

smallest possible testing pool is 10 different people, the total testing pool for a particular school consists of all knowledge tests, practical tests, and end-of-course tests for approved appendix K that were administered in the prior 24-month period. For those schools that seek renewal of non-provisional pilot school certificates, they must continue to meet, by reference in § 141.83, the quality of training standard set forth in § 141.5(d).

This rule clarifies existing requirements and reinserts language that was inadvertently removed. Because the changes in this technical amendment result in no substantive change, we find good cause exists under 5 U.S.C. 553(d)(3) to make the amendment effective in less than 30 days.

#### List of Subjects in 14 CFR Part 141

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

#### The Amendment

■ Accordingly, title 14 of the Code of Federal Regulations (CFR) part 141 is amended as follows:

#### PART 141—PILOT SCHOOLS

■ 1. The authority citation for part 141 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709, 44711, 45102–45103, 45301–43502.

■ 2. Amend § 141.5 by revising paragraphs (d) and (e) to read as follows:

#### § 141.5 Requirements for a pilot school certificate.

\* \* \* \* \*

(d) Has established a pass rate of 80 percent or higher on the first attempt for all knowledge tests leading to a certificate or rating, practical tests leading to a certificate or rating, or end-of-course tests for an approved training course specified in appendix K of this part.

(e) Has graduated at least 10 different people from the school's approved training courses.

Issued in Washington, DC on September 14, 2010.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

[FR Doc. 2010–23283 Filed 9–16–10; 8:45 am]

**BILLING CODE 4910–13–P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 416

[Docket No. SSA–2009–0017]

RIN 0960–AH00

#### Improvements to the Supplemental Security Income Program—Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act)

**AGENCY:** Social Security Administration.

**ACTION:** Final Rule; correcting amendment.

**SUMMARY:** In the *Federal Register* of September 7, 2010, we published a final rule document revising our regulations to incorporate improvements to the Supplemental Security Income (SSI) program made by the HEART Act. We inadvertently stated the RIN incorrectly as 0960–AD78. This document corrects the RIN to 0960–AH00.

**DATES:** Effective on September 17, 2010.

**FOR FURTHER INFORMATION CONTACT:** Brian J. Rudick, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7102. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:** We published a final rule document in the *Federal Register* of September 7, 2010, (75 FR 54285) revising our regulations to incorporate improvements to the SSI program made by the HEART Act. In this final rule, we incorrectly stated the RIN as 0960–AD78. This correction changes the RIN to 0960–AH00.

**Martin Sussman,**

*Senior Advisor for Regulations.*

[FR Doc. 2010–23183 Filed 9–16–10; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 2

[Docket No. FDA–2006–N–0304] (formerly Docket No. 2006N–0262)

RIN 0910–AF93

#### Use of Ozone-Depleting Substances; Removal of Essential-Use Designation (Flunisolide, etc.); Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that appeared in the *Federal Register* of April 14, 2010 (75 FR 19213). The document amended FDA's regulation on the use of ozone-depleting substances (ODSs) in self-pressurized containers to remove the essential-use designations for flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil used in oral pressurized metered-dose inhalers (MDIs). The document was published with an inadvertent error. This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Diane Sullivan, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3210, Silver Spring, MD 20993, 301–796–9171.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2010–8467, appearing on page 19213, in the *Federal Register* of Wednesday, April 14, 2010, the following correction is made:

1. On page 19213, in the third column, the heading “RIN 0910–AF92” is corrected to read “RIN 0910–AF93”.

Dated: September 13, 2010.

**David Dorsey,**

*Acting Deputy Commissioner for Policy, Planning and Budget.*

[FR Doc. 2010–23195 Filed 9–16–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 602

[TD 9502]

RIN 1545–BF90

#### Exclusions From Gross Income of Foreign Corporations

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations under section 883(a) and (c) of the Internal Revenue Code (Code), concerning the exclusion from gross income of income derived by certain foreign corporations from the international operation of ships or aircraft. The final regulations adopt the proposed regulations issued on June 25, 2007, (REG–138707–06) with certain modifications in response to comments

received, and remove the temporary regulations published on the same date (TD 9332).

**DATES:** *Effective Date:* These regulations are effective September 17, 2010.

*Applicability Date:* For dates of applicability, see § 1.883-5(d).

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Bray, at (202) 622-3880 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)), under control number 1545-1677.

The collections of information in these final regulations are in §§ 1.883-2(f), 1.883-3(c) and (d), and 1.883-4(e). This information is required to enable a foreign corporation to determine if it is eligible to exclude its income from the international operation of ships or aircraft from gross income on its U.S. Federal income tax return. This information will also enable the IRS to monitor compliance with the regulations with respect to the stock ownership requirements of § 1.883-1(c)(2), and to make a preliminary determination of whether the foreign corporation is eligible to claim such an exemption and is accurately reporting income.

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 control number assigned by the Office of Management and Budget.

Books and 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**

On June 25, 2007, temporary regulations (TD 9332) (2007 temporary regulations) under section 883(a) and (c) were published in the **Federal Register** (72 FR 34600) revising final regulations issued on August 26, 2003 in TD 9087 (68 FR 51394) (2003 final regulations) as amended by TD 9218 (70 FR 45529). A notice of proposed rulemaking (REG-138707-06) cross-referencing the temporary regulations was published in the **Federal Register** on the same date (72 FR 34650) (proposed regulations).

The 2007 temporary regulations revised the 2003 final regulations in several respects. First, the 2007 temporary regulations provide guidance concerning the eligibility of certain controlled foreign corporations to exclude from gross income certain income from the international operation of ships or aircraft (section 883 income) under section 883 (section 883 exclusion). Second, the 2007 temporary regulations revised the provisions of the 2003 final regulations concerning the eligibility for the section 883 exclusion of certain foreign corporations organized in countries that provide an exemption from taxation for income from the international operation of ships or aircraft through an income tax convention. Third, the 2007 temporary regulations identified certain ground services as incidental to the international operation of ships or aircraft for purposes of the section 883 exclusion. Finally, the 2007 temporary regulations revised the provisions of the 2003 final regulations concerning the reporting requirements related to the qualified shareholder stock ownership test. No public hearing on the proposed regulations was requested or held, however comments were received on certain provisions of the proposed regulations. After consideration of all the comments, the proposed regulations under section 883 are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed.

**Summary of Comments and Explanation of Final Regulations**

The comments received with respect to the 2007 temporary regulations focused on three areas: (1) The scope of activities considered incidental to the international operation of a ship or aircraft (incidental activities); (2) the treatment of bearer shares for purposes of the stock ownership tests; and (3) the reporting requirements of foreign corporations claiming the section 883 exclusion.

*A. Incidental Activities*

1. Treatment of "Other Services"

The 2003 final regulations provide that certain activities of a foreign corporation engaged in the international operation of ships or aircraft are so closely related to such operation that those activities are incidental to such operation, and therefore the income derived by the foreign corporation from such incidental activities is deemed to be derived from the international operation of ships or aircraft. The 2003 final regulations include a non-

exclusive list of incidental activities eligible for the section 883 exclusion. See § 1.883-1(g)(1). The 2003 final regulations, however, reserved on whether certain ground, maintenance or catering services (collectively, ground services) constitute incidental activities, and on whether other services might also constitute incidental activities. See § 1.883-1(g)(3). After considering comments received, the 2007 temporary regulations removed the reservation with respect to ground services and identified three additional categories of incidental activities. See § 1.883-1T(g)(ix) through (xi). The 2007 temporary regulations continue to reserve on whether "other services" may constitute incidental activities for this purpose.

Two commentators have recommended that final regulations adopt a standard for determining whether "other services" are incidental activities based on the principles articulated in paragraph 4.2 of the Commentary to paragraph 1 of Article 8 of the Organization for Economic Co-operation and Development Model Tax Convention on Income and Capital (OECD Model Convention). Article 8 of the OECD Model Convention covers profits directly connected with the operation of an enterprise's ships or aircraft in international traffic and profits from activities "ancillary" to such operation. Paragraph 4.2 of the commentary to Article 8 of the OECD Model Convention defines ancillary activities as those activities that an enterprise "does not need to carry on for the purposes of its own operation of ships or aircraft in international traffic, but which make a minor contribution relative to such operation and are so closely related to such operation that they should not be regarded as a separate business or source of income of the enterprise."

The Treasury Department and the IRS considered but declined to adopt in the 2007 temporary regulations the standard articulated in paragraph 4.2 of the commentary to Article 8 of the OECD Model Convention out of concern that the standard could be interpreted in an inappropriately expansive manner. The Treasury Department and the IRS remain concerned and therefore the final regulations included in this document do not modify the scope of incidental activities. As noted, however, the list of incidental activities included in the regulations is non-exclusive, and therefore other activities not specifically identified may be incidental to the international operation of ships or aircraft, depending on the relevant facts and circumstances.

## 2. Relevance of Definitions Included in the Regulations to Treaty Interpretation

Several commentators have suggested that the scope of incidental activities under the regulations should be consistent with the scope of “ancillary” services for tax treaty purposes because the regulations could be used to determine the meaning of the treaty provisions. The Treasury Department and the IRS believe this concern is sufficiently addressed by § 1.883-1(h)(3)(iv), which provides that any definitions provided in §§ 1.883-1 through 1.883-5 shall not give meaning to similar terms used in any income tax convention, or provide guidance regarding the scope of any exemption provided by such convention, unless the income tax convention entered into force after August 26, 2003, and it, or its legislative history, explicitly refers to section 883 and guidance promulgated under that section for its meaning.

## 3. Provision of Equipment Used in Connection With Lighter Vessels

Another commentator questioned whether the use of equipment to transfer crude oil from a host vessel to a lighter vessel beyond the territorial waters of the United States would constitute an incidental activity for purposes of the section 883 exclusion. As described above, the list of incidental activities in the regulations is not exclusive, and therefore activities not specifically identified may be incidental to the international operation of ships or aircraft, depending on the relevant facts and circumstances. Thus, for example, the use of equipment to transfer crude oil from a large oil tanker to a lighter vessel beyond the territorial waters of the United States would generally be considered incidental to the international operation of the lighter vessel for purposes of the section 883 exclusion.

### *B. Reliance on Bearer Shares To Satisfy Ownership Tests*

To qualify for the section 883 exclusion a foreign corporation must satisfy one of three stock ownership tests. Under existing regulations, the foreign corporation cannot rely on bearer shares issued at any level in the ownership chain to satisfy any of the three stock ownership tests. *See*, for example, § 1.883-4(b)(1)(ii). Several commentators have suggested that a foreign corporation should be permitted to consider bearer shares in determining whether an ownership test is satisfied to the extent the foreign corporation can substantiate the ownership of the bearer shares by qualified shareholders.

It has generally been difficult to reliably prove ownership of bearer shares, particularly in prior periods. However, the Treasury Department and the IRS understand that it has become increasingly common for corporations (both publicly traded and privately held) to use a dematerialized or immobilized book-entry system for maintaining their registered and bearer shares. The Treasury Department and the IRS understand that under a dematerialized book-entry system shares are represented only by book entries, and no physical certificates are issued or transferred, and that in an immobilized book-entry system the shareholder does not receive a physical certificate upon the purchase of shares but instead evidence of ownership is maintained on the books and records of a broker/financial institution or corporate issuer. Because these systems provide the ability to reliably identify the beneficial owner of bearer shares, the Treasury Department and the IRS have determined that a foreign corporation that uses a dematerialized or immobilized book-entry system to maintain its bearer shares should be permitted to take into account the ownership of bearer shares by qualified shareholders for determining whether a stock ownership test is satisfied. Accordingly, the final regulations permit a foreign corporation to take into account ownership of bearer shares for purposes of satisfying a stock ownership test, when the bearer shares are maintained in a dematerialized or immobilized book-entry system. All other bearer shares issued by the foreign corporation or any intermediary corporation in the chain of ownership may not be relied on for purposes of satisfying a stock ownership test.

Current § 1.883-4(d)(2)(ii) provides that a qualified shareholder ownership statement remains valid until the earlier of the last day of the third calendar year following the year in which the ownership statement is signed, or the day that a change in circumstances occurs that makes any information on the ownership statement incorrect. For this purpose, a change in circumstances that makes information on an ownership statement incorrect includes bearer shares ceasing to be maintained in a dematerialized or immobilized book-entry system.

### *C. Other Comments Received*

One commentator requested that the Treasury Department and the IRS clarify the filing requirements under section 6038A for a foreign corporation that has a permanent establishment in the United States but that claims a U.S. tax

exemption under the shipping and air transport article of an income tax treaty. Another commentator requested that Form W-8BEN, “Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding,” and Form W-8ECI, “Certificate of Foreign Person’s Claim That Income Is Effectively Connected with the Conduct of a Trade or Business in the United States,” be modified to apply to income that qualifies for the section 883 exclusion. Finally, another commentator recommended that the final regulations under section 1446 be modified to clarify that a foreign corporation’s allocable share of the effectively connected taxable income of a partnership does not include income that is eligible for the section 883 exclusion by reason of an equivalent exemption referred to in § 1.883-1(h)(1). Each of these comments is beyond the scope of the final regulations included in this document, but is being considered as part of separate guidance projects.

### **Special Analysis**

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 is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of United States small business entities. This certification is based upon the fact that these regulations apply to foreign corporations and impose only a limited collection of information burden on certain shareholders of such corporations. United States small business entities may be shareholders of foreign corporations to which the regulations applies, however, the Treasury Department and the IRS do not anticipate the number of affected small business entities to be substantial. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. It also has been determined that section 553(b), (c) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Patricia A. Bray of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

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

**PART 1—INCOME TAXES**

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

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

■ **Par. 2.** Section 1.883-0 is amended by:

- 1. Adding the entries for § 1.883-1(c)(3)(ii)(A) and (B).
- 2. Revising the entries for § 1.883-1(g)(3) and (h)(3).
- 3. Revising the entry for § 1.883-2(e)(2).
- 4. Revising the entries for § 1.883-3.
- 5. Revising the entry for § 1.883-5(d).
- 6. Removing the entry for § 1.883-5(e).

The revisions and additions read as follows:

**§ 1.883-0 Outline of major topics.**

\* \* \* \* \*

**§ 1.883-1 Exclusion of income from the international operation of ships or aircraft.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(A) General rule.

(B) Names and permanent addresses of certain shareholders.

\* \* \* \* \*

(g) \* \* \*

(3) Other Services. [Reserved].

\* \* \* \* \*

(h) \* \* \*

(3) Special rules with respect to income tax conventions.

(i) Countries with only an income tax convention.

(ii) Countries with both an income tax convention and an equivalent exemption.

(A) General rule.

(B) Special rule for claiming simultaneous benefits under section 883 and an income tax convention.

(iii) Participation in certain joint ventures.

(iv) Independent interpretation of income tax conventions.

\* \* \* \* \*

**§ 1.883-2 Treatment of publicly-traded corporations.**

\* \* \* \* \*

(e) \* \* \*

(2) Availability and retention of documents for inspection.

\* \* \* \* \*

**§ 1.883-3 Treatment of controlled foreign corporations.**

(a) General rule.

(b) Qualified U.S. person ownership test.

(1) General rule.

(2) Qualified U.S. person.

(3) Treatment of bearer shares.

(4) Ownership attribution through certain domestic entities.

(5) Examples.

(c) Substantiation of CFC stock ownership.

(1) In general.

(2) Ownership statements from qualified U.S. persons.

(3) Ownership statements from intermediaries.

(4) Three-year period of validity.

(5) Availability and retention of documents for inspection.

(d) Reporting requirements.

\* \* \* \* \*

**§ 1.883-5 Effective/applicability dates.**

\* \* \* \* \*

(d) Effective/applicability dates.

**§ 1.883-0T [Removed]**

■ **Par. 3.** Section 1.883-0T is removed.

■ **Par. 4.** Section 1.883-1 is amended by revising paragraphs (c)(3)(i)(D), (c)(3)(i)(G), (c)(3)(i)(H), (c)(3)(i)(I), (c)(3)(ii), (g)(1)(ix), (g)(1)(x), (g)(1)(xi), (g)(3), (h)(1)(ii), and (h)(3) to read as follows:

**§ 1.883-1 Exclusion of income from the international operation of ships or aircraft.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) \* \* \*

(D) The applicable authority for an equivalent exemption, for example, the citation of a statute in the country where the corporation is organized, a diplomatic note between the United States and such country, or an income tax convention between the United States and such country in the case of

a corporation described in paragraphs (h)(3)(i), (ii) and (iii) of this section;

\* \* \* \* \*

(G) A statement as to whether any shares of the foreign corporation or of any intermediary corporation that are relied on to satisfy any stock ownership test described in paragraph (c)(2) of this section are issued in bearer form and whether the bearer shares are maintained in a dematerialized book-entry system in which the bearer shares are represented only by book entries and no physical certificates are issued or transferred, or in an immobilized book-entry system in which evidence of ownership is maintained on the books and records of the corporate issuer or by a broker or financial institution;

(H) Any other information required under § 1.883-2(f), § 1.883-3(d), or § 1.883-4(e), as applicable; and

(I) Any other relevant information specified in Form 1120-F, "U.S. Income Tax Return of a Foreign Corporation," and its accompanying instructions.

(ii) *Further documentation*—(A) *General rule.* Except as provided in paragraph (c)(3)(ii)(B) of this section, if the Commissioner requests in writing that the foreign corporation provide documentation or substantiate any representations made under paragraph (c)(3)(i) of this section, or under § 1.883-2(f), § 1.883-3(d), or § 1.883-4(e), as applicable, the foreign corporation must provide the requested documentation or substantiation within 60 days of receiving the written request. If the foreign corporation does not provide the requested documentation or substantiation within the 60-day period, but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension to provide the requested documentation or substantiation. Whether a failure to provide the documentation or substantiation in a timely manner was due to reasonable cause and not willful neglect shall be determined by the Commissioner based on all the facts and circumstances.

(B) *Names and permanent addresses of certain shareholders.* If the Commissioner requests the names and permanent addresses of individual qualified shareholders of a foreign corporation, as represented on each individual's ownership statement, to substantiate the requirements of the exception to the closely-held test in the publicly-traded test in § 1.883-2(e), the qualified shareholder stock ownership test in § 1.883-4(a), or the qualified U.S. person ownership test in § 1.883-3(b), the foreign corporation must provide the

requested information within 30 days of receiving the written request. If the foreign corporation does not provide the requested information within the 30-day period, but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension to provide the requested information. Whether a failure to provide the requested information was due to reasonable cause and not willful neglect shall be determined by the Commissioner based on all the facts and circumstances.

\* \* \* \* \*

(g) \* \* \*  
(1) \* \* \*

(ix) Arranging by means of a space or slot charter for the carriage of cargo listed on a bill of lading or airway bill or similar document issued by the foreign corporation on the ship or aircraft of another corporation engaged in the international operation of ships or aircraft;

(x) The provision of containers and related equipment by the foreign corporation in connection with the international carriage of cargo for use by its customers, including short-term use within the United States immediately preceding or following the international carriage of cargo (for this purpose, a period of five days or less shall be presumed to be short-term); and

(xi) The provision of goods and services by engineers, ground and equipment maintenance staff, cargo handlers, catering staff, and customer services personnel, and the provision of facilities such as passenger lounges, counter space, ground handling equipment, and hangars.

\* \* \* \* \*

(3) *Other services.* [Reserved].

\* \* \* \* \*

(h) \* \* \*  
(1) \* \* \*

(ii) Provides an exemption from tax for income derived from the international operation of ships or aircraft, either by statute, decree, income tax convention, or otherwise; or

\* \* \* \* \*

(3) *Special rules with respect to income tax conventions*—(i) *Countries with only an income tax convention.* If a foreign country grants an exemption from tax for profits from the international operation of ships or aircraft only under an income tax convention with the United States, that exemption shall constitute an equivalent exemption with respect to a foreign corporation organized in that country only if—

(A) The foreign corporation satisfies the conditions for claiming benefits with respect to such profits under the income tax convention; and

(B) The profits that are exempt from tax pursuant to the shipping and air transport or gains article of the income tax convention and are described within a category of income included in paragraphs (h)(2)(i) through (viii) of this section.

(ii) *Countries with both an income tax convention and an equivalent exemption*—(A) *General rule.* If a foreign country grants an exemption from tax for profits from the international operation of ships or aircraft under the shipping and air transport or gains article of an income tax convention with the United States and also by some other means (for example, by diplomatic note or domestic law of the foreign country), a foreign corporation may elect annually whether to claim an exemption from tax under section 883 or the income tax convention. Except as provided in paragraph (h)(3)(ii)(B) of this section, the foreign corporation must apply the elected exemption (section 883 or the income tax convention) to all categories of income described in paragraph (h)(2) of this section. If the foreign corporation elects to claim the exemption under section 883, it must satisfy all of the requirements for claiming the exemption under section 883. If the foreign corporation elects to claim the exemption under the income tax convention, it must satisfy all of the requirements and conditions for claiming benefits under the income tax convention. See § 1.883-4(b)(3) for rules concerning relying on shareholders resident in a foreign country that grants an equivalent exemption under an income tax convention to satisfy the stock ownership test of paragraph (c)(2) of this section.

(B) *Special rule for claiming simultaneous benefits under section 883 and an income tax convention.* If a foreign corporation that is organized in a country that grants an exemption from tax under an income tax convention and also by some other means (such as by diplomatic note or domestic law of the foreign country) with respect to a specific category of income described in paragraph (h)(2) of this section, and the foreign corporation elects to claim the exemption under the income tax convention, the foreign corporation may nonetheless simultaneously claim an exemption under section 883 with respect to a category of income exempt from tax by such other means if the foreign corporation—

(1) Satisfies the requirements of paragraphs (h)(3)(i)(A) and (B) of this section for each category of income;

(2) Satisfies one of the stock ownership tests of paragraph (c)(2) of this section; and

(3) Complies with the substantiation and reporting requirements in paragraph (c)(3) of this section.

(iii) *Participation in certain joint ventures.* If a foreign country grants an exemption for a category of income only through an income tax convention, a foreign corporation that is organized in that country and that derives income, directly or indirectly, through a participation in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement, or other joint venture described in paragraph (e)(2) of this section, may treat that exemption as an equivalent exemption even if the foreign corporation would not be eligible to claim benefits under the income tax convention for that category of income solely because the joint venture was not fiscally transparent, within the meaning of § 1.894-1(d)(3)(iii)(A), with respect to that category of income under the income tax laws of the foreign corporation's country of residence.

(iv) *Independent interpretation of income tax conventions.* Nothing in this section nor §§ 1.883-2 through 1.883-5 affects the rights or obligations under any income tax convention between the United States and a foreign country. The definitions provided in this section and §§ 1.883-2 through 1.883-5 shall not give meaning to similar or identical terms used in an income tax convention, or provide guidance regarding the scope of any exemption provided by such convention, unless the income tax convention entered into force after August 26, 2003, and it, or its legislative history, explicitly refers to section 883 and guidance promulgated under that section for its meaning.

\* \* \* \* \*

**§ 1.883-1T [Removed]**

■ **Par. 5.** Section 1.883-1T is removed.

■ **Par. 6.** Section 1.883-2 is amended by revising paragraphs (d)(3)(ii), (e)(2), (f)(3), and (f)(4)(ii) to read as follows:

**§ 1.883-2 Treatment of publicly-traded corporations.**

\* \* \* \* \*

(d) \* \* \*  
(3) \* \* \*

(ii) *Exception.* Paragraph (d)(3)(i) of this section shall not apply to a class of stock if the foreign corporation can establish that qualified shareholders, as defined in § 1.883-4(b), applying the attribution rules of § 1.883-4(c), own

sufficient shares in the closely-held block of stock to preclude nonqualified shareholders in the closely-held block of stock from owning 50 percent or more of the total value of the class of stock of which the closely-held block is a part for more than half the number of days during the taxable year. Any shares that are owned, after application of the attribution rules in § 1.883-4(c), by a qualified shareholder shall not also be treated as owned by a nonqualified shareholder in the chain of ownership for purposes of the preceding sentence. A foreign corporation must obtain the documentation described in § 1.883-4(d) from the qualified shareholders relied upon to satisfy this exception. However, no person otherwise treated as a qualified shareholder under § 1.883-4(b) may be treated for purposes of this paragraph (d)(3) as a qualified shareholder if such person's interest in the foreign corporation, or in any intermediary corporation, is held through bearer shares that are not maintained during the relevant period in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G).

(e) \* \* \*

(2) *Availability and retention of documents for inspection.* A foreign corporation seeking qualified foreign corporation status must retain the documentation described in paragraph (e)(1) of this section until the expiration of the statute of limitations for its taxable year to which the documentation relates. The foreign corporation must make such documentation available for inspection at such time and such place as the Commissioner requests in writing under § 1.883-1(c)(3)(ii)(A) or (B).

(f) \* \* \*

(3) A description of each class of stock relied upon to meet the requirements of paragraph (d) of this section, including whether the class is issued in registered or bearer form and whether any such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G), the number of shares issued and outstanding in that class as of the close of the taxable year, and the relative value of each class in relation to the total value of all shares of stock of the corporation that are outstanding as of the close of the taxable year;

(4) \* \* \*

(ii) With respect to all qualified shareholders that own directly, or by application of the attribution rules in § 1.883-4(c), shares of the closely-held block of stock and that the foreign corporation relies on to satisfy the

exception provided by paragraph (d)(3)(ii) of this section—

(A) The number of such qualified shareholders;

(B) The total percentage of the value of the shares owned, directly or indirectly, by such qualified shareholders by country of residence, determined under § 1.883-4(b)(2) (residence of individual shareholders) or § 1.883-4(d)(3) (special rules for residence of certain shareholders); and

(C) The number days during the taxable year of the foreign corporation that such qualified shareholders owned, directly or indirectly, their shares in the closely held block of stock.

\* \* \* \* \*

#### § 1.883-2T [Removed]

■ **Par. 7** Section 1.883-2T is removed.

■ **Par. 8.** Section 1.883-3 is revised to read as follows:

#### § 1.883-3 Treatment of controlled foreign corporations.

(a) *General rule.* A foreign corporation satisfies the stock ownership test of § 1.883-1(c)(2) if it satisfies the qualified U.S. person ownership test in paragraph (b) of this section and the substantiation and reporting requirements of paragraphs (c) and (d) of this section, respectively. A foreign corporation that fails the qualified U.S. person ownership test of paragraph (b) of this section can satisfy the stock ownership test of § 1.883-1(c)(2) if it meets either the publicly-traded test of § 1.883-2(a) or the qualified shareholder stock ownership test of § 1.883-4(a).

(b) *Qualified U.S. person ownership test—(1) General rule.* A foreign corporation satisfies the qualified U.S. person ownership test only if the following two conditions are satisfied concurrently during more than half the days in its taxable year:

(i) The foreign corporation is a controlled foreign corporation (within the meaning of section 957(a)).

(ii) One or more qualified U.S. persons own more than 50 percent of the total value of all the outstanding stock of the foreign corporation (within the meaning of section 958(a) and paragraph (b)(4) of this section).

(2) *Qualified U.S. person.* For purposes of this section, a *qualified U.S. person* is a United States citizen or resident alien, a domestic corporation, or a domestic trust described in section 501(a), but only if the person provides the controlled foreign corporation an ownership statement described in paragraph (c)(2) of this section, and the controlled foreign corporation meets the reporting requirements of paragraph (d)

of this section with respect to that person.

(3) *Treatment of bearer shares.* For purposes of paragraph (b)(1)(ii) of this section, any shares of the foreign corporation or of any intermediary corporation that are issued in bearer form, shall be treated as not owned by qualified U.S. persons if the bearer shares are not maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G).

(4) *Ownership attribution through certain domestic entities.* For purposes of paragraph (b)(1)(ii) of this section, stock owned, directly or indirectly, by or for a domestic partnership, a domestic trust not described in section 501(a), or a domestic estate, shall be treated as owned proportionately by the partners, beneficiaries, grantors, or other interest holders, respectively, under the rules of section 958(a), which shall be applied by treating each domestic entity as a foreign entity. Stock that is considered owned by a person under this paragraph (b)(4) shall, for purposes of applying this paragraph (b)(4) to such person, be treated as actually owned by such person.

(5) *Examples.* The following examples illustrate the qualified U.S. person ownership test of paragraph (b)(1) of this section:

*Example 1.* Ship Co is a controlled foreign corporation (within the meaning of section 957(a)) for more than half the days of its taxable year and is organized in a qualified foreign country. A domestic partnership owns all of the outstanding stock of Ship Co for the entire taxable year. All of the partners in the domestic partnership are residents of foreign countries and not citizens of the United States. Ship Co does not satisfy the qualified U.S. person ownership test of paragraph (b)(1) of this section because qualified U.S. persons do not own shares of Ship Co stock with a value that is greater than 50 percent of the total value of the outstanding stock of the corporation for at least half the days of Ship Co's taxable year. Therefore, to satisfy the stock ownership test of § 1.883-1(c)(2) and constitute a qualified foreign corporation, Ship Co must meet the qualified shareholder stock ownership test of § 1.883-4(a).

*Example 2.* Ship Co is a controlled foreign corporation (within the meaning of section 957(a)) for more than half the days of its taxable year and is organized in a qualified foreign country. Ship Co has a single class of stock outstanding. For Ship Co's entire taxable year, a foreign corporation (Corp A), that is wholly owned by a resident of a foreign country who is not a U.S. citizen, owns 40 percent of the outstanding Ship Co stock. During that same period, a domestic partnership owns the remaining 60 percent of the outstanding Ship Co stock. The domestic partnership is wholly owned by 20 United States citizens, each of whom owns a 5-

percent partnership interest for Ship Co's entire taxable year. Ship Co meets the qualified U.S. person ownership test of paragraph (b)(1) of this section because during more than half the days in its taxable year it was a controlled foreign corporation within the meaning of section 957(a), and, applying the ownership attribution rules of paragraph (b)(4) of this section, qualified U.S. persons (the partners in the domestic partnership) owned Ship Co stock with a value that is greater than 50 percent of the total value of all the outstanding Ship Co shares. Therefore, Ship Co will meet the stock ownership test of § 1.883-1(c)(2) if it satisfies the substantiation and reporting requirements of paragraphs (c) and (d) of this section with respect to the partners in the domestic partnership. Alternatively, if four or more partners in the domestic partnership were not qualified U.S. persons, Ship Co would not meet the qualified U.S. person ownership test of paragraph (b)(1) of this section because, even though during more than half the days in its taxable year it would have been a controlled foreign corporation within the meaning of section 957(a), qualified U.S. persons would not have owned Ship Co stock with a value that is greater than 50 percent of the total value of all the outstanding Ship Co shares during that period.

*Example 3.* Ship Co is a controlled foreign corporation (within the meaning of section 957(a)) and is organized in a qualified foreign country. Ship Co has two classes of stock outstanding, Class A representing 60 percent of the vote and value and Class B representing the remaining 40 percent of the vote and value of all the shares outstanding of Ship Co. The Class A stock is issued in bearer form and is maintained in a dematerialized book-entry system, as described in § 1.883-1(c)(3)(i)(G). The Class B stock is also issued in bearer form, but is not maintained in a dematerialized or immobilized book-entry system. For Ship Co's entire taxable year, a United States citizen A holds all the Class A stock and nonresident alien individual B owns all the Class B stock. Although the Class A stock is issued in bearer form, Ship Co will satisfy the qualified U.S. person ownership test of paragraph (b)(1) of this section because the Class A stock is maintained in a dematerialized book-entry system on behalf of A. The Class B stock is not owned by a qualified U.S. person but is taken into account in determining the total value of Ship Co's outstanding stock. Alternatively, if the Class B stock were owned by a qualified U.S. person, the results would be similar. Class B stock would not be taken into account in determining if the qualified U.S. person ownership test were satisfied, but would be taken into account in determining the total value of Ship Co's outstanding stock.

(c) *Substantiation of CFC stock ownership—(1) In general.* A controlled foreign corporation must establish all of the facts necessary to demonstrate to the Commissioner that it satisfies the qualified U.S. person ownership test of paragraph (b)(1) of this section by

obtaining a written ownership statement (described in paragraph (c)(2) or (3) of this section, as applicable), signed under penalties of perjury by an individual authorized to sign that person's Federal tax or information return, from—

(i) Each qualified U.S. person whose ownership of stock of the controlled foreign corporation is taken into account for purposes of meeting the qualified U.S. person ownership test; and

(ii) Each domestic intermediary described in paragraph (b)(4) of this section, each foreign intermediary (including a foreign corporation, partnership, trust, or estate), and mere legal owners or record holders acting as nominees in the chain of ownership between each such qualified U.S. person and the controlled foreign corporation, if any.

(2) *Ownership statements from qualified U.S. persons.* An ownership statement from a qualified U.S. person must include—

(i) The qualified U.S. person's name, permanent address, and taxpayer identification number;

(ii) If the qualified U.S. person directly owns shares in the controlled foreign corporation, the number of shares of each class of stock of the controlled foreign corporation owned by the qualified U.S. person, whether any shares are issued in bearer form, whether any bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G), and the period (or periods) in the taxable year of the controlled foreign corporation during which the qualified U.S. person owned the shares;

(iii) If the qualified U.S. person indirectly owns shares in the controlled foreign corporation through a foreign or domestic intermediary described in paragraph (c)(1)(ii) of this section, the name of each intermediary, the amount and nature of the qualified U.S. person's interest in each intermediary, the period (or periods) in the taxable year of the controlled foreign corporation during which the qualified U.S. person held such interest, and, with respect to any intermediary foreign corporation, whether any shares are issued in bearer form and whether any such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G); and

(iv) Any other information specified in published guidance by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(3) *Ownership statements from intermediaries.* An ownership statement

from a domestic or foreign intermediary must include:

(i) The intermediary's name, permanent address, and taxpayer identification number, if any.

(ii) If the intermediary directly owns stock in the controlled foreign corporation, the number of shares of each class of stock of the controlled foreign corporation owned by the intermediary, whether such shares are issued in bearer form and maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G), and the period (or periods) in the taxable year of the controlled foreign corporation during which the intermediary owned the shares.

(iii) If the intermediary indirectly owns the stock of the controlled foreign corporation, the name and address of each intermediary in the chain of ownership between it and the controlled foreign corporation, the period (or periods) in the taxable year of the controlled foreign corporation during which the intermediary owned the shares, the percentage of its indirect ownership interest in the controlled foreign corporation, and, if any intermediary in the chain of ownership is a foreign corporation, whether any shares of such intermediary are issued in bearer form and if any such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G).

(iv) Any other information specified in published guidance by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(4) *Three-year period of validity.* The rules of § 1.883-4(d)(2)(ii) shall apply for determining the validity of the ownership statements required under paragraph (c)(2) of this section.

(5) *Availability and retention of documents for inspection.* The foreign corporation seeking qualified foreign corporation status must retain the ownership statements described in this paragraph (c) until the expiration of the statute of limitations for its taxable year to which the ownership statements relate. The ownership statements must be made available for inspection at such time and place as the Commissioner may request in writing in accordance with § 1.883-1(c)(3)(ii).

(d) *Reporting requirements.* A controlled foreign corporation that relies on this section to satisfy the stock ownership test of § 1.883-1(c)(2) must include the following information (in addition to the information required by § 1.883-1(c)(3)) with its Form 1120-F, "U.S. Income Tax Return of a Foreign Corporation", filed for its taxable year.

This information must be consistent with the ownership statements obtained by the controlled foreign corporation pursuant to paragraph (c) of this section and must be current as of the end of the corporation's taxable year—

(1) The relative value of the shares of the controlled foreign corporation that are owned (directly, and indirectly applying the rules of paragraph (b)(4) of this section) by all qualified U.S. persons identified in paragraph (c)(2) of this section as compared to the value of all outstanding shares of the corporation;

(2) The period (or periods) in the taxable year during which such qualified U.S. persons held such shares;

(3) The period (or periods) in the taxable year during which the foreign corporation was a controlled foreign corporation;

(4) A statement as to whether the controlled foreign corporation or any intermediary corporation had bearer shares outstanding during the taxable year, and whether any such bearer shares taken into account for purposes of satisfying the qualified U.S. person ownership test are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G); and

(5) Any other information specified by Form 1120-F, and its accompanying instructions, or in published guidance by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

**§ 1.883-3T [Removed]**

■ **Par. 9.** Section 1.883-3T is removed.

■ **Par. 10.** Section 1.883-4 is amended by revising paragraphs (b)(1)(ii), (c)(1), (d)(1), (d)(4)(i)(C), (d)(4)(i)(D), (e)(2), and (e)(3) to read as follows:

**§ 1.883-4 Qualified shareholder stock ownership test.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) Does not own its interest in the foreign corporation through bearer shares, either directly or by applying the attribution rules of paragraph (c) of this section, unless such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G); and

\* \* \* \* \*

(c) \* \* \*

(1) *General rules for attribution.* For purposes of applying paragraph (a) of this section and the exception to the closely-held test in § 1.883-1(d)(3)(ii), stock owned by or for a corporation, partnership, trust, estate, or mutual insurance company or similar entity shall be treated as owned

proportionately by its shareholders, partners, beneficiaries, grantors, or other interest holders, as provided in paragraphs (c)(2) through (7) of this section. The proportionate interest rules of this paragraph (c) shall apply successively upward through the chain of ownership, and a person's proportionate interest shall be computed for the relevant days or period taken into account in determining whether a foreign corporation satisfies the requirements of paragraph (a) of this section. Stock treated as owned by a person by reason of this paragraph (c) shall be treated as actually owned by such person for purposes of this section. An owner of an interest in an association taxable as a corporation shall be treated as a shareholder of such association for purposes of this paragraph (c). Stock issued in bearer form will not be treated as owned proportionately by its shareholders unless the shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G).

\* \* \* \* \*

(d) \* \* \*

(1) *General rule.* A foreign corporation that relies on this section to satisfy the stock ownership test of § 1.883-1(c)(2), must establish all the facts necessary to satisfy the Commissioner that more than 50 percent of the value of its shares is owned, or treated as owned applying paragraph (c) of this section, by qualified shareholders for the relevant period. If a foreign corporation relies upon bearer shares in the chain of ownership to satisfy one of the stock ownership tests, the foreign corporation must also establish all of the facts necessary to satisfy the Commissioner that such shares are maintained in a dematerialized book-entry system, as described in § 1.883-1(c)(3)(i)(G), for the benefit of the relevant shareholder.

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(C) If the individual directly owns shares of stock in the corporation seeking qualified foreign corporation status, the name of the corporation, the number of shares in each class of stock of the corporation owned by the individual, whether any such shares are issued in bearer form and maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G), and the period (or periods) in the taxable year of the foreign corporation during which the individual owned the shares;

(D) If the individual directly owns an interest in a corporation, partnership,

trust, estate, or other intermediary that directly or indirectly owns stock in the corporation seeking qualified foreign corporation status, the name of the intermediary, the number and class of shares or the amount and nature of the interest that the individual holds in such intermediary, and, if the intermediary is a corporation, whether any such shares are issued in bearer form and maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G), and the period (or periods) in the taxable year of the foreign corporation seeking qualified foreign corporation status during which the individual held such interest;

\* \* \* \* \*

(e) \* \* \*

(2) With respect to all qualified shareholders relied upon to satisfy the 50 percent ownership test of paragraph (a) of this section, the total number of such qualified shareholders as defined in paragraph (b)(1) of this section; the total percentage of the value of the outstanding shares owned, applying the attribution rules of paragraph (c) of this section, by such qualified shareholders by country of residence or organization, whichever is applicable; and the period during the taxable year of the foreign corporation that such stock was held by qualified shareholders; and

(3) Any other relevant information specified by the Form 1120-F, "U.S. Income Tax Return of a Foreign Corporation," and its accompanying instructions, or in published guidance by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

**§ 1.883-4T [Removed]**

■ **Par. 11.** Section 1.883-4T is removed.

■ **Par. 12.** Section 1.883-5 is amended by revising paragraph (d) and removing paragraph (e) to read as follows:

**§ 1.883-5 Effective/applicability dates.**

\* \* \* \* \*

(d) *Effective/applicability date.* Except as otherwise provided in this paragraph (d), §§ 1.883-1, 1.883-2, 1.883-3, and 1.883-4 apply to taxable years of the foreign corporation beginning after June 25, 2007, and may be applied to any open taxable years of the foreign corporation beginning on or after December 31, 2004. The portion of any provision concerning bearer shares maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G), applies to taxable years of a foreign corporation beginning on or after September 17, 2010.

**§ 1.883-5T [Removed]**

■ **Par. 13.** Section 1.883-5T is removed.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

■ **Par. 14.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 15.** In § 602.101, paragraph (b) is amended by removing the entries for §§ 1.883-1T, 1.883-2T, 1.883-3T, 1.883-4T, and 1.883-5T from the table and adding an entry for § 1.883-0 to the table in numerical order to read as follows:

**§ 602.101 OMB Control Numbers.**

\* \* \* \* \*  
(b) \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * *	* *
§ 1.883-0 .....	1545-1677
* * *	* *

**Steven T. Miller,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: September 3, 2010.

**Michael Mundaca,**  
*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2010-23185 Filed 9-16-10; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket No. USCG-2010-0534]

RIN 1625-AA08

**Special Local Regulation; Monongahela River, Pittsburgh, PA**

**AGENCY:** Coast Guard, DHS.  
**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a special local regulation from mile marker 2.2 (Southside Riverfront Park Boat Ramp) on the Monongahela River to mile marker 2.7 (27th Street), extending 100 feet out from the left descending bank. This special local regulation is needed to safeguard participants of the Pittsburgh Dragon Boat Festival from the hazards imposed by marine traffic. Entry into

the regulated area is prohibited, unless specifically authorized by the Captain of the Port Pittsburgh or a designated representative.

**DATES:** This rule is effective from 11:30 a.m. to 4:30 p.m. on September 18, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0534 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0534 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail ENS Robyn Hoskins, Marine Safety Unit Pittsburgh, Coast Guard; telephone 412-644-5808 Ext. 2140, e-mail [Robyn.G.Hoskins@uscg.mil](mailto:Robyn.G.Hoskins@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM). A NPRM would be impracticable with respect to this rule because immediate action is needed to safeguard participants during the Pittsburgh Dragon Boat Festival from the hazards imposed by marine traffic, and re-scheduling the event is contrary to the public interest of participants, spectators and vendors in having the event proceed as scheduled.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because waiting 30 days would be impracticable since immediate action is needed to safeguard participants

during the Pittsburgh Dragon Boat Festival from the hazards imposed by marine traffic, and re-scheduling the event is contrary to the public interest of participants, spectators and vendors in having the event proceed as scheduled.

**Basis and Purpose**

The Coast Guard is establishing a special local regulation from mile marker 2.2 (Southside Riverfront Park Boat Ramp) on the Monongahela River to mile marker 2.7 (27th Street), extending 100 feet out from the left descending bank. This special local regulation is needed to safeguard participants during the Pittsburgh Dragon Boat Festival from the hazards imposed by marine traffic.

**Discussion of Rule**

Vessels shall not enter into, depart from, or move within the regulated area without permission from the Captain of the Port Pittsburgh or his authorized representative. Persons or vessels requiring entry into or passage through the regulated area must request permission from the Captain of the Port Pittsburgh, or a designated representative. They may be contacted on VHF-FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1-800-253-7465. This rule is effective from 11:30 a.m. to 4:30 p.m. on September 18, 2010. The Captain of the Port Pittsburgh will inform the public through broadcast notices to mariners of the enforcement period for the special local regulation as well as any changes in the planned schedule.

**Regulatory Analyses**

We developed this 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 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 rule will be in effect for a short period of time and notifications to the marine community will be made through broadcast notices to mariners. The impacts on routine navigation are expected to be minimal.