

amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106-554, 114 Stat. 2763 (2000).

2. Section 1.32 is revised to read as follows:

**§ 1.32 Segregated account; daily computation and record.**

(a) Each futures commission merchant must compute as of the close of each business day:

(1) The total amount of customer funds on deposit in segregated accounts on behalf of commodity and option customers;

(2) the amount of such customer funds required by the Act and these regulations to be on deposit in segregated accounts on behalf of such commodity and option customers; and

(3) the amount of the futures commission merchant's residual interest in such customer funds.

(b) In computing the amount of funds required to be in segregated accounts, a futures commission merchant may offset any net deficit in a particular customer's account against the current market value of readily marketable securities, less applicable percentage deductions (*i.e.*, "securities haircuts") as set forth in Rule 15c3-1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 241.15c3-1(c)(2)(vi)), held for the same customer's account. The futures commission merchant must maintain a security interest in the securities, including a written authorization to liquidate the securities at the futures commission merchant's discretion, and must segregate the securities in a safekeeping account with a bank, trust company, clearing organization of a contract market, or another futures commission merchant. For purposes of this section, a security will be considered readily marketable if it is traded on a "ready market" as defined in Rule 15c3-1(c)(11)(i) of the Securities and Exchange Commission (17 CFR 240.15c3-1(c)(11)(i)).

(c) The daily computations required by this section must be completed by the futures commission merchant prior to noon on the next business day and must be kept, together with all supporting data, in accordance with the requirements of § 1.31.

Issued in Washington, DC on August 1, 2001 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 8948]

RIN 1545-AY43

**Minimum Cost Requirement Permitting the Transfer of Excess Assets of a Defined Benefit Pension Plan to a Retiree Health Account; Correction**

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

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, June 19, 2001 (66 FR 32897) relating to the minimum cost requirement under section 420, which permits the transfer of excess assets of a defined benefit pension plan to a retiree health account.

**DATES:** This correction is effective June 19, 2001.

**FOR FURTHER INFORMATION CONTACT:** Janet A. Laufer or Vernon S. Carter, (202) 622-6060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of these corrections are under section 420 of the Internal Revenue Code.

**Need for Correction**

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the publication of the final regulations (TD 8948), that were the subject of FR Doc. 01-15255, is corrected as follows:

1. On page 32900, column 1, amendatory instruction Paragraph 1., lines 2 and 3, the language "for part 1 continues to read in part as follows:" is corrected to read "for part 1 is amended by adding a new entry in numerical order to read in part as follows:".

2. On page 32900, column 1, the authority citation is corrected to read as follows:

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

§ 1.420-1 also issued under 26 U.S.C. 420(c)(3)(E).

**LaNita Van Dyke,**

*Acting, Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).*

[FR Doc. 01-19787 Filed 8-6-01; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 301**

[TD 8961]

RIN 1545-BA04

**Modification of Tax Shelter Rules II**

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

**ACTION:** Temporary regulations.

**SUMMARY:** These temporary regulations modify the rules relating to the requirement that certain corporate taxpayers file a statement with their Federal corporate income tax returns under section 6011(a) and the registration of confidential corporate tax shelters under section 6111(d). These regulations provide the public with additional guidance needed to comply with the disclosure rules under section 6011(a), the registration requirement under section 6111(d), and the list maintenance requirement under section 6112 applicable to tax shelters. The temporary regulations affect corporations participating in certain reportable transactions, persons responsible for registering confidential corporate tax shelters, and organizers of potentially abusive tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

**DATES:** *Effective Date:* These temporary regulations are effective August 2, 2001.

*Applicability Date:* For dates of applicability, see § 1.6011-4T(g) and § 301.6111-2T(h).

**FOR FURTHER INFORMATION CONTACT:** Danielle M. Grimm (202) 622-3080 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document amends 26 CFR parts 1 and 301 to provide modified rules relating to the disclosure of certain reportable transactions by corporate investors on their Federal corporate income tax returns under section 6011 and the registration of confidential corporate tax shelters under section 6111.

On February 28, 2000, the IRS issued temporary and proposed regulations regarding section 6011 (TD 8877, REG-103735-00), section 6111 (TD 8876, REG-110311-98), and section 6112 (TD 8875, REG-103736-00) (collectively, the February regulations). The February

regulations were published in the **Federal Register** (65 FR 11205, 65 FR 11215, 65 FR 11211) on March 2, 2000. On August 11, 2000, the IRS issued temporary and proposed regulations regarding sections 6011, 6111, and 6112 (TD 8896, REG-103735-00, REG-110311-98, REG-103736-00) (collectively, the August regulations). The August regulations were published in the **Federal Register** (65 FR 49909) on August 16, 2000, modifying the February regulations.

Based on comments that have been received, the IRS and Treasury have determined that certain additional interim changes to the temporary and proposed regulations are warranted. The changes in the proposed rules are published elsewhere in this issue of the **Federal Register**.

These interim changes are intended to assist taxpayers and ease tax administration by simplifying and clarifying certain provisions of the regulations, addressing certain practical problems relating to compliance with the regulations, and making certain other changes relating to the scope of the regulations. The IRS and Treasury continue to evaluate all the comments and recommendations received, and other changes may be made in the final regulations.

### Explanation of Provisions

#### 1. Different Foreign Tax Treatment Characteristic in § 1.6011-4T(b)(3)(i)(F)

Under section 6011, reportable transactions include listed transactions and transactions that have at least two of six specified characteristics. One of the characteristics is present if the expected characterization of any significant aspect of the transaction for Federal income tax purposes differs from the expected characterization of such aspect of the transaction for purposes of taxation of any party to the transaction in another country. Commentators have suggested that the inclusion of this characteristic causes the regulations to be overinclusive. Based on these comments and further review, the IRS and Treasury have removed this characteristic from the temporary and proposed regulations.

#### 2. Clarification of Exceptions Under § 1.6011-4T

a. "Long-standing and generally accepted exception" in § 1.6011-4T(b)(3)(ii)(B)

The temporary regulations under section 6011 provide that a transaction, other than a listed transaction, is not a reportable transaction if one of four exceptions is satisfied. One exception

applies if the taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that there is a long-standing and generally accepted understanding that the expected Federal income tax benefits (taking into account any combination of intended tax consequences) from the transaction are allowable under the Code for substantially similar transactions.

Commentators have requested additional guidance on the meaning of the phrase "long-standing and generally accepted" that is contained in this exception. This exception is intended to apply to transactions the structure of which is customary and the intended tax treatment of which is widely known and generally accepted as properly allowable under the Internal Revenue Code. Ordinarily, a determination as to whether the intended tax treatment of a transaction has achieved such a level of general acceptance cannot be made unless information relating to the structure and tax treatment of substantially similar transactions has been in the public domain and widely known for a period of years. However, the applicability of this exception does not depend on such general acceptance having existed for any minimum period of time. Accordingly, the IRS and Treasury have eliminated the phrase "long-standing" from the exception and have added language to clarify the scope of the exception. Corresponding changes have been made in § 301.6111-2T.

b. "No reasonable basis exception" in § 1.6011-4T(b)(3)(ii)(C)

This exception generally provides that a transaction, other than a listed transaction, is not reportable if the taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. Commentators have requested additional guidance on the no reasonable basis determination. Accordingly, the regulations clarify that for purposes of this exception, whether the IRS would have a reasonable basis for its position is to be determined by applying the same standard as that applicable to taxpayers under § 1.6662-3(b)(3). Thus, the reasonable basis standard is not satisfied by an IRS position that would be merely arguable or that would constitute merely a colorable claim. The determination of whether the IRS would have such a reasonable basis is qualitative in nature and does not depend on any percentage

or other quantitative assessment of the likelihood that the taxpayer would ultimately prevail if a significant portion of the expected tax benefits were disallowed by the IRS. Corresponding changes have been made to newly redesignated § 301.6111-2T(b)(4)(i).

#### 3. Economic Substance Test

Commentators have suggested that the economic substance test, as articulated in § 301.6111-2T(b)(3), may encompass transactions for which registration pursuant to section 6111(d) or list maintenance under section 6112 would not be appropriate. Further, the IRS and Treasury believe that substantially all transactions encompassed by the economic substance test for which registration and list maintenance are appropriate will constitute other tax structured transactions within the meaning of § 301.6111-2T(b)(4). Accordingly, the economic substance test as described in § 301.6111-2T(b)(3) is removed from the temporary and proposed regulations under section 6111.

#### 4. Presumption Against Confidentiality

Section 301.6111-2T(c)(3) contains a presumption that, unless facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter provides express written authorization to each offeree permitting the offeree (and each employee, representative, or other agent of such offeree) to disclose the structure and tax aspects of the transaction to any and all persons, without limitation of any kind on such disclosure. There has been a request to clarify the phrase "to disclose the structure and tax aspects of the transaction." Accordingly, the IRS and Treasury have added language to clarify that this phrase is to be construed broadly and includes all materials (including opinions or other tax analyses) that are provided to the offeree related to the structure and tax aspects of the transaction.

#### 5. Tax Shelter Registration in § 301.6111-2T(e)(2)(ii)(E)

The August regulations provided that the Form 8264, "Application for Registration of a Tax Shelter," was to be filed with the Kansas City Service Center. Recently, the Service issued Announcement 2001-62 (2001-24 I.R.B. 1337), instructing taxpayers to file these forms with the Ogden Service Center. The instructions to Form 8264 will be revised to reflect the change in filing location. Accordingly, the regulations

are amended to provide that the Form 8264 is to be filed as prescribed in the instructions to the form.

#### 6. Effective Date

The regulations are applicable August 2, 2001. However, in general, taxpayers may rely on the regulations after February 28, 2000.

#### 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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations impose no new collection of information on small entities, 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 temporary regulations will be 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 Danielle M. Grimm, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects

##### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 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 1.6011-4T is amended as follows:

1. Paragraph (b)(3)(i)(F) is removed.
2. Paragraphs (b)(3)(ii)(B) and (C) are revised.

3. Paragraph (b)(5) is amended by removing the language “long-standing and” from the fifth sentence in *Example 1* and the seventh sentence in *Example 3*.

4. Paragraph (g) is revised.

The revisions and addition read as follows:

#### § 1.6011-4T Requirement of statement disclosing participation in certain transactions by corporate taxpayers (Temporary).

\* \* \* \* \*

- (b) \* \* \*  
(3) \* \* \*  
(ii) \* \* \*

(B) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that there is a generally accepted understanding that the taxpayer's intended tax treatment of the transaction (taking into account any combination of intended tax consequences) is properly allowable under the Internal Revenue Code for substantially similar transactions. There is no minimum period of time for which such a generally accepted understanding must exist. In general, however, a taxpayer cannot reasonably determine whether the intended tax treatment of a transaction has become generally accepted unless information relating to the structure and tax treatment of such transactions has been in the public domain (e.g., rulings, published articles, etc.) and widely known for a sufficient period of time (ordinarily a period of years) to provide knowledgeable tax practitioners and the IRS reasonable opportunity to evaluate the intended tax treatment. The mere fact that the taxpayer may have received an opinion or advice from one or more knowledgeable tax practitioners to the effect that the taxpayer's intended tax treatment of the transaction should or will be sustained, if challenged by the IRS, is not sufficient to satisfy the requirements of this paragraph (b)(3)(ii)(B).

(C) The taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. This paragraph (b)(3)(ii)(C) applies only if the taxpayer reasonably determines that there is no basis that would meet the standard applicable to taxpayers under § 1.6662-3(b)(3) under which the IRS could disallow any significant portion of the expected Federal income tax benefits of the transaction. Thus, the reasonable basis

standard is not satisfied by an IRS position that would be merely arguable or that would constitute merely a colorable claim. However, the taxpayer's determination of whether the IRS would or would not have a reasonable basis for such a position must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, administrative guidance, and judicial decisions that establish principles of general application in the tax law (e.g., *Gregory v. Helvering*, 293 U.S. 465 (1935)). The determination of whether the IRS would or would not have such a reasonable basis is qualitative in nature and does not depend on any percentage or other quantitative assessment of the likelihood that the taxpayer would ultimately prevail if a significant portion of the expected tax benefits were disallowed by the IRS.

\* \* \* \* \*

(g) *Effective date.* This section applies to Federal corporate income tax returns filed after February 28, 2000. However, paragraphs (b)(3)(ii)(B), (b)(3)(ii)(C), and (b)(5) *Examples 1* and *3*, of this section apply to Federal corporate income tax returns filed after August 2, 2001. Taxpayers may rely on the rules in paragraphs (b)(3)(ii)(B), (b)(3)(ii)(C), and (b)(5) *Examples 1* and *3*, of this section for Federal corporate income tax returns filed after February 28, 2000. Otherwise, the rules that apply with respect to Federal corporate income tax returns filed after February 28, 2000, and on or before August 2, 2001, are contained in § 1.6011-4T in effect prior to August 2, 2001 (see 26 CFR part 1 revised as of April 1, 2001).

#### PART 301—PROCEDURE AND ADMINISTRATION

**Par. 3.** The authority citation for part 301 continues to read in part as follows:

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

**Par. 4.** Section 301.6111-2T is amended as follows:

1. Paragraph (b)(1) is revised.
2. Paragraph (b)(3) is removed.
3. Paragraphs (b)(4), (b)(5), (b)(6) and (b)(7) are redesignated paragraphs (b)(3), (b)(4), (b)(5) and (b)(6), respectively.
4. Newly redesignated paragraph (b)(3) introductory text is amended by revising the reference to “(b)(4)” to read “(b)(3)”.
5. Newly redesignated paragraph (b)(3)(ii) is revised.

6. Newly redesignated paragraph (b)(4) introductory text is amended by removing the reference “(b)(5)(i)” and adding “(b)(4)(i)” in its place.

7. Newly redesignated paragraph (b)(4)(i) is revised.

8. Newly redesignated paragraph (b)(4)(ii) is amended by removing the reference “(b)(6)” and adding “(b)(5)” in its place.

9. Newly redesignated paragraph (b)(6) is amended as follows:

a. Paragraph (b)(6), introductory text, is revised.

b. Example 1 is removed.

c. “Example 2.” is redesignated as “Example.”

d. The language “long-standing and” is removed from paragraph (i) in the newly redesignated Example.

e. The fourth sentence of paragraph (i) in the newly redesignated Example is removed.

f. Paragraph (ii) in the newly redesignated “Example” is revised.

10. Paragraphs (c)(3) and (e)(2)(ii)(E) are revised.

11. Paragraph (h) is amended by adding 3 sentences at the end.

The revisions and additions read as follows:

**§ 301.6111-2T Confidential corporate tax shelters (temporary).**

\* \* \* \* \*

(b) \* \* \* (1) *In general.* The avoidance or evasion of Federal income tax will be considered a significant purpose of the structure of a transaction if the transaction is described in paragraph (b)(2) or (3) of this section. However, a transaction described in paragraph (b)(3) of this section need not be registered if the transaction is described in paragraph (b)(4) of this section. For purposes of this section, Federal income tax benefits include deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, and any other tax consequences that may reduce a taxpayer’s Federal income tax liability by affecting the timing, character, or source of any item of income, gain, deduction, loss, or credit.

\* \* \* \* \*

(3) \* \* \*

(ii) There is a generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are properly allowable under the Internal Revenue Code for substantially similar transactions. There is no minimum period of time for which such a generally accepted understanding must exist. In general, however, a tax shelter

promoter (or other person who would be responsible for registration under this section) cannot reasonably determine whether the intended tax treatment of a transaction has become generally accepted unless information relating to the structure and tax treatment of such transactions has been in the public domain (e.g., rulings, published articles, etc.) and widely known for a sufficient period of time (ordinarily a period of years) to provide knowledgeable tax practitioners and the IRS reasonable opportunity to evaluate the intended tax treatment. The mere fact that one or more knowledgeable tax practitioners have provided an opinion or advice to the effect that the intended tax treatment of the transaction should or will be sustained, if challenged by the IRS, is not sufficient to satisfy the requirements of this paragraph (b)(3)(ii).

(4) \* \* \*

(i) In the case of a transaction other than a transaction described in paragraph (b)(2) of this section, the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. This paragraph (b)(4)(i) applies only if the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no basis that would meet the standard applicable to taxpayers under § 1.6662-3(b)(3) of this chapter under which the IRS could disallow any significant portion of the expected Federal income tax benefits of the transaction. Thus, the reasonable basis standard is not satisfied by an IRS position that would be merely arguable or that would constitute merely a colorable claim. However, the determination of whether the IRS would or would not have a reasonable basis for such a position must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, administrative guidance, and judicial decisions that establish principles of general application in the tax law (e.g., *Gregory v. Helvering*, 293 U.S. 465 (1935)). The determination of whether the IRS would or would not have such a reasonable basis is qualitative in nature and does not depend on any

percentage or other quantitative assessment of the likelihood that the taxpayer would ultimately prevail if a significant portion of the expected tax benefits were disallowed by the IRS.

\* \* \* \* \*

(6) *Example.* The following example illustrates the application of paragraphs (b)(1) through (4) of this section. Assume, for purposes of the example, that the transaction is not the same as or substantially similar to any of the types of transactions that the IRS has identified as listed transactions under section 6111 and, thus, is not described in paragraph (b)(2) of this section. The example is as follows:

*Example.* \* \* \*

(ii) *Analysis.* The transaction represented by this combination of financial instruments is a transaction described in paragraph (b)(3) of this section. However, if Y is uncertain whether this transaction is described in paragraph (b)(3) of this section, or is otherwise uncertain whether registration is required, Y may apply for a ruling under paragraph (b)(5) of this section, and the transaction will not be required to be registered while the ruling is pending or for sixty days thereafter.

(c) \* \* \*

(3) *Presumption.* Unless facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter provides express written authorization to each offeree permitting the offeree (and each employee, representative, or other agent of such offeree) to disclose to any and all persons, without limitation of any kind, the structure and tax aspects of the transaction, and all materials of any kind (including opinions or other tax analyses) that are provided to the offeree related to such structure and tax aspects.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(E) Sign the Form 8264 and file the form as prescribed in the instructions to the form.

\* \* \* \* \*

(h) *Effective date.* \* \* \* However, paragraphs (b)(1), (b)(3)(ii), (b)(4)(i), (b)(6) *Example* (i) and (ii), (c)(3), and (e)(2)(ii)(E) of this section apply to confidential corporate tax shelters in which any interests are offered for sale after August 2, 2001. The rules in paragraphs (b)(1), (b)(3)(ii), (b)(4)(i), (b)(6), (b)(6)*Example*(i) and (ii), (c)(3), and (e)(2)(ii)(E), of this section may be relied upon for confidential corporate tax shelters in which any interests are

offered for sale after February 28, 2000. Otherwise, the rules that apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000, and on or before August 2, 2001 are contained in this § 301.6111-2T in effect prior to August 2, 2001 (See 26 CFR part 301 revised as of April 1, 2001).

#### § 301.6112-1T [Amended]

**Par. 5.** Section 301.6112-1T is amended by removing the authority citation immediately following the section.

**David A. Mader,**

*Acting Deputy Commissioner of Internal Revenue.*

**Mark Weinberger,**

*Assistant Secretary of the Treasury.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 100

[CGD05-00-044]

RIN 2115-AE46

#### Special Local Regulations for Marine Events; Chester River, Kent Island Narrows, Maryland

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is adopting permanent special local regulations for fireworks displays held over the waters of the Chester River, Kent Island Narrows, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in portions of the Chester River before, during and after the fireworks displays.

**DATES:** This rule is effective September 6, 2001.

**ADDRESSES:** Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-00-044 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Dulani Woods, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401

Hawkins Point Road, Baltimore Maryland, 21226-1791, telephone number (410) 576-2513.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On April 5, 2001, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Fireworks Displays, Chester River, Kent Island Narrows, Maryland, in the **Federal Register** (66 FR 18056). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

##### Background and Purpose

At various times throughout the year, fireworks displays are held over the waters of the Chester River, Kent Island Narrows, Maryland. The events consist of pyrotechnic displays fired from a barge positioned north of Kent Island Narrows, Maryland. A fleet of spectator vessels gathers nearby to view the fireworks displays. Due to the dangers inherent in fireworks displays, vessel traffic will need to be temporarily restricted to provide for the safety of spectators and transiting vessels.

##### Discussion of Comments and Changes

There have been no changes made in the Final Rule, as we received no comments on the NPRM.

##### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Although this rule will prevent traffic from transiting a portion of the Chester River during the events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612.), we considered whether this 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 rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Chester River during the event.

Although this rule will prevent traffic from transiting or anchoring in a portion of the Chester River during the events, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

##### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. No assistance was requested by any small business, organization, or governmental jurisdiction.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

##### Collection of Information

This rule calls 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 law or local governments and would either preempt State law or