To provide the appropriate level of customer protection, the relief was limited to conduct directed towards certain institutions and governmental entities as described in Regulation 4.7.[3] In addition, the Commission stated that any person who established a fixed location in the U.S. for the solicitation or acceptance of business, or whose marketing activities involved long or repeated periods within the U.S. that can be characterized as a *de facto* fixed presence, would be disqualified from Regulation 30.10 relief and would be required to register with the Commission. On August 4, 1994, the Commission issued an order expanding the category of persons to whom designated firms may direct limited marketing conduct to include all ''accredited investors,'' as that term is defined in section 230.501(a) of Securities and Exchange Commission Regulation D issued pursuant to the Securities Act of 1933.[4] The orders issued by the Commission in 1992 and 1994 are collectively known as the Limited Marketing Orders.

Pursuant to the terms set forth therein, a foreign regulatory or self-regulatory organization must obtain a written confirmation from the Commission that the Limited Marketing Orders apply to firms in its jurisdiction with confirmed Regulation 30.10 relief. On March 23, 2007, the Commission issued an order granting relief under Regulation 30.10 authorizing designated members of TAIFEX to solicit and accept orders from customers located in the U.S. for otherwise permitted transactions on TAIFEX.[5] By letter dated April 16, 2008, counsel for TAIFEX petitioned the Commission to confirm that designated TAIFEX members may engage in limited marketing conduct with respect to foreign futures or options contracts within the U.S. through their employees or other representatives, as set forth in the Limited Marketing Orders.

As previously stated, the Commission believes that certain contacts between firms with confirmed Regulation 30.10 relief and certain sophisticated customers located in the U.S., who have a high degree of sophistication and financial resources, would not be contrary to the public interest. Accordingly, the Commission has determined to issue this order permitting designated TAIFEX members to engage in limited marketing conduct with respect to foreign futures or option contracts within the U.S. through their employees or other representatives, as set forth in the Limited Marketing Orders.

Prior to engaging in any marketing activity in the U.S., a TAIFEX member must obtain confirmation of Regulation 30.10 relief from the National Futures Association (''NFA'').[6] Any TAIFEX member operating pursuant to this order will remain subject to all of the terms and conditions set forth in the Limited Marketing Orders and the TAIFEX Order. In particular, the Commission notes that every order granting Regulation 30.10 relief has required a firm seeking relief under such an order to consent to jurisdiction in the U.S. under the Commodity Exchange Act and file with NFA a valid and binding appointment of an agent in the U.S. for service of process.

Dated: July 3, 2008.

By the Commission

David Stawick,

Secretary of the Commission.

[FR Doc. E8–15606 Filed 7–8–08; 8:45 am]

BILLING CODE 6351–01–P

[3] The order limited the relief to marketing conduct directed towards persons whose description in terms of sophistication and assets was derived generally from the definition of ''qualified eligible participant'' (''QEP''), as defined in Regulation 4.7(a)(1)(ii). In 2000, the Commission streamlined Regulation 4.7 by combining into a single definition those persons formerly defined as QEPs and ''qualified eligible clients'' (''QECs''). As a result of the revision, both QEPs and QECs are termed ''qualified eligible persons.'' 65 FR 47848, 47849–50 (Aug. 4, 2000).

[4] 59 FR 42156 (Aug. 17, 1994).

[5] 72 FR 14413 (Mar. 28, 2007) (''TAIFEX Order'').

[6] The Commission has delegated to NFA certain responsibilities, including the responsibility to receive requests for confirmation of Regulation 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Regulation 30.10 Order and to grant exemptive relief from registration to qualifying firms. 62 FR 47792, 47793 (Sept. 11, 1997).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9412]

RIN 1545–BF06

Election To Expense Certain Refineries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the election to expense qualified refinery property under section 179C of the Internal Revenue Code, and affects taxpayers who own refineries located in the United States. These temporary regulations reflect changes to the law made by the Energy Policy Act of 2005. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on July 9, 2008.

Applicability Date: For dates of applicability, see § 1.179C–1T(g).

FOR FURTHER INFORMATION CONTACT: Philip Tiegerman (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number (1545–2103). Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR part 1 to provide regulations under section 179C of the Internal Revenue Code (Code). Section 179C was added to the Code by section 1323(a) of the Energy Policy Act of 2005, Public Law 109–58 (119 Stat. 594) to encourage the construction of new refineries and the expansion of existing refineries to enhance the nation's refinery capacity.

Section 179C(a) allows a taxpayer to elect to deduct 50 percent of the cost of any qualified refinery property. The remaining 50 percent of the taxpayer's qualifying expenditures are generally recovered under section 168 and section 179B, if applicable. The provisions of section 179C apply to qualified refinery property placed in service by a taxpayer after August 8, 2005, and before January 1, 2012. All costs properly capitalized into qualified refinery property are includable in the cost of the qualified refinery property.

Explanation of Provisions

Scope

The temporary regulations restate the provisions of section 179C and provide guidance on certain issues related to electing and determining the deduction allowable under section 179C(a). Specifically, the temporary regulations provide guidance on making elections under section 179C(a) and (g), and the associated reporting requirements contained in section 179C(h). Further, the temporary regulations provide guidance on determining and substantiating the production capacity requirement, as well as guidance addressing the availability of the deduction in certain sale-leaseback transactions. The temporary regulations generally interpret the statute in a manner consistent with existing statutory and regulatory principles and recognize that taxpayers have had to address section 179C issues for prior tax years in the absence of regulations. While these temporary regulations generally apply to taxable years ending on or after July 9, 2008 and terminate three years after the date they are published in the **Federal Register**, the temporary regulations may be applied by taxpayers to taxable years ending prior to July 9, 2008. These temporary regulations also provide procedures for claiming the section 179C(a) deduction for taxable years ending prior to July 9, 2008.

Property Eligible for the Section 179C Deduction

Under section 179C(c), property must meet several requirements to be considered qualified refinery property eligible for the section 179C(a) deduction. These requirements include the following: (1) The property must be part of a qualified refinery; (2) the original use of the property must commence with the taxpayer; (3) the property must be placed in service within a specified time period; (4) the property must meet certain production capacity requirements; (5) the property must meet all applicable environmental laws; and (6) the property must meet certain construction and written binding contract requirements.

Description of Qualified Refinery

Section 179C(d) provides that a qualified refinery is a refinery located in the United States, whose primary purpose is to process liquid fuel from crude oil or qualified fuels. Section 179C(f) provides that refinery property is ineligible for the section 179C(a) deduction if the primary purpose of the refinery is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility; or if the refinery property is built solely to comply with consent decrees or projects mandated by Federal, state, or local governments.

Original Use Requirement

Pursuant to the requirements under section 179C(c)(1)(A), the temporary regulations provide that the original use of qualified refinery property must commence with the taxpayer. The temporary regulations define original use as the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer, and provide certain exceptions for taxpayers that engage in certain sale-leaseback transactions.

The temporary regulations provide that if a taxpayer incurs capital expenditures to recondition or rebuild property acquired or owned by the taxpayer, those capital expenditures will meet the original use requirement, and may qualify for deduction under section 179C(a). Consistent with the statute, the temporary regulations clarify that reconditioned or rebuilt property acquired by a taxpayer does not satisfy the original use requirement and is not qualified refinery property. The question of whether property is reconditioned or rebuilt property is a question of fact.

Consistent with section 179C(c)(2), the temporary regulations also provide an exception to the original use requirement for certain sale-leaseback transactions. If property is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer, and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the original use of that property is considered to have commenced with the taxpayer-lessor.

Placed in Service Requirements

Section 179C(c)(1)(B) provides that qualified refinery property is property that is placed in service by the taxpayer after August 8, 2005, and before January 1, 2012.

Consistent with section 179C(c)(2), the temporary regulations provide that, for certain sale-leaseback transactions, if property is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the new property is treated as originally placed in service by the taxpayer-lessor not earlier than the date on which the property is used by the lessee under the sale-leaseback.

Production Capacity Requirements

The production capacity requirement of section 179C(c)(1)(C) and (e) is met if any portion of qualified refinery property: (1) Enables an existing qualified refinery to increase its total volume output, determined without regard to asphalt or lube oil, by 5 percent or more on an average daily basis; or (2) enables the existing qualified refinery to increase the percentage of total throughput attributable to processing qualified fuels to a rate that is at least 25 percent of total throughput on an average daily basis. Any reasonable method may be used to determine the appropriate baseline for measuring capacity increases and to demonstrate and substantiate that the capacity of the existing qualified refinery has been sufficiently increased. For example, the average annual output over a number of normal production years may provide a reasonable baseline for measuring an increase in capacity. The temporary regulations confirm that the existing qualified refinery is the refinery prior to the installation of qualified refinery property. The temporary regulations also confirm that the question of whether the qualified refinery property has sufficiently enabled output or throughput increases is properly evaluated as of the placed-in-service date of the qualified refinery property.

Any Applicable Environmental Laws Requirement

Section 179C(c)(1)(D) provides that qualified refinery property must meet all applicable Federal, state, and local environmental laws. However, the environmental compliance requirement applies only with respect to the laws in effect on the date that qualified refinery property is placed in service after August 8, 2005, and before January 1, 2012. Furthermore, a refinery's failure to meet applicable environmental laws with respect to a portion of the refinery

that was in service prior to August 8, 2005 will not disqualify the taxpayer from making the election under section 179C(a) with respect to the otherwise qualifying refinery property.

Section 179C(c)(1)(D) and (c)(3) provides that the property must comply with the Clean Air Act, notwithstanding any waiver received by the taxpayer under that Act.

Consistent with section 179C(f)(2), the temporary regulations provide that the section 179C(a) election is not available for identifiable refinery property built solely to comply with state, locally or Federally mandated projects or consent decrees. For example, a taxpayer may not elect to expense the cost of a scrubber necessary for the refinery to comply with the Clean Air Act, even if the scrubber is installed as part of a larger project, if the scrubber itself does not otherwise enable an increase in production capacity.

Construction and Written Binding Contract Requirements

Under section 179C(c)(1), qualified refinery property will include otherwise qualified property that is placed in service by the taxpayer after August 8, 2005, and before January 1, 2012, but only if no written binding contract for the construction of the property was in effect on or before June 14, 2005. Pursuant to section 179C(c)(1)(F), a taxpayer must take some action constituting a construction commitment before January 1, 2008. To meet this test, any of the following three acts is sufficient: (1) Entering into a written binding construction contract before January 1, 2008; (2) placing the property in service before January 1, 2008; or (3) in the case of self-constructed property, starting self-construction after June 14, 2005, and before January 1, 2008.

Consistent with existing section 168(k) principles, in the case of self-constructed property, the temporary regulations provide that construction begins when physical work (not including preliminary activities such as planning or designing, securing financing, exploring, or researching) of a significant nature begins. The determination of when work of a significant nature begins depends on the facts and circumstances. *Cf.* Treas. Regs. § 1.168(k)–1(b)(4)(iii)(B). Recognizing that taxpayers have had to make some determinations as to whether self-constructed property could qualify for the section 179C deduction in the absence of regulations, the temporary regulations provide that physical work of a significant nature will be deemed to have begun before January 1, 2008 for purposes of section 179C if the taxpayer performed some physical work before January 1, 2008 (such as clearing a site or excavation) and has performed physical work of a significant nature (as defined in Treas. Regs. § 1.168(k)–1(b)(4)(iii)(B)) before October 7, 2008.

Elections

Section 179C provides two elections. The first election is provided under section 179C(a), which allows a taxpayer to elect to deduct an amount equal to 50 percent of the costs paid or incurred by the taxpayer for qualified refinery property in the year the property is placed in service. The election generally must be made by the due date (including extensions) for filing the taxpayer's Federal income tax return for the taxable year in which the qualified refinery property is placed in service by the taxpayer. The taxpayer must make the election by entering the deduction claimed at the appropriate place on the taxpayer's Federal income tax return.

A taxpayer that did not claim the section 179C(a) deduction on a Federal income tax return filed for a taxable year ending prior to July 9, 2008 but wishes to claim the deduction for that taxable year may do so by properly making a section 179C(a) election under these proposed regulations on an amended return filed by December 31, 2008.

In general, once an election is made under section 179C(a), it may not be revoked except with the written consent of the Commissioner. However, these temporary regulations provide that a taxpayer is deemed to have requested and been granted consent to revoke an election under section 179C(a) if the taxpayer revokes the election before the revocation deadline. The revocation deadline is the later of December 31, 2008, or 24 months after the due date (including extensions) of the taxpayer's Federal income tax return for the taxable year for which the election applies. The taxpayer revokes the election by attaching a statement to an amended return for the taxable year for which the election applies. A taxpayer is not permitted to revoke an election under section 179C(a) after the revocation deadline. The revocation deadline may not be extended under § 301.9100–1.

The second election is provided in section 179C(g), which allows a taxpayer that is a subchapter T cooperative (cooperative taxpayer) and that has a subchapter T cooperative as one or more of its owners (cooperative owner(s)) to elect to allocate all or a portion of the deduction allowable under section 179C(a) for the taxable year to the cooperative owner(s). If a cooperative taxpayer makes an election under section 179C(g), the temporary regulations provide that this allocation is equal to the cooperative owner's ratable share of the total amount allocated, determined on the basis of the cooperative owner's ownership interest in the cooperative taxpayer at the beginning of the cooperative taxpayer's taxable year. Under the temporary regulations, the section 179C(g) election must be made by the due date (including extensions) for filing the cooperative taxpayer's original Federal income tax return for the taxable year for which the section 179C(a) election is made by the cooperative taxpayer. Under the temporary regulations, a cooperative taxpayer is required to make the election under section 179C(g) by attaching a statement to the cooperative taxpayer's Federal income tax return providing the name and taxpayer identification number of the cooperative taxpayer, the amount of the deduction allowable to the cooperative taxpayer, the name and taxpayer identification number of each cooperative owner, and the amount of the deduction allocated to each of the cooperative owner(s). Consistent with section 179C(g)(3), the temporary regulations also require the cooperative taxpayer to notify any cooperative owner in writing, and on Form 1099–PATR, ''Taxable Distributions Received from Cooperatives,'' of the amount of the section 179C(a) deduction that is apportioned to that cooperative owner. The written notice must be provided to the cooperative owner(s) before the due date (including extensions) of the cooperative taxpayer's original Federal income tax return.

Consistent with section 179C(g)(2), once made, an election under section 179C(g) may not be revoked. Consequently, a taxpayer that has made an irrevocable section 179C(g) election may not elect to revoke its section 179C(a) election.

Reporting Requirements

Section 179C(h) provides that any taxpayer making a section 179C(a) election must submit a statement in order to claim the section 179C(a) deduction. The temporary regulations provide that in order to claim the section 179C(a) deduction on a tax return filed after July 23, 2008, the taxpayer must attach the statement to the taxpayer's Federal income tax return for the taxable year in which the qualified refinery property is placed in service by the taxpayer. The taxpayer must identify the name and location of the qualified refinery property and provide an affirmation that the

taxpayer's refinery property meets the production capacity requirements of section 179C(e). The taxpayer also must provide the total cost basis of the qualified refinery property and the depreciation treatment of the capitalized portion of the qualified refinery property. If it has not already filed the statement, a taxpayer that has claimed the section 179C(a) deduction on a Federal income tax return filed prior to July 23, 2008, must attach a statement to its next Federal income tax return for each taxable year in which the taxpayer claimed the deduction but did not file a statement.

Effective/Applicability Date

These temporary regulations generally apply to taxable years ending on or after July 9, 2008, and terminate on July 1, 2011. However, the proposed regulations may be relied upon by taxpayers for taxable years ending prior to July 9, 2008.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Philip Tiegerman, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.179C–1T is added to read as follows:

§ 1.179C–1T Election to expense certain refineries (temporary).

(a) *Scope and definitions*—(1) *Scope.* This section provides the rules for determining the deduction allowable under section 179C(a) for the cost of any qualified refinery property. The provisions of this section apply only to a taxpayer that elects to apply section 179C in the manner prescribed under paragraph (d) of this section.

(2) *Definitions.* For purposes of section 179C and this section, the following definitions apply:

(i) *Applicable environmental laws* are any applicable Federal, state, or local environmental laws.

(ii) *Qualified fuels* has the meaning set forth in section 45K(c).

(iii) *Cost* is the unadjusted depreciable basis (as defined in § 1.168(b)–1(a)(3), but without regard to the reduction in basis for any portion of the basis the taxpayer properly elects to treat as an expense under section 179C and this section) of the property.

(iv) *Throughput* is a volumetric rate measuring the flow of crude oil or qualified fuels processed over a given period of time, typically referenced on the basis of barrels per calendar day.

(v) *Barrels per calendar day* is the amount of fuels that a facility can process under usual operating conditions, expressed in terms of capacity during a 24-hour period and reduced to account for down time and other limitations.

(vi) *United States* has the same meaning as that term is defined in section 7701(a)(9).

(b) *Qualified refinery property*—(1) *In general.* Qualified refinery property is any property that meets the requirements set forth in paragraphs (b)(2) through (b)(7) of this section.

(2) *Description of qualified refinery property*—(i) *In general.* Property that comprises any portion of a qualified refinery may be qualified refinery property. For purposes of section 179C and this section, a qualified refinery is any refinery located in the United States that is designed to serve the primary purpose of processing crude oil or qualified fuels.

(ii) *Nonqualified refinery property.* Refinery property is not qualified refinery property for purposes of this paragraph (b)(2) if—

(A) The primary purpose of the refinery property is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility; or

(B) The refinery property is built solely to comply with consent decrees or projects mandated by Federal, state or local governments.

(3) *Original use*—(i) *In general.* For purposes of the deduction allowable under section 179C(a), refinery property will meet the requirements of this paragraph (b)(3) if the original use of the property commences with the taxpayer. Except as provided in paragraph (b)(3)(ii) of this section, original use means the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. Thus, if a taxpayer incurs capital expenditures to recondition or rebuild property acquired or owned by the taxpayer, only the capital expenditures incurred by the taxpayer to recondition or rebuild the property acquired or owned by the taxpayer satisfy the original use requirement. However, the cost of reconditioned or rebuilt property acquired by a taxpayer does not satisfy the original use requirement. Whether property is reconditioned or rebuilt property is a question of fact. For purposes of this paragraph (b)(3)(i), acquired or self-constructed property that contains used parts will be treated as reconditioned or rebuilt only if the cost of the used parts is more than 20 percent of the total cost of the property.

(ii) *Sale-leaseback.* If any new portion of a qualified refinery is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the taxpayer-lessor is considered the original user of the property.

(4) *Placed-in-service date*—(i) *In general.* Refinery property will meet the requirements of this paragraph (b)(4) if the property is placed in service by the taxpayer after August 8, 2005, and before January 1, 2012.

(ii) *Sale-leaseback.* If a new portion of refinery property is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the property is treated as originally placed in service by

the taxpayer-lessor not earlier than the date on which the property is used by the lessee under the leaseback.

(5) *Production capacity*—(i) *In general.* Refinery property is considered qualified refinery property if—

(A) It enables the existing qualified refinery to increase the total volume output, determined without regard to asphalt or lube oil, by at least five percent on an average daily basis; or

(B) It enables the existing qualified refinery to increase the percentage of total throughput attributable to processing qualified fuels to a rate that is at least 25 percent of total throughput on an average daily basis.

(ii) *When production capacity is tested.* The production capacity requirement of this paragraph (b)(5) is determined as of the date the property is placed in service by the taxpayer. Any reasonable method may be used to determine the appropriate baseline for measuring capacity increases and to demonstrate and substantiate that the capacity of the existing qualified refinery has been sufficiently increased.

(iii) *Multi-stage projects.* In the case of multi-stage projects, a taxpayer must satisfy the reporting requirements of paragraph (f)(2) of this section, sufficient to establish that the production capacity requirements of this paragraph (b)(5) will be met as a result of the taxpayer's overall plan.

(6) *Applicable environmental laws*—(i) *In general.* The environmental compliance requirement applies only with respect to refinery property, or any portion of refinery property, that is placed in service after August 8, 2005. A refinery's failure to meet applicable environmental laws with respect to a portion of the refinery that was in service prior to August 8, 2005 will not disqualify a taxpayer from making the election under section 179C(a) with respect to otherwise qualifying refinery property.

(ii) *Waiver under the Clean Air Act.* Refinery property must comply with the Clean Air Act, notwithstanding any waiver received by the taxpayer under that Act.

(7) *Construction of property*—(i) *In general.* Qualified property will meet the requirements of this paragraph (b)(7) if—

(A) The property is placed in service by the taxpayer after August 8, 2005, and before January 1, 2012; and

(B) No written binding contract for the construction of the property was in effect before June 14, 2005.

(ii) *Definition of binding contract*—(A) *In general.* A contract is binding only if it is enforceable under state law against the taxpayer or a predecessor, and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, a contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages to a specified amount. In determining whether a contract limits damages, the fact that there may be little or no damages because the contract price does not significantly differ from fair market value will not be taken into account.

(B) *Conditions.* A contract is binding even if subject to a condition, as long as the condition is not within the control of either party or the predecessor of either party. A contract will continue to be binding if the parties make insubstantial changes in its terms and conditions, or if any term is to be determined by a standard beyond the control of either party. A contract that imposes significant obligations on the taxpayer or a predecessor will be treated as binding, notwithstanding the fact that insubstantial terms remain to be negotiated by the parties to the contract.

(C) *Options.* An option to either acquire or sell property is not a binding contract.

(D) *Supply agreements.* A binding contract does not include a supply or similar agreement if the payment amount and design specification of the property to be purchased have not been specified.

(E) *Components.* A binding contract to acquire one or more components of a larger property will not be treated as a binding contract to acquire the larger property. If a binding contract to acquire a component does not satisfy the requirements of this paragraph (b)(7), the component is not qualified refinery property.

(iii) *Self-constructed property*—(A) *In general.* Except as provided in paragraph (b)(7)(iii)(B) of this section, if a taxpayer manufactures, constructs, or produces property for use by the taxpayer in its trade or business (or for the production of income by the taxpayer), the construction of property rules in this paragraph (b)(7) are treated as met for qualified refinery property if the taxpayer began manufacturing, constructing, or producing the property after June 14, 2005, and before January 1, 2008. Property that is manufactured, constructed or produced for the taxpayer by another person under a written binding contract (as defined in paragraph (b)(7)(ii) of this section) that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business (or for the production of income) is considered to be manufactured, constructed, or produced by the taxpayer.

(B) *When construction begins.* For purposes of this paragraph (b)(7)(iii), construction of property generally begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature begins depends on the facts and circumstances. Nevertheless, physical work of a significant nature will be deemed to have begun for purposes of this paragraph (b)(7)(iii)(B), and the construction of the property will be deemed to have met the requirements of paragraph (b)(7)(iii)(A) of this section, if the taxpayer performed some physical work before January 1, 2008 (such as clearing a site or excavation) and has performed physical work of a significant nature (as defined in Treas. Regs. § 1.168(k)–1(b)(4)(iii)(B)) before October 7, 2008.

(C) *Components of self-constructed property*—(*1*) *Acquired components.* If a binding contract (as defined in paragraph (b)(7)(ii) of this section) to acquire a component of self-constructed property is in effect on or before June 14, 2005, the component does not satisfy the requirements of paragraph (b)(7)(i) of this section, and is not qualified refinery property. However, if construction of the self-constructed property begins after June 14, 2005, the self-constructed property may be qualified refinery property if it meets all other requirements of section 179C and this section (including paragraph (b)(7)(i) of this section), even though the component is not qualified refinery property. If the construction of self-constructed property begins before June 14, 2005, neither the self-constructed property nor any component related to the self-constructed property is qualified refinery property. If the component was acquired before January 1, 2008, but the construction of the self-constructed property begins after December 31, 2007, the component may qualify as qualified refinery property even if the self-constructed property is not qualified refinery property.

(*2*) *Self-constructed components.* If the manufacture, construction, or production of a component fails to meet any of the requirements of paragraph (b)(7)(iii) of this section, the component is not qualified refinery property. However, if the manufacture, construction, or production of a component fails to meet any of the requirements provided in paragraph (b)(7)(iii) of this section, but the

construction of the self-constructed property begins after June 14, 2005, the self-constructed property may qualify as qualified refinery property if it meets all other requirements of section 179C and this section (including paragraph (b)(7)(i) of this section). If the construction of the self-constructed property begins before June 14, 2005, neither the self-constructed property nor any components related to the self-constructed property are qualified refinery property. If the component was self-constructed before January 1, 2008, but the construction of the self-constructed property begins after December 31, 2007, the component may qualify as qualified refinery property, although the self-constructed property is not qualified refinery property.

(c) *Computation of expense deduction for qualified refinery property.* In general, the allowable deduction under paragraph (d) of this section for qualified refinery property is determined by multiplying by 50 percent the cost of the qualified refinery property paid or incurred by the taxpayer.

(d) *Election*—(1) *In general.* A taxpayer may make an election to deduct as an expense 50 percent of the cost of any qualified refinery property. A taxpayer making this election takes the 50 percent deduction for the taxable year in which the qualified refinery property is placed in service.

(2) *Time and manner for making election*—(i) *Time for making election.* An election specified in this paragraph (d) generally must be made not later than the due date (including extensions) for filing the original Federal income tax return for the taxable year in which the qualified refinery property is placed in service by the taxpayer. However, a taxpayer that did not claim the section 179C(a) deduction on a Federal income tax return filed for a taxable year ending prior to July 9, 2008 but wishes to claim the deduction for that taxable year may do so by properly making a section 179C(a) election under this paragraph (d) on an amended return filed by December 31, 2008.

(ii) *Manner of making election.* The taxpayer makes an election under section 179C(a) and this paragraph (d) by entering the amount of the deduction at the appropriate place on the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service (or on the amended return, as provided in paragraph (d)(2)(i) of this section), and attaching a report as specified in paragraph (f) of this section to the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service (or on the amended return, as provided in paragraph (d)(2)(i) of this section).

(3) *Revocation of election*—(i) *In general.* An election made under section 179C(a) and this paragraph (d), and any specification contained in such election, may not be revoked except with the consent of the Commissioner of Internal Revenue.

(ii) *Revocation prior to the revocation deadline.* A taxpayer is deemed to have requested, and to have been granted, consent of the Commissioner to revoke an election under section 179C(a) and this paragraph (d) if the taxpayer revokes the election before the revocation deadline. The revocation deadline is the later of December 31, 2008, or 24 months after the due date (including extensions) for filing the taxpayer's Federal income tax return for the taxable year for which the election applies. An election under section 179C(a) and this paragraph (d) is revoked by attaching a statement to an amended return for the taxable year for which the election applies. The statement must specify the name and address of the refinery for which the election applies and the amount deducted on the taxpayer's original Federal income tax return for the taxable year for which the election applies.

(iii) *Revocation after the revocation deadline.* An election under section 179C(a) and this paragraph (d) may not be revoked after the revocation deadline. The revocation deadline may not be extended under § 301.9100–1.

(iv) *Revocation by cooperative taxpayer.* A taxpayer that has made an election to allocate the section 179C deduction to cooperative owners under section 179C(g) and paragraph (e) of this section may not revoke its election under section 179C(a).

(e) *Election to allocate section 179C deduction to cooperative owners*—(1) *In general.* If a cooperative taxpayer makes an election under section 179C(g) and this paragraph (e), the cooperative taxpayer may elect to allocate all, some, or none of the deduction allowable under section 179C(a) for that taxable year to the cooperative owner(s). This allocation is equal to the cooperative owner(s)' ratable share of the total amount allocated, determined on the basis of each cooperative owner's ownership interest in the cooperative taxpayer. For purposes of this section, a cooperative taxpayer is an organization to which part I of subchapter T applies, and in which another organization to which part I of subchapter T applies (cooperative owner) directly holds an ownership interest. No deduction shall be allowed under section 1382 for any amount allocated under this paragraph (e).

(2) *Time and manner for making election*—(i) *Time for making election.* A cooperative taxpayer must make the election under section 179(g) and this paragraph (e) by the due date (including extensions) for filing the cooperative taxpayer's original Federal income tax return for the taxable year to which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies.

(ii) *Manner of making election.* An election under this paragraph (e) is made by attaching to the cooperative taxpayer's timely filed Federal income tax return for the taxable year (including extensions) to which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies a statement providing the following information:

(A) The name and taxpayer identification number of the cooperative taxpayer.

(B) The amount of the deduction allowable to the cooperative taxpayer for the taxable year to which the election under section 179C(a) and paragraph (d) of this section applies.

(C) The name and taxpayer identification number of each cooperative owner to which the cooperative taxpayer is allocating all or some of the deduction allowable.

(D) The amount of the allowable deduction that is allocated to each cooperative owner listed in paragraph (e)(2)(ii)(C) of this section.

(3) *Written notice to owners.* If any portion of the deduction allowable under section 179C(a) is allocated to a cooperative owner, the cooperative taxpayer must notify the cooperative owner of the amount of the deduction allocated to the cooperative owner in a written notice, and on Form 1099–PATR, ''Taxable Distributions Received from Cooperatives.'' This notice must be provided on or before the due date (including extensions) of the cooperative taxpayer's original Federal income tax return for the taxable year for which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies.

(4) *Irrevocable election.* A section 179C(g) election, once made, is irrevocable.

(f) *Reporting requirement*—(1) *In general.* A taxpayer may not claim a deduction under section 179C(a) for any taxable year unless the taxpayer files a report with the Secretary containing information with respect to the operation of the taxpayer's refineries.

(2) *Information to be included in the report.* The taxpayer must specify—

(i) The name and address of the refinery;

(ii) Under which production capacity requirement under section 179C(e) and paragraph (b)(5)(i)(A) and (B) of this section the taxpayer's qualified refinery qualifies;

(iii) Whether the refinery is qualified refinery property under section 179C(d) and paragraph (b)(2) of this section, sufficient to establish that the primary purpose of the refinery is to process liquid fuel from crude oil or qualified fuels.

(iv) The total cost basis of the qualified refinery property at issue for the taxpayer's current taxable year; and

(v) The depreciation treatment of the capitalized portion of the qualified refinery property.

(3) *Time and manner for submitting report*—(i) *Time for submitting report.* The taxpayer is required to submit the report specified in this paragraph (f) not later than the due date (including extensions) of the taxpayer's Federal income tax return for the taxable year in which the qualified refinery property is placed in service. A taxpayer that has made a section 179C(a) election for a prior taxable year by claiming the section 179C(a) deduction on a Federal income tax return filed prior to July 23, 2008, but has not already filed a report for that year, must attach a report to its next Federal income tax return for each taxable year the taxpayer claimed the deduction but did not file a report.

(ii) *Manner of submitting report.* The taxpayer must attach the report specified in this paragraph (f) to the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service.

(g) *Effective/applicability date.* This section is applicable for taxable years ending on or after July 9, 2008.

(h) *Expiration date.* The applicability of this section expires on or before July 1, 2011.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 4.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
1.179C–1T	1545–2103
* * * * *	

Approved: July 3, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 08–1423 Filed 7–3–08; 3:33 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2008–0031]

RIN 1625–AA08

Regattas and Marine Parades; Great Lake Annual Marine Events

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending special local regulations for annual regattas and marine parades in the Captain of the Port Lake Michigan zone. This rule will place restrictions on vessel movement in portions of the Calumet Sag Channel and the Little Calumet River during the annual Southland Regatta. The Southland Regatta is a university rowing race that will be held annually during the first weekend of November. This rule is intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas or marine parades.

DATES: This rule is effective August 8, 2008.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG–2008–0031 and are available online at *http:www.regulations.gov.* This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the U.S. Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Commander Kimber Bannan, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI, 414–747–7159. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 6, 2008, we published a notice of proposed rulemaking (NPRM) entitled Regattas and Marine Parades; Great Lake Annual Marine Events in the **Federal Register** (73 FR 6859). We received one letter commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

This rule will add a subpart to 33 CFR Part 100 that will place restrictions on the portions of the Calumet Sag Channel and the Little Calumet River during the annual Southland Regatta. The Southland Regatta is a university rowing race that will be held annually during the first weekend of November.

Discussion of Comments and Changes

One comment was received regarding this rule. The comment endorsed the rule stating that it would enable the Southland Regatta contestants to focus on the competition without the threat of danger, collision, and injury from vessels and recreational boaters on the water before, during, and after the event.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order.

The Coast Guard's use of these special local regulations will be periodic, of short duration, and designed to minimize the impact on navigable waters. These special local regulations will only be enforced immediately before, during, and immediately after the time the marine events occur. Furthermore, these special local