

the regulation, the arrangements are brought into compliance with the final regulations.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

The Treasury Department and the IRS specifically request comments on: (1) Whether revocation of § 1.817-5(f)(2)(ii) necessitates other changes to the look-through rules of § 1.817-5(f), in particular whether the list of holders permitted by § 1.817-5(f)(3) should be amended or expanded, and whether a non-pro-rata distribution of the investment returns of a segregated asset account should be permitted to take account of certain bonus payments to investment managers commonly referred to as incentive payments, (2) whether § 1.817-5 should be updated to take account of changes to variable contracts since the final regulations were published in 1986, and (3) whether regulations are needed to address when a holder of a variable contract will be treated as the owner of assets held in a segregated asset account and, therefore,

required to include earnings on those assets in income.<sup>3</sup>

### Drafting Information

The principal author of these proposed regulations is James Polfer, Office of the Associate Chief Counsel (Financial Institutions and Products), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Treasury Department and the IRS participated in their development.

### List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

### Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAX

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

Section 1.817-5 also issued under 26 U.S.C. 817(h). \* \* \*

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

#### § 1.817-5 [Amended]

2. Section 1.817-5 is amended as follows:

1. Paragraphs (f)(2)(ii) and (g) *Example 3* are removed.

2. Paragraph (f)(2)(iii) is redesignated as paragraph (f)(2)(ii).

3. Paragraph (g) *Example 4* is redesignated as paragraph (g) *Example 3*.

**Robert E. Wenzel,**

*Deputy Commissioner (Services and Enforcement).*

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<sup>3</sup> The Treasury Department and the IRS have issued a number of revenue rulings that provide guidance for determining whether the holder of a variable contract will be treated as the owner of assets held by a segregated asset account by virtue of the control the contract holder has over those assets. See Rev. Rul. 2003-92, 2003-33 I.R.B. (August 18, 2003); Rev. Rul. 2003-91, 2003-33 I.R.B. (August 18, 2003); Rev. Rul. 82-54, 1982-1 C.B. 11; Rev. Rul. 81-225, 1981-2 C.B. 12; Rev. Rul. 80-274, 1980-2 C.B. 27; Rev. Rul. 77-85, 1977-1 C.B. 12. See also *Christoffersen v. U.S.*, 749 F.2d 513 (8th Cir. 1984), *rev'd* 578 F. Supp. 398 (N.D. Iowa 1984). These rulings apply general concepts of ownership that have developed in case law to conclude that a contract holder was the owner of assets held in the account that supported the contract holder's annuity contract, and was therefore subject to current taxation on the earnings on those assets.

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 151

[USCG-2003-14273]

RIN 1625-AA52 [Formerly RIN 2115-AG52]

### Mandatory Ballast Water Management Program for U.S. Waters

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The unintentional introduction of nonindigenous species (NIS) into U.S. waters via the discharge of vessels' ballast water has had significant impacts on the nation's marine and freshwater resources, biological diversity, and coastal infrastructures. To address this continued threat, and to comply with the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, and the National Invasive Species Act of 1996, the Coast Guard proposes mandatory ballast water management practices for all vessels equipped with ballast tanks bound for ports or places within the U.S. and/or entering U.S. waters. The Great Lakes ballast water management program would remain unchanged. This proposed rulemaking would increase the Coast Guard's ability to protect U.S. waters against the introduction of NIS via ballast water discharges.

**DATES:** Comments and related material must reach the Docket Management Facility on or before October 28, 2003.

**ADDRESSES:** To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-2003-14273), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web site for the Docket Management System at <http://dms.dot.gov>.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725