribed under subsection (1) of this section.
- (7) The term ''vessel'' includes cargo handling equipment which the Secretary determines is intended for use primarily on the vessel. The term ''vessel'' also includes an ocean-going towing vessel or an ocean-going barge or comparable towing vessel or barge operated on the Great Lakes.
- (8) The term ''noncontiguous trade'' means (i) trade between the contiguous forty-eight States on the one hand and Alaska, Hawaii, Puerto Rico and the insular territories and possessions of the United States on the other hand, and (ii) trade from any point in Alaska, Hawaii, Puerto Rico, and such territories and possessions to any other point in Alaska, Hawaii, Puerto Rico, and such territories and possessions.
- (9) The term ''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, and the Secretary of Transportation with respect to all other vessels.
- (1) Records; reports; rules and regulations; termination of agreement upon changes in regulations with substantial effect on rights or obligations

Each person maintaining a fund under this section shall keep such records and shall make such reports as the Secretary or the Secretary of the Treasury shall require. The Secretary of the Treasury and the Secretary shall jointly prescribe all rules and regulations, not inconsistent with the foregoing provisions of this section, as may be necessary or appropriate to the determination of tax liability under this section. If, after an agreement has been entered into under this section, a change is made either in the joint regulations or in the regulations prescribed by the Secretary under this section which could have a substantial effect on the rights or obligations of any person maintaining a fund under this section, such person may terminate such agreement.

(m) Departmental reports and certification

(1) In general

For each calendar year, the Secretaries shall each provide the Secretary of the Treasury, within 120 days after the close of such calendar year, a written report with respect to those capital construction funds that are under their jurisdiction.

(2) Contents of reports

Each report shall set forth the name and taxpayer identification number of each person -

- (A) establishing a capital construction fund during such calendar year;
- (B) maintaining a capital construction fund as of the last day of such calendar year;

- (C) terminating a capital construction fund during such calendar year;
- (D) making any withdrawal from or deposit into (and the amounts thereof) a capital construction fund during such calendar year; or
- (E) with respect to which a determination has been made during such calendar year that such person has failed to fulfill a substantial obligation under any capital construction fund agreement to which such person is a party.

-SOURCE-

(June 29, 1936, ch. 858, title VI, Sec. 607, 49 Stat. 2005; June 23, 1938, ch. 600, Sec. 23-28, 52 Stat. 960, 961; Aug. 4, 1939, ch. 417, Sec. 10, 53 Stat. 1185; July 17, 1952, ch. 939, Sec. 17-19, 66 Stat. 764, 765; Pub. L. 85-637, Aug. 14, 1958, 72 Stat. 592; Pub. L. 86-518, Sec. 1, June 12, 1960, 74 Stat. 216; Pub. L. 87-45, Sec. 6, May 27, 1961, 75 Stat. 91; Pub. L. 87-271, Sept. 21, 1961, 75 Stat. 570; Pub. L. 91-469, Sec. 21(a), Oct. 21, 1970, 84 Stat. 1026; Pub. L. 93-116, Oct. 1, 1973, 87 Stat. 421; Pub. L. 97-31, Sec. 12(97), Aug. 6, 1981, 95 Stat. 162; Pub. L. 99-514, Sec. 2, title II, Sec. 261(d), (e), Oct. 22, 1986, 100 Stat. 2095, 2214; Pub. L. 100-647, title I, Sec. 1002(m)(2), Nov. 10, 1988, 102 Stat. 3382; Pub. L. 101-508, title XI, Sec. 11101(d)(7)(B), Nov. 5, 1990, 104 Stat. 1388-405; Pub. L. 105-34, title III, Sec. 311(c)(2), Aug. 5, 1997, 111 Stat. 835.)

-REFTEXT-

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (d)(1) and (h)(3), is classified generally to Title 26, Internal Revenue Code.

Section 103, referred to in subsec. (e)(2)(D), which related to interest on certain governmental obligations was amended generally by Pub. L. 99-514, title XIII, Sec. 1301(a), Oct. 22, 1986, 100 Stat. 2602, and as so amended relates to interest on State and local bonds.

-MISC2-

AMENDMENTS

- 1997 Subsec. (h)(6)(A). Pub. L. 105-34 substituted ''20 percent'' for ''28 percent'' in concluding provisions.
- 1990 Subsec. (h)(6)(A). Pub. L. 101-508 substituted ''section 1(h)'' for ''section 1(j)''.
- 1988 Subsec. (h)(6)(A). Pub. L. 100-647 substituted ''section 1(j)'' for ''section 1(i)''.
- 1986 Subsec. (b)(1)(A), (B). Pub. L. 99-514, Sec. 2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.
- Subsec. (d)(1). Pub. L. 99-514, Sec. 2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (d)(1)(A), (D). Pub. L. 99-514, Sec. 261(e)(1), (2), inserted 'and section 7518 of such Code'.

Subsec. (e)(2)(C). Pub. L. 99-514, Sec. 261(e)(3), substituted

''the percentage applicable under section 243(a)(1) of the Internal

Revenue Code of 1986'' for ''85 percent''.

Pub. L. 99-514, Sec. 2, substituted ''section 243 of the Internal Revenue Code of 1986'' for ''section 243 of the Internal Revenue Code of 1954''.

Subsec. (e)(4)(E). Pub. L. 99-514, Sec. 261(e)(4), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''15 percent of any dividend referred to in paragraph (2)(C).''

Subsec. (g)(3). Pub. L. 99-514, Sec. 261(e)(5), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to -

- ''(A) Five-eighths of such portion, in the case of a corporation (other than an electing small business corporation, as defined in section 1371 of the Internal Revenue Code of 1954, or
- ''(B) One-half of such portion, in the case of any other person.''
- Subsec. (h)(3). Pub. L. 99-514, Sec. 2, substituted ''Internal

Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (h)(5), (6). Pub. L. 99-514, Sec. 261(e)(6), added pars.

(5) and (6).

Subsec. (i)(1). Pub. L. 99-514, Sec. 2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (m). Pub. L. 99-514, Sec. 261(d), added subsec. (m).

1981 - Subsecs. (a), (c), (f), (h)(4). Pub. L. 97-31, Sec.

12(97)(A), substituted ''Secretary'' for ''Secretary of Commerce'' wherever appearing.

Subsec. (k). Pub. L. 97-31, Sec. 12(97), substituted in pars. (2)(C) and (7) ''Secretary'' for ''Secretary of Commerce'' and added par. (9).

Subsec. (1). Pub. L. 97-31, Sec. 12(97)(A), substituted
''Secretary'' for ''Secretary of Commerce'' wherever appearing.

1973 - Subsec. (k)(8). Pub. L. 93-116 substituted ''(ii) trade from any point in Alaska, Hawaii, Puerto Rico, and such territories and possessions to any other point in Alaska, Hawaii, Puerto Rico, and such territories and possessions.'' for ''(ii) trade between Alaska, Hawaii, and Puerto Rico and such territories and possessions and (iii) trade between the islands of Hawaii.''

1970 - Pub. L. 91-469 revised tax deferred reserve fund provisions generally, extended tax deferral privilege to vessels operated in nonsubsidized foreign trade, noncontiguous domestic trade, Great Lakes trade, and in fisheries, built in the United States, and documented under her laws, and substituted a new

statutory framework consisting of subsecs. (a) to (1) for determination of tax status of deposits into and withdrawals from the fund for former subsecs. (a) to (h) and providing as follows:

Subsec. (a), a capital construction fund, agreement rules, persons eligible, replacement, additional, or reconstructed vessels for prescribed trade and fishery operations, amount of deposits, annual limitation, and conditions and requirements for deposits and withdrawals, subsec. (a) formerly permitting a 10 percent distribution of net profits;

Subsec. (b), ceiling on deposits, deposits of lessees, and definition of ''agreement vessel'', subsec. (b) formerly providing for a capital reserve fund, deposits, and allowable disbursements; Subsec. (c), investment requirements, depositories, fiduciary requirements, investment in interest-bearing certificates (formerly provided in former subsec. (d)(2) of this section), stock investments, including common stock treatment of preferred issues, percentage for domestic issues, listing and registration, prudent man acquisitions (provisions formerly covered in former subsec. (d)(3)(A) of this section), and value and percentage equilibrium, subsec. (c) formerly providing for creation of a special reserve fund, deposits, and allowable disbursements;

Subsec. (d), nontaxability of deposits and eligible deposits, subsec. (d) formerly providing rules and regulations for administration of reserve funds and investment of funds, now

covered in subsec. (c) of this section;

Subsec. (e), capital account, capital gain account, and ordinary income account within the *capital construction fund* and limitation on losses, subsec. (e) formerly providing for withdrawals from capital reserve fund to meet needs due to operating losses;

Subsec. (f), purposes of qualified withdrawals and nonqualified withdrawal treatment for nonfulfillment of substantial obligations, subsec. (f) formerly providing for title to reserve funds on termination of contract;

Subsec. (g), tax treatment of qualified withdrawals and reduction of basis, subsec. (g) formerly providing for increase and transfer of reserve funds and interest on overpayment of taxes;

Subsec. (h), tax treatment of nonqualified withdrawals, FIFO and LIFO bases, and interest rate, subsec. (h) formerly providing for exemption of reserve funds from taxation, in effect a tax deferral;

Subsec. (i), corporate reorganizations and partnership changes;

Subsec. (j), treatment of existing funds and relation of old to new funds;

Subsec. (k), definitions; and

Subsec. (1), records, reports, rules, and regulations, and termination of agreement upon changes in regulations with substantial effect on rights or obligations.

1961 - Subsec. (b). Pub. L. 87-271 authorized the contractor, upon consent of the Secretary of Commerce, to pay amounts from the capital reserve fund for research, development, and design expenses

for new and advanced ship design machinery and equipment, purchase of cargo containers delivered after June 30, 1959, payment of principal on indebtedness incurred for containers, and for reimbursing the contractor's general funds for expenditures for such purchases or payments, and required such cargo containers, to the extent paid for out of the capital reserve fund, to be treated as vessels for purpose of deposits and withdrawals from the fund, except that depreciation thereon shall be based on life expectancy used for such containers in determination of ''net earnings'' in subsec. (d)(1) of this section.

Pub. L. 87-45 inserted ''and on cruises, if any, authorized under section 1183 of this Appendix'' after ''route or service approved by the Secretary'' in second par.

1960 - Subsec. (b). Pub. L. 86-518 substituted ''twenty-five-year life expectancy'' for ''twenty-year life expectancy''.

1958 - Subsec. (d). Pub. L. 85-637 designated first and second paragraphs as subdivisions (1) and (2), and added subdivision (3).

1952 - Subsec. (b). Act July 17, 1952, Sec. 17, permitted recomputation of life-expectancy of a reconstructed or reconditioned vessel in use under an operating-differential subsidy contract, and provided for recomputation of depreciation changes.

Subsec. (d). Act July 17, 1952, Sec. 18, substituted ''as provided for in section 1177(b) of this Appendix'' after ''life of the vessel'' for ''being twenty years''.

Subsec. (g). Act July 17, 1952, Sec. 19, barred payment of interest by Government on overpayment of taxes resulting from voluntary deposits of earnings.

1939 - Subsec. (c)(3). Act Aug. 4, 1939, permitted payment from the capital reserve fund, and authorized payment from other assets of the contractor if assets have not been repaid to the reserve funds, or if prepayments of amounts not due before one year after the date of termination of the contract have been made from the capital reserve funds.

1938 - Subsec. (b). Act June 23, 1938, Sec. 23, 24, substituted ''insurance and indemnities'' for ''insurance indemnities'' in first par., and inserted provisions requiring deposit of proceeds of any sale or other disposition of a vessel in the capital reserve funds, and to permit the contractor to pay from the fund any sums owing but not yet due on notes secured by mortgages on subsidized vessels.

Subsec. (c). Act June 23, 1938, Sec. 25, substituted ''If the profits, without regard to capital gains and capital losses, earned by the business of the subsidized vessels and services incident thereto exceed 10 per centum per annum and exceed the percentage of profits deposited in the capital reserve fund, as provided in subsection (b) of this section, the contractor shall deposit annually such excess profits in this reserve fund'' for ''In this reserve fund, the contractor shall deposit annually the profits earned by the business of the subsidized vessels and services

incident thereto in excess of 10 per centum per annum and in excess of the percentage of profits deposited in the capital reserve fund, as provided in subsection (b) of this section', in second par.

Subsec. (c)(2). Act June 23, 1938, Sec. 26, substituted ''will be made up'' for ''will not be made up''.

Subsecs. (f), (g). Act June 23, 1938, Sec. 27, added subsecs. (f) and (g). Former subsec. (f) redesignated (h).

Subsec. (h). Act June 23, 1938, Sec. 28, redesignated former subsec. (f) as subsec. (h) and made earnings withdrawn from the special reserve fund taxable as if earned during the year of withdrawal from the fund.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to taxable years ending after May 6, 1997, see section 311(d) of Pub. L. 105-34, set out as a note under section 1 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101-508, set out as a note under section 1 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section

1019(a) of Pub. L. 100-647, set out as a note under section 1 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 261(d), (e) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 261(g) of Pub. L. 99-514, set out as an Effective Date note under section 7518 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 21(b) of Pub. L. 91-469 provided that: ''The amendment made by subsection (a) (amending this section) shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS

For coordination of application of Internal Revenue Code of 1986 with capital construction program under this chapter, see section 261(a) of Pub. L. 99-514, set out as a note under section 7518 of Title 26, Internal Revenue Code.

DEPOSITS INTO CAPITAL RESERVE FUND

Pub. L. 92-507, Sec. 6, Oct. 19, 1972, 86 Stat. 917, provided that: ''Nothing in this Act (enacting this note and amending subchapter XI of this chapter) shall limit or affect the right of an obligor who maintains a capital reserve fund under section 607 of the Merchant Marine Act, 1936 (this section) to make deposits of the proceeds of guaranteed obligations into such capital reserve fund as provided in subparagraph (c) of condition (6) of section 1107 of the Merchant Marine Act, 1936 (subparagraph (c) of condition (6) of section 1276a of former Title 46, Shipping), as in effect prior to the effective date of this Act (Oct. 9, 1972).''

RATE OF DEPRECIATION FOR VESSELS DELIVERED BY SHIPBUILDER ON OR

AFTER JANUARY 1, 1946, AND BEFORE JANUARY 1, 1960

For provisions relating to computation of depreciation with respect to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and before Jan. 1, 1960, see section 8(b) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES,

AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12,

1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND
OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86-518 to operate or be

interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1177-1, 1185, 1244 of this Appendix; title 26 sections 56, 139, 543, 7518; title 42 section 9141.



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Dated: December 30, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–8323 Filed 1–5–06; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Capital Construction Fund—Deposit/ Withdrawal Report

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. DATES: Written comments must be submitted on or before March 7, 2006. **ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW.. Washington, DC 20230 (or via the

Internet at dHynek@doc.gov). FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907–586–7008 or patsy.bearden@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The respondents will be commercial fishing industry individuals, partnerships, and corporations, which entered into Capital Construction Fund agreements with the Secretary of Commerce allowing deferral of Federal taxation on fishing vessel income, deposited into the fund for use in the acquisition, construction, or reconstruction of fishing vessels. Deferred taxes are recaptured by reducing an agreement vessel's basis for depreciation by the amount withdrawn from the fund for its acquisition, construction, or reconstruction. The deposit/withdrawal information collected from agreement holders are required pursuant to 50 CFR Part 259.35 and Public Law 99-514 (The Tax Reform Act, 1986). The information

collected is required to ensure that agreement holders are complying with fund deposit/withdrawal requirements established in program regulations and properly accounting for fund activity on their Federal income tax returns. The information collected must also be reported annually to the Secretary of Treasury in accordance with the Tax Reform Act, 1986.

II. Method of Collection

The information will be collected by mail.

III. Data

OMB Number: 0648-0041.

Form Number: NOAA Form 38-42.

Type of Review: Regular submission.

Affected Public: Business or other forprofit organizations.

Estimated Number of Respondents: 3.600.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 1,200.

Estimated Total Annual Cost to Public: \$2,500.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 30, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–8319 Filed 1–5–06; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Designation of Fishery Management Council Members and Application for Reinstatement of State Authority

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 7, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Linda Moon, 301–713–2337 or *Linda.Moon@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended in 1996, provides for the nomination for members of Fishery Management Councils by state governors and Indian treaty tribes, for the designation of a principal state fishery official who will perform duties under the Magnuson-Stevens Act, and for a request by a state for reinstatement of state authority over a managed fishery. Nominees for council membership must provide the governor or tribe with background documentation, which is then submitted to NOAA with the nomination. The information submitted with these actions will be used to ensure that the requirements of the Magnuson-Stevens Act are being met.

II. Method of Collection

State governors and Indian treaty tribes submit written nominations to the Secretary of Commerce, together with recommendations and statements of candidates' qualifications. Designations