(d) Contracting Officer’s decision and appeals to the Maritime Administrator—

(1) Where there has not been a request to cure or to be heard. If the Contracting Officer issues a written notice under paragraph (b) of this section and the party does not request within 30 days an opportunity either to cure its breach or to be heard and offer evidence in opposition to the tentative conclusion, the Contracting Officer’s tentative conclusion shall become the final decision, which decision shall be final, conclusive and binding upon the party, and no appeal therefrom shall be taken to the Maritime Administrator.

(2) Where there has been a request to cure or to be heard. If the Contracting Officer issues a written notice under paragraph (b) of this section and the party requests within 30 days an opportunity either to cure its breach or to be heard and offer evidence in opposition to the tentative conclusion, the party shall be offered such an opportunity. Request to cure must include a proposal to cure the breach. If the Contracting Officer accepts the party’s proposal to cure its breach, then such determination shall be final. A party requesting to be heard and offer evidence in opposition to the Contracting Officer’s tentative conclusion shall be permitted to submit, in writing, any information, evidence or argument within a period set by the Contracting Officer after considering the wishes of the party. The Contracting Officer shall reduce his final decision to writing and furnish the party a copy, by certified mail—return receipt requested, which decision shall be final and conclusive and shall bind the party unless within 30 days of receipt of the decision the party appeals from said decision by personal delivery or by certified mail to the Maritime Administrator with notice to the Contracting Officer.

(e) Appeals to the Maritime Administrator. Appeals with a request for a hearing on the record, if desired, are to be transmitted pursuant to paragraph (d) of this section and are to be addressed to the Maritime Administrator. Upon the filing of an appeal, the Contracting Officer shall transmit the entire record and a copy of his final decision to the Maritime Administrator. If a request for a hearing on the record is granted, the Maritime Administrator shall proceed pursuant to the Rules of Practice and Procedure in Part 201 of this title. The decision of the Maritime Administrator on any question of fact shall be final, conclusive and binding upon the party unless determined by a court of competent jurisdiction to be fraudulent, capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence.

[41 FR 4265, Jan. 29, 1976, as amended at 73 FR 56740, Sept. 30, 2008]

§ 390.14 Departmental reports and certification.

(a) In general. For each calendar year, the Secretary of Transportation shall 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 under the Secretary of Transportation’s jurisdiction.

(b) Content of reports. Each report shall set forth the name and taxpayer identification number of each person:

(1) Establishing a capital construction fund during such calendar year;
(2) Maintaining a capital construction fund as of the last day of such calendar year;
(3) Terminating a capital construction fund during such calendar year;
(4) Making any withdrawal from or deposit into (and the amounts thereof) a capital construction fund during such calendar year; or
(5) 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.

[55 FR 34929, Aug. 27, 1990]

APPENDIX I TO PART 390—U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION—APPLICATION INSTRUCTIONS

INSTRUCTION REGARDING APPLICATION FOR A CAPITAL CONSTRUCTION FUND

An application for a capital construction fund under 46 U.S.C. 53501 et seq., the Rules and Regulations prescribed jointly by the
Secretary of the Treasury and the Secretary of Transportation (26 CFR Part 3 and reprinted in 46 CFR Part 391, the "Joint Regulations") and individually by the Secretary of Transportation (46 CFR Part 390, the "SOC Regulations") shall be prepared and submitted in the form specified by these instructions.

The application must be legible and shall be submitted in six (6) complete sets, including the required Schedules and Exhibits. The application shall be filed with the Secretary, Maritime Administration, Washington, DC 20590. Three of these sets must be duly executed and certified by the Applicant. The name of the Applicant shall be shown on all accompanying papers for identification.

All questions contained in the application must be responded to; if a question is not applicable the respondent should so state. Additional information may be requested if such information is necessary to aid the Contracting Officer in making a determination to enter into a Capital Construction Fund Agreement.

U.S. DEPARTMENT OF TRANSPORTATION,
MARITIME ADMINISTRATION

APPLICATION FOR ESTABLISHMENT OF A CAPITAL CONSTRUCTION FUND UNDER SECTION 607, MERCHANT MARINE ACT, 1936, AS AMENDED

The undersigned ("Applicant"), a citizen of the United States within the meaning of 46 U.S.C. 50201, as amended, hereby applies under section 607 of the Merchant Marine Act, 1936, as amended ("Act"), the Rules and Regulations jointly prescribed by the Secretary of the Treasury and the Secretary of Transportation ("Joint Regulations") and individually by the Secretary of Transportation ("SOC Regulations") to establish a Capital Construction Fund to aid in the acquisition, construction or reconstruction of a qualified vessel, the acquisition, construction or reconstruction of barges, containers or trailers which are part of the complement of a qualified vessel and the payment of the principal on indebtedness incurred in connection with the acquisition, construction or reconstruction of a qualified vessel or a barge, container or trailer which is part of the complement of a qualified vessel. The fund hereby applied for will be effective for deposits relating to the taxable year beginning and ending , and for subsequent taxable years. In support of this application, the Applicant submits the following information:

I. As to the identity of and other General Information of the Applicant (the following data is required to prove the Applicant’s citizenship to the satisfaction of the Secretary; also see 46 CFR Part 355):
A. Vessels. Provide in a tabular form headed “Schedule A” (see prescribed format in appendix II) the vessels owned or leased by the Applicant which the Applicant proposes to be designated as “Eligible Agreement Vessels” for the purpose of making deposits into a Capital Construction Fund pursuant to the provisions of 46 U.S.C. 53501 et seq., giving:

a. Name and official number.
b. Specific type.
c. Capacity (tons of cargo, number of containers, barges, etc.).
d. Whether owned or leased, and if leased the owner and the owner’s address.
e. Date and place of construction.
f. If reconstructed, date of redelivery and place of reconstruction.
g. Date documented under laws of the United States.
h. Area of operation.

i. Full details concerning the service in which the Applicant operates or will operate each vessel; if the vessel is used for multiple purposes indicate the percentage of time in which the vessel is engaged in each service.

B. Barges, Containers, and Trailers. Provide in a tabular form headed “Schedule A” (see prescribed format in appendix II) the barges, containers, and trailers owned or leased by the Applicant which the Applicant proposes to be incorporated in an Agreement for purposes of making deposits into a Capital Construction Fund pursuant to the provisions of 46 U.S.C. 53501 et seq., giving:

a. Number of barges, containers or trailers which are part of the complement of an eligible vessel; name and official number of barges which are not a part of the complement of an eligible vessel.
b. Specific type.
c. Size or capacity.
d. Whether owned or leased, and if leased the owner and the owner’s address.
e. Date and place of construction.
f. If reconstructed, date of redelivery and place of reconstruction.
g. Date documented under the laws of the United States.
h. Area of operation.

i. The vessel or vessels for which the barges, containers and trailers are part of the complement; full details concerning the service in which the Applicant operates or will operate each barge which is not a part of a complement.

V. Purposes for which Qualified Withdrawals are Proposed. Applicant is advised that information furnished in response to sections A, B, C and D of this item is for the purpose of inducing the United States to enter into an agreement to establish a Capital Construction Fund pursuant to 46 U.S.C. 53501 et seq. In connection therewith attention is directed to 46 U.S.C. 53509(c) which states, “Under joint regulations, if the Secretary of Transportation 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." Also see \(\text{§}390.13\) of the SOC Regulations.

A. Acquisition or Construction of Vessels. Provide in form headed "Schedule B" (see prescribed format in appendix II) the proposed program for the acquisition or construction of vessels, giving:
   a. Number, type and commercial characteristics of vessels to be acquired or constructed.
   b. Whether vessels will be replacements or additions, and if replacements identify vessels to be replaced.
   c. Projected date of acquisition or award of construction contract.
   d. Projected date of commencing operations.
   e. Estimated total cost.
   f. Method by which estimated total cost of project was determined.
   g. Estimated amount of Capital Construction Fund monies to be used as down payment by the Applicant.
   h. Estimated amount of borrowings and the amount of such borrowings to be retired by qualified withdrawals from the Capital Construction Fund, including anticipated terms of such financing.
   i. Intended area of operation.
   j. Full details concerning the use of the proposed vessel; if the vessel is to be used for multiple purposes indicate the approximate percentage of time in which the vessel will be engaged in each service.

B. Acquisition or Construction of Barges, Containers and Trailers. Provide in a form headed "SCHEDULE B" (see prescribed format in appendix II) the proposed program for acquisition or construction of barges, containers and trailers giving:
   a. Number, type and size of barges, containers and trailers.
   b. Whether barges, containers and trailers will be replacements or additions, if replacements identify barges, containers or trailers to be replaced.
   c. Projected date of acquisition or award of construction contract.
   d. Projected date of introduction into service.
   e. Estimated total cost.
   f. Method by which estimated total cost of project was determined.
   g. Estimated amount of Capital Construction Fund monies to be used as down payment by the Applicant.
   h. Estimated amount of borrowings and the amount of such borrowings to be retired by qualified withdrawals from the Capital Construction Fund including anticipated terms of such financing.
   i. Identification of vessels for which the barges, containers and trailers will be part of the complement, and the vessel’s area of operation. In the case of barges which are not a part of the complement of a vessel provide the barges’ intended area of operation.
   j. Full details concerning the use of the proposed barge; if the barge is to be used for multiple purposes indicate the approximate percentage of time in which the barge will be engaged in each service.

C. Reconstruction of Vessels. Provide in a form headed "SCHEDULE B" (see prescribed format in appendix II) the proposed program for reconstruction of vessels, giving:
   a. Identification of vessels to be reconstructed.
   b. Nature and extent of proposed reconstruction.
   c. Projected date of award of reconstruction contract.
   d. Projected date of commencing operations with reconstructed vessels.
   e. Estimated total cost.
   f. Method by which estimated total cost of project was determined.
   g. Estimated amount of Capital Construction Fund monies to be used as down payment by the Applicant.
   h. Estimated amount of borrowings and amount of such borrowings to be retired by qualified withdrawals from the Capital Construction Fund, including anticipated terms of such financing.
   i. Intended area of operation.
   j. Full details concerning the use of the proposed vessel; if the vessel is to be used for multiple purposes indicate the approximate percentage of time in which the vessel will be engaged in each service.

D. Reconstruction of Barges, Containers and Trailers. Provide in a form headed "SCHEDULE B" (see prescribed format in appendix II) the proposed program for reconstruction of barges, containers and trailers giving:
   a. Number, type and size of barges, containers and trailers.
   b. Nature and extent of proposed reconstruction work.
   c. Projected date of award of reconstruction contract.
   d. Projected date of completion of reconstruction work.
   e. Estimated total cost.
   f. Method by which estimated total cost of project was determined.
   g. Estimated amount of Capital Construction Fund monies to be used as down payment by the Applicant.
   h. Estimated amount of borrowings and amount of such borrowings to be retired by qualified withdrawal from the Capital Construction Fund including anticipated terms of such financing.
   i. Identification of vessels for which the barges, containers, and trailers will be part of the complement, and the vessel’s area of operation.
operations. In the case of barges which are not a part of the complement of a vessel provide the barges’ area of operation.

j. Full details concerning the use of the proposed barge; if the barge is to be used for multiple purposes indicate approximate percentage of time in which the barge will be engaged in each service.

E. Payment of Principal on Existing Indebtedness Incurred in Connection with the Acquisition, Construction or Reconstruction of a Qualified Vessel or a Barge, Container or Trailer which is Part of the Complement of a Qualified Vessel. Provide in a form headed “Schedule B” (see prescribed format in appendix II) the proposed program for payments of principal on existing indebtedness incurred in connection with the acquisition, construction, or reconstruction of qualified vessels, barges, containers, or trailers, giving:

a. Name, official number or other identifying information for the vessel, barge, container, or trailer.

b. Whether the debt was incurred for acquisition, construction or reconstruction, demonstrating evidence of a direct connection between the qualified vessel and the debt which was incurred.

c. The aggregate principal balance of such indebtedness as of the date of this application.

d. The dates and amounts of payments of principal to liquidate the outstanding debt in accordance with the applicable loan agreements or other documents.

VI. As to the Depository to be Used for the Capital Construction Fund. Provide in a tabular form headed “Schedule C” (see prescribed format in appendix II) the full name and complete address of the financial institution which will act as depository. Indicate the type of account, i.e., checking, savings, trust, in which the fund will be held.

VII. Proposed Schedule of Minimum Amounts Available for Deposit into the Capital Construction Fund. Provide in a tabular form headed “Schedule D” (see prescribed format in appendix II) a proposed program for deposits into the Capital Construction Fund commencing with the beginning of the first taxable year for which the Agreement applies.

The applicant is advised that the purpose of Schedule D is to insure that a sufficient commitment has been made to accomplish the objectives contained in Schedule B. Minimum annual deposits are not required, but a minimum amount must be deposited for each 3 year period under the Agreement. For each such 3 year period of the proposed Schedule D the Applicant will indicate not only the minimum amount to be deposited, but also the source of such deposit, giving amounts expected to be derived from:

a. Ordinary income attributable to the operation of agreement vessels.

b. Net proceeds from the sale or other disposition of agreement vessels.

c. Receipts from the investment or reinvestment of amounts held in the fund.

d. Earned depreciation on agreement vessels.

VIII. Financial Statements and Reports of the Applicant Including Predecessors. A. Financial Statements. For each of the past three fiscal years provide:


B. Reports. If the books of the Applicant were audited by an independent certified public accountant copies of the public accountant’s reports shall be submitted for each of the past three fiscal years.

X. A statement of any additional information which, in the opinion of the Applicant, is necessary to make the application and attached exhibits true and complete.

XI. A specific written request, pursuant to 5 U.S.C. 552(b)(4), must accompany the application if the Applicant wishes certain trade secrets, financial and commercial information contained in this application to be withheld from disclosure. The Maritime Administrator, Department of Transportation will endeavor to respect such a request, acting within the limits of the applicable provisions of the Freedom of Information Act.

State of _, 20 County of

Dated __________ 88:

Name of __________ Applicant

By __________ Name and Title

I, __________ do certify that I am the (Title of Office) of (Exact Name of Applicant), the Applicant on whose behalf I have executed the foregoing application; that the Applicant is a citizen of the United States within the meaning of 46 U.S.C. 55601; that this application is made for the purpose of inducing the United States of America to permit the Applicant, pursuant to section 607 of the Merchant Marine Act, 1936, as amended, the Joint Regulations and the SOC Regulations to establish a Capital Construction Fund for the purposes set forth in 46 U.S.C. 55601; that I have carefully examined the application and all documents submitted in connection with the foregoing application.
APPENDIX II TO PART 390—SAMPLE CAPITAL CONSTRUCTION FUND AGREEMENT WITH THE UNITED STATES MARITIME ADMINISTRATOR (Contract No. MA/CCF—)

This Capital Construction Fund Agreement ("Agreement"), made on the date hereinafter set forth, by and between the United States of America, represented by the Maritime Administrator, Department of Transportation ("Maritime Administrator"), and [Name of Party], a corporation organized and existing under the laws of the State of [State] ("Party"), a citizen of the United States of America.

Whereas: 1. The Party has applied for the establishment of a Capital Construction Fund ("Fund") under section 607 of the Merchant Marine Act, 1936, as amended ("Act"); 2. The Party is the owner or lessee or has contracted for the construction of one or more eligible vessels as defined in 46 U.S.C. 53501, which vessels are listed in Schedule A hereof; 3. The Party has a program for the construction or acquisition of qualified agreement vessels as defined in 46 U.S.C. 53501, which program is described in Schedule B hereof; 4. The Maritime Administrator and the Party desire to enter into an Agreement for the purpose of providing replacement vessels, additional vessels, or reconstruction 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; 5. The Maritime Administrator has determined that the Party qualifies for an Agreement under the Act; and 6. The Maritime Administrator has authorized the award of an Agreement upon the terms and conditions set forth herein subject to the Act, the rules and regulations, and the terms and conditions set forth herein subject to the Act, the rules and regulations.

Now, therefore, in consideration of the premises the Maritime Administrator and the Party hereby agree as follows:

1. Establishment of a Fund: (A) A Fund is hereby established for the purposes set forth in Article 2 hereof, pursuant to such terms and conditions as shall be prescribed in this Agreement, the Act, the rules and regulations.

(B) The Fund shall be established in the depositories listed in Schedule C hereof.

2. Purpose of the Fund: The Fund established hereunder shall be utilized to provide for 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, and to provide for qualified withdrawals to achieve the program set forth in Schedule B hereof.

3. Term of the Agreement: This Agreement shall be effective on the date of execution by the Maritime Administrator and shall continue until terminated under Article 4.

4. Termination of Agreement: (A) This Agreement may be terminated at any time under any of the following circumstances:

(B) Upon termination of this Agreement pursuant to paragraphs (A) and/or (B) hereof all amounts remaining in the Fund shall be treated as if withdrawn in a nonqualified withdrawal (as that term is defined in the Act and the rules and regulations) on the date of termination of this Agreement.

5. Deposits to be made into the Fund: (A) Subject to any restrictions contained in the Act, the rules and regulations, or this Agreement, the Party may deposit, for each taxable year to which this Agreement applies, amounts representing:

NOTE: The United States Criminal Code makes it a criminal offense to knowingly and willfully falsify, conceal or cover up by any trick, scheme, or device, a material fact from, or make any false, fictitious or fraudulent statements or representations or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement to, any department or government agency of the United States or fraudulent statement to, any department or government agency of the United States as to any matter within its jurisdiction (18 U.S.C. 1001).