

## Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under section 355(a)(3)(B) regarding the distribution of stock of a controlled corporation acquired in a transaction described in section 355(a)(3)(B). The temporary regulations revise § 1.355-2(g) to reflect issues arising under section 355(b)(3), as enacted by the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109-222 (120 Stat. 345), and modified by the Tax Technical Corrections Act of 2007, Public Law 110-172 (121 Stat. 2473, 2476). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

## Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that section 355(a)(3)(B) generally applies to parent-subsidiary groups of corporations, which tend to be larger businesses, and that these regulations primarily grant relief from the application of section 355(a)(3)(B) in certain situations. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

## Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. As described in the preamble to the temporary regulations, comments are also requested regarding the overall approach taken in these proposed rules, including the extent to which the definition of a taxable

transaction should be the same under section 355(a)(3)(B) and section 355(b), and whether the exception for acquisitions from affiliates should be the same under those sections. Comments are also requested regarding the need for future guidance described in sections 4.A. and 4.B. of such preamble, relating to predecessors of distributing corporations, acquisitions involving corporations that join the distributing corporation's separate affiliated group, predecessors of controlled corporations, acquisitions involving corporations that join the controlled corporation's separate affiliated group, the application of *Dunn Trust v. Commissioner*, 86 T.C. 745 (1986), and the treatment of stock issuances by the controlled corporation to the distributing corporation. Comments are also requested regarding the potential application of the hot stock rule to redemptions of controlled corporation stock described in section 4.C. of such preamble. With respect to redemptions, comments are specifically requested regarding the circumstances under which section 355(a)(3)(B) should apply.

All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

## Drafting Information

The principal author of these regulations is Russell P. Subin of the Office of Associate Chief Counsel (Corporate). 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.

## Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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 1.355-2(g) also issued under 26 U.S.C. 355(b)(3)(D). \* \* \*.

**Par. 2.** Section 1.355-2 is amended by revising paragraph (g) and adding paragraph (i) to read as follows:

### § 1.355-2 Limitations.

\* \* \* \* \*

(g) [The text of the proposed amendments to § 1.355-2(g) is the same as the text of § 1.355-2T(g) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(i) [The text of the proposed amendments to § 1.355-2(i) is the same as the text of § 1.355-2T(i) published elsewhere in this issue of the **Federal Register**.]

**Steve T. Miller,**

(Acting) Deputy Commissioner for Services and Enforcement.

[FR Doc. E8-29545 Filed 12-12-08; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket No. USCG-2008-0867]

RIN 1625-AA00

### Safety Zone; Desert Storm Exhibition Run; Lake Havasu, Lake Havasu City, AZ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes establishing a temporary safety zone within the Thompson Bay region of the navigable waters of the Colorado River in Lake Havasu, Lake Havasu City, Arizona in support of the Desert Storm Exhibition Run. This temporary safety zone is would provide for the safety of the participants, crew, spectators, participating vessels and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** Comments and related material must reach the Coast Guard on or before January 14, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG-2008-0867 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery*: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(5) *Fax*: 202-493-2251.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278-7262. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

#### **Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

#### **Submitting comments**

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-0867), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-2008-0867" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We

will consider all comments and material received during the comment period and may change the rule based on your comments.

#### **Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2008-0867 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101-1028 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### **Privacy Act**

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

#### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### **Background and Purpose**

Lake Racer LLC is sponsoring the Desert Storm Exhibition Run. The event is an Exhibition Run consisting of up to 250 powerboats ranging from 21 to 55 feet in length. The sponsor will provide 2 water rescue boats and 20 perimeter boats for this event. This safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway.

#### **Discussion of Proposed Rule**

The Coast Guard proposes to establish a safety zone that will be enforced from 8 a.m. to 5:30 p.m. on April 24, 2009 thru April 26, 2009. This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the regatta and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative. The limits of this temporary safety zone are enclosed by the following coordinates 34°27.81N, 114°20.90W; 34°26.24N, 114°19.28W; 34°26.49N, 114°18.99W. The Coast Guard may be assisted by the other federal, state, or local agencies, including the Coast Guard Auxiliary. Vessel or persons violating this section will be subject to both criminal and civil penalties.

#### **Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### **Regulatory Planning and Review**

This proposed 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 it under that Order.

This determination is based on the size and location of the safety zone within the water. Commercial vessels will not be hindered by the safety zone, as they will be able to transit safely around the zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic

impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators vessels intending to transit a portion of the Colorado River from 8 a.m. to 5:30 p.m. on April 24, 2009 through April 26, 2009.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: vessel traffic can pass safely around the zone. Before the enforcement period, the Coast Guard will submit an inclusion into the Local Notice to Mariners (LNM) that will be available to the users of the river. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not

require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T11–121 to read as follows: § 165.T11–121 Safety Zone; Desert Storm Exhibition Run; Lake Havasu City, Lake Havasu, AZ.

(a) *Location.* All waters of Thompson Bay on the Colorado River and land adjacent to those waters enclosed by the following coordinates 34°27.81N, 114°20.90W; 34°26.24N, 114°19.28W; 34°26.49N, 114°18.99W.

(b) *Enforcement Period.* This safety zone will be enforced from 8 a.m. to 5:45 p.m. on April 25, 2009 and April 26, 2009. If the need for the safety zone ends before the scheduled termination times, the captain of the port will cease enforcement of this safety zone.

(c) *Definitions.* (1) *Designated representative.* Any Commissioned, Warrant, or Petty Officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port San Diego.

(2) *Coast Guard Patrol Commander.* A Commissioned, Warrant, or Petty Officer who will be designated by the Captain of the Port San Diego.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited unless authorized by the Captain of the Port, or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Coast Guard Patrol Commander. The Patrol Commander may be contacted via VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port or the designated representative.

(4) Upon being hailed by the Coast Guard Patrol personnel, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: November 21, 2008.

**T.H. Farris,**  
*Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 72, 73, 74, 77, and 78**

**[EPA–HQ–OAR–2008–0774; FRL–8750–7**

**RIN 2060–AP35**

**Rulemaking To Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to reaffirm the promulgation of certain revisions of the Acid Rain Program rules in order to prevent disruption of the program, which has achieved significant, cost-effective reductions in sulfur dioxide (SO<sub>2</sub>) emissions from utility sources since its commencement in 1995. These rule revisions were finalized in the **Federal Register** notices that also finalized the Clean Air Interstate Rule (CAIR) and the final Federal Implementation Plans for CAIR (CAIR FIPs). The U.S. Court of Appeals for the District of Columbia Circuit recently issued a decision vacating and remanding CAIR and the CAIR FIPs. EPA and other parties have petitioned for rehearing, and the Court has not yet issued a mandate in the case. These revisions to the Acid Rain Program rules were not addressed by, or involved in any of the issues raised by, any parties in the proceeding or the Court. EPA believes it is reasonable to view these revisions as unaffected by the Court's decision. However, EPA is proposing to reaffirm—pursuant to its authority under Title IV of the Clean Air Act (CAA) and CAA section 301—the promulgation of these revisions in order to remove any uncertainty about their regulatory status because they have been in effect since mid-2006, most of them are crucial to the ongoing operation of

the Acid Rain Program, and the rest of them streamline and clarify requirements of the program.

**DATES:** Written comments must be received by January 29, 2009. Any request for a public hearing must be made by telephone or by e-mail to the person in the **FOR FURTHER INFORMATION CONTACT** section of this preamble by December 22, 2008. If such a telephone or e-mail request for a public hearing is received by that date, a public hearing will be held on December 30, 2008 in Washington, DC. For additional information on a public hearing and comments, see the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections of this preamble.

**ADDRESSES:** Submit any comments, identified by Docket ID EPA–HQ–OAR–2008–0774 (which incorporates by reference the dockets for CAIR and the CAIR FIPs, i.e., Docket ID Nos. EPA–HQ–OAR–2003–0053 and EPA–HQ–OAR–2004–0076), by mail to Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Any comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Dwight C. Alpern, Clean Air Markets Division, U.S. Environmental Protection Agency, Clean Air Markets Division, Mailcode: 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9151, e-mail at [alpern.dwight@epa.gov](mailto:alpern.dwight@epa.gov). Electronic copies of this document can be accessed through the EPA Web site at: <http://epa.gov/airmarkets>.

**SUPPLEMENTARY INFORMATION:**

*Regulated Entities.* Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate electricity for sale and steam. Regulated categories and entities include:

Category	NAICS code	Examples of potentially regulated industries
Industry .....	221112 and others .....	Electric service providers.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be

regulated by this action. This table lists the types of entities, of which EPA is now aware, that could potentially be

regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether