

SUBCHAPTER F—AID TO FISHERIES

PART 253—FISHERIES ASSISTANCE PROGRAMS

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AUTHORITY: 46 U.S.C. 53701 and 16 U.S.C. 4101 *et seq.*

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Subpart A—General

§ 253.1 Purpose.

(a) The regulations in this part pertain to fisheries assistance programs. Subpart B of this part governs the Fisheries Finance Program (FFP or the Program), which makes capacity neutral long-term direct fisheries and aquaculture loans. The FFP conducts all credit investigations, makes all

credit determinations and holds and services all credit collateral.

(b) Subpart C of this part implements Public Law 99-659 (16 U.S.C. 4100 *et seq.*), which has two objectives:

(1) Promote and encourage State activities in support of the management of interjurisdictional fishery resources identified in interstate or Federal fishery management plans; and

(2) Promote and encourage management of interjurisdictional fishery resources throughout their range.

(3) The scope of this part includes guidance on making financial assistance awards to States or Interstate Commissions to undertake projects in support of management of interjurisdictional fishery resources in both the executive economic zone (EEZ) and State waters, and to encourage States to enter into enforcement agreements with either the Department of Commerce or the Department of the Interior.

Subpart B—Fisheries Finance Program

§ 253.10 General definitions.

The terms used in this subpart have the following meanings:

Act means Chapter 537 of Title 46 of the U.S. Code, (46 U.S.C. 53701–35), as may be amended from time to time.

Actual cost means the sum of all amounts for a project paid by an obligor (or related person), as well as all amounts that the Program determines the obligor will become obligated to pay, as such amounts are calculated by § 253.16.

Applicant means the individual or entity applying for a loan (the prospective obligor).

Application means the documents provided to or requested by NMFS from an applicant to apply for a loan.

Application fee means 0.5 percent of the dollar amount of financing requested.

Approval in principle letter (AIP) means a written communication from NMFS to the applicant expressing the

agency's commitment to provide financing for a project, subject to all applicable regulatory and Program requirements and in accordance with the terms and conditions contained in the AIP.

Aquaculture facility means land, structures, appurtenances, laboratories, water craft built in the U.S., and any equipment used for the hatching, caring for, or growing fish, under controlled circumstances for commercial purposes, as well as the unloading, receiving, holding, processing, or distribution of such fish.

Capital Construction Fund (CCF), as described under 46 U.S.C. 53501-17, allows owners of eligible vessels to reserve capital for replacement vessels, additional vessels, reconstruction of vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States, for operation in the fisheries of the United States.

Captain means a vessel operator or a vessel master.

Charter fishing means fishing from a vessel carrying a "passenger for hire," as defined in 46 U.S.C. 2101(21a), such passenger being engaged in recreational fishing, from whom consideration is provided as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

Citizen means a "citizen of the United States," as described in 46 U.S.C. 104, or an entity who is a citizen for the purpose of documenting a vessel in the coastwise trade under 46 U.S.C. 50501.

Crewman means any individual, other than a captain, a passenger for hire, or a fisheries observer working on a vessel that is engaged in fishing.

Demand means a noteholder's request that a debtor or guarantor pay a note's full principal and interest balance.

Facility means a fishery or an aquaculture facility.

Fish means finfish, mollusks, crustaceans and all other forms of aquatic animal and plant life, other than marine mammals and birds.

Fisheries harvest authorization means any transferable permit, license or

other right, approval, or privilege to engage in fishing.

Fishery facility means land, land structures, water craft that do not engage in fishing, and equipment used for transporting, unloading, receiving, holding, processing, preserving, or distributing fish for commercial purposes (including any water craft used for charter fishing).

Fishing means:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish;

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this section.

(5) Fishing does not include any scientific research activity which is conducted by a scientific research vessel.

Fishing industry for the purposes of this part, means the broad sector of the national economy comprised of persons or entities that are engaged in or substantially associated with fishing, including aquaculture, charter operators, guides, harvesters, outfitters, processors, suppliers, among others, without regard to the location of their activity or whether they are engaged in fishing for wild stocks or aquaculture.

Guarantee means a guarantor's contractual promise to repay indebtedness if an obligor fails to repay as agreed.

Guarantee fee means one percent of a guaranteed note's average annual unpaid principal balance.

Guaranteed note means a promissory note from an obligor to a noteholder, the repayment of which the United States guarantees.

IFQ means Individual Fishing Quota, which is a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. IFQ does not include community development quotas.

Noteholder means a guaranteed note payee.

Obligor means a party primarily liable for payment of the principal of or

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interest on an obligation, used interchangeably with the terms “note payor” or “notemaker.”

Origination year means the year in which an application for a loan is accepted for processing.

Program means the Fisheries Finance Program, Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

Project means:

(1) The refinancing or construction of a new fishing vessel or the financing or refinancing of a fishery or aquaculture facility or the refurbishing or purchase of an existing vessel or facility, including, but not limited to, architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Program requires;

(2) The purchase or refinance of any limited access privilege, IFQ, fisheries access right, permit, or other fisheries harvest authorization, for which the actual cost of the purchase of such authorization would be eligible under the Act for direct loans;

(3) Activities (other than fishing capacity reduction, as set forth in part 600.1000 of this title) that assist in the transition to reduced fishing capacity;

(4) Technologies or upgrades designed to improve collection and reporting of fishery-dependent data, to reduce bycatch, to improve selectivity or reduce adverse impacts of fishing gear, or to improve safety; or

(5) Any other activity that helps develop the U.S. fishing industry, including, but not limited to, measures designed or intended to improve a vessel's fuel efficiency, to increase fisheries exports, to develop an underutilized fishery, or to enhance financial stability, financial performance, growth, productivity, or any other business attribute related to fishing or fisheries.

RAM means the Restricted Access Management division in the Alaska Regional Office of NMFS or the office that undertakes the duties of this division to issue or manage quota shares.

Refinancing means newer debt that either replaces older debt or reim-

burses applicants for previous expenditures.

Refinancing/assumption fee means a one time fee assessed on the principal amount of an existing FFP note to be refinanced or assumed.

Refurbishing means any reconstruction, reconditioning, or other improvement of existing vessels or facilities, but does not include routine repairs or activities characterized as maintenance.

Security documents mean all documents related to the collateral securing the U.S. Note's repayment and all other assurances, undertakings, and contractual arrangements associated with financing or guarantees provided by NMFS.

Underutilized fishery means any stock of fish (a) harvested below its optimum yield or (b) limited to a level of harvest or cultivation below that corresponding to optimum yield by the lack of aggregate facilities.

U.S. means the United States of America and, for citizenship purposes, includes the fifty states, Commonwealth of Puerto Rico, American Samoa, the Territory of the U.S. Virgin Islands, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States, or any political subdivision of any of them.

U.S. Note means a promissory note payable by the obligor to the United States.

Useful life means the period during which project property will, as determined by the Program, remain economically productive.

Vessel means any vessel documented under U.S. law and used for fishing.

Wise use means the development, advancement, management, conservation, and protection of fishery resources, that is not inconsistent with the National Standards for Fishery Conservation and Management (16 U.S.C. 1851) and any other relevant criteria, as may be specified in applicable statutes, regulations, Fishery Management Plans, or NMFS guidance.

§ 253.11 General FFP credit standards and requirements.

(a) *Principal.* Unless explicitly stated otherwise in these regulations or applicable statutes, the amount of any loan may not exceed 80 percent of actual cost, as such term is described in § 253.16; provided that the Program may approve an amount that is less, in accordance with its credit determination.

(b) *Interest rate.* Each loan's annual interest rate will be 2 percent greater than the U.S. Department of Treasury's cost of borrowing public funds of an equivalent maturity at the time the loan closes.

(c) *Ability and experience requirements.* An obligor and the majority of its principals must demonstrate the ability, experience, resources, character, reputation, and other qualifications the Program deems necessary for successfully operating the project property and protecting the Program's interest in the project.

(d) *Lending restrictions.* Unless it can document that unique or extraordinary circumstances exist, the Program will not provide financing:

(1) For venture capital purposes; or

(2) To an applicant who cannot document successful fishing industry ability and experience of a duration, degree, and nature that the Program deems necessary to successfully repay the requested loan.

(e) *Income and expense projections.* The Program, using conservative income and expense projections for the project property's operation, must determine that projected net earnings can service all debt, properly maintain the project property, and protect the Program's interest against risks of loss, including the industry's cyclical economics.

(f) *Working capital.* The Program must determine that a project has sufficient initial working capital to achieve net earnings projections, fund all foreseeable contingencies, and protect the Program's interest in the project. In making its determination, the Program will use a conservative assessment of an applicant's financial condition, and at the Program's discretion, some portion of projected working capital needs may be met by something other than current assets minus liabilities (i.e., by a line or letter of

credit, non-current assets readily capable of generating working capital, a guarantor with sufficient financial resources, etc.).

(g) *Audited financial statements.* Audited financial statements will ordinarily be required for any obligor with large or financially complex operations, as determined by the Program, whose financial condition the Program believes cannot be otherwise assessed with reasonable certainty.

(h) *Consultant services.* Expert consulting services may be necessary to help the Program assess a project's economic, technical, or financial feasibility. The Program will notify the applicant if an expert is required. The Program will select and employ the necessary consultant, but require the applicant to reimburse the Program for any fees charged by the consultant. In the event that an application requires expert consulting services, the loan will not be closed until the applicant fully reimburses the Program for the consulting fees. This cost may, at the Program's discretion, be included in the amount of the note. For a declined application, the Program may reimburse itself from the application fee as described in § 253.12, including any portion known as the commitment fee that could otherwise be refunded to the applicant.

(i) *Property inspections.* The Program may require adequate condition and valuation inspection of all property used as collateral as the basis for assessing the property's worth and suitability for lending. The Program may also require these at specified periods during the life of the loan. These must be conducted by competent and impartial inspectors acceptable to the Program. Inspection cost(s) will be at an applicant's expense. Those occurring before application approval may be included in actual cost, as actual cost is described in § 253.16.

(j) *Collateral.* The Program shall have first lien(s) on all primary project property pledged as collateral. The Program, at its discretion, may request additional collateral and will consider any additional collateral in its credit determinations.

(k) *No additional liens.* All primary project property pledged as collateral,

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including any additional collateral, shall be free of additional liens, unless the Program, at the request of the applicant, expressly waives this requirement in writing.

(l) *General FFP credit standards apply.* Unless explicitly stated otherwise in these rules, all FFP direct lending is subject to the above general credit standards and requirements found in §§ 253.12 through 253.30. The Program may adjust collateral, guarantee and other requirements to reflect individual credit risks.

(m) *Adverse legal proceedings.* The Program, at its own discretion, may decline or hold in abeyance any loan approval or disbursement(s) to any applicant found to have outstanding lawsuits, citations, hearings, liabilities, appeals, sanctions or other pending actions whose negative outcome could significantly impact, in the opinion of the Program, the financial circumstances of the applicant.

§ 253.12 Credit application.

(a) *Applicant.* (1) An applicant must be a U.S. citizen and be eligible to document a vessel in the coastwise trade; and

(2) Only the legal title holder of project property, or its parent company (or the lessee of an appropriate long-term lease) may apply for a loan; and

(3) An applicant and the majority of its principals must generally have the ability, experience, resources, character, reputation, and other qualifications the Program deems necessary for successfully operating, utilizing, or carrying out the project and protecting the Program's interest; and

(4) Applicants should apply to the appropriate NMFS Regional Financial Services Branch to be considered.

(b) *Application fee.* An application fee of 0.5 percent of the dollar amount of an application is due when the application is formally accepted. Upon submission, 50 percent of the application fee, known as the "filing fee," is non-refundable; the remainder, known as the "commitment fee," may be refunded if the Program declines an application or an applicant withdraws its application before the Program issues an AIP letter, as described in § 253.13(e).

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The Program will not issue an AIP letter if any of the application fee remains unpaid. No portion of the application fee shall be refunded once the Program issues an AIP letter.

(c) *False statement.* A false statement on an application is grounds for denial or termination of funds, grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001 and an event of a security default.

§ 253.13 Initial investigation and approval.

(a) The Program shall undertake a due diligence investigation of every application it receives to determine if, in the Program's sole judgment, the application is both:

(1) Eligible for a loan because it meets applicable loan requirements; and

(2) Qualified for a loan because the project is deemed an acceptable credit risk.

(b) The Program will approve eligible and qualified applicants by evaluating the information obtained during the application and investigation process.

(c) Among other investigations, applicants may be subject to a background check, fisheries violations check and credit review. Background checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's honesty or financial integrity.

(d) The Program, at its own discretion, may decline or delay approval of any loans or disbursements to any applicant found to have outstanding citations, notices of violations, or other pending legal actions or unresolved claims.

(e) The Program may place any terms and conditions on such approvals that the Program, in its sole discretion, deems necessary and appropriate.

(f) *Credit decision.* (1) The Program shall issue to approved applicants an AIP letter, which shall describe the terms and conditions of the loan, including (but not limited to) loan amounts, maturities, additional collateral, repayment sources or guarantees.

Such terms and conditions are at the Program's sole discretion and shall also be incorporated in security documents that the Program prepares. An applicant's non-acceptance of any terms and conditions may result in an applicant's disqualification.

(2) Any application the Program deems ineligible or unqualified will be declined.

§ 253.14 Loan documents.

(a) *U.S. Note.* (1) The U.S. Note will be in the form the Program prescribes.

(2) The U.S. Note evidences the obligor's indebtedness to the United States.

(i) For financing approved after October 11, 1996, the U.S. Note evidences the obligor's actual indebtedness to the U.S.; and

(ii) For financing originating before October 11, 1996, that continues to be associated with a Guaranteed Note, the U.S. Note shall evidence the obligor's actual indebtedness to the U.S. upon the Program's payment of any or all of the sums due under the Guaranteed Note or otherwise disbursed on the obligor's behalf.

(iii) The U.S. Note will, among other things, contain provisions to add to its principal balance all amounts the Program advances or incurs, including additional interest charges and costs incurred to protect its interest or accommodate the obligor.

(3) The U.S. Note shall be assignable by the Program, at its sole discretion.

(b) *Security documents.* (1) Each security document will be in the form the Program prescribes.

(2) The Program will, at a minimum, require the pledge of adequate collateral, generally in the form of a security interest or mortgage against all property associated with a project or security as otherwise required by the Program.

(3) The Program will require such other security as it deems necessary and appropriate, given the circumstances of each obligor and the project.

(4) The security documents will, among other things, contain provisions to secure the repayment of all additional amounts the Program advances or incurs to protect its interest or ac-

commodate the obligor, including additional interest charges and fees.

§ 253.15 Recourse against parties.

(a) *Form.* Recourse by borrowers or guarantors may be by a repayment guarantee, irrevocable letter of credit, additional tangible or intangible collateral, or other form acceptable to the Program.

(b) *Principals accountable.* The principal parties in interest, who ultimately stand most to benefit from the project, will ordinarily be held financially accountable for the project's performance. The Program may require recourse against:

(1) All major shareholders of a closely-held corporate obligor;

(2) The parent corporation of a subsidiary corporate obligor;

(3) The related business entities of the obligor if the Program determines that the obligor lacks substantial pledged assets other than the project property or is otherwise lacking in any credit factor required to approve the application;

(4) Any or all major limited partners;

(5) Non-obligor spouses of applicants or obligors in community property states; and/or

(6) Against any others it deems necessary to protect its interest.

(c) *Recourse against parties.* Should the Program determine that a secondary means of repayment from other sources is necessary (including the net worth of parties other than the obligor), the Program may require secured or unsecured recourse against any such secondary repayment sources.

(d) *Recourse unavailable.* Where appropriate recourse is unavailable, the conservatively projected net liquidating value of the obligor's assets (as such assets are pledged to the Program) must, in the Program's credit judgment, substantially exceed all projected Program exposure or other risks of loss.

§ 253.16 Actual cost.

Actual cost shall be determined as follows:

(a) The actual cost of a vessel shall be the sum of:

(1) The total cost of the project depreciated on a straight-line basis, over

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the project property's useful life, using a 10-percent salvage value; and

(2) The current market value of appurtenant limited access privileges or transferable limited access privileges vested in the name of the obligor, the subject vessel or their owners, provided that such privileges are utilized by or aboard the subject vessel and will be pledged as collateral for the subject FFP financing.

(b) The actual cost of a facility shall be the sum of:

(1) The total cost of the project, not including land, depreciated on a straightline basis over the Project Property's useful life, using a 10-percent salvage value;

(2) The current market value of the land that will be pledged as collateral for the subject FFP financing, provided that such land is utilized by the facility; and

(3) The net present value of the payments due under a long term lease of land or marine use rights, provided that they meet the following requirements:

(i) The project property must be located at such leased space or directly use such marine use rights;

(ii) Such lease or marine use right must have a duration the Program deems sufficient; and

(iii) The lease or marine use right must be assigned to the Program such that the Program may foreclose and transfer such lease to another party.

(c) The actual cost of a transferable limited access privilege shall be determined as follows:

(1) For financing the purchase of limited access privileges, the actual cost shall be the purchase cost.

(2) For refinancing limited access privileges, the actual cost shall be the current market value.

(d) The actual cost of any Project that includes any combination of items described in paragraphs (a), (b) or (c) of this section shall be the sum of such calculations.

§ 253.17 Insurance.

(a) All insurable collateral property and other risks shall be continuously insured so long as any balance of principal or interest on a Program loan or guarantee remains outstanding.

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(b) Insurers must be acceptable to the Program.

(c) Insurance must be in such forms and amounts and against such risks the Program deems necessary to protect the United States' interest.

(d) Insurance must be endorsed to include the requirements the Program deems necessary and appropriate.

(1) Normally and as appropriate, the Program will be named as an additional insured, mortgagee, or loss payee, for the amount of its interest; any waiver of this requirement must be in writing;

(2) Cancellation will require adequate advance written notice;

(3) The Program will be adequately protected against other insureds' breaches of policy warranties, negligence, omission, etc., in the case of marine insurance, vessel seaworthiness will be required;

(4) The insured must provide coverage for any other risk or casualty the Program may require.

§ 253.18 Closing.

(a) *Approval in principle letters.* Every closing will be in strict accordance with a final approval in principle letter.

(b) *Contracts.* Promissory notes, security documents, and any other documents the Program may require will be on standard Program forms that may not be altered without Program written approval. The Program will ordinarily prepare all contracts, except certain pledges involving real property or other matters involving local law, which will be prepared by each obligor's attorney at the direction and approval of the Program.

(c) *Additional requirements.* At its discretion the Program may require services from applicant's attorneys, other contractors or agents. Real property services required from an applicant's attorney or agent may include, but are not limited to: Title search, title insurance, mortgage and other document preparation, document execution and recording, escrow and disbursement, and legal opinions and other assurances. The Program will notify the applicant in advance if any such services

are required of the applicant's attorneys, contractors or other agents. Applicants are responsible for all attorney's fees, as well as those of any other private contractor. Attorneys and other contractors must be satisfactory to the Program.

(d) *Closing schedules.* The Program will not be liable for adverse interest-rate fluctuations, loss of commitments, or other consequences of an inability by any of the parties to meet the closing schedule.

§ 253.19 Dual-use CCF.

The Program may require the pledge of a CCF account or annual deposits of some portion of the project property's net income into a dual-use CCF. A dual-use CCF provides the normal CCF tax-deferral benefits, but also gives the Program control of CCF withdrawals, recourse against CCF deposits, ensures an emergency refurbishing reserve (tax-deferred) for project property, and provides additional collateral.

§ 253.20 Fees.

(a) *Application fee.* See §§ 253.10 and 253.12(b).

(b) *Guarantee fee.* For existing Guaranteed Loans, an annual guarantee fee will be due in advance and will be based on the guaranteed note's repayment provisions for the prospective year. The first annual guarantee fee is due at guarantee closing. Each subsequent guarantee fee is due and payable on the guarantee closing's anniversary date. Each is fully earned when due, and shall not subsequently be refunded for any reason.

(c) *Refinancing or assumption fee.* The Program will assess a fee of one quarter of one (1) percent of the note to be refinanced or assumed. This fee is due upon application for refinancing or assumption of a guaranteed or direct loan. Upon submission, the fee shall be non-refundable. The Program may waive a refinancing or assumption fee's payment when the refinancing or assumption's primary purpose will benefit the United States.

(d) *Where payable.* Fees are payable by check to "U.S. Department of Commerce/NOAA." Other than those collected at application or closing, fees are payable by mailing checks to the

"U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service," to such address as the Program may designate. To ensure proper crediting, each check should include the official case number the Program assigns.

§ 253.21 Demand by guaranteed noteholder and payment.

Every demand by the guaranteed noteholder must be delivered in writing to the Program and must include the noteholder's certified record of the date and amount of each payment made on the guaranteed note and the manner of its application. The only period during which a guaranteed noteholder can make demand for a payment default begins on the thirty-first day of the payment default and continues through the ninetieth day of a payment default. The noteholder must possess evidence of the demand's timely delivery.

§ 253.22 Program operating guidelines.

The Program may issue policy and administrative guidelines, as the need arises.

§ 253.23 Default and liquidation.

Upon default under the terms of any note, guarantee, security agreement, mortgage, or other security document the Program shall take remedial actions including, but not limited to, where appropriate, retaking or arrest of collateral, foreclosure, restructuring, debarment, referral for debt collection, or liquidation as it deems best able to protect the U.S. Government's interest.

§ 253.24 Enforcement violations and adverse actions.

(a) *Compliance with applicable law.* All applicants and Program participants shall comply with applicable law.

(b) *Applicant disqualification.* (1) Any issuance of any citation or Notice of Violation and Assessment by NMFS enforcement or other enforcement authority may constitute grounds for the Program to:

- (i) Delay application or approval processing;
- (ii) Delay loan closing;

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(iii) Delay disbursement of loan proceeds;

(iv) Disqualify an applicant or obligor; or

(v) Declare default.

(2) The Program will not approve loans or disburse funds to any applicant found to have an outstanding, final and unappealable fisheries fine or other unresolved penalty until either: Such fine is paid or penalty has been resolved; or the applicant enters into an agreement to pay the penalty and makes all payments or installments as they are due. Failure to pay or resolve any such fine or penalty in a reasonable period of time will result in the applicant's disqualification.

(c) *Foreclosure in addition to other penalties.* In the event that a person with an outstanding balance on a Program loan or guarantee violates any ownership, lease, use, or other provision of applicable law, such person may be subject to foreclosure of property, in addition to any fines, sanctions, or other penalties.

§ 253.25 Other administrative requirements.

(a) *Debt Collection Act.* In accordance with the provisions of the Debt Collection Improvement Act of 1996, a person may not obtain any Federal financial assistance in the form of a loan (other than a disaster loan) or loan guarantee if the person has an outstanding debt (other than a debt under the Internal Revenue Code of 1986) with any Federal agency which is in a delinquent status, as determined under standards prescribed by the Secretary of the Treasury.

(b) *Certifications.* Applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," or its equivalent or successor form, if any.

(c) *Taxpayer identification.* An applicant classified for tax purposes as an individual, limited liability company, partnership, proprietorship, corporation, or legal entity is required to submit along with the application a taxpayer identification number (TIN) (social security number, employer identification number as applicable, or reg-

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istered foreign organization number). Recipients who either fail to provide their TIN or provide an incorrect TIN may have application processing or funding suspended until the requirement is met.

(d) *Audit inquiry.* An audit of a Program loan may be conducted at any time. Auditors, selected at the discretion of the Program or other agency of the United States, shall have access to any and all books, documents, papers and records of the obligor or any other party to a financing that the auditor(s) deem(s) pertinent, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium.

(e) *Paperwork Reduction Act.* The application requirements contained in these rules have been approved under OMB control number 0648-0012. The applications for the halibut/sablefish QS crew member eligibility certificate have been approved under OMB control number 0648-0272. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

§ 253.26 Traditional loans.

(a) *Eligible projects.* Financing or refinancing up to 80 percent of a project's actual cost shall be available to any citizen who is determined to be eligible and qualified under the Act and these rules, except—

(1) The Program will not finance the cost of new vessel construction.

(2) The Program will not finance a vessel refurbishing project that materially increases an existing vessel's harvesting capacity.

(b) *Financing or refinancing.* (1) Projects, other than those specified in paragraphs (a) (1) and (a)(2) of this section, may be financed, as well as refinanced.

(2) Notwithstanding paragraph (a)(1) of this section, the Program may refinance the construction cost of a vessel whose construction cost has already been financed (or otherwise paid) prior to the submission of a loan application.

(3) Notwithstanding paragraph (a)(2) of this section, the Program may refinance the refurbishing cost of a vessel whose initial refurbishing cost has already been financed (or otherwise paid) prior to the submission of a loan application.

(4) The Program may finance or refinance the purchase or refurbishment of any vessel or facility for which the Secretary has:

- (i) Accelerated and/or paid outstanding debts or obligations;
- (ii) Acquired; or
- (iii) Sold at foreclosure.

(c) *Existing vessels and facilities.* The Program may finance the purchase of an existing vessel or existing fishery facility if such vessel or facility will be refurbished in the United States and will be used in the fishing industry.

(d) *Fisheries modernization.* Notwithstanding any of this part, the Program may finance or refinance any:

(1) Activities that assist in the transition to reduced fishing capacity; or

(2) Technologies or upgrades designed to:

- (i) Improve collection and reporting of fishery-dependent data;
- (ii) Reduce bycatch;
- (iii) Improve selectivity;
- (iv) Reduce adverse impacts of fishing gear; or
- (v) Improve safety.

(e) *Guaranty transition.* Upon application by the obligor, any guaranteed loans originated prior to October 11, 1996, may be refinanced as direct loans, regardless of the original purpose of the guaranteed loan.

(f) *Maturity.* Maturity may not exceed 25 years, but shall not exceed the project property's useful life. The Program, at its sole discretion, may set a shorter maturity period.

(g) *Credit standards.* Traditional loans are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted in accordance with the Program's assessment of individual credit risks.

§ 253.27 IFQ financing.

The Program may finance or refinance the project cost of purchasing, including the reimbursement of obligations for expenditures previously made

for purchasing, individual fishing quotas in accordance with the applicable sections of the Magnuson-Stevens Fishery Conservation and Management Act or any other statute.

§ 253.28 Halibut sablefish IFQ loans.

(a) *Specific definitions.* For the purposes of this section, the following definitions apply:

(1) Entry-level fishermen means fishermen who do not own any IFQ in the year they apply for a loan.

(2) Fishermen who fish from small vessels means fishermen wishing to purchase IFQ for use on Category B, Category C, or Category D vessels, but who do not own, in whole or in part, any Category A or Category B vessels, as such vessels are defined in 50 CFR 679.40(a)(5) of this title.

(3) Halibut sablefish quota share means a halibut or sablefish permit, the face amount of which is used as the basis for the annual calculation of a person's halibut or sablefish IFQ, also abbreviated as "HSQS" or "halibut/sablefish QS."

(4) Halibut/Sablefish IFQ means the annual catch limit of halibut or sablefish that may be harvested by a person who is lawfully allocated halibut or sablefish quota share, a harvest privilege for a specific portion of the total allowable catch of halibut or sablefish.

(b) *Entry level fishermen.* The Program may finance up to 80 percent of the cost of purchasing HSQS by an entry level fisherman who:

(1) Does not own any halibut/sablefish QS during the origination year;

(2) Applies for a loan to purchase a quantity of halibut/sablefish QS that is not greater than the equivalent of 8,000 lb. (3,628.7 kg) of IFQ during the origination year;

(3) Possesses the appropriate transfer eligibility documentation duly issued by RAM for HSQS;

(4) Intends to be present aboard the vessel, as may be required by applicable regulations; and

(5) Meets all other Program eligibility, qualification, lending and credit requirements.

(c) *Fishermen fishing from small vessels.* The Program may finance up to 80 percent of the cost of purchasing HSQS by a fisherman who fishes from a small

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vessel, provided that any such fisherman shall:

(1) Apply for a loan to purchase halibut or sablefish QS for use on vessel Categories B, C, or D, as defined under 50 CFR 679.40(a)(5) of this title;

(2) Not own an aggregate quantity of halibut/sablefish QS (including the loan QS) of more than the equivalent of 50,000 lb. (22,679.6 kg) of IFQ during the origination year;

(3) Not own, in whole or in part, directly or indirectly (including through stock or other ownership interest) any vessel of the type that would have been assigned Category A or Category B HSQS under 50 CFR 679.40(a)(5);

(4) Possess the appropriate transfer eligibility documentation duly issued by the RAM for HSQS;

(5) Intend to be present aboard the vessel, as may be required by applicable regulations, as IFQ associated with halibut/sablefish QS financed by the loan is harvested; and

(6) Meet all other Program eligibility, qualification, lending and credit requirements.

(d) *Refinancing.* (1) The Program may refinance any existing debts associated with HSQS an applicant currently holds, provided that—

(i) The HSQS being refinanced would have been eligible for Program financing at the time the applicant purchased it, and

(ii) The applicant meets the Program's applicable lending requirements.

(2) The refinancing is in an amount up to 80 percent of HSQS' current market value; however, the Program will not disburse any amount that exceeds the outstanding principal balance, plus accrued interest (if any), of the existing HSQS debt being refinanced.

(3) In the event that the current market value of HSQS and principal loan balance do not meet the 80 percent requirement in paragraph (d)(2) of this section, applicants seeking refinancing may be required to provide additional down payment.

(e) *Maturity.* Loan maturity may not exceed 25 years, but may be shorter depending on credit and other considerations.

(f) *Repayment.* Repayment will be by equal quarterly installments of principal and interest.

(g) *Security.* Although quota share(s) will be the primary collateral for a HSQS loan, the Program may require additional security pledges to maintain the priority of the Program's security interest. The Program, at its option, may also require all parties with significant ownership interests to personally guarantee loan repayment for any applicant that is a corporation, partnership, or other entity. Subject to the Program's credit risk determination, some projects may require additional security, collateral, or credit enhancement.

(h) *Crew member transfer eligibility certification.* The Program will accept RAM certification as proof that applicants are eligible to hold HSQS. The application of any person determined by RAM to be unable to receive such certification will be declined. Applicants who fail to obtain appropriate transfer eligibility certification within 45 working days of the date of application may lose their processing priority.

(i) *Program credit standards.* HSQS loans, regardless of purpose, are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

§ 253.29 CDQ loans.

(a) *FFP actions.* The Program may finance or refinance up to 80 percent of a project's actual cost.

(b) *Eligible projects.* Eligible projects include the purchase of all or part of ownership interests in fishing or processing vessels, shoreside fish processing facilities, permits, quota, and cooperative rights in any of the Bering Sea and Aleutian Islands fisheries.

(c) *Eligible entities.* The following communities, in accordance with applicable law and regulations are eligible to participate in the loan program:

(1) The villages of Akutan, Atka, False Pass, Nelson Lagoon, Nikolski, and Saint George through the Aleutian Pribilof Island Community Development Association.

(2) The villages of Aleknagik, Clark's Point, Dillingham, Egegik, Ekuk,

Ekwok, King Salmon/Savonoski, Levelock, Manokotak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, and Ugashik through the Bristol Bay Economic Development Corporation.

(3) The village of Saint Paul through the Central Bering Sea Fishermen's Association.

(4) The villages of Chefornak, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Kongiganak, Kwigillingok, Mekoryuk, Napakiak, Napaskiak, Newtok, Nightmute, Oscarville, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Tuntutuliak, and Tununak through the Coastal Villages Region Fund.

(5) The villages of Brevig Mission, Diomede, Elim, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktoolik, Stebbins, Teller, Unalakleet, Wales, and White Mountain through the Norton Sound Economic Development Corporation.

(6) The villages of Alakanuk, Emmonak, Grayling, Kotlik, Mountain Village, and Nunam Iqua through the Yukon Delta Fisheries Development Association.

(7) Any new groups established by applicable law.

(d) *Loan terms.* (1) CDQ loans may have terms up to thirty years, but shall not exceed the project property's useful life. The Program, at its sole discretion, may set a shorter maturity period.

(2) CDQ loans are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

§ 253.30 Crab IFQ loans.

(a) *Specific definitions.* For the purposes of this section, the following definitions apply:

(1) Crab means those crab species managed under the Fishery Management Plan for Bering Sea/Aleutian Island (BSAI) King and Tanner Crab.

(2) Crab FMP means the Fishery Management Plan for BSAI King and Tanner Crab.

(3) Crab quota share means a BSAI King and Tanner Crab permit, the base amount of which is used as a basis for the annual calculation of a person's

Crab IFQ, also abbreviated as "Crab QS."

(b) *Crab captains or crewmen.* The Program may finance up to 80 percent of the cost of purchasing Crab QS by a citizen:

(1) Who is or was:

(i) A captain of a crab fishing vessel, or

(ii) A crew member of a crab fishing vessel;

(2) Who has been issued the appropriate documentation of eligibility by RAM;

(3) Whose aggregate holdings of QS will not exceed any limit on Crab QS holdings that may be in effect in the Crab FMP implementing regulations or applicable statutes in effect at the time of loan closing; and will not hold either individually or collectively, based on the initial QS pool, as published in 50 CFR part 680, Table 8; and

(4) Who, at the time of initial application, meets all other applicable eligibility requirements to fish for crab or hold Crab QS contained in the Crab FMP implementing regulations or applicable statutes in effect at the time of loan closing.

(c) *Refinancing.* (1) The Program may refinance any existing debts associated with Crab QS that an applicant currently holds, provided that:

(i) The Crab QS being refinanced would have been eligible for Program financing at the time the applicant purchased it;

(ii) The applicant meets the Program's applicable lending requirements; and

(iii) The applicant would meet the requirements found in the Crab FMP implementing regulations at the time any such refinancing loan would close.

(2) The Program may refinance an amount up to 80 percent of Crab QS's current market value; however, the Program will not disburse any amount that exceeds the outstanding principal balance, plus accrued interest (if any), of the existing Crab QS debt being refinanced.

(3) In the event that the current market value of Crab QS and current principal balance do not meet the 80 percent requirement in paragraph (c)(2) of

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this section, applicants seeking refinancing may be required to provide additional down payment.

(d) *Maturity.* Loan maturity may not exceed 25 years, but may be shorter depending on credit and other considerations.

(e) *Repayment.* Repayment schedules will be set by the loan documents.

(f) *Security.* Although the quota share will be the primary collateral for a Crab QS loan, the Program may require additional security pledges to maintain the priority of the Program's security interest. The Program, at its option, may also require all parties with significant ownership interests to personally guarantee loan repayment for any applicant that is a corporation, partnership, or other entity. Subject to the Program's credit risk determination, some projects may require additional security, collateral, or credit enhancement.

(g) *Crew member transfer eligibility certification.* The Program will accept RAM transfer eligibility certification as proof that applicants are eligible to hold Crab QS. The application of any person determined by RAM to be unable to receive such certification will be declined. Applicants who fail to obtain appropriate transfer eligibility certification within 45 working days of the date of application may lose their processing priority.

(h) *Crab Quota Share Ownership Limitation.* A program obligor must comply with all applicable maximum amounts, as may be established by NMFS regulations, policy or North Pacific Fishery Management Council action.

(i) *Program credit standards.* Crab QS loans are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

§ 253.31 Harvesting rights loans.

(a) *Specific definitions.* For the purposes of this section, the following definitions apply:

(1) *Harvesting right(s)* means any privilege to harvest fish in a fishery that is federally managed under a limited access system.

(2) *Limited access system* has the same meaning given to that term in section

3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

(b) *Loan requirements and limitations.* These loan requirements and limitations apply to individuals or entities who seek to finance or refinance the acquisition of harvesting rights.

(1) The borrower must meet all regulatory and statutory requirements to hold the harvesting rights at the time any such loan or refinancing loan would close.

(2) NMFS will accept and consider the input of a Regional Fishery Management Council at any time regarding the availability of loans in a fishery under the Council's authority.

(i) The Council may submit an explanation to NMFS, in writing, as to why the availability of financing for harvesting rights in a fishery would harm the achievement of the goals and objectives of the Fishery Management Plan applicable to the fishery. If NMFS accepts the Council's reasoning, harvesting rights loans will not be provided, or will cease to be provided, in that fishery.

(ii) If NMFS determines that harvesting rights loans will not be provided in a fishery, NMFS will publish a notice in the FEDERAL REGISTER notifying the public that new loans will not be made in that fishery.

(iii) In such a scenario, pending applications will be returned and loan fees returned as exceptional circumstances justify the action.

(3) The harvesting rights to be financed must be issued in a manner in which they can be individually identified such that a valid and specific security interest can be recorded. This determination shall be solely made by the Program.

(c) *Refinancing.* (1) The Program may refinance any existing debts associated with harvesting rights a borrower currently holds, provided that:

(i) The harvesting rights being refinanced would have been eligible for Program financing at the time the borrower purchased them, if Program financing had been available;

(ii) The borrower meets all other applicable lending requirements; and

(iii) The refinancing is in an amount up to 80 percent of the harvesting

rights' current market value, as determined at the sole discretion of the Program, and subject to the limitation that the Program will not disburse any amount that exceeds the outstanding principal balance, plus accrued interest (if any), of the existing harvesting rights' debt being refinanced or its fair market value, whichever is less.

(2) In the event that the current market value of harvesting rights and principal loan balance do not meet the 80 percent requirement in paragraph (c)(1)(iii) of this section, borrowers seeking refinancing may be required to provide additional down payment.

(d) *Maturity.* Loan maturity may not exceed 25 years, but may be shorter depending on credit and other considerations.

(e) *Repayment.* Repayment will be by equal quarterly installments of principal and interest.

(f) *Security.* Although harvesting right(s) will be the primary collateral for a loan, the Program may require additional security pledges to maintain the priority of the Program's security interest. The Program, at its option, may also require all parties with significant ownership interests to personally guarantee loan repayment for any borrower that is a corporation, partnership, or other entity, including collateral to secure the guarantees. Some projects may require additional security, collateral, or credit enhancement as determined, in the sole discretion, by the Program.

(g) *Program credit standards.* Harvesting rights loans, regardless of purpose, are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

[83 FR 24232, May 25, 2018]

§§ 253.32–253.49 [Reserved]

Subpart C—Interjurisdictional Fisheries

§ 253.50 Definitions.

The terms used in this subpart have the following meanings:

Act means the Interjurisdictional Fisheries Act of 1986, Public Law 99-659 (Title III).

Adopt means to implement an interstate fishery management plan by State action or regulation.

Commercial fishery failure means a serious disruption of a fishery resource affecting present or future productivity due to natural or undetermined causes. It does not include either:

(1) The inability to harvest or sell raw fish or manufactured and processed fishery merchandise; or

(2) Compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

Enforcement agreement means a written agreement, signed and dated, between a state agency and either the Secretary of the Interior or Secretary of Commerce, or both, to enforce Federal and state laws pertaining to the protection of interjurisdictional fishery resources.

Federal fishery management plan means a plan developed and approved under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Fisheries management means all activities concerned with conservation, restoration, enhancement, or utilization of fisheries resources, including research, data collection and analysis, monitoring, assessment, information dissemination, regulation, and enforcement.

Fishery resource means finfish, mollusks, and crustaceans, and any form of marine or Great Lakes animal or plant life, including habitat, other than marine mammals and birds.

Interjurisdictional fishery resource means:

(1) A fishery resource for which a fishery occurs in waters under the jurisdiction of one or more states and the U.S. Exclusive Economic Zone; or

(2) A fishery resource for which an interstate or a Federal fishery management plan exists; or

(3) A fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

Interstate Commission means a commission or other administrative body established by an interstate compact.

Interstate compact means a compact that has been entered into by two or

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more states, established for purposes of conserving and managing fishery resources throughout their range, and consented to and approved by Congress.

Interstate Fisheries Research Program means research conducted by two or more state agencies under a formal interstate agreement.

Interstate fishery management plan means a plan for managing a fishery resource developed and adopted by the member states of an Interstate Marine Fisheries Commission, and contains information regarding the status of the fishery resource and fisheries, and recommends actions to be taken by the States to conserve and manage the fishery resource.

Landed means the first point of off-loading fishery resources.

NMFS Regional Director means the Director of any one of the five National Marine Fisheries Service regions.

Project means an undertaking or a proposal for research in support of management of an interjurisdictional fishery resource or an interstate fishery management plan.

Research means work or investigative study, designed to acquire knowledge of fisheries resources and their habitat.

Secretary means the Secretary of Commerce or his/her designee.

State means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam,

or the Commonwealth of the Northern Mariana Islands.

State agency means any department, agency, commission, or official of a state authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

Value means the monetary worth of fishery resources used in developing the apportionment formula, which is equal to the price paid at the first point of landing.

Volume means the weight of the fishery resource as landed, at the first point of landing.

§ 253.51 Apportionment.

(a) *Apportionment formula.* The amount of funds apportioned to each state is to be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and landed within such state during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen and landed within all of the states during those calendar years.

(1) The equally weighted average value is determined by the following formula:

$$\frac{\text{Volume of X State}}{\text{Volume of all States}} = \text{A percent}$$

$$\frac{\text{Value of X State}}{\text{Value of all States}} = \text{B percent}$$

$$\frac{[A\% + B\%]}{2} = \text{State percentage used to determine state's share of the total available funds}$$

(2) Upon appropriation of funds by Congress, the Secretary will take the following actions:

- (i) Determine each state's share according to the apportionment formula.
- (ii) Certify the funds to the respective NMFS Regional Director.

(iii) Instruct NMFS Regional Directors to promptly notify states of funds' availability.

(b) No state, under the apportionment formula in paragraph (a) of this section, that has a ratio of one-third of

1 percent or higher may receive an apportionment for any fiscal year that is less than 1 percent of the total amount of funds available for that fiscal year.

(c) If a State's ratio under the apportionment formula in paragraph (b) of this section is less than one-third of 1 percent, that state may receive funding if the state:

(1) Is signatory to an interstate fishery compact;

(2) Has entered into an enforcement agreement with the Secretary and/or the Secretary of the Interior for a fishery that is managed under an interstate fishery management plan;

(3) Borders one or more of the Great Lakes;

(4) Has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management plan or an interstate fisheries research Program; or

(5) Has adopted a Federal fishery management plan for an interjurisdictional fishery resource.

(d) Any state that has a ratio of less than one-third of 1 percent and meets any of the requirements set forth in paragraphs (c)(1) through (5) of this section may receive an apportionment for any fiscal year that is not less than 0.5 percent of the total amount of funds available for apportionment for such fiscal year.

(e) No state may receive an apportionment under this section for any fiscal year that is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(f) *Unused apportionments.* Any part of an apportionment for any fiscal year to any state:

(1) That is not obligated during that year;

(2) With respect to which the state notifies the Secretary that it does not wish to receive that part; or

(3) That is returned to the Secretary by the state, may not be considered to be appropriated to that state and must be added to such funds as are appropriated for the next fiscal year. Any notification or return of funds by a state referred to in this section is irrevocable.

§ 253.52 State projects.

(a) *General*—(1) *Designation of state agency.* The Governor of each state shall notify the Secretary of which agency of the state government is authorized under its laws to regulate commercial fisheries and is, therefore, designated receive financial assistance awards. An official of such agency shall certify which official(s) is authorized in accordance with state law to commit the state to participation under the Act, to sign project documents, and to receive payments.

(2) States that choose to submit proposals in any fiscal year must so notify the NMFS Regional Director before the end of the third quarter of that fiscal year.

(3) Any state may, through its state agency, submit to the NMFS Regional Director a completed NOAA Grants and Cooperative Agreement Application Package with its proposal for a project, which may be multiyear. Proposals must describe the full scope of work, specifications, and cost estimates for such project.

(4) States may submit a proposal for a project through, and request payment to be made to, an Interstate Fisheries Commission. Any payment so made shall be charged against the apportionment of the appropriate state(s). Submitting a project through one of the Commissions does not remove the matching funds requirement for any state, as provided in paragraph (c) of this section.

(b) *Evaluation of projects.* The Secretary, before approving any proposal for a project, will evaluate the proposal as to its applicability, in accordance with 16 U.S.C. 4104(a)(2).

(c) *State matching requirements.* The Federal share of the costs of any project conducted under this subpart, including a project submitted through an Interstate Commission, cannot exceed 75 percent of the total estimated cost of the project, unless:

(1) The state has adopted an interstate fishery management plan for the fishery resource to which the project applies; or

(2) The state has adopted fishery regulations that the Secretary has determined are consistent with any Federal

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fishery management plan for the species to which the project applies, in which case the Federal share cannot exceed 90 percent of the total estimated cost of the project.

(d) *Financial assistance award.* If the Secretary approves or disapproves a proposal for a project, he or she will promptly give written notification, including, if disapproved, a detailed explanation of the reason(s) for the disapproval.

(e) *Restrictions.* (1) The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the state as a part of its contribution to the total cost of the project.

(2) The expenditure of funds under this subpart may be applied only to projects for which a proposal has been evaluated under paragraph (b) of this section and approved by the Secretary, except that up to \$25,000 each fiscal year may be awarded to a state out of the state's regular apportionment to carry out an "enforcement agreement." An enforcement agreement does not require state matching funds.

(f) *Prosecution of work.* All work must be performed in accordance with applicable state laws or regulations, except when such laws or regulations are in conflict with Federal laws or regulations such that the Federal law or regulation prevails.

§ 253.53 Other funds.

(a) *Funds for disaster assistance.* (1) The Secretary shall retain sole authority in distributing any disaster assistance funds made available under section 308(b) of the Act. The Secretary may distribute these funds after he or she has made a thorough evaluation of the scientific information submitted, and has determined that a commercial fishery failure of a fishery resource arising from natural or undetermined causes has occurred. Funds may only be used to restore the resource affected by the disaster, and only by existing methods and technology. Any fishery resource used in computing the states' amount under the apportionment for-

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mula in § 253.601(a) will qualify for funding under this section. The Federal share of the cost of any activity conducted under the disaster provision of the Act shall be limited to 75 percent of the total cost.

(2) In addition, pursuant to section 308(d) of the Act, the Secretary is authorized to award grants to persons engaged in commercial fisheries for uninsured losses determined by the Secretary to have been suffered as a direct result of a fishery resource disaster. 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.

§ 253.54 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 TAX REGULATIONS

Sec.

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259.3 Acquisition, construction, or reconstruction.

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

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

SOURCE: 82 FR 24565, May 30, 2017, unless otherwise noted.

§ 259.1 Definitions.

As used in this part:

Act means Chapter 535 of Title 46 of the U.S. Code (46 U.S.C. 53501-53517), as may be amended from time to time.

Agreement means the contract to participate in the program between the approved CCF applicant (party) and the Secretary.

Agreement vessel means any eligible vessel or qualified vessel which is subject to an Agreement.

Citizen of the United States means any person who is a United States citizen and any corporation or partnership organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade.

Commercial fishing means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

Depository means the bank or brokerage account(s) listed in the Agreement where the CCF funds will be physically held.

Eligible vessel means—

- (1) A vessel—
 - (i) Constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside of the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;
 - (ii) Documented under the laws of the United States if 5 net tons or greater; and
 - (iii) Operated in the foreign or domestic commerce of the United States or in the fisheries of the United States; and

(2) A commercial fishing vessel or vessel which will carry fishing parties for hire—

- (i) Constructed in the United States and, if reconstructed, reconstructed in the United States;
- (ii) State registered if at least 2 net tons but fewer than 5 net tons or Documented under the laws of the United States if 5 net tons or greater;
- (iii) Owned by a citizen of the United States;
- (iv) Having its home port in the United States; and
- (v) Operated in the commercial fisheries of the United States.

Extension period means the first day following the end of the Filing period and ending on the last day of the party's last filing extension.

Filing period means the first day following the end of the Tax Year and ending on the party's last day to file their tax return absent a filing extension.

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

Qualified vessel means—

- (1) A vessel—
 - (i) Constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside of the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;
 - (ii) Documented under the laws of the United States if 5 net tons or greater; and
 - (iii) Agreed, between the Secretary and the person maintaining the capital construction fund established under 46 U.S.C. 53503, to be operated in the fisheries of the United States; and
- (2) A commercial fishing vessel or vessel which will carry fishing parties for hire—
 - (i) Constructed in the United States and, if reconstructed, reconstructed in the United States;

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

(iii) Owned by a citizen of the United States;

(iv) Having its home port in the United States; and

(v) Operated in the commercial fisheries of the United States; and

(3) Gear which is permanently fixed to the vessel. The expenditure for gear and certain nets which are not fixed to the vessel (pots, traps, longline, seine nets, gill set nets and gill drift nets) is excluded from the amount eligible for qualified withdrawals of CCF funds.

Schedule A means the section of the Agreement that designates the income producing vessel from which deposits are made to a designated account.

Schedule B means the section of the Agreement that designates the qualified project for which the CCF funds are to be expended.

Secretary means the Secretary of Commerce with respect to eligible or qualified vessels operated or to be operated in the fisheries of the United States.

Tax due date means the date the party's Federal tax return must be filed, including extensions, with the Internal Revenue Service.

Tax year means the period between January 1 and December 31 for Calendar year filers or the designated fiscal year for fiscal year filers.

United States means the United States of America and, for citizenship purposes, includes the Commonwealth of Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States, or any political subdivision of any of them.

§ 259.2 Applying for a Capital Construction Fund Agreement ("Agreement").

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

(1) Be a citizen of the United States (citizenship requirements are those

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necessary for documenting vessels in the coastwise trade within the meaning of section 2 of the Shipping Act, 1916, as amended);

(2) Own or lease one or more eligible vessels (as defined at 46 U.S.C. 53501) operating in the foreign or domestic commerce of the United States;

(3) Have an acceptable plan to acquire, construct, or reconstruct one or more qualified vessels (as defined at 46 U.S.C. 53501). The plan must be a firm representation of the applicant's actual intentions. Qualified vessels must be for commercial operation in the fisheries of the United States. If the vessel is 5 net tons or over, it must be documented with a fishery trade endorsement. Dual documentation in both the fisheries and the coastwise trade of the United States is permissible. Any vessel which will carry fishing parties for hire must be inspected and certified (under 46 CFR part 176) by the U.S. Coast Guard as qualified to carry more than six passengers. If the vessel weighs fewer than 5 net tons the party must demonstrate to the Secretary's satisfaction that the carrying of fishing parties for hire will constitute its primary activity.

(b) *Content of application.* Applicants seeking an Agreement must submit a formal application providing the following information:

(1) Name and Tax Identification Number (TIN) of applicant;

(2) Proof of U.S. citizenship;

(3) The first taxable year for which the Agreement is to apply (see § 259.4 for the latest time at which applications for an Agreement relating to the previous taxable year may be received);

(4) The following information regarding each *eligible vessel* which is to be incorporated in Schedule A of the Agreement:

(i) Name of vessel,

(ii) Official number or, in the case of vessels weighing under 5 net tons, the State registration number, where required,

(iii) Type of vessel (*i.e.*, catching vessel, processing vessel, transporting vessel, charter vessel, barge, passenger carrying fishing vessel, etc.),

(iv) General characteristics (*i.e.*, net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of

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

(v) Whether it is owned or leased and, if leased, the name of the owner, and a copy of the lease,

(vi) Date and place of construction,

(vii) If reconstructed, date of redelivery and place of reconstruction,

(viii) Trade (or trades) in which the vessel is documented and date last documented,

(ix) The fishery of operation (which in this section means each species or group of species). Each species must be specifically identified by the acceptable common names of fish, shellfish, or other living marine resources which each vessel catches, processes, or transports or will catch, process, or transport for commercial purposes such as marketing or processing the catch),

(x) The area of operation (which for fishing vessels means the general geographic areas in which each vessel will catch, process, or transport, or charter for each species or group of species of fish, shellfish, or other living marine resources),

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

(i) Number of vessels,

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

(iii) General characteristics (*i.e.*, net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of passengers carried),

(iv) Cost of projects,

(v) Amount of indebtedness to be paid for vessels to be constructed, acquired, or reconstructed (all notes, mortgages, or other evidence of indebtedness must be submitted as soon as available, together with sufficient additional evidence to establish that full proceeds of the indebtedness to be paid from a CCF account under an Agreement, were used solely for the purpose of the construction, acquisition, or reconstruction of Schedule B vessels),

(vi) Date of construction, acquisition, or reconstruction,

(vii) Fishery of operation (which in this section means each species or group of species must be specifically identified by acceptable common name of fish, shellfish, or other living marine resources), and

(viii) Area of operation (which in this section means the general geographic areas in which each vessel will operate for each species or group of species of fish, shellfish, or other living marine resources),

(c) *Filing.* The application must be signed and submitted to the Financial Services Division of the National Marine Fisheries Service. As a general rule, the Agreement must be executed and entered into by the taxpayer on or prior to the due date for the filing of the Federal tax return in order to be effective for the tax year to which that return relates. It is in the Applicant's best interest to file at least 45 days in advance of such date.

§ 259.3 Acquisition, construction, or reconstruction.

CCF funds cannot be used for any vessel acquisition, construction, or reconstruction that increases harvesting capacity in a fishery or fisheries, other than in a limited access system in which the fisheries management authority establishes harvesting limits.

(a) *Acquisition.* CCF funds can be used to acquire any used qualified vessel that will fish in a limited access system in which the fisheries management authority establishes harvesting limits. If the fishery or fisheries is not a limited access system, CCF funds can only be used to replace an existing, recently sunken, or scrapped vessel and its existing harvesting capacity. The replaced vessel must lose its fisheries trade endorsement and the vessel owner must notify the Coast Guard Documentation Center of that fact.

(b) *Construction.* CCF funds can be used to construct a new qualified vessel that will fish in a limited access system in which the fisheries management authority establishes harvesting limits. If the fishery or fisheries is not a limited access system, CCF funds can only be used to replace an existing, recently sunken, or scrapped vessel and its existing harvesting capacity. The replaced vessel must lose its fisheries

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trade endorsement and the vessel owner must notify the Coast Guard Documentation Center of that fact.

(c) *Reconstruction.* Reconstruction may include rebuilding, replacing, reconditioning, refurbishing, repairing, converting and/or improving any portion of a vessel. A reconstruction project must, however, either substantially prolong the useful life of the reconstructed vessel, increase its value, materially increase its safety, reliability, or energy efficiency, or adapt it to a different commercial use in the fishing trade or industry. No vessel more than 25 years old at the time of withdrawal shall be a qualified vessel for the purpose of reconstruction unless a special showing is made, to the Secretary's discretionary satisfaction, that the type and degree of reconstruction intended will result in an efficient and productive vessel with an economically useful life of at least 10 years beyond the date reconstruction is completed.

(d) *Time permitted for construction or reconstruction.* Construction or reconstruction must be completed within 18 months from the date construction or reconstruction first commences, unless otherwise consented to by the Secretary.

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

(a) *Constructive deposits and withdrawals (before Agreement executed date).* Constructive deposits and withdrawals are deemed to have been deposited to and withdrawn from a designated CCF account even though the funds were not physically deposited. Constructive deposits and withdrawals shall be permissible only during the "Tax Year" for which a written application for an Agreement is submitted to the Secretary. Once the Secretary executes the Agreement, the constructive deposit and withdrawal period ends. All deposits must be physically deposited into a designated CCF account.

(1) All qualified deposits and expenditures occurring within the period specified directly above, that are within the eligible ceilings specified at 46 U.S.C.

53505, may be consented to by the Secretary as constructive deposits and withdrawals. In order for the Secretary to provide his or her consent for constructive deposit and withdrawal treatment, the applicant must include a written request with the application and provide sufficient supporting data to enable the Secretary to evaluate the request. This written request must be submitted no later than the "Extension Period" for that party's initial tax year.

(2) [Reserved]

(b) *Constructive deposits and withdrawals (after the Agreement effective date).* The Secretary shall not permit constructive deposits or withdrawals after the effective date of an Agreement. Deposits made after the effective date of an Agreement must be physically deposited into a dedicated CCF account.

(c) *First tax year for which an Agreement is effective.* In order for an Agreement to be effective for any applicant's "Tax Year," the written application must be submitted to the Secretary before the end of the "Filing Period" or "Extension Period" for that tax year, whichever applies. If the written application is received by the Secretary, after the end of the "Filing Period" or "Extension Period," whichever applies, then the Agreement will be first effective for the next succeeding "Tax Year."

(1) It is in the applicant's best interest to submit his or her written application at least 45 days in advance of the end of his or her tax due date. If the written application is submitted too close to the tax due date, and the Secretary is not ultimately able to execute the Agreement, the applicant must bear the burden of negotiating with the Internal Revenue Service for relief. The Secretary shall regard any penalties related to this denied application as due to the applicant's failure to apply for an Agreement in a timely manner.

(2) [Reserved]

(d) *Ratification of withdrawals, as qualified, made without first having obtained Secretary's prior consent.* Any withdrawals made after the effective date of an Agreement without the Secretary's consent are automatically

non-qualified withdrawals, unless the Secretary subsequently consents to them by ratification.

(1) The Secretary may ratify, as qualified, any withdrawal made without the Secretary's prior consent, provided the withdrawal would have resulted in the Secretary's consent had it been requested before withdrawal.

(2) The Secretary may issue his or her retroactive consent, if appropriate, as work priorities permit. However, if the Secretary is unable to issue retroactive consent for withdrawals made without his or her consent, then those withdrawals, and any associated penalties, will be deemed due to the party's failure to apply in a timely manner.

(3) It is recommended that a party submit his or her request for withdrawal at least 45 days in advance of the expected date of withdrawal. Withdrawals made without the Secretary's consent, in reliance on obtaining the Secretary's consent, are made purely at a party's own risk. Should any withdrawal made without the Secretary's consent prove, for any reason, to be one which the Secretary will not or cannot consent to ratify, then the result will be an unqualified withdrawal and/or an involuntary termination of the Agreement.

(4) Should a party withdraw CCF funds for a project not previously deemed an eligible Schedule B objective without having first obtained the Secretary's consent, the Secretary may entertain an application to amend the Agreement's Schedule B objectives as the prerequisite to consenting by ratification to the withdrawal.

(5) Redeposit of any withdrawals made without the Secretary's consent, and for which such consent is not subsequently given (either by ratification or otherwise), shall not be permitted. If the non-qualified withdrawal adversely affects the Agreement's general status the Secretary may terminate the Agreement.

§ 259.5 Maximum deposit amounts and time to deposit.

(a) Other than the maximum annual ceilings established by the Act, the Secretary shall not establish an annual ceiling. However, deposits can no

longer be made once a party has deposited 100 percent of the anticipated cost of all Schedule B objectives unless the Agreement is then amended to establish additional Schedule B objectives.

(b) Ordinarily, the Secretary shall permit deposits to accumulate prior to commencement of any given Schedule B objective for a maximum of ten years. However, at the Secretary's sole discretion and based on good and sufficient cause shown, the time period may be extended.

§ 259.6 Termination of inactive and zero balance accounts.

(a) If a Schedule B objective has not commenced within 10 years from the date the Agreement was established, and has not been extended by written approval of the Secretary, the Agreement is considered inactive and subject to termination.

(b) If the account balance of all depositories of an Agreement is zero dollars 10 years after the date it was established, and has not been extended through amendment, the Agreement is considered inactive and subject to termination unless its Schedule B objective has commenced.

(c) A certified letter will be sent to holders of Agreements identified for termination informing them that the agreement will terminate 60 days after the date of the letter unless the deficiencies identified in the letter are addressed.

§ 259.7 Annual deposit and withdrawal reports required.

(a) The Secretary will require from each party an annual deposit and withdrawal report for each CCF depository. Failure to submit such reports may be cause for involuntary termination of the party's Agreement.

(1) A final deposit and withdrawal report at the end of the tax year, which shall be submitted not later than 30 days after expiration of the due date, for filing the party's Federal income tax return. The report must be made on a form prescribed by the Secretary using a separate form for each CCF depository.

(2) Each report must bear a certification that the deposit and withdrawal information given includes all annual

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deposit and withdrawal activity for each CCF depository. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity.

(b) The Secretary, at his or her discretion, may, after due notice, disqualify withdrawals and/or involuntarily terminate the Agreement for the participant's failure to submit the required annual deposit and withdrawal reports.

(c) Additionally, each party shall submit, not later than 30 days after expiration of the party's tax due date, a copy of the party's Federal Income Tax Return filed with IRS for the preceding tax year. Failure to submit the Federal Income Tax Return shall, after due notice, be cause for the same adverse action specified in paragraph (b) of this section.

§ 259.8 CCF accounts.

(a) *General.* Each CCF account in a scheduled depository shall have an account number, which must be reflected on the reports required by § 259.7. All CCF accounts shall be reserved only for CCF transactions. There shall be no intermingling of CCF and non-CCF transactions and there shall be no pooling of 2 or more CCF accounts without the prior consent of the Secretary. Safe deposit boxes, safes, or the like shall not be eligible CCF depositories without the Secretary's consent, which shall be granted solely at his or her discretion.

(b) *Assignment.* The use of funds held in a CCF depository for transactions in the nature of a countervailing balance, compensating balance, pledge, assignment, or similar security arrangement shall constitute a material breach of the Agreement unless prior written consent of the Secretary is obtained.

(c) *Depositories.* Section 53506(a) of the Act provides that amounts in a CCF account must be kept in a depository or depositories specified in the Agreements and be subject to such trustee or other fiduciary requirements as the Secretary may require. Unless otherwise specified in the Agreement, the party may select the type or types of accounts in which the assets of the Fund may be deposited.

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§ 259.9 Conditional consents to withdrawal qualification.

The Secretary may conditionally consent to the qualification of a withdrawal. This consent is conditioned upon the timely submission, to the Secretary, of the items requested by the Secretary in the withdrawal approval letter. Failure to provide these items in a timely manner, and after due notice, will result in nonqualification of the withdrawal and/or involuntary termination of the Agreement.

§ 259.10 Miscellaneous.

(a) Wherever the Secretary prescribes time constraints, the postmark date shall control if mailed. If a private delivery service is used, including Federal Express or United Parcel Service, the date listed on the label shall control. Submission of CCF transactions by email or facsimile is only allowable when an original signature is not required.

(b) All CCF information received by the Secretary shall be held strictly confidential to the extent permitted by law, except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the identity of the fund holder.

(c) While recognizing that precise regulations are necessary in order to treat similarly situated parties similarly, the Secretary also realizes that precision in regulations can sometimes cause inequitable effects to result from unavoidable, unintended, or minor discrepancies between the regulations and the circumstances they attempt to govern. The Secretary will, consequently, at his or her discretion, as a matter of privilege and not as a matter of right, attempt to afford relief to parties where literal application of the purely procedural, as opposed to substantive, aspects of these regulations would otherwise work an inequitable hardship. This privilege will be sparingly granted and no party should act in reliance on its being granted.

(d) These §§ 259.1 through 259.10 are applicable to all Agreements first entered into (or amended) on or after the date these sections are adopted.

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(e) These §§259.1 through 259.10 are specifically incorporated in all Agreements existing prior to the date these sections are adopted.