

Bethel, AK, Bethel, LOC/DME BC RWY 1L, Amdt 6
 Bethel, AK, Bethel, NDB RWY 18, Amdt 8C, CANCELLED
 Bethel, AK, Bethel, RNAV (GPS) RWY 1L, Amdt 1
 Bethel, AK, Bethel, RNAV (GPS) RWY 1R, Orig
 Bethel, AK, Bethel, RNAV (GPS) RWY 19L, Orig
 Bethel, AK, Bethel, RNAV (GPS) RWY 19R, Amdt 1
 Bethel, AK, Bethel, RNAV (GPS)—A, Amdt 1
 Bethel, AK, Bethel, Takeoff Minimums and Obstacle DP, Amdt 3
 Bethel, AK, Bethel, VOR RWY 18, Amdt 8C, CANCELLED
 Bethel, AK, Bethel, VOR/DME RWY 1L, Amdt 2
 Bethel, AK, Bethel, VOR/DME RWY 19R, Amdt 2
 Bethel, AK, Bethel, VOR/DME—B, Orig-A, CANCELLED

[FR Doc. E8-16529 Filed 7-21-08; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9417]

RIN 1545-BE39

Farmer and Fisherman Income Averaging

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 1301 of the Internal Revenue Code (Code) relating to the averaging of farm and fishing income in computing income tax liability. The regulations reflect changes to the law made by the American Jobs Creation Act of 2004. The regulations provide guidance to individuals engaged in a farming or fishing business who elect to reduce their tax liability by treating all or a portion of the current taxable year's farm or fishing income as if one-third of it had been earned in each of the prior three taxable years. The text of the temporary regulations in this document also serves as the text of proposed regulations set forth in a 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 22, 2008.

Applicability Dates: For dates of applicability, see §§ 1.1301-1(g) and 1.1301-1T(g).

FOR FURTHER INFORMATION CONTACT: Amy Pfalzgraf, (202) 622-4950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final and temporary amendments to the Income Tax Regulations (26 CFR part 1) under section 1301. For taxable years beginning after December 31, 1997, section 1301 provides that individual taxpayers engaged in a farming business may elect to compute their income tax liability under section 1 by treating all or a portion of their taxable income from the trade or business of farming as if one-third of it had been earned in each of the prior three taxable years.

Section 314(b) of the American Jobs Creation Act of 2004 (AJCA), Public Law 108-357 (118 Stat. 1468), amended section 1301 to permit fishermen to make a farm income averaging election. Section 1301(b)(1)(A) now provides that the income eligible for averaging includes income attributable to a fishing business. *Fishing business* is defined in section 1301(b)(4) as the conduct of commercial fishing as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1802.

The Magnuson-Stevens Act defines *commercial fishing* as fishing in which the fish harvested are intended to or do enter commerce through sale, barter, or trade. 16 U.S.C. 1802(4). *Fishing* is defined as the catching, taking, or harvesting of fish; the attempted catching, taking, or harvesting of fish; activities that reasonably can be expected to result in the catching, taking, or harvesting of fish; or any operations at sea in support of, or in preparation for, the catching, taking, or harvesting of fish. Fishing does not include any scientific research activity conducted by a scientific research vessel. 16 U.S.C. 1802(15). *Fish* is defined as finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, other than marine mammals and birds. 16 U.S.C. 1802(12). Under 50 CFR 600.10, the terms *catch*, *take*, or *harvest* include activities that result in the killing of fish or the bringing of live fish on board a vessel.

Section 314(a) of the AJCA amended section 55(c) to provide that the farm income averaging election is disregarded in computing the regular tax liability for purposes of calculating the alternative minimum tax (AMT). As a result, the reduction in regular tax liability resulting from a farm income

averaging election will not be offset by a corresponding increase in the AMT.

Section 1.1301-1 of the Income Tax Regulations provides guidance on income averaging for farmers under the rules in effect before the AJCA amendments.

Explanation of Provisions

These temporary regulations provide guidance on the AJCA changes to the income averaging rules. In addition, conforming changes are made to the final regulations in § 1.1301-1.

Definition of Fishing Business

Section 1301(b)(4) defines *fishing business* by reference to section 3 of the Magnuson-Stevens Act. The definition of fishing business in these temporary regulations follows the definitions in the Magnuson-Stevens Act and the regulations under that Act. Thus, fishing includes catching, taking, or harvesting activities that result in the killing of fish or the bringing of live fish on board a vessel, but does not include the processing of fish.

Amount of Income Eligible for Averaging

Section 1301(b)(1)(A) provides that income attributable to any farming business or fishing business is eligible for income averaging. These temporary regulations clarify that the maximum amount of income that an individual may elect to average is the total of the individual's farm and fishing income and gains, reduced by any farm and fishing deductions or losses allowed as a deduction in computing taxable income. Therefore, a taxpayer engaged in both a farming business and a fishing business must combine income, gains, deductions, and losses from both the farming business and the fishing business to determine the maximum amount of income that is eligible for averaging.

Lessors of Vessels Used for Fishing

The rental income of a landlord that is based on a share of a tenant's production is subject to fluctuations in the farm economy to the same extent as that of a farmer. Therefore, § 1.1301-1(b)(2) provides that a landlord is engaged in a farming business if this arrangement is established in a written agreement before the tenant begins significant activities on the land.

These temporary regulations similarly provide that a lessor of a vessel is engaged in a fishing business within the meaning of section 1301(b)(4) if the payment due to the lessor under the lease is based on a share of the lessee's catch (or a share of the proceeds from

the sale of the catch) and the lease is a written agreement entered into before the lessee begins significant fishing activities resulting in the shared catch. A fixed lease payment is not eligible for income averaging.

Crewmembers

The income of crewmembers on vessels engaged in fishing also is subject to fluctuations in the fishing economy if the crewmembers' compensation is based on a share of the vessel's catch of fish or a share of the proceeds from the sale of the catch. Accordingly, these temporary regulations provide that these crewmembers are engaged in a fishing business, whether or not they are treated as employees for employment tax purposes.

Deposits Into Merchant Marine Capital Construction Fund

Section 7518(c)(1)(A) provides that certain deposits into a Merchant Marine Capital Construction Fund (CCF) reduce taxable income for purposes of the Code (the CCF reduction). These temporary regulations provide that, for purposes of income averaging computations, the CCF reduction also reduces taxable income. In addition, except to the extent that the amount of the CCF deposit is determined by reference to income from maritime operations other than fishing, the CCF reduction also reduces the amount of income that is eligible for income averaging.

Effective/Applicability Date

These temporary regulations apply for taxable years beginning after July 22, 2008. However, taxpayers may apply the temporary regulations in taxable years beginning after December 31, 2003, but before July 23, 2008, if all provisions are consistently applied in each taxable year.

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) please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for

comment on their impact on small business.

Drafting Information

The principal author of these regulations is Amy Pfalzgraf of the Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.1301-1T also issued under 26 U.S.C. 1301(c). * * *

■ **Par. 2.** Section 1.1301-1 is amended by:

■ 1. Adding new paragraphs (b)(3) and (d)(4).

■ 2. Revising paragraph (g).

The additions and revision read as follows:

§ 1.1301-1 Averaging of farm income.

* * * * *

(b) * * *

(3) [Reserved]. For further guidance, see § 1.1301-1T(b)(3).

* * * * *

(d) * * *

(4) [Reserved]. For further guidance, see § 1.1301-1T(d)(4).

* * * * *

(g) *Effective/applicability date.* (1) Except as provided in paragraphs (b)(2), (g)(2), and (g)(3) of this section and § 1.1301-1T(g)(2), this section applies to taxable years beginning after December 31, 2001.

(2) Paragraphs (a), (b)(1), (c)(1), (d)(3)(ii), (e), (f)(2), and (f)(4) of this section apply only for taxable years beginning before July 23, 2008. For taxable years beginning after July 22, 2008, see § 1.1301-1T.

(3) Paragraphs (b)(3) and (d)(4) of this section apply for taxable years beginning after July 22, 2008.

■ **Par. 3.** Section 1.1301-1T is added to read as follows:

§ 1.1301-1T Averaging of farm and fishing income (temporary).

(a) *Overview.* An individual engaged in a farming or fishing business may

make a farm income averaging election to compute current year (election year) income tax liability under section 1 by averaging, over the prior three-year period (base years), all or a portion of the individual's current year electible farm income as defined in paragraph (e) of this section. Electible farm income includes income from both farming and fishing businesses, and the farm income averaging election permits the averaging of both farm and fishing income. An individual that makes a farm income averaging election—

(1) Designates all or a portion of the individual's electible farm income for the election year as elected farm income; and

(2) Determines the election year section 1 tax by determining the sum of—

(i) The section 1 tax that would be imposed for the election year if taxable income for the year were reduced by elected farm income; plus

(ii) For each base year, the amount by which the section 1 tax would be increased if taxable income for the year were increased by one-third of elected farm income.

(b) *Individual engaged in a farming or fishing business—(1) In general—(i) Farming or fishing business.* *Farming business* has the same meaning as provided in section 263A(e)(4) and the regulations under that section. *Fishing business* means the conduct of commercial fishing as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(4)). Accordingly, a fishing business is fishing in which the fish harvested are intended to or do enter commerce through sale, barter, or trade. *Fishing* means the catching, taking, or harvesting of fish; the attempted catching, taking, or harvesting of fish; any activities that reasonably can be expected to result in the catching, taking, or harvesting of fish; or any operations at sea in support of or in preparation for the catching, taking, or harvesting of fish. Fishing does not include any scientific research activity conducted by a scientific research vessel. *Fish* means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, other than marine mammals and birds. *Catching, taking, or harvesting* includes activities that result in the killing of fish or the bringing of live fish on board a vessel.

(ii) *Form of business.* An individual engaged in a farming or fishing business includes a sole proprietor of a farming or fishing business, a partner in a partnership engaged in a farming or fishing business, and a shareholder of an S corporation engaged in a farming

or fishing business. Except as provided in paragraph (e)(1)(i) of this section, services performed as an employee are disregarded in determining whether an individual is engaged in a farming or fishing business for purposes of section 1301.

(iii) *Base years.* An individual is not required to have been engaged in a farming or fishing business in any of the base years in order to make a farm income averaging election.

(2) [Reserved]. For further guidance, see § 1.1301-1(b)(2).

(3) *Lessors of vessels used in fishing.* A lessor of a vessel is engaged in a fishing business for purposes of section 1301 with respect to payments that are received under the lease and are based on a share of the catch from the lessee's use of the vessel in a fishing business (or a share of the proceeds from the sale of the catch) if this manner of payment is determined under a written lease agreement entered into before the lessee begins any significant fishing activities resulting in the catch. A lessor of a vessel is not engaged in a fishing business for purposes of section 1301 with respect to fixed lease payments or with respect to lease payments based on a share of the lessee's catch (or a share of the proceeds from the sale of the catch) if the share is determined under either an unwritten agreement or a written agreement entered into after the lessee begins significant fishing activities resulting in the catch.

(c) *Making, changing, or revoking an election—(1) In general.* A farm income averaging election is made by filing Schedule J, "Income Averaging for Farmers and Fishermen," with an individual's Federal income tax return for the election year (including a late or amended return if the period of limitation on filing a claim for credit or refund has not expired).

(2) [Reserved]. For further guidance, see § 1.1301-1(c)(2).

(d)(1) through (3)(i) [Reserved]. For further guidance, see § 1.1301-1(d)(1) through (3)(i).

(ii) *Example.* The rules of this paragraph (d)(3) are illustrated by the following example:

Example. (i) T is a fisherman who uses the calendar taxable year. In each of the years 2001, 2002, and 2003, T's taxable income is \$20,000. In 2004, T has taxable income of \$30,000 (prior to any farm income averaging election) and electible farm income of \$10,000. T makes a farm income averaging election with respect to \$9,000 of the electible farm income for 2004. Under paragraph (a)(2)(ii) of this section, \$3,000 of elected farm income is allocated to each of the base years 2001, 2002, and 2003. Under paragraph (a)(2) of this section, T's 2004 tax liability is the sum of the following amounts:

(A) The section 1 tax on \$21,000, which is T's taxable income of \$30,000, minus elected farm income of \$9,000.

(B) For each of the base years 2001, 2002, and 2003, the amount by which section 1 tax would be increased if one-third of elected farm income were allocated to each year. The amount for each year is the section 1 tax on \$23,000 (T's taxable income of \$20,000, plus \$3,000, which is one-third of elected farm income for the 2004 election year), minus the section 1 tax on \$20,000.

(ii) In 2005, T has taxable income of \$50,000 and electible farm income of \$12,000. T makes a farm income averaging election with respect to all \$12,000 of the electible farm income for 2005. Under paragraph (a)(2)(ii) of this section, \$4,000 of elected farm income is allocated to each of the base years 2002, 2003, and 2004. Under paragraph (a)(2) of this section, T's 2005 tax liability is the sum of the following amounts:

(A) The section 1 tax on \$38,000, which is T's taxable income of \$50,000, minus elected farm income of \$12,000.

(B) For each of base years 2002 and 2003, the amount by which section 1 tax would be increased if, after adjustments for previous farm income averaging elections pursuant to paragraph (d)(3)(i) of this section, one-third of elected farm income were allocated to each year. The amount for each year is the section 1 tax on \$27,000 (T's taxable income of \$20,000 increased by \$3,000 for T's 2004 farm income averaging election and further increased by \$4,000, which is one-third of elected farm income for the 2005 election year), minus the section 1 tax on \$23,000 (T's taxable income of \$20,000 increased by \$3,000 for T's 2004 farm income averaging election).

(C) For base year 2004, the amount by which section 1 tax would be increased if, after adjustments for previous farm income averaging elections pursuant to paragraph (d)(3)(i) of this section, one-third of elected farm income were allocated to that year. This amount is the section 1 tax on \$25,000 (T's taxable income of \$30,000 reduced by \$9,000 for T's 2004 farm income averaging election and increased by \$4,000, which is one-third of elected farm income for the 2005 election year), minus the section 1 tax on \$21,000 (T's taxable income of \$30,000 reduced by \$9,000 for T's 2004 farm income averaging election).

(4) *Deposits into Merchant Marine Capital Construction Fund—(i) Reductions to taxable income and electible farm income.* Under section 7518(c)(1)(A), certain deposits to a Merchant Marine Capital Construction Fund (CCF) reduce taxable income for purposes of the Code (the CCF reduction). The amount of the CCF reduction is limited under section 7518(a)(1)(A) to the taxpayer's taxable income (determined without regard to the reduction) attributable to specified maritime operations including operations in fisheries of the United States. The CCF reduction is taken into account in determining the taxable income used in computations under this section. In addition, except to the extent

the amount described in section 7518(a)(1)(A) is not attributable to the individual's fishing business, the CCF reduction is treated in computing electible farm income as an item of deduction attributable to the individual's fishing business.

(ii) *Example.* The rules of this paragraph (d)(4) are illustrated by the following example:

Example. (i) T is a fisherman who uses the calendar taxable year. In each of the years 2001, 2002, and 2003, T's taxable income (before taking any CCF reduction into account) is \$20,000. For taxable year 2002, all of T's income is described in section 7518(a)(1)(A) and is attributable to T's fishing business. T makes a \$5,000 deposit into a CCF for taxable year 2002. In 2004, T has taxable income of \$30,000 (before taking any CCF reduction into account). In addition, T's electible farm income for 2004 (before taking the CCF reduction into account) is \$10,000, all of which is described in section 7518(a)(1)(A) and is attributable to T's fishing business. For taxable year 2004, T makes a \$4,000 deposit into a CCF.

(ii) The amount of the 2004 CCF deposit reduces taxable income. Accordingly, T's taxable income for 2004 is \$26,000 (\$30,000 - \$4,000). In addition, the entire amount of the CCF reduction is treated as an item of deduction attributable to T's fishing business. Accordingly, T's electible farm income for 2004 is \$6,000 (\$10,000 - \$4,000). Similarly, the amount of the 2002 CCF deposit reduces T's taxable income for 2002. Accordingly, T's taxable income for 2002 is \$15,000 (\$20,000 - \$5,000).

(iii) T makes an income averaging election with respect to all \$6,000 of the electible farm income for 2004. Under paragraph (a)(2)(ii) of this section, \$2,000 of elected farm income is allocated to each of the base years 2001, 2002, and 2003. Under paragraph (a)(2) of this section, T's 2004 tax liability is the sum of the following amounts:

(A) The section 1 tax on \$20,000, which is T's taxable income of \$26,000 (\$30,000 reduced by the \$4,000 CCF deposit), minus elected farm income of \$6,000.

(B) For each of the base years 2001, 2002, and 2003, the amount by which section 1 tax would be increased if one-third of elected farm income were allocated to each year. The amount for base years 2001 and 2003 is the section 1 tax on \$22,000 (T's taxable income of \$20,000, plus \$2,000, which is one-third of elected farm income for the election year), minus the section 1 tax on \$20,000. The amount for base year 2002 is the section 1 tax on \$17,000 (T's taxable income of \$15,000 (\$20,000 reduced by the \$5,000 CCF deposit), plus \$2,000 (one-third of elected farm income for the election year)), minus the section 1 tax on \$15,000.

(e) *Electible farm income—(1) Identification of items attributable to a farming or fishing business—(i) In general.* Farm and fishing income includes items of income, deduction, gain, and loss attributable to an individual's farming or fishing business.

Farm and fishing losses include, to the extent attributable to a farming or fishing business, any net operating loss carryover or carryback or net capital loss carryover to an election year. Income, gain, or loss from the sale of development rights, grazing rights, and other similar rights is not treated as attributable to a farming business. In general, farm and fishing income does not include compensation received as an employee. However, a shareholder of an S corporation engaged in a farming or fishing business may treat compensation received from the corporation as farm or fishing income if the compensation is paid by the corporation in the conduct of the farming or fishing business. If a crewmember on a vessel engaged in commercial fishing (within the meaning of section 3 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1802(4)) is compensated by a share of the boat's catch of fish or a share of the proceeds from the sale of the catch, the crewmember is treated for purposes of section 1301 as engaged in a fishing business and the compensation is treated for such purposes as income from a fishing business.

(ii) *Gain or loss on sale or other disposition of property*—(A) *In general.* Gain or loss from the sale or other disposition of property that was regularly used in the individual's farming or fishing business for a substantial period of time is treated as attributable to a farming or fishing business. For this purpose, the term *property* does not include land, but does include structures affixed to land. Property that has always been used solely in the farming or fishing business by the individual is deemed to meet both the regularly used and substantial period tests. Whether property not used solely in the farming or fishing business was regularly used in the farming or fishing business for a substantial period of time depends on all of the facts and circumstances.

(B) *Cessation of a farming or fishing business.* If gain or loss described in paragraph (e)(1)(ii)(A) of this section is realized after cessation of a farming or fishing business, the gain or loss is treated as attributable to a farming or fishing business only if the property is sold within a reasonable time after cessation of the farming or fishing business. A sale or other disposition within one year of cessation of the farming or fishing business is presumed to be within a reasonable time. Whether a sale or other disposition that occurs more than one year after cessation of the farming or fishing business is within a

reasonable time depends on all of the facts and circumstances.

(2) *Determination of amount that may be elected farm income*—(i) *Electible farm income.* (A) The maximum amount of income that an individual may elect to average (electible farm income) is the sum of any farm and fishing income and gains, minus any farm and fishing deductions or losses (including loss carryovers and carrybacks) that are allowed as a deduction in computing the individual's taxable income.

(B) Individuals conducting both a farming business and a fishing business must calculate electible farm income by combining income, gains, deductions, and losses derived from the farming business and the fishing business.

(C) Except as otherwise provided in paragraph (d)(4) of this section, the amount of any CCF reduction is treated as a deduction from income attributable to a fishing business in calculating electible farm income.

(D) Electible farm income may not exceed taxable income, and electible farm income from net capital gain attributable to a farming or fishing business may not exceed total net capital gain. Subject to these limitations, an individual who has both ordinary income and net capital gain from a farming or fishing business may elect to average any combination of the ordinary income and net capital gain.

(ii) *Examples.* The rules of this paragraph (e)(2) of this section are illustrated by the following examples:

Example 1. A has ordinary income from a farming business of \$200,000 and deductible expenses from a farming business of \$50,000. A's taxable income is \$150,000 (\$200,000 – \$50,000). Under paragraph (e)(2)(i) of this section, A's electible farm income is \$150,000, all of which is ordinary income.

Example 2. B has capital gain of \$20,000 that is not from a farming or fishing business, capital loss from a farming business of \$30,000, and ordinary income from a farming business of \$100,000. Under section 1211(b), B's allowable capital loss is limited to \$23,000. B's taxable income is \$97,000 ((\$20,000 – \$23,000) + \$100,000). B has a capital loss carryover from a farming business of \$7,000 (\$30,000 total loss – \$23,000 allowable loss). Under paragraph (e)(2)(i) of this section, B's electible farm income is \$77,000 (\$100,000 ordinary income from a farming business, minus \$23,000 capital loss from a farming business), all of which is ordinary income.

Example 3. C has ordinary income from a fishing business of \$200,000 and ordinary loss from a farming business of \$60,000. C's taxable income is \$140,000 (\$200,000 – \$60,000). Under paragraph (e)(2)(i)(B) of this section, C must deduct the farm loss from the fishing income in determining C's electible farm income.

Therefore, C's electible farm income is \$140,000 (\$200,000 – \$60,000), all of which is ordinary income.

Example 4. D has ordinary income from a farming business of \$200,000 and ordinary loss of \$50,000 that is not from a farming or fishing business. D's taxable income is \$150,000 (\$200,000 – \$50,000). Under paragraph (e)(2)(i)(D) of this section, electible farm income may not exceed taxable income. Therefore, D's electible farm income is \$150,000, all of which is ordinary income.

Example 5. E has capital gain from a farming business of \$50,000, capital loss of \$40,000 that is not from a farming or fishing business, and ordinary income from a farming business of \$60,000. E's taxable income is \$70,000 ((\$50,000 – \$40,000) + \$60,000). Under paragraph (e)(2)(i)(D) of this section, electible farm income may not exceed taxable income, and electible farm income from net capital gain attributable to a farming or fishing business may not exceed total net capital gain. Therefore, E's electible farm income is \$70,000 of which \$10,000 is capital gain and \$60,000 is ordinary income.

(f)(1) [Reserved]. For further guidance, see § 1.1301–1(f)(1).

(2) *Changes in filing status.* An individual is not prohibited from making a farm income averaging election solely because the individual's filing status is not the same in an election year and the base years. For example, an individual who is married and files a joint return in the election year, who filed as single in one or more of the base years, may elect to average farm or fishing income, by using the single filing status to compute the increase in section 1 taxes for the base years in which the individual filed as single.

(f)(3) [Reserved]. For further guidance, see § 1.1301–1(f)(3).

(4) *Alternative minimum tax.* A farm income averaging election is disregarded in computing the tentative minimum tax and the regular tax under section 55 for the election year or any base year. The election is taken into account, however, in determining the regular tax liability under section 53(c) for the election year.

(f)(5) [Reserved]. For further guidance, see § 1.1301–1(f)(5).

(g) *Effective/applicability date.* (1) This section applies for taxable years beginning after July 22, 2008.

(2) Taxpayers may apply the provisions of this section rather than the corresponding provisions of § 1.1301–1 in taxable years beginning after December 31, 2003, but before July 23, 2008, if all provisions are consistently applied in each taxable year.

(3) This section expires on July 21, 2011.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: July 7, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8-16665 Filed 7-21-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2008-0698]

Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation for the "Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races" from 7 a.m. to 7:30 p.m. each day, from July 25, 2008 through July 27, 2008. This action is necessary to assist in minimizing the inherent dangers associated with hydroplane races. During the enforcement period, no person or vessel may enter the regulated area without permission of the Captain of the Port.

DATES: The regulations in 33 CFR 100.1303 will be enforced from 7 a.m. to 7:30 p.m. each day from July 25, 2008 through July 27, 2008.

FOR FURTHER INFORMATION CONTACT: BM2 Joshua Lehner, Sector Portland Waterways Management at (503) 247-4015.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races in 33 CFR 100.1303 from 7 a.m. to 7:30 p.m. each day from July 25, 2008 through July 27, 2008.

Under the provisions of 33 CFR 100.1303, a vessel may not enter the regulated area, unless it receives permission from the Coast Guard Patrol Commander. Vessels granted permission to enter the zone by the Patrol Commander shall not exceed minimum wake speed without the permission of the Patrol Commander. A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area

under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled to stop shall stop and comply with orders of the patrol vessel personnel; failure to do so may result in expulsion from the area, citation, or both. The Coast Guard may be assisted by other Federal, state, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1303 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and a marine information broadcast. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: July 7, 2008.

F.G. Myer,

Captain, U.S. Coast Guard, Captain of the Port Portland.

[FR Doc. E8-16677 Filed 7-21-08; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG-2008-0593]

Celebrate Milwaukie Fireworks Display, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the "Celebrate Milwaukie Fireworks Display safety zone on the Willamette River"; from 8:30 p.m. through 11:30 p.m. On July 26, 2008. This action is necessary to provide a safe display for the public and to keep them clear of the fall out area of the fireworks. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port.

DATES: The regulations in 33 CFR 165.1315(a)(12) will be enforced from 8:30 p.m. through 11:30 p.m. On July 26, 2008.

FOR FURTHER INFORMATION CONTACT: BM2 Joshua Lehner, Sector Portland Waterways Management at (503) 247-4015.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for

the Celebrate Milwaukie Fireworks Display in 33 CFR 165.1315(a)(12) on July 26, 2008 from 8:30 p.m. to 11:30 p.m.

Under the provisions of 33 CFR 165.1315, a vessel may not enter the regulated area, unless it receives permission from the COTP. The Coast Guard may be assisted by other Federal, state, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.1315(a)(12) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and a marine information broadcast. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 20, 2008.

F.G. Myer,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. E8-16676 Filed 7-21-08; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2008-0215]

RIN 1625-AA00

Safety Zones: Festival of Sail San Francisco, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish temporary safety zones in support of the scheduled Festival of Sail Events from July 23, 2008, through July 27, 2008. The safety zones will include a parade and two mock cannon battles referred to as location "alpha" and location "bravo". The temporary safety zones are necessary to provide for the safety of spectators, participating vessels and crews.

DATES: This rule is effective for the Festival of Sail—Parade of Ships from 11:59 a.m. through 4 p.m. on July 23, 2008; for the mock cannon battle location "alpha" from 2 p.m. through 4:30 p.m. on July 25, 2008, and July 26, 2008; and for the mock cannon battle location "bravo" from 2 p.m. through