

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 10/31/2007

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Barry West
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 07/09/2007

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200706-0648-004
AGENCY ICR TRACKING NUMBER:
TITLE: Interim Capital Construction Fund Agreement and Certificate Family of Forms
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0090
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 10/31/2010 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	1,000	2,250	3,000
New	1,000	2,250	3,180
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	0	0	180
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Interim Capital Construction Fund Agreement	NA, NA, 88-14, NA	Qualified Vessel for Construction, Acquisition and/or Mortgage Payments, Schedule A - Eligible Vessel, Interim Capital Construction Fund Agreement, Fishing Vessel Capital Construction Fund Application	
Certificate of Construction/Reconstruction	NA	Certificate of Construction/Reconstruction	

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. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

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

Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
INTERIM CAPITAL CONSTRUCTION FUND AGREEMENT AND CERTIFICATE
FAMILY OF FORMS
OMB CONTROL NO.: 0648-0090**

A. JUSTIFICATION

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

The **Merchant Marine Act of 1936**, as amended by P.L. 91-469 and P.L. 99-514, provides for the administration of a Capital Construction Fund (CCF) Program by National Marine Fisheries Service (NMFS). The law requires that applicants enter into formal agreements with the Secretary of Commerce. The agreement allows the fishermen to defer taxable income from operation of their fishing vessels if the money is placed into an account to fund the construction, reconstruction, or replacement of a fishing vessel. The program requirements are detailed at **50 CFR Part 259**. The agreement is a contract between the Secretary of Commerce and the agreement holder specifying the obligations of each party. Schedule B specifies the construction, acquisition, or reconstruction objectives planned under the agreement. The Certificate of Construction/Reconstruction certifies the completion of Schedule B objectives.

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.

NMFS collects information to determine whether an applicant is eligible for a formal agreement.

- Specific information about the vessel and its characteristics are needed to clearly identify the vessel affected by the agreement.
- Information on type of gear, fishery, and areas of operation is required because program benefits are limited for certain fisheries and because NMFS must track where the assistance is going to in the industry.
- Information on ownership and percentage of ownership is used to determine eligibility and the proper allocation of cost to the agreement vessel.
- Information on the bank or other institution at which the CCF account will be established is needed for enforcement purposes.
- Principal mortgage balance and depreciable basis are used to determine limitations of costs of objectives for compliance with program regulations. Objective costs are limited to the lesser of the principle mortgage balance or depreciable basis as of the beginning of the year in which the objective commenced.
- Dates and times for completion and the specific types of improvements to the vessel are needed to determine compliance with regulations, which impose time restrictions for beginning and completing objectives.

As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with National Oceanic and Atmospheric Administration (NOAA)

standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NMFS decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. 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.

Some items could be electronically submitted, including “Certificate of Construction/ Reconstruction” and deposit/withdrawal and computation forms not covered under Paperwork Reduction Act (PRA). The Program Automatic Data Processing system (ADP) system will be modified to accept these, however, it is unlikely to be used often in this manner because most of the respondents do not have access to a computer. Some other items could be electronically submitted but there would be no real benefit because supporting documentation is required. All information on the form is the minimum required by law. Because the information collected relates to financial transactions of individuals and businesses it is not disclosed to the public in any form.

4. Describe efforts to identify duplication.

NMFS is solely responsible for the program. Some requirements for financial (tax) and vessel registration documents duplicate data submitted to other agencies, but NMFS accepts copies of this documentation.

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

The requirements are the minimum to ensure eligibility. No special provisions for small businesses are made.

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

The information is only collected once and is initiated by the respondent. If all of the information was not gathered, NMFS could not be certain of the applicant’s eligibility for an agreement, track program activity, or ensure compliance with other requirements. Subsequent reports of the deposits and withdrawals from agreement accounts are cleared under Office of Management and Budget (OMB) Control No.: 0648-0041.

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

The collection is consistent with 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 PRA Federal Register notice that solicited public comments on the information collection is attached; no comments were received on the collection. Consultation with program users, their accountants, and attorneys, as well as with the Internal Revenue Service is on-going about all aspects of the program including information collection.

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

No payment or gift to respondents is provided.

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

The information collected is confidential under the Magnuson-Stevens Fishery Conservation and Management Act, as amended in 2006, and NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics. In addition, 50CFR259.38(b) states: "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."

11. 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.

No sensitive questions are asked.

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

The estimated total annual burden is as follows:

500 respondents x 1 agreement x 3.5 hrs/agreement (application, 30 minutes; Schedule A, 50 minutes; Schedule B for Construction, Acquisition and/or Mortgage Payments, 50 minutes; Schedule B for Qualified Vessel for Reconstruction, 50 minutes; agreement document 30 minutes = 1,750 hours).

500 respondents x 1 certificate x 1 hr/certificate = 500 hours.

TOTALS = 1,000 respondents, 1,000 responses, and 2,250 hours.

The cost of the response time to the public is estimated to be \$22/hr, for a total of \$49,500.

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

Annualized costs per respondent are estimated at \$5.70 for the agreement (\$3.20 for postage and \$2.50 for copying) and \$0.66 for the certificate (\$0.41 for postage and \$0.25 for copying). Based on 500 agreement responses and 500 certificate responses, this equates to \$3,180 ($\$5.70 \times 500 + \0.66×500).

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

Number of responses x average time to review x average salary of reviewer/hr plus 35% overhead = $1,000 \times 1 \text{ hr} \times \$25.55 + 35\% = \$34,492.50$.

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

No changes are requested.

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

The information collected is 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 forms will display the expiration date of OMB approval.

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

Statistical methods are not used for this collection.

INSTRUCTIONS TO APPLY FOR FISHING VESSEL CAPITAL CONSTRUCTION FUND AGREEMENT

► APPLICATION FORM

Social Security/Employer Identification Number: If you are a sole proprietor of your business or a partner in a partnership and you are applying as an individual taxpayer, enter your Social Security number. If you are applying as a corporation or partnership taxpayer, enter the Employer Identification number.

Estimated CCF Deposit: Enter the estimated amount of your initial CCF deposit attributable to your Schedule A eligible vessel(s) from sale or insurance proceeds, fishing income, and or/depreciation.

CCF Depository: Provide the **name and address** of each FDIC or SIPC insured bank, savings and loan, brokerage firm, etc., where you plan to set up your CCF account. All CCF assets must be kept separate and apart from any general operating or personal funds, and you must notify us of any change in depositories prior to making the change. Any investment of the account shall be made in accordance with Article VII of the Agreement and Sec. 607(c) of the Act.

Evidence of Ownership or Lease for Schedule A Vessels:

For each vessel you **own or lease** submit a copy (back and front) of the current Coast Guard Form 1270, "Certificate of Documentation;" or, if the vessel is 2 - 5 net tons, submit a copy of the current Certificate of Number for an undocumented vessel.

For each vessel you **lease**, submit a copy of the current Lease Agreement.

If you **sold** the eligible Schedule A vessel during the year, submit a copy of Coast Guard Form 1332, "Abstract of Title," or a fully executed Bill of Sale copy. You must provide acceptable evidence of your ownership immediately prior to the sale of the vessel.

Proof of U.S. Citizenship: If the Schedule A vessel is Coast Guard documented in your name, no additional proof is necessary. If the vessel is undocumented or leased, provide a copy of your birth certificate, naturalization certificate, current passport, or a notarized affidavit. Corporations or partnerships must be U.S. citizens within the meaning of 46 U.S.C. 802. Complete the attached forms for corporations or partnerships.

► **FISHING VESSEL CCF APPLICATION FORM** - continued

Federal Income Tax Return Copies: Submit complete and signed copies of your Federal returns as filed with IRS for the previous 2 years, i.e., if this application is for taxable year ending December 31, 1997, submit copies of your 1995 and 1996 Federal returns; or if this application is for fiscal year ending March 31, 1997, submit copies of your FY 1994 and FY 1995 Federal returns.

Federal Tax Extension Notice Copy: If, at the time you are applying for this Agreement, you are on automatic extension for filing your tax return, you must include a **signed and dated** copy of the IRS Automatic Extension form as filed with IRS. If, in fact, you are on an additional extension, you must include a copy of the **IRS approved** Additional Extension form.

► **SCHEDULE A "ELIGIBLE" VESSEL AND SCHEDULE B "QUALIFIED" VESSEL FORMS**

The terms "eligible" and "qualified" vessel mean any vessel 2 net tons and over, and (a) constructed in the United States, and if reconstructed, reconstructed in the U.S.; (b) documented for fishery under the laws of the U.S.; and, (c) operated in the fisheries of the U.S.

On both Schedule A and Schedule B forms, under:

"Vessel Type", the term 'Charter' means a vessel which will carry fishing parties for hire.

"Fishery of Operation," list in order of importance the common name of the species of fish and shellfish each vessel does or will catch, process, or transport.

"Area of Operation," list the geographical areas where each vessel does or will operate, i.e., Alaska, East Coast, Gulf of Mexico, West Coast, etc.

► **SCHEDULE A ELIGIBLE VESSEL FORM**

Complete a Schedule A form for each eligible (income producing) vessel you owned or leased during all or a portion of the first taxable year for which you are applying.

► **SCHEDULE B QUALIFIED VESSEL FORMS**

Complete a Schedule B form for each qualified vessel project reflecting actual or anticipated plans for construction, acquisition, or reconstruction. **PLEASE NOTE-- give your best estimate completing all blanks because the project(s) must be a firm representation of your actual intentions.** Your first objective should commence within 10 years after entering the CCF Agreement. If your original plans change, your Schedule B objective(s) may be amended (subject to regulations) by mutual consent.

● **CONSTRUCTION, ACQUISITION AND/OR MORTGAGE PAYMENTS**

Construction of a new vessel must take place in the U.S. and must be completed within 18 months, unless otherwise consented to.

In order to **acquire a used** vessel, you must agree to accomplish a second objective. If you do not complete the second objective, all previous withdrawals for acquisition of the used vessel may be considered nonqualified.

Acquisition requirements are:

(a) if the vessel to be acquired is not more than 5 years old, you must accomplish either construction of a new vessel within 10 years, or reconstruction of a vessel within 7 years from the date of purchase; or,

(b) if the vessel is more than 5 years old, that same vessel's reconstruction must be accomplished within 7 years from the date of purchase. You must include this additional required Schedule B objective form with your application. See reconstruction requirements below.

Principal Mortgage Payments. If you do not use the CCF to initially acquire a used vessel and wish to have as your Schedule B objective in your Agreement to make the principal mortgage payments on the vessel, you must agree to the same requirements for acquisition of a used vessel. The vessel must also have enough remaining basis for depreciation to reduce for the amount of the payments to be paid with CCF. You must provide evidence of this related debt, such as, copies of mortgage or promissory note.

► **SCHEDULE B QUALIFIED VESSEL FORMS** - Continued

● **RECONSTRUCTION**

The reconstruction work must take place in the U.S.

Time Allowed: Once started, the reconstruction project must be completed within 18 months, unless otherwise consented to.

Minimum Cost Requirement: Each reconstruction must equal at least 20 percent of the original acquisition cost, or \$100,000, whichever is less.

Type of Improvements: A reconstruction may include rebuilding, replacing, reconditioning, converting and/or improving any portion of a vessel. The improvements must prolong the useful life of the reconstructed vessel, increase its value, or adapt it to a different commercial use in the fishing trade or industry.

► **NOAA FORM 88-14, INTERIM CAPITAL CONSTRUCTION FUND AGREEMENT**

Important--Complete only the last page of both CCF Agreement forms.

All applicants print or type your name(s) and Social Security Number or Employer Identification Number next to the word "Party" (on lower right side of page).

Directly below "Party," the applicant's signature(s) must appear on the "By" line, and below your signature enter your title, i.e., Owner, Lessee, President. The signature(s) may be witnessed on the "By" line (on left side of page).

If signature is by an attorney-in-fact, provide a signed original Power of Attorney authorizing same.

Corporations. The authorized officer's signature must be attested to by the corporate secretary (on left side of page).

In addition, a corporate resolution to enter the Agreement, or the enclosed Certificate of Corporate Secretary form must accompany all corporation applications.

Partnerships. All partners must sign, unless a managing owner or other party has been directed to carry on all CCF activities. A document evidencing this must be provided with the application.

► **GENERAL INFORMATION**

Upon approval of your CCF application, you will receive:

- An approval letter
- Your copy of the executed CCF Agreement with approved Schedule A and Schedule B forms
- A letter authorizing withdrawals if the objective has commenced or is scheduled to commence within two years
- Annual Deposit/Withdrawal Report forms, instructions, and reporting requirements
- Investment Guide

NOAA FORM 88-14

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

Agreement No. CCF: _____

INTERIM CAPITAL CONSTRUCTION FUND AGREEMENT

This Interim Capital Construction Fund Agreement (the "Agreement"), made on _____, by and between the Secretary of Commerce (the "Secretary") and _____ (the "Party"), a citizen of the United States.

WITNESSETH:

WHEREAS:

1. The Party has applied for establishment of an Interim Capital Construction Fund (the "Interim Fund") under section 607 of the Merchant Marine Act, 1936, for the purpose of providing replacement, additional, or reconstructed vessels for operation in the fisheries of the United States;

2. The Secretary after appropriate findings and determinations has authorized the award of an Interim Capital Construction Fund Agreement to the Party upon the terms and conditions set forth in this Agreement and subject to the provisions of the Merchant Marine Act, 1936, as amended from time to time (the "Act"), and to such rules and regulations as the Secretary of Commerce or his delegate shall from time to time prescribe, either alone or jointly with the Secretary of the Treasury, as necessary to carry out the powers, duties, and functions vested in them by the Act (the "Rules and Regulations").

NOW, THEREFORE, in consideration of the premises, it is hereby agreed:

I. Establishment of Interim Fund. An Interim Fund is hereby established for the purposes set forth in Article III. During the term of this Agreement deposits into and withdrawals from the Interim Fund shall be made only in accordance with the provisions, conditions, and requirements of the Act, this Agreement, and the Rules and Regulations.

II. Term of the Agreement. This Agreement shall terminate:

A. Upon failure of the Party to make application for a permanent Capital Construction Fund Agreement (the "Permanent Agreement") within sixty (60) days after notice in the Federal Register that the final form of such Permanent Agreement and form of application, if any, have been adopted by the Secretary.

B. Upon denial by the Secretary of a timely-filed application for a Permanent Agreement.

C. By mutual consent.

D. Upon failure to execute a Permanent Agreement within ninety (90) days after tender by the Secretary of such Agreement for execution by the Party.

E. At the option of the Secretary, upon a determination pursuant to subsection (f) (2) of section 607 of the Act that a Party has failed to fulfill a substantial obligation under this Agreement, or if the Party has made any material misrepresentation in connection with this Agreement.

F. Upon the execution by the Secretary and the Party of a Permanent Agreement.

In the case of terminations occasioned by the events described in sections (A), (B), (C), (D), and (E) above, the provisions of the Internal Revenue Code of 1986 shall apply as though this Agreement had not been executed.

If this Agreement is terminated by virtue of the execution of a Permanent Agreement under (F) above, no interval shall be deemed to occur between the Interim and Permanent Agreement. The assets then on deposit in the Interim Fund, to the extent found necessary and appropriate by the Secretary for carrying out the program set forth in the Permanent Agreement, shall be transferred to the corresponding accounts in the Permanent Fund under the Permanent Agreement.

III. Purposes of the Interim Fund. The Interim Fund established by this Agreement shall be for the purposes of providing for qualified withdrawals during the term of this Agreement (1) to provide for the replacement, addition, or reconstruction of qualified vessels in accordance with the general objectives contained in Schedule B of this Agreement; and/or (2) to provide for the payment of the principal on indebtedness incurred in connection with the acquisition, construction, or reconstruction of a qualified vessel; and (3) to provide for transfer to a Permanent Agreement such amounts as may be approved by the Secretary under Article II of this Agreement. For the purpose of item (2) in the preceding sentence, an eligible vessel may also be a qualified vessel.

IV. Approved Depositories. All assets of the Interim Fund shall be maintained in the following depositories:
(Insert the name of the depositories)

V. Deposits to be made in the Interim Fund.

A. In order to carry out the purposes of section 607 of the Act as more specifically set forth in Schedule B of this Agreement, for each of the taxable years covered by this Agreement;

1. The Party shall deposit in any order all amounts received from the following:
 - a. Receipts (earnings) from the investment and reinvestment of amounts held in the Interim Fund; and
 - b. Except as shall be specifically exempted from deposit by the Secretary, net proceeds (i) the sale or other disposition (including any mortgage) of any agreement vessel, and (ii) any insurance or indemnity attributable to any agreement vessel resulting from total loss whether such loss was determined by compromise, constructively, or by agreement.
2. In addition to the deposits required by section (A) of this Article V, the party may make deposits in any order and amount but not in excess of the sum of:
 - a. One hundred percent of the taxable income attributable to the operation of the agreement vessels in the fisheries of the United States;
 - b. The amount allowable as a deduction under section 167 of the Internal Revenue Code of 1986 for such year in respect to the agreement vessels; and
 - c. Net proceeds not required to be deposited under section (A) (1) (b) of this Article V from (i) the sale or other disposition (including any mortgage) of any agreement vessel, and (ii) any insurance or indemnity attributable to any agreement vessel.

In no event may the deposits of taxable income from agreement vessels for any taxable year exceed one hundred percent of the taxable income of the Party for such year. Deposits may be made to the ordinary income, capital gain, and capital accounts from any moneys or funds of the Party, however, the Federal income tax treatment of any deposit shall be that specified under section 607 of the Act.

B. Deposits which are determined by subsequent audit to exceed the limitations stated in section (A) of this Article V may be applied as deposits applicable to a subsequent taxable year either under this agreement or an immediately succeeding Permanent Agreement. In the event that upon subsequent audit it is determined that amounts deposited in the Interim Fund for any taxable year fall below the maximum limitations stated in section (A) of this Article V, additional deposits may be made applicable to such taxable year.

C. Deposits may be made in the form of mortgages and evidences of indebtedness received in connection with transactions referred to in section (A) of this Article V.

D. With respect to any leased vessel covered by this Agreement, the maximum amount which may be deposited by the Party for any taxable year may be increased by the amount allowable to the owner as a deduction under section 167 of the Internal Revenue Code of 1986 that the owner does not deposit under an Agreement for that year. Such deposits by the Party shall be added to the amount in the capital account as a deposit of depreciation.

VI. Withdrawals from the Interim Fund.

A. Prior to making a withdrawal, or a related series of withdrawals, the Party must obtain the consent of the Secretary, and, if required by the Secretary, must amend and supplement Schedule B. A withdrawal made for the purposes specified in Schedule B of the Agreement, as so amended and supplemented, shall be treated as a "qualified withdrawal" within the meaning of subsection 607(f) of the Act except as otherwise provided in section (B) of this Article VI. Any withdrawal which is not a qualified withdrawal shall be treated as a nonqualified withdrawal or a withdrawal pursuant to subsection 607(h), as the case may be.

B. The Secretary may from time to time determine that the addition of a significant degree of fishing effort to the existing fleet in any specific segment or segments of the fisheries will be inconsistent with the wise use of the fisheries resource involved, and inconsistent with the development, advancement, management, conservation, or protection of that resource (the "Closed Fishery"). Prior to his making a final determination the Secretary shall give notice of his intention to make such determination and afford an opportunity for hearing by publishing a proposed regulation in the Federal Register establishing that qualified withdrawals may not be made from the Interim Fund if such withdrawals would introduce a significant degree of additional fishing effort into the Closed Fishery. If, after notice and opportunity for hearing, the Secretary makes a determination and gives notice thereof by promulgating a regulation in the Federal Register, the Party affected thereby may:

1. Make a qualified withdrawal in accordance with section (A) of this Article VI: Provided, that a degree of fishing effort substantially equivalent to any additional degree of fishing effort to be introduced into any Closed Fishery as a result of such qualified withdrawal is permanently removed by such Party from all fishing effort in that Closed Fishery; or
2. Amend Schedule B with the Secretary's consent; or
3. Make a nonqualified withdrawal in accordance with section (A) of this Article VI in such manner as the Secretary determines to be equitable to the Party by allowing the Party to withdraw all of the assets in the Interim Fund, or specified portions thereof, over a period of time; or
4. Continue the Interim Fund, and all or a portion of the assets in it: Provided that it appears to the Secretary that a qualified withdrawal may at some later time be reasonably expected to occur.

In the case of nonqualified withdrawal in accordance with this Article VI, the provisions of the Internal Revenue Code of 1986 shall apply as though this Agreement had not been executed with respect to the funds withdrawn.

VII. Investment of the Interim Fund. Investments shall be made in accordance with the following requirements and such additional requirements as the Secretary may by Rules and Regulations prescribe from time to time.

A. The assets of the Interim Fund may be invested in obligations of the United States Government or of any agency or instrumentality thereof, bankers acceptances and negotiable certificates of deposit which are readily marketable and which are issued by members of the Federal Deposit Insurance Corporation and the Federal Reserve System, and commercial paper which is readily marketable and of one of the two highest grades as rated by Standard and Poor's Corporation. All of the foregoing investments shall mature not later than one year from the date of their purchase.

B. No person shall buy on margin or effect the short sale of any security when acting for the account of the Interim Fund.

C. Assets of the Interim Fund may not be invested in securities of any of the following:

1. The Party;
2. A subsidiary of the Party;
3. A related company of the Party; or
4. Any issuer under common control with the Party, or owning or controlling more than ten percent of the Party's voting securities.

VIII. Pledges and Assignments Prohibited. The Party covenants and agrees that, without the prior written consent of the Secretary, neither the Party nor a trustee nor any other person shall pledge or assign all or any portion of this Agreement, the Interim Fund, or any assets in the Interim Fund.

IX. Related Companies. Where affiliates, subsidiaries, holding companies, or other persons related to the Party, directly or indirectly, are involved in the financing, acquisition, construction, or reconstruction of a qualified vessel, the Party shall make written application to the Secretary for approval of the transaction not less than thirty (30) days prior to the execution thereof. Withdrawals with respect to such transactions before such approval is granted shall be treated as nonqualified withdrawals unless otherwise approved by the Secretary.

X. Records and Reports.

A. The Party and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the Party (1) shall keep its books, records, and accounts relating to the property and to the maintenance, operation, and servicing of the vessel(s) and service(s) covered by this Agreement in such form and under such conditions as may be prescribed by the Secretary, but the Secretary shall not require the duplication of books, records, and accounts required to be kept in some other form by the Secretary of the Treasury so long as such information is made available to the Secretary, and (2) shall file, upon notice from the Secretary, balance facts and transactions, as in the opinion of the Secretary reveal the financial results in the performance of, or transactions or operations under, this Agreement. The Secretary reserves the right to require that all or any of such statements, reports, and memoranda shall be certified by independent certified public accountants acceptable to the Secretary. The Party shall from time to time establish and maintain such checks upon or systems of control of expenditures or revenues in connection with the operation of the agreement vessel(s) as the Secretary may require.

B. The Secretary is hereby authorized to examine and audit the books, records, and accounts of all persons referred to in section (A) of this Article X whenever he may deem it necessary or desirable.

XI. Warranties and Representations by the Party. The Party hereby warrants, represents, and agrees as follows:

A. That the Party is, and at all times during the period of this Agreement, will continue to be a citizen of the United States within the meaning of subsection 905(c) of the Act;

B. That the Party owns or leases the eligible vessels, as that term is defined in subsection 607(k) of the Act, set out in Schedule A of this Agreement;

C. That the vessels referred to in Schedule B of this Agreement:

1. Were, or will be, constructed or reconstructed in the United States;
2. Were, or will be, documented under the laws of the United States for operation in the fisheries of the United States; and
3. Are, or will be, operated in the fisheries of the United States and the areas of operation specified in Schedule B.

D. That the Party will during the term of this Agreement comply with the provisions of this Agreement, of the Act, and of the Rules and Regulations.

XII. Effective Dates. This Agreement is binding upon execution and shall be effective for purposes of withdrawals from the Interim Fund in accordance with Rules and Regulations issued by the Secretary and for purposes of deposits the effective date(s) shall be prescribed in joint Rules and Regulations issued by the Secretary and the Secretary of the Treasury.

XIII. Modification, Amendment, and Extension. This Agreement may be modified, amended, or extended by mutual consent.

XIV. Miscellaneous Provisions.

A. The use of headnotes at the beginning of the Articles in this Agreement is for the purpose of description only and shall not be construed as limiting or in any other manner affecting the substance of the Articles themselves.

B. The "Secretary" shall mean the Secretary of Commerce or any official or body from time to time duly authorized to perform the duties and functions of the Secretary of Commerce under the Act (including the Administrator, National Oceanic and Atmospheric Administration, or his authorized delegate).

IN WITNESS WHEREOF, the Secretary and the Party have executed this Agreement in duplicate, effective as of the date hereinbefore first mentioned.

UNITED STATES OF AMERICA
SECRETARY OF COMMERCE
National Oceanic and Atmospheric Administrator

By _____

Financial Assistance Specialist
Financial Services Division
National Marine Fisheries Service

(SEAL)

ATTEST: (By corporate secretary), or
Witness: (others)

PARTY:

By _____

By: _____

Title _____

Title _____

Public reporting burden for this collection of information is estimated to average 30 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 suggestions for reducing this burden to NOAA Fisheries, F/MB5, 1315 East West Hwy., Silver Spring, MD 20910.

The information collected is confidential under the Magnuson-Stevens Fishery Conservation and Management Act, as amended in 2006, NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics and 15CFR259.38(b).

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected 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.

FISHING VESSEL CCF APPLICATION

Date: _____

CCF Applicant Name: _____

Taxable Entity type: Individual C-Corporation S-Corporation Partnership

CCF application for the taxable year ending: (date)

Social Security/Employer Identification Number: _____

Estimated initial CCF deposit attributable to Schedule A vessel(s) from:

Fishing Income \$ _____ Sale/Insurance Proceeds \$ _____, Depreciation \$ _____

Name and Address of each CCF depository (bank, brokerage, etc.) to be used:

The following checked items are attached as a part of this application: (Note: *Required **See instructions)

- _____ *NOAA Form 88-14, Interim Capital Construction Fund Agreement (2 signed forms)
- _____ *Completed Schedule A and Schedule B forms
- _____ **Evidence of ownership for all Schedule A eligible vessels to be a part of this CCF Agreement
- _____ **Evidence of lease for Schedule A vessel(s)
- _____ **Proof of U.S. citizenship (if Schedule A vessel leased, or 2 - 5 net tons)
- _____ **Evidence of debt for Schedule B vessel
- _____ *Federal tax return copies as filed with IRS for previous 2 years
- _____ **Signed and dated copy of IRS Automatic Extension notice, and copy of IRS approved Additional Extension Request, if applicable to this taxable year application

I hereby give permission to the administrators of my Capital Construction Fund Agreement to release and obtain any information about the CCF Agreement from the following representative:

Representative (Name, Firm, etc.) _____

Address: _____

Phone (_____) _____ FAX Phone (_____) _____

Mail all CCF correspondence to: My Address _____ My Representative _____ Both _____

Applicant's Signature and Title _____

Address: _____

Phone (_____) _____ FAX Phone (_____) _____

Public reporting burden for this collection of information is estimated to average 30 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 suggestions for reducing this burden to NOAA Fisheries, F/MB5, 1315 East West Hwy., Silver Spring, MD 20910.

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SCHEDULE A - ELIGIBLE VESSEL

CASE NO. _____

A. NAME OF VESSEL: _____ OFFICIAL NO. _____

B. NAME OF OWNER: _____

C. PERCENT OF OWNERSHIP: _____ % DATE ACQUIRED: _____

D. NAME OF LESSEE (If applicable): _____

E. DATE VESSEL LAST DOCUMENTED: _____

F. TRADE(S) VESSEL DOCUMENTED FOR: _____

G. DATE VESSEL CONSTRUCTED: _____

H. PLACE CONSTRUCTED (CITY & STATE): _____

I. NET TONNAGE: _____ TONS NUMBER OF CHARTER PASSENGERS: _____

J. GROSS TONNAGE: _____ TONS

K. LENGTH (OVERALL/REGISTERED): _____ FEET

L. VESSEL TYPE: CATCHER () PROCESSOR () TENDER/ TRANSPORTER () CHARTER ()

M. GEAR TYPE (Seine, Trawl, Pots, etc.): _____

N. FISHERY OF OPERATION (salmon, king crab, etc.): _____

O. AREA OF OPERATION: _____

Date: _____

A PAGE _____

Public reporting burden for this collection of information is estimated to average 50 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 suggestions for reducing this burden to NOAA Fisheries, F/MB5, 1315 East West Hwy., Silver Spring, MD 20910.

The information collected is confidential under the Magnuson-Stevens Fishery Conservation and Management Act, as amended in 2006, NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics and 15CFR259.38(b).

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected 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.

**SCHEDULE B - QUALIFIED VESSEL FOR
CONSTRUCTION, ACQUISITION AND/OR MORTGAGE PAYMENTS**

CASE NO. _____

A. NAME OF VESSEL: _____ OFFICIAL NO. _____

B. NAME OF OWNER: _____

C. PERCENT OF OWNERSHIP: _____%

D. ANTICIPATED OR TOTAL ACTUAL COST OF VESSEL: \$ _____

E. PRINCIPAL MORTGAGE BALANCE \$ _____, AS OF _____

F. DEPRECIABLE BASIS \$ _____, AS OF _____

G. ANTICIPATED OR ACTUAL DATE OF ACQUISITION: _____

If acquisition of a used vessel, skip to Line K.

H. ANTICIPATED BEGINNING DATE OF CONSTRUCTION: _____

I. ANTICIPATED DELIVERY DATE: _____
(Must be within 18 months of beginning date)

J. CONSTRUCTION TO BE DONE BY: CONTRACT () OWNER () BOTH ()

K. NET TONNAGE: _____ TONS

L. GROSS TONNAGE: _____ TONS NO. CHARTER PASSENGERS: _____

M. LENGTH (OVERALL/REGISTERED): _____ FEET

N. AGE (SHOW YEAR CONSTRUCTED): _____

O. VESSEL TYPE: CATCHER () PROCESSOR () TENDER/
TRANSPORTER () CHARTER ()

P. GEAR TYPE (seine, trawl, pots, etc.): _____

Q. FISHERY OF OPERATION (salmon, king crab, cod, etc.): _____

R. AREA OF OPERATION: _____
() Withdrawal limited to Party's share of cost/share of ownership.
() Conditioned upon satisfying the requirements of 50 CFR §259.31.

DATE: _____

B PAGE _____

Public reporting burden for this collection of information is estimated to average 50 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 suggestions for reducing this burden to NOAA Fisheries, F/MB5, 1315 East West Hwy., Silver Spring, MD 20910.

The information collected is confidential under the Magnuson-Stevens Fishery Conservation and Management Act, as amended in 2006, NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics and 15CFR259.38(b).

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected 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.

SCHEDULE B - QUALIFIED VESSEL FOR RECONSTRUCTION

CASE NO. _____

- A. NAME OF VESSEL: _____ OFFICIAL NO. _____
- B. NAME OF OWNER: _____
- C. PERCENT OF OWNERSHIP: _____% D. YEAR CONSTRUCTED: _____
- E. ORIGINAL COST OF VESSEL: _____
- F. ANTICIPATED OR ACTUAL TOTAL COST OF RECONSTRUCTION: \$ _____
(Amount must be 20% of Line "E" amount or \$100,000, whichever is less)
- G. MORTGAGE OR DEBT RELATED TO THIS RECONSTRUCTION: \$ _____
- H. RECONSTRUCTION TO BE DONE BY: CONTRACT () OWNER () BOTH ()
1. BEGINNING DATE: _____ 2. DELIVERY DATE: _____
(Note:--Delivery date must be within 18 months of beginning date)
3. IMPROVEMENTS (new engine, electronics, etc.): _____
- _____
- _____

BEFORE RECONSTRUCTION:

AFTER RECONSTRUCTION:

- | | |
|---|------------------|
| I. _____ NET TONS | _____ NET TONS |
| J. _____ GROSS TONS | _____ GROSS TONS |
| _____ PASSENGERS | _____ PASSENGERS |
| K. _____ FEET | _____ FEET |
| L. VESSEL TYPE: CATCHER () PROCESSOR () CHARTER () TRANSPORTER () | TENDER/ |
| M. GEAR TYPE (seine, trawl, pots, etc.): _____ | |
| N. FISHERY OF OPERATION (salmon, king crab, cod, etc.): _____ | |
| O. AREA OF OPERATION: _____ | |
| () Conditioned upon satisfying the requirements of 50 CFR, §259.31. | |
| () Withdrawal limited to Party's share of cost/share of ownership. | |

Date: _____

B PAGE _____

Public reporting burden for this collection of information is estimated to average 50 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 suggestions for reducing this burden to NOAA Fisheries, F/MB5, 1315 East West Hwy., Silver Spring, MD 20910.

The information collected is confidential under the Magnuson-Stevens Fishery Conservation and Management Act, as amended in 2006, NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics and 15CFR259.38(b).

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected 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.

CERTIFICATE OF CONSTRUCTION/RECONSTRUCTION

The undersigned hereby certifies that:

Construction Reconstruction*

of Schedule B, page _____, _____, was completed
(Name of Vessel)

on _____, by Contract Owner Both,
(Date)

for a **TOTAL COST** of \$ _____.

If available, show breakdown below for above Total Cost:

Hull & House \$ _____

Machinery \$ _____

Electronics \$ _____

Fixed Gear \$ _____

Other \$ _____

(Signature)

(Print Name)

(Date)

***NOTE:** All, or the major portion (ordinarily, not less than 80 percent), of the total cost must (for the purpose of meeting the minimum cost requirement) be classifiable as a capital expenditure for IRS purposes. That portion of cost not classifiable as a capital expenditure is not eligible for payment through the CCF.

--50 CFR, sec 259.31(b)(2)

Public reporting burden for this collection of information is estimated to average 1 hour 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 suggestions for reducing this burden to NOAA Fisheries, F/MB5, 1315 East West Hwy., Silver Spring, MD 20910.

The information collected is confidential under the Magnuson-Stevens Fishery Conservation and Management Act, as amended in 2006, NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics and 15CFR259.38(b).

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[Laws in effect as of January 6, 1999]

[Document not affected by Public Laws enacted between January 6, 1999 and February 11, 2000]

[CITE: 46USC--App.1177]

TITLE 46, APPENDIX--SHIPPING

CHAPTER 27--MERCHANT MARINE ACT, 1936

SUBCHAPTER VI--VESSEL OPERATING ASSISTANCE PROGRAMS

Part A--Operating-Differential Subsidy Program Sec. 1177.

Capital Construction Fund

(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 noncontiguous 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. The 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; interest-bearing

WAIS Document Retrieval

securities; stock: percentage for domestic 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 interestbearing 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 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 [2 6 U. S. C. 7 518] , 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 [2 6 U. S. C. 10 3] .

(3) The **capital** gain account shall consist of--

WAIS Document Retrieval

(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 nonqualified 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

WAIS Document Retrieval

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 close of the--	The applicable percentage is--
26th taxable year	20 percent
27th taxable year	40 percent
28th taxable year	60 percent

WAIS Document Retrieval

29th taxable year80 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--

- (i) by excluding such withdrawal from gross income, and
(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 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 \1\ of such Code [26 U.S.C. 701 et seq.]).

-----\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)

WAIS Document Retrieval

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 oceangoing 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.

WAIS Document Retrieval

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.

(June 29, 1936, ch. 858, title VI, Sec. 607, 49 Stat. 2005; June 23, 1938, ch. 600, Secs. 23-28, 52 Stat. 960, 961; Aug. 4, 1939, ch. 417, Sec. 10, 53 Stat. 1185; July 17, 1952, ch. 939, Secs. 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.)

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.

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

WAIS Document Retrieval

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. (l). 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 (l) 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,

WAIS Document Retrieval

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. (l), 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, Secs. 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

WAIS Document Retrieval

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,

P 9 to which such amendment relates, see section 1019(a) of
" 2
P 1 set out as a note under section 1 of Title 26, Internal
u 0
b 0

Effective Date of 1986 Amendment

For provisions relating to computation of depreciation with respect and as
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 a
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.

WAIS Document Retrieval

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.

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.

§ 253.24

Funds may be distributed by the Secretary only after notice and opportunity for public comment of the appropriate limitations, terms, and conditions for awarding assistance under this section. Assistance provided under this section is limited to 75 percent of an uninsured loss to the extent that such losses have not been compensated by other Federal or State programs.

(b) *Funds for interstate commissions.* Funds authorized to support the efforts of the three chartered Interstate Marine Fisheries Commissions to develop and maintain interstate fishery management plans for interjurisdictional fisheries will be divided equally among the Commissions.

§ 253.24 Administrative requirements.

Federal assistance awards made as a result of this Act are subject to all Federal laws, Executive Orders, Office of Management and Budget Circulars as incorporated by the award; Department of Commerce and NOAA regulations; policies and procedures applicable to Federal financial assistance awards; and terms and conditions of the awards.

PART 259—CAPITAL CONSTRUCTION FUND

JOINT TAX REGULATIONS

Sec.

259.1 Execution of agreements and deposits made in a Capital Construction Fund.

CAPITAL CONSTRUCTION FUND AGREEMENT

259.30 Application for Interim Capital Construction Fund Agreement (“Interim CCF Agreement”).

259.31 Acquisition, construction, or reconstruction.

259.32 Conditional fisheries.

259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary’s consent; first tax year for which Interim CCF Agreement is effective.

259.34 Minimum and maximum deposits; maximum time to deposit.

259.35 Annual deposit and withdrawal reports required.

259.36 CCF accounts.

259.37 Conditional consents to withdrawal qualification.

259.38 Miscellaneous.

AUTHORITY: 46 U.S.C. 1177.

50 CFR Ch. II (10–1–02 Edition)

JOINT TAX REGULATIONS

§ 259.1 Execution of agreements and deposits made in a Capital Construction Fund.

In the case of a taxable year of a taxpayer beginning after December 31, 1969, and before January 1, 1972, the rules governing the execution of agreements and deposits under such agreements shall be as follows:

(a) A capital construction fund agreement executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years will be deemed to be effective on the date of the execution of such agreement or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(b) Notwithstanding the provisions of paragraph (a) of this section, where:

(1) For taxable years beginning after December 31, 1969, and prior to January 1, 1971, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1972, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1972, and

(2) For taxable years beginning after December 31, 1970, and prior to January 1, 1972, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1973, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1973 (or, if earlier, 60 days after the publication of final joint regulations under section 607 of the Merchant Marine Act, 1936, as amended); then such a capital construction fund agreement will be deemed to be effective as of the close of business of the last regular business day of each such taxable year or years to which such deposit related.

(c)(1) Deposits made in a capital construction fund pursuant to such an agreement within 60 days after the date of execution of the agreement, or on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years, whichever date shall be later, shall be deemed to have been made on

the date of the actual deposit or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(2) Notwithstanding paragraph (c)(1) of this section, for taxable years beginning after December 31, 1970, and ending prior to January 1, 1972, deposits made later than the last date permitted under paragraph (c)(1) of this section but on or before January 9, 1973, in a capital construction fund pursuant to an agreement with the Secretary of Commerce, acting by and through the Administrator of the National Oceanic and Atmospheric Administration, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of such taxable year, whichever is earlier.

(d) Nothing in this section shall alter the rules and regulations governing the timing of deposits with respect to existing capital and special reserve funds or with respect to the treatment of deposits for any taxable year or years other than a taxable year or years beginning after December 31, 1969, and before January 1, 1972.¹

[37 FR 25025, Nov. 25, 1972, as amended at 38 FR 8163, Mar. 29, 1973]

CAPITAL CONSTRUCTION FUND
AGREEMENT

SOURCE: Sections 259.30 to 259.38 appear at 39 FR 33675, Sept. 19, 1974, unless otherwise noted.

§ 259.30 Application for Interim Capital Construction Fund Agreement ("Interim CCF Agreement").

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

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

¹The phrase "existing capital and special reserve funds" does not refer to the Capital Construction Fund program but rather to funds established with the Maritime Administration prior to the amendment of the Merchant Marine Act, 1936, which authorized the Capital Construction Fund program.

(2) Own or lease one or more eligible vessels (as defined in section 607(k)(1) of the Act) operating in the foreign or domestic commerce of the United States.

(3) Have an acceptable program for the acquisition, construction, or reconstruction of one or more qualified vessels (as defined in section 607(k)(2) of the Act). Qualified vessels must be for commercial operation in the fisheries of the United States. If the qualified vessel is 5 net tons or over, it must be documented in the fisheries of the United States. 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 or demonstrate to the Secretary's satisfaction that the carrying of fishing parties for hire will constitute its primary activity. The program must be a firm representation of the applicant's actual intentions. Vague or contingent objectives will not be acceptable.

(b) *Content of application.* Applicants seeking an Interim CCF Agreement may make application by letter providing the following information:

(1) Proof of U.S. citizenship;

(2) The first taxable year for which the Interim CCF Agreement is to apply (see § 259.33 for the latest time at which applications for an Interim CCF Agreement relating to a previous taxable year may be received);

(3) The following information regarding each "eligible vessel" which is to be incorporated in Schedule A of the Interim CCF Agreement for purposes of making deposits into a CCF pursuant to section 607 of the Act:

(i) Name of vessel,

(ii) Official number, or, in the case of vessels 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 characteristic (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of

§ 259.31

50 CFR Ch. II (10-1-02 Edition)

passengers carried or in the case of vessels operating in the foreign or domestic commerce the various uses of the vessel, etc.),

(v) Whether 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 vessel is documented and date last documented,

(ix) If a fishing vessel, the fishery of operation (which in this section means each species or group of species—each species must be specifically identified by 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) If a fishing vessel, 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).

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

(i) Number of vessels,

(ii) Type of vessel (i.e., catching, processing, transporting, or passenger carrying fishing vessel),

(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 evidences of the 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 under an Interim CCF 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—each species must be specifically identified by acceptable common name—of fish, shellfish, or other living marine resources),

(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 in duplicate to the Regional Office of the National Marine Fisheries Service's Financial Assistance Division corresponding to the region in which the party conducts its business. As a general rule, the Interim CCF Agreement must be executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of the Federal tax return in order to be effective for the tax year to which that return relates. It is manifestly in the Applicant's best interest to file at least 45 days in advance of such date.

[39 FR 33675, Sept. 19, 1974, as amended at 42 FR 65185, Dec. 30, 1978]

§ 259.31 Acquisition, construction, or reconstruction.

(a) *Acquisition.* No vessel having previously been operated in a fishery of the United States prior to its acquisition by the party seeking CCF withdrawal therefor shall be a qualified vessel for the purpose of acquisition, except in the cases specified in paragraphs (a)(1) and (2) of this section:

(1) A vessel not more than 5 years old, at the time of its acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, but only if each acquisition in this category becomes a Schedule A vessel and there exists for each acquisition in this category (on a one-for-one basis) an additional Schedule B construction or reconstruction. The sole consideration for permitting an acquisition in this category is that it will enable the party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the additional Schedule B construction or

reconstruction. Should this consideration materially fail, the Secretary shall, at his discretion, disqualify previously qualified withdrawals in this category, seek liquidated damages as provided for in paragraph (a)(4) of this section and/or terminate the Interim CCF Agreement.

(2) A vessel more than 5 years old, but not more than 25 years old (special showing required if more than 25 years old, see paragraph (b) of this section), at the time of acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, but only if that same vessel becomes a Schedule A vessel and (in addition to being a Schedule B vessel for the purpose of its acquisition) becomes a Schedule B vessel for the purpose of that same vessel's reconstruction to be accomplished ordinarily within 7 years from the date of acquisition. The sole consideration for permitting an acquisition in this category is that it will enable a party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the Schedule B reconstruction of the vessel so acquired. Should this consideration materially fail, the same penalty prescribed in paragraph (a)(1) of this section applies.

(3) Reserved for minimum deposits under this section.

(4) Reserved for liquidated damages.

(b) *Reconstruction.* No reconstruction project costing less than \$100,000 shall qualify a vessel for reconstruction, unless the reconstruction project costs, or will cost, 20 percent or more of the reconstructed vessel's acquisition cost (in its unreconstructed state) to the party seeking CCF withdrawal therefor. If the reconstruction project meets the \$100,000 test, then the 20 percent test does not apply. Conversely, if the reconstruction project does not meet the \$100,000 test, then the 20 percent test applies.

(1) Reconstruction may include rebuilding, replacing, reconditioning, converting and/or improving any portion of a vessel. A reconstruction project must, however, substantially prolong the useful life of the reconstructed vessel, increase its value, or adapt it to a different commercial use in the fishing trade or industry.

(2) All, or the major portion (ordinarily, not less than 80 percent), of a reconstruction project's actual cost must (for the purpose of meeting the above dollar or percentage tests) be classifiable as a capital expenditure for Internal Revenue Service (IRS) purposes. That otherwise allowable (i.e., for the purpose of meeting the above dollar or percentage tests) portion of a reconstruction project's actual cost which is not classifiable as a capital expenditure shall, however, be excluded from the amount qualified for withdrawal as a result of the reconstruction project.

(3) No vessel more than 25 years old at the time of withdrawal or request for 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 at least 10 years beyond the date reconstruction is completed.

(c) *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.

(d) *Energy saving improvements.* An improvement made to a vessel to conserve energy shall, regardless of cost, be treated as a reconstruction for the purpose of qualifying a CCF withdrawal for such expenditure and shall be exempted from having to meet conditional fishery requirements for reconstruction as set forth in § 259.32 and from all qualifying tests for reconstruction set forth in paragraph (b) of this section with the following exceptions:

(1) An energy saving improvement shall be required to meet both conditional fishery requirements and the qualifying tests for reconstruction if it serves the dual purpose of saving energy and meeting the reconstruction requirement of paragraph (a) of this section for qualifying a withdrawal for the acquisition of a used vessel.

(2) That portion of the actual cost of an energy saving improvement which is

to be paid from the CCF must be classifiable and treated as a capital expenditure for Internal Revenue Service purposes.

(e) *Safety projects.* The acquisition and installation of safety equipment for a qualified vessel and vessel modifications whose central purpose is materially increasing the safety of a qualified vessel or the acquisition and installation of equipment required by law or regulation that materially increases the safety of a qualified vessel shall, regardless of cost, be treated as reconstruction for the purpose of qualifying a CCF withdrawal for such expenditure, shall be exempt from having to meet conditional fishery requirements for reconstruction as set forth in § 259.32, and shall be exempt from all qualifying tests for reconstruction set forth in paragraph (b) of this section, with the following exceptions:

(1) A safety improvement shall be required to meet both conditional fishery requirements and all qualifying tests for reconstruction if it serves the dual purpose of safety and meeting the reconstruction requirement of paragraph (a) of this section for qualifying a withdrawal for the acquisition of a used vessel;

(2) That portion of the actual cost of a safety improvement that is to be paid from the CCF must be classifiable and treated as a capital expenditure for Internal Revenue Service purposes;

(3) Safety improvement projects whose clear and central purpose is restricted to complying with the requirements of the Commercial Fishing Industry Vessel Safety Act of 1988 (Public Law 100–424 Sec. 1, 102 stat. 1585 (1988) (codified in scattered sections of 46 U.S.C.)) shall, without further documentation, be considered to fall within this paragraph (e). Satisfactory documentation will be required for all other projects proposed to be considered as falling within this paragraph (e). Projects not required by law or regulation whose central purpose clearly involves something other than an improvement that materially increases the safety of a vessel will not be considered to fall within this paragraph (e).

[39 FR 33675, Sept. 19, 1974, as amended at 46 FR 54563, Nov. 3, 1981; 62 FR 331, Jan. 3, 1997]

§ 259.32 Conditional fisheries.

(a) The Secretary may from time-to-time establish certain fisheries in which CCF benefits will be restricted. The regulatory mechanism for so doing is part 251 of this chapter. Each fishery so restricted is termed a “conditional fishery”. Subpart A of part 251 of this chapter establishes the procedure to be used by the Secretary in proposing and adopting a fishery as a conditional fishery. Subpart B of part 251 of this chapter enumerates each fishery actually adopted as a conditional fishery (part 251 of this chapter should be referred to for details). The purpose of this § 259.32 is to establish the effect of conditional fishery adoption upon Interim CCF Agreements.

(b) If a written request for an otherwise permissible action under an Interim CCF Agreement is submitted prior to the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise normal manner, upon so much of the action then applied for as is then permissible without regard to the subsequent adoption of a conditional fishery (even, if that adoption occurs before the Secretary gives his consent or issues an Interim CCF Agreement or amendment thereto, all as the case may be). Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(c) If a written request for an otherwise permissible action under an Interim CCF Agreement, or an application for an Interim CCF Agreement, is submitted after the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise normal manner, upon so much of the action then applied for as is then permissible without regard to the previous adoption of a conditional fishery provided, however, that this paragraph shall apply only to construction or reconstruction for which a binding contract has been reduced to writing prior to the date upon which conditional fishery adoption occurred. Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(d) Conditional fishery adoption shall have no effect whatsoever upon a

Schedule B objective whose qualification for withdrawal (which may be in an amount equal to the total cost over time of a Schedule B objective, i.e., a series of withdrawals) has been, prior to the date of conditional fishery adoption, either consented to by the Secretary or requested in accordance with paragraph (b) or (c) of this section. This extends to past, present, and future withdrawals in an amount representing up to 100 percent of the cost of a Schedule B objective. Commencement of any project in these categories shall, however, be started not later than 6 months from the date of conditional fishery adoption and shall be completed within 24 months from the date of conditional fishery adoption, unless for good and sufficient cause shown the Secretary, at his discretion, consents to a longer period for either project commencement or completion. Consent to the qualification of withdrawal for any project in these categories not commenced or completed within the periods allowed shall be revoked at the end of the periods allowed.

(e) Conditional fishery adoption shall have no effect whatsoever upon Schedule B objectives which will not result in significantly increasing harvesting capacity in a fishery adopted as a conditional fishery.

(1) Construction of a new vessel (vessel "Y") for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the party causing the "Y" vessel to be constructed causes (within 1 year after the delivery of vessel "Y") to be permanently removed from all fishing, or placed permanently in a fishery not then adopted as a conditional fishery, under such conditions as the Secretary may deem necessary or desirable, a vessel (vessel "Z") which has during the previous 18 months operated substantially in the same fishery as the "Y" vessel and which has a fishing capacity substantially equivalent to the "Y" vessel. Failure to remove a vessel could subject all withdrawals to be treated as nonqualified and may be cause for termination of the CCF. What constitutes substantially equivalent fishing capacity shall be a matter for

the Secretary's discretion. Ordinarily, in exercising his discretion about what does or does not constitute substantially equivalent fishing capacity, the Secretary will take into consideration (i) the average size of vessels constructed for the adopted conditional fishery in question at the time vessel "Z" was constructed (or, if constructed for a different fishery, the average size of vessels in the adopted conditional fishery at the time vessel "Z" entered it), (ii) the average size of vessels constructed for the adopted conditional fishery at the time vessel "Y" was or will be constructed, and (iii) such other factors as the Secretary may deem material and equitable, including the length of time the party had owned or leased vessel "Z" and the length of time the vessel has operated in the conditional fishery. The Secretary will consider these factors, and exercise his discretion, in such a way as to encourage use of this program by established fishermen who have owned or leased for substantial periods vessels which need to be replaced, even though a "Z" vessel may have been constructed at a time which dictated a lesser fishing capacity than dictated for a "Y" vessel at the time of its construction.

(2) Acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the vessel to be acquired and/or reconstructed had during the previous 3 years operated substantially in the same fishery as the adopted conditional fishery in which it will operate after acquisition and/or reconstruction. If less than 3 years, then acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless there occurs vessel removal or permanent placement elsewhere under the same conditions specified for construction in paragraph (e)(1) of this section.

(3) Construction of a new vessel or the acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall not be deemed to significantly increase the harvesting capacity where the vessel

constructed, acquired and/or reconstructed replaces another vessel which was lost or destroyed and which had, immediately prior to the loss or destruction, operated in the same fishery as the adopted conditional fishery, provided, however, that the fishing capacity of the replacement vessel has a fishing capacity substantially equivalent to the vessel lost or destroyed and that the construction, acquisition and/or reconstruction is completed within 2 years after the close of the taxable year in which the loss or destruction occurred. The Secretary may, at his discretion, and for good and sufficient cause shown, extend the replacement period, provided that the request for extension of time to replace is timely filed with the Secretary.

(f) Conditional fishery adoption shall have the following effect on all Schedule B objectives (whether for acquisition, construction, or reconstruction) which the Secretary deems to significantly increase harvesting capacity in that fishery, excluding those circumstances specifically exempted by paragraphs (b) through (e) of this section (which shall be governed by the provisions of paragraphs (b) through (e) of this section).

(1) The Secretary may nevertheless consent to the qualification of withdrawal, but only up to an amount not exceeding the total of eligible ceilings actually deposited during tax years other than the taxable year in which conditional fishery adoption occurs plus a pro-rata portion of eligible ceilings generated in the tax year in which conditional fishery adoption occurs. Pro-rata shall be according to the number of months or any part thereof in a party's tax year which elapse before the adoption of the conditional fishery occurs. For example, if a party's tax year runs from January 1, 1974, to December 31, 1974, and conditional fishery adoption occurs on August 15, 1974, (i.e., during the 8th month of the party's tax year), then the pro-rata portion for that year is eight-twelfths of the total eligible ceilings generated during that year.

(2) Qualified withdrawals in excess of the amount specified in paragraph (f)(1) of this section shall not, during the continuance of the adopted conditional

fishery, be consented to. Parties at this point shall have the following option:

(i) Make, with the Secretary's consent, a nonqualified withdrawal of the excess and discontinue the future deposit of eligible ceilings (which may effect termination of the Interim CCF Agreement).

(ii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective not then involving an adopted conditional fishery. If amendment of an Interim CCF Agreement is necessary in order to include a Schedule B objective not then involving an adopted conditional fishery, the party may, with the Secretary's consent, make the necessary amendment.

(iii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective involving a then adopted conditional fishery in anticipation that the then adopted conditional fishery will eventually be disadopted, in which case all deposits of eligible ceilings will once again be eligible for the Secretary's consent as qualified withdrawals. If the adoption of a conditional fishery continues for a substantial length of time and there is no foreseeable prospect of disadoption, then the Secretary, in his discretion, may require paragraph (f)(2)(i) or (ii) of this section to be effected.

(g) The Secretary shall neither enter into a new Interim CCF Agreement, nor permit amendment of an existing one, which involves a Schedule B objective in a then adopted conditional fishery unless paragraph (b), (c) or (d) of this § 259.32 applies or unless the Schedule B objective is expressly conditioned upon acquisition construction, or reconstruction of the type permitted under paragraph (e) of this § 259.32. Such an express condition would not survive beyond the time at which conditional fishery status is removed.

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

(a) *Periods controlling permissibility.* For the purpose of this § 259.33, the period between the beginning and the end of a party's tax year is designated "Period (aa)"; the period between the

end of a party's tax year and the party's tax due date for that tax year is designated "Period (bb)"; the period between the party's tax due date and the date on which ends the party's last extension (if any) of that tax due date is designated "Period (cc)".

(b) *Constructive deposits and withdrawals (before Interim CCF Agreement effectiveness date)*. Constructive deposits and withdrawals shall be permissible only during the Period (aa) during which a written application for an interim CCF Agreement is submitted to the Secretary and so much of the next succeeding Period (aa), if any, which occurs before the Secretary executes the Interim CCF Agreement previously applied for. All otherwise qualified expenditures of eligible ceilings during Period (aa) may be consented to by the Secretary as constructive deposits and withdrawals: *Provided*, The applicant's application for an Interim CCF Agreement and for consent to constructive deposit and withdrawal qualification (together with sufficient supporting data to enable the Secretary's execution or issuance of consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc). If, however, the Secretary receives the completed application in proper form so close to the latest permissible period that the Interim CCF Agreement cannot be executed and/or the consent given before the end of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the applicant to negotiate with the Internal Revenue Service (IRS) for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless execute the Interim CCF Agreement and issue his consent however long past the applicant's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the applicant's having failed to apply in a more timely fashion.

(c) *Constructive deposits (after Interim CCF Agreement effectiveness date)*. The Secretary shall not permit constructive deposits or withdrawals after the

effective date of an Interim CCF Agreement. Eligible ceilings must, after the effective date of an interim CCF Agreement, be physically deposited in money or kind in scheduled depositories before the last date eligible ceilings for any Period (aa) of any party become ineligible for deposit (the last date being Period (bb) or Period (cc), whichever applies).

(d) *Ratification of withdrawals (as qualified) made without first having obtained Secretary's consent*. The Secretary may ratify as qualified any withdrawal made without first having obtained the Secretary's consent therefor, provided the withdrawal was such as would have resulted in the Secretary's consent had it been requested before withdrawal, and provided further that the party's request for consent (together with sufficient supporting data to enable issuance of the Secretary's consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc).

(1) If, however, the Secretary receives the request in proper form so close to the latest permissible period that the consent cannot be given before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the party to negotiate with IRS for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless issue his consent however long past the party's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the party's having failed to apply in a more timely fashion.

(2) All parties shall be counseled that it is manifestly in their best interest to request the Secretary's consent 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 to which the Secretary will not or cannot consent by

ratification, then the result will be either, or both, at the Secretary's discretion, an unqualified withdrawal or an involuntary termination of the Interim CCF Agreement.

(3) Should the withdrawal made without having first obtained the Secretary's consent be made in pursuance of a project not then an eligible Schedule B objective, then the Secretary may entertain an application to amend the Interim CCF Agreement's Schedule B objectives as the prerequisite to consenting by ratification to the withdrawal, all under the same time constraints and conditions as otherwise specified herein.

(4) Any withdrawals made, after the effective date of an Interim CCF Agreement, without the Secretary's consent are automatically non-qualified withdrawals unless the Secretary subsequently consents to them by ratification as otherwise specified herein.

(5) Redeposit of that portion of the ceiling withdrawn without the Secretary's consent, and for which such consent is not subsequently given (either by ratification or otherwise), shall not be permitted. If such a non-qualified withdrawal adversely affects the Interim CCF Agreement's general status in any wise deemed by the Secretary, at his discretion, to be significant and material, the Secretary may involuntarily terminate the Interim CCF Agreement.

(e) *First tax year for which Interim CCF Agreement is effective.* An Agreement, to be effective for any party's Period (aa), must be executed and entered into by the party, and submitted to the Secretary, before the end of Period (bb) or Period (cc), whichever applies, for such Period (aa). If executed and entered into by the party, and/or received by the Secretary, after the end of Period (bb) or Period (cc), whichever applies, then the Agreement will be first effective for the next succeeding Period (aa).

(1) If, however, the Secretary receives an Agreement executed and entered into by the party in proper form so close to the latest permissible period that the Secretary cannot execute the Agreement before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the

party to negotiate with IRS for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless execute the Agreement however long past the party's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the party's having failed to apply in a more timely manner.

(2) All parties shall be counseled that it is manifestly in their best interest to enter into and execute an Agreement, and submit the same to the Secretary, at least 45 days in advance of the Period (bb) or Period (cc), whichever applies, for the Period (aa) for which the Agreement is first intended to be effective.

§ 259.34 Minimum and maximum deposits; maximum time to deposit.

(a) *Minimum annual deposit.* The minimum annual (based on each party's taxable year) deposit required by the Secretary in order to maintain an Interim CCF Agreement shall be an amount equal to 2 percent of the total anticipated cost of all Schedule B objectives unless such 2 percent exceeds during any tax year 50 percent of a party's Schedule A taxable income, in which case the minimum deposit for that year shall be 50 percent of the party's Schedule A taxable income.

(1) Minimum annual deposit compliance shall be audited at the end of each party's taxable year unless any one or more of the Schedule B objectives is scheduled for commencement more than 3 taxable years in advance of the taxable year in which the agreement is 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 above.

[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

§ 259.37

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

50 CFR Ch. II (10-1-02 Edition)

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 post-mark 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.

(d) These §§ 259.30 through 259.38 are applicable absolutely to all Interim CCF Agreements first entered into (or the amendment of all then existing Interim CCF Agreements, which amendment is first entered into) on or after the date these §§ 259.30 through 259.38 are adopted. These §§ 259.30 through 259.38 are applicable to all Interim CCF Agreements entered into before the date these §§ 259.30 through 259.38 are adopted, with the following exceptions only:

National Marine Fisheries Service/NOAA, Commerce

§ 259.38

(1) The vessel age limitations imposed by §259.31 shall not apply to already scheduled Schedule B objectives.

(2) The minimum deposits imposed by §259.34 shall not apply to any party's tax year before that party's tax year next following the one in which these §§259.30 through 259.38 are adopted.

(e) These §§259.30 through 259.38 are specifically incorporated in all past, present, and future Interim CCF Agreements by reference thereto made in Whereas Clause number 2 of all such Interim CCF Agreements.

law or rule of law, including the doctrine of res judicata.

§ 2.1-26 Reports by taxpayers.

(a) *Information required.* With each income tax return filed for a taxable year during any part of which a construction reserve fund is in existence the taxpayer shall submit a statement setting forth a detailed analysis of such fund. The statement, which need not be on any prescribed form, shall include the following information with respect to the construction reserve fund:

(1) The actual balance in the fund at the beginning and end of the taxable year;

(2) The date, amount, and source of each deposit during the taxable year;

(3) If any deposit referred to in subparagraph (2) of this paragraph consists of proceeds from the sale, or indemnification of loss, of a vessel or share thereof, the amounts of the unrecognized gain;

(4) The date, amount, and purpose of each expenditure or withdrawal from the fund; and

(5) The date and amount of each contract, under which deposited funds are deemed to be obligated during the taxable year, for the construction, reconstruction, reconditioning, or acquisition of new vessels, or for the liquidation of purchase-money indebtedness on such vessels, and the identification of such vessels.

(b) *Records required.* Taxpayers shall keep such records and make such additional reports as the Commissioner of Internal Revenue or the Administration may require.

§ 2.1-27 Controlled corporation.

For the purpose of section 511 of the Act and the regulations in this part a new vessel is considered as constructed, reconstructed, reconditioned, or acquired by the taxpayer if constructed, reconstructed, reconditioned, or acquired by a corporation at a time when the taxpayer owns not less than 95 percent of the total number of shares of each class of stock of the corporation.

§ 2.1-28 Administrative jurisdiction.

Sections 2.1-3 to 2.1-11, inclusive, §§ 2.1-13 to 2.1-15, inclusive, and §§ 2.1-19

to 2.1-22, inclusive, deal primarily with matters under the jurisdiction of the Administration. Sections 2.1-12, 2.1-16 to 2.1-18, inclusive, and §§ 2.1-23 to 2.1-27, inclusive, deal primarily with matters under the jurisdiction of the Commissioner of Internal Revenue. Generally, matters relating to the establishment, maintenance, expenditure, and use of construction reserve funds and the construction, reconstruction, reconditioning, or acquisition of new vessels are under the jurisdiction of the Administration; and matters relating to the determination, assessment, and collection of taxes are under the jurisdiction of the Commissioner of Internal Revenue. Correspondence should be addressed to the particular authority having jurisdiction in the matter.

PART 3—CAPITAL CONSTRUCTION FUND

Sec.

3.0 Statutory provisions; section 607, Merchant Marine Act, 1936, as amended.

3.1 Scope of section 607 of the Act and the regulations in this part.

3.2 Ceiling on deposits.

3.3 Nontaxability of deposits.

3.4 Establishment of accounts.

3.5 Qualified withdrawals.

3.6 Tax treatment of qualified withdrawals.

3.7 Tax treatment of nonqualified withdrawals.

3.8 Certain corporate reorganizations and changes in partnerships, and certain transfers on death. [Reserved]

3.9 Consolidated returns. [Reserved]

3.10 Transitional rules for existing funds.

3.11 Definitions.

AUTHORITY: Sec. 21(a) of the Merchant Marine Act of 1970 (84 Stat. 1026); sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

SOURCE: T.D. 7398, 41 FR 5812, Feb. 10, 1976, unless otherwise noted.

§ 3.0 Statutory provisions; section 607, Merchant Marine Act, 1936, as amended.

SEC. 607 (a) Agreement Rules.

Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1)) may enter into an agreement with the Secretary of Commerce 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

§ 3.0

26 CFR Ch. I (4–1–03 Edition)

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 noncontiguous 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). The 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 of Commerce may by regulations prescribe or are set forth in such agreement; except that the Secretary of Commerce 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)) which is attributable to the operation of the agreement vessels.

(b) Ceiling on Deposits.

(1) The amount deposited under subsection (a) 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 1954 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 1954 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 re-investment 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) Requirements as to Investments.

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 of Commerce. They may be invested only in interest-bearing securities approved by the Secretary of Commerce; except that, if the Secretary of Commerce 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 corporation would meet such requirements but for the fact that it cannot be listed and registered as required because it is non-voting stock, such preferred stock shall be treated as meeting the requirements of this subsection.

(d) Nontaxability for Deposits.

(1) For purposes of the Internal Revenue Code of 1954—

(A) Taxable income (determined without regard to this section) 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),

(B) Gain from a transaction referred to in subsection (b)(1)(C) 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) shall be determined without regard to this section, and

(E) In applying the tax imposed by section 531 of such Code (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

Internal Revenue Service, Treasury

§ 3.0

and not later than the time provided in joint regulations.

(e) Establishment of Accounts.

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),

(B) Amounts referred to in subsection (b)(1)(C) other than that portion thereof which represents gain not taken into account by reason of subsection (d)(1)(B),

(C) 85 percent of any dividend received by the fund with respect to which the person maintaining the fund would (but for subsection (d)(1)(C)) be allowed a deduction under section 243 of the Internal Revenue Code of 1954, and

(D) Interest income exempt from taxation under section 103 of such Code.

(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), 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),

(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), 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), and

(E) 15 percent of any dividend referred to in paragraph (2)(C).

(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.

(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 of Commerce, 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 of Commerce 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 nonqualified withdrawal.

(g) Tax Treatment of Qualified Withdrawals.

(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—

(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.

(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.

§ 3.0

26 CFR Ch. I (4-1-03 Edition)

(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) 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 re-deposit 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.

(1) Except as provided in subsection (i), 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), shall be treated as withdrawn on a last-in-first-out basis.

(3) For purposes of the Internal Revenue Code of 1954—

(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 and no addition to the tax shall be payable under section 6651 of such Code,

(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 606(5) of the Merchant Marine Act of 1936 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 of Commerce 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.

(i) Certain Corporate Reorganizations and Changes in Partnerships.

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 1954 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 of such Code).

(j) Treatment of Existing Funds.

(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), the date of the deposit of any item so transferred shall be July 1,

Internal Revenue Service, Treasury

§ 3.1

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 of Commerce 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 506 of this Act.

(6) The term “joint regulations” means regulations prescribed under subsection (1).

(7) The term “vessel” includes cargo handling equipment which the Secretary of Commerce 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.

(l) Records; Reports; Changes in Regulations.

Each person maintaining a fund under this section shall keep such records and shall make such reports as the Secretary of Commerce or the Secretary of the Treasury shall require. The Secretary of the Treasury and the Secretary of Commerce 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 of Commerce 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.

§ 3.1 Scope of section 607 of the Act and the regulations in this part.

(a) *In general.* The regulations prescribed in this part provide rules for determining the income tax liability of any person a party to an agreement with the Secretary of Commerce establishing a capital construction fund (for purposes of this part referred to as the “fund”) authorized by section 607 of the Merchant Marine Act, 1936, as amended (for purposes of this part referred to as the “Act”). With respect to such parties, section 607 of the Act in general provides for the nontaxability of certain deposits of money or other property into the fund out of earnings or gains realized from the operation of vessels covered in an agreement, gains realized from the sale or other disposition of agreement vessels or proceeds from insurance for indemnification for loss of agreement vessels, earnings from the investment or reinvestment of amounts held in a fund, and gains with respect to amounts or deposits in the fund. Transitional rules are also provided for the treatment of “old funds” existing on or before the effective date of the Merchant Marine Act of 1970 (see § 3.10).

(b) *Cross references.* For rules relating to eligibility for a fund, deposits, and withdrawals and other aspects, see the regulations prescribed by the Secretary of Commerce in titles 46 (Merchant Marine) and 50 (Fisheries) of the *Code of Federal Regulations*.

(c) *Code*. For purposes of this part, the term “Code” means the Internal Revenue Code of 1954, as amended.

§ 3.2 Ceiling on deposits.

(a) *In general*—(1) *Total ceiling*. Section 607(b) of the Act provides a ceiling on the amount which may be deposited by a party for a taxable year pursuant to an agreement. The amount which a party may deposit into a fund may not exceed the sum of the following subceilings:

(i) The lower of (a) the taxable income (if any) of the party for such year (computed as provided in Chapter I of the Code but without regard to the carryback of any net operating loss or net capital loss and without regard to section 607 of the Act) or (b) taxable income (if any) of such party for such year attributable under paragraph (b) of this section to the operation of agreement vessels (as defined in paragraph (f) of this section) in the foreign or domestic commerce of the United States or in the fisheries of the United States (see section 607(b)(1)(A) of the Act).

(ii) Amounts allowable as a deduction under section 167 of the Code for such year with respect to the agreement vessels (see section 607(b)(1)(B) of the Act),

(iii) The net proceeds (if not included in subdivision (i) of this paragraph) from (a) the sale or other disposition of any agreement vessels or (b) insurance or indemnity attributable to any agreement vessels (see section 607(b)(1)(C) of the Act and paragraph (c) of this section), and

(iv) Earnings and gains from the investment or reinvestment of amounts held in such fund (see section 607(b)(1)(D) of the Act and paragraphs (d) and (g) of this section).

(2) *Overdeposits*. (i) If for any taxable year an amount is deposited into the fund under a subceiling computed under subparagraph (1) of this paragraph which is in excess of the amount of such subceiling for such year, then at the party’s option such excess (or any portion thereof) may—

(a) Be treated as a deposit into the fund for that taxable year under another available subceiling, or

(b) Be treated as not having been deposited for the taxable year and thus, at the party’s option, may be disposed of either by it being—

(1) Treated as a deposit into the fund under any subceiling available in the first subsequent taxable year in which a subceiling is available, in which case such amount shall be deemed to have been deposited on the first day of such subsequent taxable year, or

(2) Repaid to the party from the fund.

(ii)(a) When a correction is made for an overdeposit, proper adjustment shall be made with respect to all items for all taxable years affected by the overdeposit, such as, for example, amounts in each account described in § 3.4, treatment of nonqualified withdrawals, the consequences of qualified withdrawals and the treatment of losses realized or treated as realized by the fund. Thus, for example, if the party chooses to have the fund repay to him the amount of an overdeposit, amounts in each account, basis of assets, and any affected item will be determined as though no deposit and repayment had been made. Accordingly, in such a case, if there are insufficient amounts in an account to cover a repayment of an overdeposit (as determined before correcting the overdeposit), and the party had applied the proceeds of a qualified withdrawal from such account towards the purchase of a qualified vessel (within the meaning of § 3.11(a)(2)), then such account and the basis of the vessel shall be adjusted as of the time such withdrawal was made and proceeds were applied, and repayment shall be made from such account as adjusted. If a party chooses to treat the amount of an overdeposit as a deposit under a subceiling for a subsequent year, similar adjustments to affected items shall be made. If the amount of a withdrawal would have exceeded the amount in the fund (determined after adjusting all affected amounts by reason of correcting the overdeposit), the withdrawal to the extent of such excess shall be treated as a repayment made at the time the withdrawal was made.

(b) If the accounts (as defined in § 3.4) that were increased by reason of excessive deposits contain sufficient amounts at the time the overdeposit is

discovered to repay the party, the party may, at his option, demand repayment of such excessive deposits from such accounts in lieu of making the adjustments required by (a) of this subdivision (ii).

(iii) During the period beginning with the day after the date an overdeposit was actually made and ending with the date it was disposed of in accordance with subdivision (i)(b) of this subparagraph, there shall be included in the party's gross income for each taxable year the earnings attributed to any amount of overdeposit on hand during such a year. The earnings attributable to any amount of overdeposit on hand during a taxable year shall be an amount equal to the product of—

(a) The average daily earnings for each one dollar in the fund (as determined in subdivision (iv) of this subparagraph),

(b) The amount of overdeposit (as determined in subdivision (vi) of this subparagraph), and

(c) The number of days during the taxable year the overdeposit existed.

(iv) For purposes of subdivision (iii) (a) of this subparagraph, the average daily earnings for each dollar in the fund shall be determined by dividing the total earnings of the fund for the taxable year by the sum of the products of—

(a) Any amount on hand during the taxable year (determined under subdivision (v) of this subparagraph), and

(b) The number of days during the taxable year such amount was on hand in the fund.

(v) For purposes of this subparagraph—

(a) An amount on hand in the fund or an overdeposit shall not be treated as on hand on the day deposited but shall be treated as on hand on the day withdrawn, and

(b) The fair market value of such amounts on hand for purposes of this subparagraph shall be determined as provided in § 20.2031-2 of the Estate Tax Regulations of this chapter but without applying the blockage and other special rules contained in paragraph (e) thereof.

(vi) For purposes of subdivision (iii) (b) of this subparagraph, the amount of

overdeposit on hand at any time is an amount equal to—

(a) The amount deposited into the fund under a subceiling computed under subparagraph (1) of this paragraph which is in excess of the amount of such subceiling, less

(b) The sum of—

(1) Amounts described in (a) of this subdivision (vi) treated as a deposit under another subceiling for the taxable year pursuant to subdivision (i) of this subparagraph,

(2) Amounts described in (a) of this subdivision (vi) disposed of (or treated as disposed of) in accordance with subdivision (i) or (ii) of this subparagraph prior to such time.

(vii) To the extent earnings attributed under subdivision (iii) of this subparagraph represent a deposit for any taxable year in excess of the subceiling described in subparagraph (1)(iv) of this paragraph for receipts from the investment or reinvestment of amounts held in the fund, such attributed earnings shall be subject to the rules of this subparagraph for overdeposits.

(3) *Underdeposit caused by audit adjustment.* [Reserved]

(4) *Requirements for deficiency deposits.* [Reserved]

(b) *Taxable income attributable to the operation of an agreement vessel—*(1) *In general.* For purposes of this section, taxable income attributable to the operation of an agreement vessel means the amount, if any, by which the gross income of a party for the taxable year from the operation of an agreement vessel (as defined in paragraph (f) of this section) exceeds the allowable deductions allocable to such operation (as determined under subparagraph (3) of this paragraph). The term "taxable income attributable to the operation of the agreement vessels" means the sum of the amounts described in the preceding sentence separately computed with respect to each agreement vessel (or share therein) or, at the party's option, computed in the aggregate.

(2) *Gross income.* (i) Gross income from the operation of agreement vessels means the sum of the revenues which are derived during the taxable year from the following:

(a) Revenues derived from the transportation of passengers, freight, or

§ 3.2

26 CFR Ch. I (4-1-03 Edition)

mail in such vessels, including amounts from contracts for the charter of such vessels to others, from operating differential subsidies, from collections in accordance with pooling agreements and from insurance or indemnity net proceeds relating to the loss of income attributable to such agreement vessels.

(b) Revenues derived from the operation of agreement vessels relating to commercial fishing activities, including the transportation of fish, support activities for fishing vessels, charters for commercial fishing, and insurance or indemnity net proceeds relating to the loss of income attributable to such agreement vessels.

(c) Revenues from the rental, lease, or use by others of terminal facilities, revenues from cargo handling operations and tug and lighter operations, and revenues from other services or operations which are incidental and directly related to the operation of an agreement vessel. Thus, for example, agency fees, commissions, and brokerage fees derived by the party at his place of business for effecting transactions for services incidental and directly related to shipping for the accounts of other persons are includible in gross income from the operation of agreement vessels where the transaction is of a kind customarily consummated by the party for his own account at such place of business.

(d) Dividends, interest, and gains derived from assets set aside and reasonably retained to meet regularly occurring obligations relating to the shipping or fishing business directly connected with the agreement vessel which obligations cannot at all times be met from the current revenues of the business because of layups or repairs, special surveys, fluctuations in the business, and reasonably foreseeable strikes (whether or not a strike actually occurs), and security amounts retained by reason of participation in conferences, pooling agreements, or similar agreements.

(ii) The items of gross income described in subdivision (i) (c) and (d) of this subparagraph shall be considered to be derived from the operations of a particular agreement vessel in the same proportion that the sum of the

items of gross income described in subdivision (i) (a) and (b) of this subparagraph which are derived from the operations of such agreement vessel bears to the party's total gross income for the taxable year from operations described in subdivision (i) (a) and (b) of this subparagraph.

(iii) In the case of a party who uses his own or leased agreement vessels to transport his own products, the gross income attributable to such vessel operations is an amount determined to be an arm's length charge for such transportation. The arm's length charge shall be determined by applying the principles of section 482 of the Code and the regulations thereunder as if the party transporting the product and the owner of the product were not the same person but were controlled taxpayers within the meaning of § 1.482-1(a)(4) of the Income Tax Regulations of this chapter. Gross income attributable to the operation of agreement vessels does not include amounts for which the party is allowed a deduction for percentage depletion under sections 611 and 613 of the Code.

(3) *Deductions.* From the gross income attributable to the operation of an agreement vessel or vessels as determined under subparagraph (2) of this paragraph, there shall be deducted, in accordance with the principles of § 1.861-8 of the Income Tax Regulations of this chapter, the expenses, losses, and other deductions definitely related and therefore allocated and apportioned thereto and a ratable part of any expenses, losses, or other deductions which are not definitely related to any gross income of the party. Thus, for example, if a party has gross income attributable to the operation of an agreement vessel and other gross income and has a particular deduction definitely related to both types of gross income, such deduction must be apportioned between the two types of gross income on a reasonable basis in determining the taxable income attributable to the operation of the agreement vessel.

(4) *Net operating and capital loss deductions.* The taxable income of a party attributable to the operation of agreement vessels shall be computed without regard to the carryback of any net

operating loss deduction allowed by section 172 of the Code, the carryback of any net capital loss deduction allowed by sections 165(f) of the Code, or any reduction in taxable income allowed by section 607 of the Act.

(5) *Method of accounting.* Taxable income must be computed under the method of accounting which the party uses for Federal income tax purposes. Such method may include a method of reporting whereby items of revenue and expense properly allocable to voyages in progress at the end of any accounting period are eliminated from the computation of taxable income for such accounting period and taken into account in the accounting period in which the voyage is completed.

(c) *Net proceeds from transactions with respect to agreement vessels.* [Reserved]

(d) *Earnings and gains from the investment or reinvestment of amounts held in a fund—(1) In general.* (i) Earnings and gains received or accrued by a party from the investment or reinvestment of assets in a fund is the total amount of any interest or dividends received or accrued, and gains realized, by the party with respect to assets deposited in, or purchased with amounts deposited in, such fund. Such earnings and gains are therefore required to be included in the gross income of the party unless such amount, or a portion thereof, is not taken into account under section 607(d)(1)(C) of the Act and § 3.3(b)(2)(ii) by reason of a deposit or deemed deposit into the fund. For rules relating to receipts from the sale or other disposition of nonmoney deposits into the fund, see paragraph (g) of this section.

(ii) Earnings received or accrued by a party from investment or reinvestment of assets in a fund include the ratable monthly portion of original issue discount included in gross income pursuant to section 1232(a)(3) of the Code. Such ratable monthly portion shall be deemed to be deposited into the ordinary income account of the fund, but an actual deposit representing such ratable monthly portion shall not be made. For basis of bond or other evidence of indebtedness issued at a discount, see § 3.3(b)(2)(ii)(b).

(2) *Gain realized.* (i) The gain realized with respect to assets in the fund is the

excess of the amount realized (as defined in section 1001(b) of the Code and the regulations thereunder) by the fund on the sale or other disposition of a fund asset over its adjusted basis (as defined in section 1011 of the Code) to the fund. For the adjusted basis of non-money deposits, see paragraph (g) of this section.

(ii) Property purchased by the fund (including property considered under paragraph (g)(1)(iii) of this section as purchased by the fund) which is withdrawn from the fund in a qualified withdrawal (as defined in § 3.5) is treated as a disposition to which subdivision (i) of this subparagraph applies. For purposes of determining the amount by which the balance within a particular account will be reduced in the manner provided in § 3.6(b) (relating to order of application of qualified withdrawals against accounts) and for purposes of determining the reduction in basis of a vessel, barge, or container (or share therein) pursuant to § 3.6(c), the value of the property is its fair market value on the day of the qualified withdrawal.

(3) *Holding period.* Except as provided in paragraph (g) of this section, the holding period of fund assets shall be determined under section 1223 of the Code.

(e) *Leased vessels.* In the case of a party who is a lessee of an agreement vessel, the maximum amount which such lessee may deposit with respect to any agreement vessel by reason of section 607(b)(1)(B) of the Act and paragraph (a)(1)(ii) of this section (relating to depreciation allowable) for any period shall be reduced by the amount (if any) which, under an agreement entered into under section 607 of the Act, the owner is required or permitted to deposit for such period with respect to such vessel by reason of section 607(b)(1)(B) of the Act and paragraph (a)(1)(ii) of this section. The amount of depreciation depositable by the lessee under this paragraph is the amount of depreciation deductible by the lessor on its income tax return, reduced by the amount described in the preceding sentence or the amount set forth in the agreement, whichever is lower.

(f) *Definition of agreement vessel.* For purposes of this section, the term “agreement vessel” (as defined in

§3.2

26 CFR Ch. I (4-1-03 Edition)

§3.11(a)(3) and 46 CFR 390.6) includes barges and containers which are the complement of an agreement vessel and which are provided for in the agreement, agreement vessels which have been contracted for or are in the process of construction, and any shares in an agreement vessel. Solely for purposes of this section, a party is considered to have a "share" in an agreement vessel if he has a right to use the vessel to generate income from its use whether or not the party would be considered as having a proprietary interest in the vessel for purposes of State or Federal law. Thus, a partner may enter into an agreement with respect to his share of the vessel owned by the partnership and he may make deposits of his distributive share of the sum of the four subceilings described in paragraph (a)(1) of this section. Notwithstanding the provisions of subchapter K of the Code (relating to the taxation of partners and partnerships), the Internal Revenue Service will recognize, solely for the purposes of applying this part, an agreement by an owner of a share in an agreement vessel even though the "share" arrangement is a partnership for purposes of the Code.

(g) *Special rules for nonmoney deposits and withdrawals*—(1) *In general.* (i) Deposits may be made in the form of money or property of the type permitted to be deposited under the agreement. (For rules relating to the types of property which may be deposited into the fund, see 46 CFR §390.7(d), and 50 CFR part 259.) For purposes of this paragraph, the term "property" does not include money.

(ii) Whether or not the election provided for in subparagraph (2) of this paragraph is made—

(a) The amount of any property deposited, and the fund's basis for property deposited in the fund, is the fair market value of the property at the time deposited, and

(b) The fund's holding period for the property begins on the day after the deposit is made.

(iii) Unless such an election is made, deposits of property into a fund are considered to be a sale at fair market value of the property, a deposit of cash equal to such fair market value, and a purchase by the fund of such property

for cash. Thus, in the absence of the election, the difference between the fair market value of such property deposited and its adjusted basis shall be taken into account as gain or loss for purposes of computing the party's income tax liability for the year of deposit.

(iv) For fund's basis and holding period of assets purchased by the fund, see paragraph (d) (2) and (3) of this section.

(2) *Election not to treat deposits of property other than money as a sale or exchange at the time of deposit.* A party may elect to treat a deposit of property as if no sale or other taxable event had occurred on the date of deposit. If such election is made, in the taxable year the fund disposes of the property, the party shall recognize as gain or loss the amount he would have recognized on the day the property was deposited into the fund had the election not been made. The party's holding period with respect to such property shall not include the period of time such property was held by the fund. The election shall be made by a statement to that effect, attached to the party's Federal income tax return for the taxable year to which the deposit relates, or, if such return is filed before such deposit is made, attached to the party's return for the taxable year during which the deposit is actually made.

(3) *Effect of qualified withdrawal of property deposited pursuant to election.* If property deposited into a fund, with respect to which an election under subparagraph (2) of this paragraph is made, is withdrawn from the fund in a qualified withdrawal (as defined in §3.5) such withdrawal is treated as a disposition of such property resulting in recognition by the party of gain or loss (if any) as provided in subparagraph (2) of this paragraph with respect to nonfund property. In addition, such withdrawal is treated as a disposition of such property by the fund resulting in recognition of gain or loss by the party with respect to fund property to the extent the fair market value of the property on the date of withdrawal is greater or less (as the case may be) than the adjusted basis of the property to the fund on such date. For purposes of determining the amount by which

the balance within a particular account will be reduced in the manner provided in §3.6(b) (relating to order of application of qualified withdrawals against accounts) and for purposes of determining the reduction in basis of a vessel, barge, or container (or share therein) pursuant to §3.6(c), the value of the property is its fair market value on the day of the qualified withdrawal. For rules relating to the effect of a qualified withdrawal of property purchased by the fund (including deposited property considered under subparagraph (1)(iii) of this paragraph as purchased by the fund), see paragraph (d)(2)(ii) of this section.

(4) *Effect of nonqualified withdrawal of property deposited pursuant to election.* If property deposited into a fund with respect to which an election under subparagraph (2) of this paragraph is made, is withdrawn from the fund in a nonqualified withdrawal (as defined in §3.7(b)), no gain or loss is to be recognized by the party with respect to fund property or nonfund property but an amount equal to the adjusted basis of the property to the fund is to be treated as a nonqualified withdrawal. Thus, such amount is to be applied against the various accounts in the manner provided in §3.7(c), such amount is to be taken into account in computing the party's taxable income as provided in §3.7(d), and such amount is to be subject to interest to the extent provided for in §3.7(e). In the case of withdrawals to which this subparagraph applies, the adjusted basis of the property in the hands of the party is the adjusted basis on the date of deposit, increased or decreased by the adjustments made to such property while held in the fund, and in determining the period for which the party has held the property there shall be included, in addition to the period the fund held the property, the period for which the party held the property before the date of deposit of the property into the fund. For rules relating to the basis and holding period of property purchased by the fund (including deposited property considered under subparagraph (1)(ii) of this paragraph as purchased by the fund) and withdrawn in a nonqualified withdrawal see §3.7(f).

(5) *Examples.* The provisions of this paragraph are illustrated by the following examples:

Example (1). X Corporation, which uses the calendar year as its taxable year, maintains a fund described in §3.1. X's taxable income (determined without regard to section 607 of the Act) is \$100,000, of which \$80,000 is taxable income attributable to the operation of agreement vessels (as determined under paragraph (b)(1) of this section). Under the agreement, X is required to deposit into the fund all earnings and gains received from the investment or reinvestment of amounts held in the fund, an amount equal to the net proceeds from transactions referred to in §3.2(c), and an amount equal to 50 percent of its earnings attributable to the operation of agreement vessels provided that such 50 percent does not exceed X's taxable income from all sources for the year of deposit. The agreement permits X to make voluntary deposits of amounts equal to 100 percent of its earnings attributable to the operation of agreement vessels, subject to the limitation with respect to taxable income from all sources. The agreement also provides that deposits attributable to such earnings may be in the form of cash or other property. On March 15, 1973, X deposits, with respect to its 1972 earnings attributable to the operation of agreement vessels, stock with a fair market value at the time of deposit of \$80,000 and an adjusted basis to X of \$10,000. Such deposit represents agreement vessel income of \$80,000. At the time of deposit, such stock had been held by X for a period exceeding 6 months. X does not elect under subparagraph (2) of this paragraph to defer recognition of the gain. Accordingly, under subparagraph (1)(iii) of this paragraph, the deposit is treated as a deposit of \$80,000 and X realizes a long-term capital gain of \$70,000 on March 15, 1973.

Example (2). The facts are the same as in example (1), except that X elects in accordance with subparagraph (2) of this paragraph not to treat the deposit as a sale or exchange. On July 1, 1974, the fund sells the stock for \$85,000. The basis to the fund of the stock is \$80,000 (see subparagraph (1)(ii) (a) of this paragraph). With respect to nonfund property, X recognizes \$70,000 of long-term capital gain on the sale includible in its gross income for 1974. With respect to fund property, X realizes \$5,000 of long-term capital gain (the difference between the amount received by the fund on the sale of the stock, \$85,000, and the basis to the fund of the stock, \$80,000), an amount equal to which is required to be deposited into the fund with respect to 1974, as a gain from the investment or reinvestment of amounts held in the

§ 3.3

26 CFR Ch. I (4-1-03 Edition)

fund. Since the fund held the stock for a period exceeding 6 months, the \$5,000 is allocated to the fund's capital gain account under § 3.4(c).

Example (3). The facts are the same as in example (2), except that the fund sells the stock on July 1, 1974, for \$75,000. As the basis to the fund of the stock is \$80,000, with respect to fund property, X realizes a long-term capital loss on the sale (the difference between the amount received by the fund on the sale of the stock, \$75,000, and the basis to the fund of the stock, \$80,000), of \$5,000, an amount equal to which is required to be charged against the fund's capital gain account under § 3.4(e). Under subparagraph (2) of this paragraph, X recognizes \$70,000 of long-term capital gain with respect to nonfund property on the sale which is includible in its gross income for 1974.

Example (4). The facts are the same as in example (2), except that on July 1, 1974, X makes a qualified withdrawal (as defined in § 3.5(a)) of the stock and uses it to pay indebtedness pursuant to § 3.5(b). On the disposition by X considered to occur under subparagraph (3) of this paragraph on the qualified withdrawal, X recognizes \$70,000 of long-term capital gain with respect to nonfund property, which is includible in its gross income for 1974, and a long-term capital gain of \$5,000 with respect to fund property, an amount equal to which is allocated to the fund's capital gain account under § 3.4(c). The fund is treated as having a qualified withdrawal of an amount equal to the fair market value of the stock on the day of withdrawal, \$85,000 (see subparagraph (3) of this paragraph). In addition, \$85,000 is applied against the various accounts in the order provided in § 3.6(b). The basis of the vessel with respect to which the indebtedness was incurred is to be reduced as provided in § 3.6(c).

Example (5). The facts are the same as in example (2), except that X withdraws the stock from the fund in a nonqualified withdrawal (as defined in § 3.7(b)). Under subparagraph (4) of this paragraph, X recognizes no gain or loss with respect to fund or nonfund property on such withdrawal. An amount equal to the basis of the stock to the fund (\$80,000) is applied against the various accounts in the order provided in § 3.7(c), and is taken into account in computing X's taxable income for 1974 as provided in § 3.7(d). In addition, X must pay interest on the withdrawal as provided in § 3.7(e). The basis to X of the stock is \$10,000 notwithstanding the fact that the fair market value of such stock was \$85,000 on the day of withdrawal (see subparagraph (4) of this paragraph).

§ 3.3 Nontaxability of deposits.

(a) *In general.* Section 607(d) of the Act sets forth the rules concerning the

income tax effects of deposits made with respect to ceilings described in section 607(b) and § 3.2. The specific treatment of deposits with respect to each of the subceilings is set forth in paragraph (b) of this section.

(b) *Treatment of deposits—(1) Earnings of agreement vessels.* Section 607(d)(1)(A) of the Act provides that taxable income of the party (determined without regard to section 607 of the Act) shall be reduced by an amount equal to the amount deposited for the taxable year out of amounts referred to in section 607(b)(1)(A) of the Act and § 3.2(a)(1)(i). For computation of the foreign tax credit, see paragraph (i) of this section.

(2) *Net proceeds from agreement vessels and fund earnings.* (i)(a) Section 607(d)(1)(B) provides that gain from a transaction referred to in section 607(b)(1)(C) of the Act and § 3.2(a)(1)(iii) (relating to ceilings on deposits of net proceeds from the sale or other disposition of agreement vessels) is not to be taken into account for purposes of the Code if an amount equal to the net proceeds from transactions referred to in such sections is deposited in the fund. Such gain is to be excluded from gross income of the party for the taxable year to which such deposit relates. Thus, the gain will not be taken into account in applying section 1231 of the Code for the year to which the deposit relates.

(b) [Reserved]

(ii)(a) Section 607(d)(1)(C) of the Act provides that the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund and referred to in section 607(b)(1)(D) of the Act and § 3.2(a)(1)(iv) shall not be taken into account for purposes of the Code if an amount equal to such earnings is deposited into the fund. Such earnings are to be excluded from the gross income of the party for the taxable year to which such deposit relates.

(b) However, for purposes of the basis adjustment under section 1232(a)(3)(E) of the Code, the ratable monthly portion of original issue discount included in gross income shall be determined without regard to section 607(d)(1)(C) of the Act.

(iii) In determining the tax liability of a party to whom subparagraph (1) of

this paragraph applies, taxable income, determined after application of subparagraph (1) of this paragraph, is in effect reduced by the portion of deposits which represent gain or earnings respectively referred to in subdivision (i) or (ii) of this subparagraph. The excess, if any, of such portion over taxable income determined after application of subparagraph (1) of this paragraph is taken into account in computing the net operating loss (under section 172 of the Code) for the taxable year to which such deposits relate.

(3) *Time for making deposits.* (i) This section applies with respect to an amount only if such amount is deposited in the fund pursuant to the agreement and not later than the time provided in subdivision (ii), (iii), or (iv) of this subparagraph for the making of such deposit or the date the Secretary of Commerce provides, whichever is earlier.

(ii) Except as provided in subdivision (iii) or (iv) of this subparagraph, a deposit may be made not later than the last day prescribed by law (including extensions thereof) for filing the party's Federal income tax return for the taxable year to which such deposit relates.

(iii) If the party is a subsidized operator under an operating-differential subsidy contract, and does not receive on or before the 59th day preceding such last day, payment of all or part of the accrued operating-differential subsidy payable for the taxable year, the party may deposit an amount equivalent to the unpaid accrued operating-differential subsidy on or before the 60th day after receipt of payment of the accrued operating-differential subsidy.

(iv) A deposit pursuant to § 3.2(a)(3)(i) (relating to underdeposits caused by audit adjustments) must be made on or before the date prescribed for such a deposit in § 3.2(a)(4).

(4) *Date of deposits.* (i) Except as otherwise provided in subdivisions (ii) and (iii) of this subparagraph (with respect to taxable years beginning after December 31, 1969, and prior to January 1, 1972), in § 3.2(a)(2)(i), or in § 3.10(b), deposits made in a fund within the time specified in subparagraph (3) of this

paragraph are deemed to have been made on the date of actual deposit.

(ii)(a) For taxable years beginning after December 31, 1969, and prior to January 1, 1971, where an application for a fund is filed by a taxpayer prior to January 1, 1972, and an agreement is executed and entered into by the taxpayer prior to March 1, 1972,

(b) For taxable years beginning after December 31, 1970, and prior to January 1, 1972, where an application for a fund is filed by a taxpayer prior to January 1, 1973, and an agreement is executed and entered into by the taxpayer prior to March 1, 1973, and

(c) For taxable years beginning after December 31, 1971, and prior to January 1, 1975, where an agreement is executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year,

deposits in a fund which are made within 60 days after the date of execution of the agreement, or on or before the due date, with extensions thereof, for the filing of his Federal income tax return for such taxable year or years, whichever date shall be later, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of each such taxable year or years to which such deposits relate, whichever day is earlier.

(iii) Notwithstanding subdivision (ii) of this subparagraph, for taxable years beginning after December 31, 1970, and ending prior to January 1, 1972, deposits made later than the last date permitted under subdivision (ii) but on or before January 9, 1973, in a fund pursuant to an agreement with the Secretary of Commerce, acting by and through the Administrator of the National Oceanic and Atmospheric Administration, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of such taxable year, whichever is earlier.

(c) *Determination of earnings and profits.* [Reserved]

(d) *Accumulated earnings tax.* As provided in section 607(d)(1)(E) of the Act amounts, while held in the fund, are

not to be taken into account in computing the “accumulated taxable income” of the party within the meaning of section 531 of the Code. Amounts while held in the fund are considered held for the purpose of acquiring, constructing, or reconstructing a qualified vessel or barges and containers which are part of the complement of a qualified vessel or the payment of the principal on indebtedness incurred in connection with any such acquisition, construction, or reconstruction. Thus, for example, if the reasonable needs of the business (within the meaning of section 537 of the Code) justify a greater amount of accumulation for providing replacement vessels than can be satisfied out of the fund, such greater amount accumulated outside of the fund shall be considered to be accumulated for the reasonable needs of the business. For a further example, although amounts in the fund are not taken into account in applying the tax imposed by section 531 of the Code, to the extent there are amounts in a fund to provide for replacing a vessel, amounts accumulated outside of the fund to replace the same vessel are not considered to be accumulated for the reasonable needs of the business.

(e) *Nonapplicability of section 1231.* If an amount equivalent to gain from a transaction referred to in section 607(b)(1)(C) of the Act and § 3.2(c) (1) and (5) is deposited into the fund and, therefore, such gain is not taken into account in computing gross income under the provisions of paragraph (b)(2) of this section, then such gain will not be taken into account for purposes of the computations under section 1231 of the Code.

(f) *Deposits of capital gains.* In respect of capital gains which are not included in the gross income of the party by virtue of a deposit to which section 607(d) of the Act and this section apply, the following provisions of the Code do not apply: the minimum tax for tax preferences imposed by section 56 of the Code; the alternative tax imposed by section 1201 of the Code on the excess of the party’s net long-term capital gain over his net short-term capital loss; and, in the case of a taxpayer other than a corporation, the deduction provided by section 1202 of the

Code of 50% of the amount of such excess. However, section 56 may apply upon a nonqualified withdrawal with respect to amounts treated under § 3.7(d)(2) as being made out of the capital gain account.

(g) *Deposits of dividends.* The deductions provided by section 243 of the Code (relating to the deductions for dividends from a domestic corporation received by a corporation) shall not apply in respect of dividends (earned on assets held in the fund) which are deposited into a fund, and which, by virtue of such deposits and the provisions of section 607(d) of the Act and this section, are not included in the gross income of the party.

(h) *Presumption of validity of deposit.* All amounts deposited in the fund shall be presumed to have been deposited pursuant to an agreement unless, after an examination of the facts upon the request of the Commissioner of Internal Revenue or his delegate, the Secretary of Commerce determines otherwise. The Commissioner or his delegate will request such a determination where there is a substantial question as to whether a deposit is made in accordance with an agreement.

(i) *Special rules for application of the foreign tax credit—(1) In general.* For purposes of computing the limitation under section 904 of the Code on the amount of the credit provided by section 901 of the Code (relating to the foreign tax credit), the party’s taxable income from any source without the United States and the party’s entire taxable income are to be determined after application of section 607(d) of the Act. Thus, amounts deposited for the taxable year with respect to amounts referred to in section 607(b)(1)(A) of the Act and § 3.2(a)(1)(i) (relating to taxable income attributable to the operation of agreement vessels) shall be treated as a deduction in arriving at the party’s taxable income from sources without the United States (subject to the apportionment rules and subparagraph (2) of this paragraph) and the party’s entire taxable income for the taxable year. Amounts deposited with respect to gain described in section 607(d)(1)(B) of the Act and § 3.2(c) (relating to net proceeds from the sale or other disposition of an

agreement vessel and net proceeds from insurance or indemnity) and amounts deposited with respect to earnings described in section 607(d)(1)(C) of the Act and paragraph (b)(2)(ii) (relating to earnings from the investment and reinvestment of amounts held in a fund) of this section are not taken into account for purposes of the Code and hence are not included in the party's taxable income from sources without the United States or in the party's entire taxable income for purposes of this paragraph.

(2) *Apportionment of taxable income attributable to agreement vessels.* For purposes of computing the overall limitation under section 904(a)(2) of the Code the amount of the deposit made with respect to taxable income attributable to agreement vessels pursuant to § 3.2(a)(1)(i) which is allocable to sources without the United States is the total amount of such deposit multiplied by a fraction the numerator of which is the gross income from sources without the United States from the operation of agreement vessels and the denominator of which is the total gross income from the operation of agreement vessels computed as provided in § 3.2(b)(2). For purposes of this paragraph, gross income from sources without the United States attributable to the operation of agreement vessels is to be determined under sections 861 through 863 of the Code and under the taxpayer's usual method of accounting provided such method is reasonable and in keeping with sound accounting practice. Any computation under the per-country limitation of section 904(a)(1) shall be made in the manner consistent with the provisions of the preceding sentences of this subparagraph.

§ 3.4 Establishment of accounts.

(a) *In general.* Section 607(e)(1) of the Act requires that three bookkeeping or memorandum accounts are to be established and maintained within the fund: the capital account, the capital gain account, and the ordinary income account. Deposits of the amounts under the subceilings in section 607(b) of the Act and § 3.2 are allocated among the accounts under section 607(e) of the Act and this section.

(b) *Capital account.* The capital account shall consist of:

(1) Amounts referred to in section 607(b)(1)(B) of the Act and § 3.2(a)(1)(ii) (relating to deposits for depreciation),

(2) Amounts referred to in section 607(b)(1)(C) of the Act and § 3.2(a)(1)(iii) (relating to deposits of net proceeds from the sale or other disposition of agreement vessels) other than that portion thereof which represents gain not taken into account for purposes of computing gross income by reason of section 607(d)(1)(B) of the Act and § 3.3(b)(2) (relating to nontaxability of gain from the sale or other disposition of an agreement vessel),

(3) Amounts representing 85 percent of any dividend received by the fund with respect to which the party would, but for section 607(d)(1)(C) of the Act and § 3.3(b)(2)(ii) (relating to nontaxability of deposits of earnings from investment and reinvestment of amounts held in a fund), be allowed a deduction under section 243 of the Code, and

(4) Amounts received by the fund representing interest income which is exempt from taxation under section 103 of the Code.

(c) *Capital gain account.* The capital gain account shall consist of amounts which represent the excess of (1) deposits of long-term capital gains on property referred to in section 607(b)(1)(C) and (D) of the Act and § 3.2(a)(1)(iii) and (iv) (relating respectively to certain agreement vessels and fund assets), over (2) amounts representing losses from the sale or exchange of assets held in the fund for more than 6 months (for purposes of this section referred to as "long-term capital losses"). For purposes of this paragraph and paragraph (d)(2) of this section, an agreement vessel disposed of at a gain shall be treated as a capital asset to the extent that gain thereon is not treated as ordinary income, including gain which is ordinary income under section 607(g)(5) of the Act (relating to treatment of gain on disposition of a vessel with a reduced basis) and § 3.6(e) or under section 1245 of the Code (relating to gain from disposition of certain depreciable property). For provisions relating to the treatment of short-term capital gains on certain

transactions involving agreement vessels or realized by the fund, see paragraph (d) of this section. For rules relating to the treatment of capital losses on assets held in the fund, see paragraph (e) of this section.

(d) *Ordinary income account.* The ordinary income account shall consist of:

(1) Amounts referred to in section 607(b)(1)(A) of the Act and § 3.2(a)(1)(i) (relating to taxable income attributable to the operation of an agreement vessel),

(2) Amounts representing (i) deposits of gains from the sale or exchange of capital assets held for 6 months or less (for purposes of this section referred to as “short-term capital gains”) referred to in section 607(b)(1) (C) or (D) of the Act and § 3.2(a)(1) (iii) and (iv) (relating respectively to certain agreement vessels and fund assets), reduced by (ii) amounts representing losses from the sale or exchange of capital assets held in the fund for 6 months or less (for purposes of this section referred to as “short-term capital losses”). For rules relating to the treatment of certain agreement vessels as capital assets, see paragraph (c) of this section,

(3) Amounts representing interest (not including any tax-exempt interest referred to in section 607(e)(2)(D) of the Act and paragraph (b)(4) of this section) and other ordinary income received on assets held in the fund (not including any dividend referred to in section 607(e)(2)(C) of the Act and subparagraph (5) of this paragraph),

(4) Amounts representing ordinary income from a transaction (involving certain net proceeds with respect to an agreement vessel) described in section 607(b)(1)(C) of the Act and § 3.2(a)(1)(iii), including gain which is ordinary income under section 607(g)(5) of the Act and § 3.6(e) (relating to treatment of gain on the disposition of a vessel with a reduced basis) or under section 1245 of the Code (relating to gain from disposition of certain depreciable property), and

(5) Fifteen percent of any dividend referred to in section 607(e)(2)(C) of the Act and paragraph (b)(3) of this section received on any assets held in the fund.

(e) *Limitation on deduction for capital losses on assets held in a fund.* Except on termination of a fund, long-term (and

short-term) capital losses on assets held in the fund shall be allowed only as an offset to long-term (and short-term) capital gains on assets held in the fund, but only if such gains are deposited into the fund, and shall not be allowed as an offset to any capital gains on assets not held in the fund. The net long-term capital loss of the fund for the taxable year shall reduce the earliest long-term capital gains in the capital gain account at the beginning of the taxable year and the net short-term capital loss for the taxable year shall reduce the earliest short-term capital gains remaining in the ordinary income account at the beginning of the taxable year. Any such losses that are in excess of the capital gains in the respective accounts shall reduce capital gains deposited into the respective accounts in subsequent years (without regard to section 1212, relating to capital loss carrybacks and carryovers). On termination of a fund, any net long-term capital loss in the capital gain account and any net short-term capital loss remaining in the ordinary income account is to be taken into account for purposes of computing the party’s taxable income for the year of termination as a long-term or short-term (as the case may be) capital loss recognized in the year the fund is terminated. With respect to the determination of the basis to a fund of assets held in such fund, see § 3.2(g).

[T.D. 7398, 41 FR 5812, Feb. 10, 1976, as amended by T.D. 7831, 47 FR 39675, Sept. 9, 1982]

§ 3.5 Qualified withdrawals.

(a) *In general.* (1) A qualified withdrawal is one made from the fund during the taxable year which is in accordance with section 607(f)(1) of the Act, the agreement, and with regulations prescribed by the Secretary of Commerce and which is for the acquisition, construction, or reconstruction of a qualified vessel (as defined in § 3.11(a)(2)) or barges and containers which are part of the complement of a qualified vessel (or shares in such vessels, barges, and containers), or for the payment of the principal of indebtedness incurred in connection with the acquisition, construction, or reconstruction of such qualified vessel (or a

barge or container which is part of the complement of a qualified vessel).

(2) For purposes of this section the term *share* is used to reflect an interest in a vessel and means a proprietary interest in a vessel such as, for example, that which results from joint ownership. Accordingly, a share within the meaning of § 3.2(f) (relating to the definition of "agreement vessel" for the purpose of making deposits) will not necessarily be sufficient to be treated as a share within the meaning of this section.

(3) For purposes of this section, the term *acquisition* means any of the following:

(i) Any acquisition, but only to the extent the basis of the property acquired in the hands of the transferee is its cost. Thus, for example, if a party transfers a vessel and \$1 million in an exchange for another vessel which qualifies for nonrecognition of gain or loss under section 1031 (a) of the Code (relating to like-kind exchange), there is an acquisition to the extent of \$1 million.

(ii) With respect to a lessee's interest in a vessel, expenditures which result in increasing the amounts with respect to which a deduction for depreciation (or amortization in lieu thereof) is allowable.

(b) *Payments on indebtedness.* Payments on indebtedness may constitute qualified withdrawals only if the party shows to the satisfaction of the Secretary of Commerce a direct connection between incurring the indebtedness and the acquisition, construction, or reconstruction of a qualified vessel or its complement of barges and containers whether or not the indebtedness is secured by the vessel or its complement of barges and containers. The fact that an indebtedness is secured by an interest in a qualified vessel, barge, or container is insufficient by itself to demonstrate the necessary connection.

(c) *Payments to related persons.* Notwithstanding paragraph (a) of this section, payments from a fund to a person owned or controlled directly or indirectly by the same interests as the party within the meaning of section 482 of the Code and the regulations thereunder are not to be treated as qualified withdrawals unless the party dem-

onstrates to the satisfaction of the Secretary of Commerce that no part of such payment constitutes a dividend, a return of capital, or a contribution to capital under the Code.

(d) *Treatment of fund upon failure to fulfill obligations.* Section 607(f)(2) of the Act provides that if the Secretary of Commerce determines that any substantial obligation under the agreement is not being fulfilled, he may, after notice and opportunity for hearing to the party, treat the entire fund, or any portion thereof, as having been withdrawn as a nonqualified withdrawal. In determining whether a party has breached a substantial obligation under the agreement, the Secretary will consider among other things, (1) the effect of the party's action or omission upon his ability to carry out the purposes of the fund and for which qualified withdrawals are permitted under section 607(f)(1) of the Act, and (2) whether the party has made material misrepresentations in connection with the agreement or has failed to disclose material information. For the income tax treatment of nonqualified withdrawals, see § 3.7.

§ 3.6 Tax treatment of qualified withdrawals.

(a) *In general.* Section 607(g) of the Act and this section provide rules for the income tax treatment of qualified withdrawals including the income tax treatment on the disposition of assets acquired with fund amounts.

(b) *Order of application of qualified withdrawals against accounts.* A qualified withdrawal from a fund shall be treated as being made: First, out of the capital account; second, out of the capital gain account; and third, out of the ordinary income account. Such withdrawals will reduce the balance within a particular account on a first-in-first-out basis, the earliest qualified withdrawals reducing the items within an account in the order in which they were actually deposited or deemed deposited in accordance with this part. The date funds are actually withdrawn from the fund determines the time at which withdrawals are considered to be made.

(c) *Reduction of basis.* (1) If any portion of a qualified withdrawal for the

§ 3.7

26 CFR Ch. I (4-1-03 Edition)

acquisition, construction, or reconstruction of a vessel, barge, or container (or share therein) is made out of the ordinary income account, the basis of such vessel, barge, or container (or share therein) shall be reduced by an amount equal to such portion.

(2) If any portion of a qualified withdrawal for the acquisition, construction, or reconstruction of a vessel, barge, or container (or share therein) is made out of the capital gain account, the basis of such vessel, barge, or container (or share therein) shall be reduced by an amount equal to—

(i) 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 Code), or

(ii) One-half of such portion, in the case of any other person.

(3) If any portion of a qualified withdrawal to pay the principal of an indebtedness is made out of the ordinary income account or the capital gain account, then the basis of the vessel, barge, or container (or share therein) with respect to which such indebtedness was incurred is reduced in the manner provided by subparagraphs (1) and (2) of this paragraph. If the aggregate amount of such withdrawal from the ordinary income account and capital gain account would cause a basis reduction in excess of the party's basis in such vessel, barge, or container (or share therein), the excess is applied against the basis of other vessels, barges, or containers (or shares therein) owned by the party at the time of withdrawal in the following order: (i) vessels, barges, or containers (or shares therein) which were the subject of qualified withdrawals in the order in which they were acquired, constructed, or reconstructed; (ii) agreement vessels (as defined in section 607(k)(3) of the Act and § 3.11(a)(3)) and barges and containers which are part of the complement of an agreement vessel (or shares therein) which were not the subject of qualified withdrawals, in the order in which such vessels, barges, or containers (or shares therein) were acquired by the party; and (iii) other vessels, barges, and containers (or shares therein), in the order in which they were acquired by the party. Any

amount of a withdrawal remaining after the application of this subparagraph is to be treated as a nonqualified withdrawal. If the indebtedness was incurred to acquire two or more vessels, barges, or containers (or shares therein), then the basis reduction in such vessels, barges, or containers (or shares therein) is to be made pro rata in proportion to the adjusted basis of such vessels, barges, or containers (or shares therein) computed, however, without regard to this section and adjustments under section 1016(a) (2) and (3) of the Code for depreciation or amortization.

(d) *Basis for depreciation.* For purposes of determining the allowance for depreciation under section 167 of the Code in respect of any property which has been acquired, constructed, or reconstructed from qualified withdrawals, the adjusted basis for determining gain on such property is determined after applying paragraph (c) of this section. In the case of reductions in the basis of any property resulting from the application of paragraph (c)(3) of this section, the party may adopt a method of accounting whereby (1) payments shall reduce the basis of the property on the day such payments are actually made, or (2) payments made at any time during the first half of the party's taxable year shall reduce the basis of the property on the first day of the taxable year, and payments made at any time during the second half of the party's taxable year shall reduce the basis of the property on the first day of the succeeding taxable year. For requirements respecting the change of methods of accounting, see § 1.446-1(e)(3) of the Income Tax Regulations of this chapter.

(e) *Ordinary income treatment of gain from disposition of property acquired with qualified withdrawals.* [Reserved]

§ 3.7 Tax treatment of nonqualified withdrawals.

(a) *In general.* Section 607(h) of the Act provides rules for the tax treatment of nonqualified withdrawals, including rules for adjustments to the various accounts of the fund, the inclusion of amounts in income, and the payment of interest with respect to such amounts.

(b) *Nonqualified withdrawals defined.* Except as provided in section 607 of the Act and § 3.8 (relating to certain corporate reorganizations, changes in partnerships, and transfers by reason of death), any withdrawal from a fund which is not a qualified withdrawal shall be treated as a nonqualified withdrawal which is subject to tax in accordance with section 607(h) of the Act and the provisions of this section. Examples of nonqualified withdrawals are amounts remaining in a fund upon termination of the fund, and withdrawals which are treated as nonqualified withdrawals under section 607(f)(2) of the Act and § 3.5(d) (relating to failure by a party to fulfill substantial obligation under agreement) or under the second sentence of section 607(g)(4) of the Act and § 3.6(c)(3) (relating to payments against indebtedness in excess of basis).

(c) *Order of application of nonqualified withdrawals against deposits.* A nonqualified withdrawal from a fund shall be treated as being made: first, out of the ordinary income account; second, out of the capital gain account; and third, out of the capital account. Such withdrawals will reduce the balance within a particular account on a first-in-first-out basis, the earliest nonqualified withdrawals reducing the items within an account in the order in which they were actually deposited or deemed deposited in accordance with this part. Nonqualified withdrawals for research, development, and design expenses incident to new and advanced ship design, machinery, and equipment, and any amount treated as a nonqualified withdrawal under the second sentence of section 607(g)(4) of the Act and § 3.6(c)(3), shall be applied against the deposits within a particular account on a last-in-first-out basis. The date funds are actually withdrawn from the fund determines the time at which withdrawals are considered to be made. For special rules concerning the withdrawal of contingent deposits of net proceeds from the installment sale of an agreement vessel, see § 3.2(c)(6).

(d) *Inclusion in income.* (1) Any portion of a nonqualified withdrawal which, under paragraph (c) of this section, is treated as being made out of the ordinary income account is to be

included in gross income as an item of ordinary income for the taxable year in which the withdrawal is made.

(2) Any portion of a nonqualified withdrawal which, under paragraph (c) of this section, is treated as being made out of the capital gain account is to be included in income as an item of long-term capital gain recognized during the taxable year in which the withdrawal is made.

(3) For effect upon a party's taxable income of capital losses remaining in a fund upon the termination of a fund (which, under paragraph (b) of this section, is treated as a nonqualified withdrawal of amounts remaining in the fund), see § 3.4(e).

(e) *Interest.* (1) For the period on or before the last date prescribed by law, including extensions thereof, for filing the party's Federal income tax return for the taxable year during which a nonqualified withdrawal is made, no interest shall be payable under section 6601 of the Code in respect of the tax on any item which is included in gross income under paragraph (d) of this section, and no addition to such tax for such period shall be payable under section 6651 of the Code. In lieu of the interest and additions to tax under such sections, simple interest on the amount of the tax attributable to any item included in gross income under paragraph (d) of this section is to be paid at the rate of interest determined for the year of withdrawal under subparagraph (2) of this paragraph. Such interest is to be charged for the period from the last date prescribed for payment of tax for the taxable year for which such item was deposited in the fund to the last date for payment of tax for the taxable year in which the withdrawal is made. Both dates are to be determined without regard to any extensions of time for payment. Interest determined under this paragraph which is paid within the taxable year shall be allowed as a deduction for such year under section 163 of the Code. However, such interest is to be treated as part of the party's tax for the year of withdrawal for purposes of collection and in determining any interest or additions to tax for the year of withdrawal under section 6601 or 6651, respectively, of the Code.

§ 3.8

(2) For purposes of section 607(h)(3)(C)(ii) of the Act, and for purposes of certain dispositions of vessels constructed, reconstructed, or acquired with qualified withdrawals described in § 3.6(e), the applicable rate of interest for any nonqualified withdrawal—

(i) Made in a taxable year beginning in 1970 and 1971 is 8 percent.

(ii) Made in a taxable year beginning after 1971, the rate for such year as determined and published jointly by the Secretary of the Treasury or his delegate and the Secretary of Commerce. Such rate shall bear a relationship to 8 percent which the Secretaries determine 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. The determination of the applicable rate for any such taxable year will be computed by multiplying 8 percent by the ratio which (a) the average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of such taxable year, bears to (b) the average yield on 5-year Treasury securities for the calendar year 1970. The applicable rate so determined shall be computed to the nearest one-hundredth of 1 percent. If such a determination and publication is made, the latest published percentage shall apply for any taxable year beginning in the calendar year with respect to which publication is made.

(3) No interest shall be payable in respect of taxes on amounts referred to in section 607(h)(2) (i) and (ii) of the Act (relating to withdrawals for research and development and payments against indebtedness in excess of basis) or in the case of any nonqualified withdrawal arising from the application of the recapture provision of section 606(5) of the Merchant Marine Act, 1936, as in effect on December 31, 1969.

(f) *Basis and holding period in the case of property purchased by the fund or considered purchased by the fund.* In the case of a nonqualified withdrawal of property other than money which was purchased by the fund (including deposited property considered under § 3.2(g)(1)(ii) as purchased by the fund),

26 CFR Ch. I (4-1-03 Edition)

the adjusted basis of the property in the hands of the party is its adjusted basis to the fund on the day of the withdrawal. In determining the period for which the taxpayer has held the property withdrawn in a nonqualified withdrawal, there shall be included only the period beginning with the date on which the withdrawal occurred. For basis and holding period in the case of nonqualified withdrawals of property other than money deposited into the fund, see § 3.2(g)(4).

§ 3.8 Certain corporate reorganizations and changes in partnerships, and certain transfers on death. [Reserved]

§ 3.9 Consolidated returns. [Reserved]

§ 3.10 Transitional rules for existing funds.

(a) *In general.* Section 607(j) of the Act provides that any person who was maintaining a fund or funds under section 607 of the Merchant Marine Act, 1936, prior to its amendment by the Merchant Marine Act of 1970 (for purposes of this part referred to as “old fund”) may continue to maintain such old fund in the same manner as under prior law subject to the limitations contained in section 607(j) of the Act. Thus, a party may not simultaneously maintain such old fund and a new fund established under the Act.

(b) *Extension of agreement to new fund.* If a person enters into an agreement under the Act to establish a new fund, he may agree to the extension of such agreement to some or all of the amounts in the old fund and transfer the amounts in the old fund to which the agreement is to apply from the old fund to the new fund. If an agreement to establish a new fund is extended to amounts from an old fund, each item in the old fund to which such agreement applies shall be considered to be transferred to the appropriate account in the manner provided for in § 3.8(d) in the new fund in a nontaxable transaction which is in accordance with the provisions of the agreement under which such old fund was maintained. For purposes of determining the amount of interest under section 607(h)(3)(C) of the Act and § 3.7(e), the

date of deposit of any item so transferred shall be deemed to be July 1, 1971, or the date of the deposit in the old fund, whichever is the later.

§ 3.11 Definitions.

(a) As used in the regulations in this part and as defined in section 607(k) of the Act—

(1) The term *eligible vessel* means any vessel—

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

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

(iii) Operated in the foreign or domestic commerce of the United States or in the fisheries of the United States. Any vessel which was 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 U.S. foreign trade pursuant to a contract entered into before April 15, 1970, shall be treated as satisfying the requirements of subdivision (i) of this subparagraph and the requirements of subparagraph (2)(i) of this section.

(2) The term *qualified vessel* means any vessel—

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

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

(iii) Which the person maintaining the fund agrees with the Secretary of Commerce will be operated in the U.S. 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 section 607 of the Act.

(4) The term *vessel* includes cargo handling equipment which the Secretary of Commerce 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 in the Great Lakes.

(b) Insofar as the computation and collection of taxes are concerned, other terms used in the regulations in this

part, except as otherwise provided in the Act or this part, have the same meaning as in the Code and the regulations thereunder.

PART 4—TEMPORARY INCOME TAX REGULATIONS UNDER SECTION 954 OF THE INTERNAL REVENUE CODE

Sec.

4.954-0 Introduction.

4.954-1 Foreign base company income; taxable years beginning after December 31, 1986.

4.954-2 Foreign personal holding company income; taxable years beginning after December 31, 1986.

AUTHORITY: 26 U.S.C. 7805.

Section 4.954-0 also issued under 26 U.S.C. 954 (b) and (c).

Section 4.954-1 also issued under 26 U.S.C. 954 (b) and (c).

Section 4.954-2 also issued under 26 U.S.C. 954 (b) and (c).

§ 4.954-0 Introduction.

(a) *Effective date.* (1) The provisions of §§ 4.954-1 and 4.954-2 apply to taxable years of a controlled foreign corporation beginning after December 31, 1986. Consequently, any gain or loss (including foreign currency gain or loss as defined in section 988(b)) recognized during such taxable years of a controlled foreign corporation is subject to these provisions. For further guidance, see § 1.954-0(a) of this chapter.

(2) The provisions of §§ 1.954A-1 and 1.954A-2 apply to taxable years of a controlled foreign corporation beginning before January 1, 1987. All references therein to sections of the Code are to the Internal Revenue Code of 1954 prior to the amendments made by the Tax Reform Act of 1986.

(b) *Outline of regulation provisions for sections 954(b)(3), 954(b)(4), 954(b)(5) and 954(c) for taxable years of a controlled foreign corporation beginning after December 31, 1986.*

(I) § 4.954-0 Introduction.

(a) Effective dates.

(b) Outline.

(II) § 4.954-1 Foreign base company income.

(a) In general.

(1) Purpose and scope.

(2) Definition of gross foreign base company income.

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**

Regulations at § 679.24(a) require that all hook-and-line, longline pot, and pot-and-line marker buoys, carried onboard or used by any vessel regulated under 50 CFR part 679, shall be marked with the vessel name, Federal permit number, or registration number. The regulations also specify the size and color of markings. The marking of gear aids law enforcement and enables other fishermen to report on misplaced gear.

II. Method of Collection

No information is collected; this is a gear-marking requirement.

III. Data

OMB Number: 0648-0353.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; and individuals or households.

Estimated Number of Respondents: 2,116.

Estimated Time per Response: 15 minutes per buoy.

Estimated Total Annual Burden Hours: 3,750.

Estimated Total Annual Cost to Public: \$4,332.

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: February 15, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7-2869 Filed 2-20-07; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Proposed Information Collection; Comment Request; Interim Capital Construction Fund Agreement and Certificate Family of Forms**

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

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 April 23, 2007.

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 Charles L. Cooper, (301) 713-2396 or Charles.Cooper@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 information collected from agreement holders is used to determine their eligibility to participate in the Capital

Construction Fund Program pursuant to 50 CFR part 259.

At the completion of construction/reconstruction, a certificate to that effect must be submitted.

II. Method of Collection

The information will be collected on forms: the Fishing Vessel Capital Construction Fund Application, the Interim Capital Construction Fund Agreement, and the Certificate of Construction/Reconstruction.

III. Data

OMB Number: 0648-0090.

Form Number: NOAA Form 88-14.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Response: Application, 30 minutes; agreement, 3 hours; certificate, 1 hour.

Estimated Total Annual Burden Hours: 2,250.

Estimated Total Annual Cost to Public: \$3,300.

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: February 15, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7-2873 Filed 2-20-07; 8:45 am]

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