

**Explanation of Provisions**

Section 301.7701-3(g)(1) describes how elective changes in the classification of an entity will be treated for tax purposes. Section 301.7701-3(g)(1)(ii) provides that an elective conversion of an association to a partnership is deemed to have the following form: the association distributes all of its assets and liabilities to its shareholders in liquidation of the association, and immediately thereafter, the shareholders contribute all of the distributed assets and liabilities to a newly formed partnership. Section 301.7701-3(g)(1)(iii) provides that an elective conversion of an association to an entity that is disregarded as an entity separate from its owner is deemed to have the following form: the association distributes all of its assets and liabilities to its single owner in liquidation of the association.

Section 332 may be relevant to the deemed liquidation of an association if it has a corporate owner. Under section 332, no gain or loss is recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation if the requirements of section 332(b) are satisfied. Those requirements include the adoption of a plan of liquidation at a time when the corporation receiving the distribution owns stock of the liquidating corporation meeting the requirements of section 1504(a)(2) (i.e., 80 percent of vote and value). The elective change from an association to a partnership or to a disregarded entity results in a constructive liquidation of the association for federal tax purposes. Formally adopting a plan of liquidation for the entity, however, is potentially incompatible with an elective change under section 301.7701-3, which allows the local law entity to remain in existence while liquidating only for federal tax purposes. Accordingly, to provide tax treatment of an association's deemed liquidation that is compatible with the requirements of section 332, the regulations state that, for purposes of satisfying the requirement of adoption of a plan of liquidation under section 332(b), a plan of liquidation is deemed adopted immediately before the deemed liquidation incident to an elective change in entity classification, unless a formal plan of liquidation that contemplates the filing of the elective change in entity classification is adopted on an earlier date.

**Effective Date**

These regulations apply to elections filed on or after December 17, 2001; however, taxpayers may apply the

amendments retroactively if the corporate owner claiming treatment under section 332 and its subsidiary making the election take consistent positions with respect to the Federal tax consequences of the election.

**Special Analyses**

It has been determined that these regulations are 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 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these 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 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 authors of these regulations are Beverly M. Katz of the Office of Associate Chief Counsel (Passthroughs & Special Industries) and David J. Sotos of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects in 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 part 301 is amended as follows:

**PART 301—PROCEDURE AND ADMINISTRATION**

**Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

**Par. 2.** Section 301.7701-3 is amended as follows:

1. Redesignating the text of paragraph (g)(2) as paragraph (g)(2)(i) and adding a heading for newly designated paragraph (g)(2)(i).

2. Adding a new paragraph (g)(2)(ii).

3. Revising the first sentence of paragraph (g)(4).

The additions and revision read as follows:

**§ 301.7701-3 Classification of certain business entities.**

\* \* \* \* \*

(g) \* \* \*

(2) *Effect of elective changes*—(i) *In general.* \* \* \*

(ii) *Adoption of plan of liquidation.*

For purposes of satisfying the requirement of adoption of a plan of liquidation under section 332, unless a formal plan of liquidation that contemplates the election to be classified as a partnership or to be disregarded as an entity separate from its owner is adopted on an earlier date, the making, by an association, of an election under paragraph (c)(1)(i) of this section to be classified as a partnership or to be disregarded as an entity separate from its owner is considered to be the adoption of a plan of liquidation immediately before the deemed liquidation described in paragraph (g)(1)(ii) or (iii) of this section. This paragraph (g)(2)(ii) applies to elections filed on or after December 17, 2001. Taxpayers may apply this paragraph (g)(2)(ii) retroactively to elections filed before December 17, 2001, if the corporate owner claiming treatment under section 332 and its subsidiary making the election take consistent positions with respect to the federal tax consequences of the election.

\* \* \* \* \*

(4) *Effective date.* Except as otherwise provided in paragraph (g)(2)(ii) of this section, this paragraph (g) applies to elections that are filed on or after November 29, 1999. \* \* \*

\* \* \* \* \*

Approved: December 10, 2001.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue Service.*

**Mark Weinberger,**

*Assistant Secretary of the Treasury.*

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

[COTP Corpus Christi 01-002]

RIN 2115-AA97

**Safety Zone; Gulf Intracoastal Waterway, Port Isabel, TX**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; request for comments.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone to

ensure the safety of navigation within a radius of 1000 feet of Queen Isabella Bridge construction vessels and machinery. Vessels transiting the Gulf Intracoastal Waterway through the Queen Isabella Bridge may do so during daylight hours only. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by construction in the vicinity of the Queen Isabella Bridge. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Corpus Christi.

**DATES:** This regulation becomes effective at 2 p.m. on September 26, 2001 and terminates when the re-construction of the Queen Isabella Bridge is completed and certified by the Texas Department of Transportation to the satisfaction of the Captain of the Port or September 26, 2002 which ever is earlier. A document announcing the termination date will be published later in the **Federal Register**. Comments and related material must reach the Coast Guard on or before February 15, 2002.

**ADDRESSES:** Any comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP Corpus Christi 01-002 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Corpus Christi, 555 N. Carancahua Street, Suite 500, Corpus Christi, Texas, 78478 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG C. J. Bright, Chief, Waterways Section, Coast Guard Captain of the Port Corpus Christi, 555 N. Carancahua St. Suite 500, Corpus Christi, Texas, 78478, (361) 888-3162

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to the potential safety hazards associated with emergency bridge repairs.

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**. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond

to the potential safety hazards associated with the bridge construction.

Although the Coast Guard has good cause in implementing this regulation, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of the safety zone in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking, COTP Corpus Christi 01-002, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

##### **Background and Purpose**

At approximately 2:15 a.m., on September 15, 2001, the Uninspected Towing Vessel BROWN WATER V allided with the Queen Isabella Bridge in position 26°05.1' N, 097°12.8' W, Intracoastal Waterway Mile Marker 665 near Port Isabel, Texas. The resulting damage caused the Queen Isabella Bridge to collapse in the Intracoastal Waterway blocking the channel and severely impacting the ability to safely navigate the area encompassed by the Captain of the Port Corpus Christi Zone. As a result of the bridge collapse, the power for the lighting of the bridge and the bridge fendering system was also rendered inoperable. The re-construction of the bridge will take approximately six months to complete and will involve various construction vessels and equipment. The Texas Department of Transportation has certified to the satisfaction of the Captain of the Port that the bridge is safe for vessels to transit the Intracoastal Waterway during the re-construction. Vessels transiting the Intracoastal Waterway shall do so during daylight hours only, at a minimum and safe speed, and maintain a distance of at least 1,000 feet around construction vessels and machinery. The daylight transits restriction may be lifted when lighting for the bridge and fendering system is operational to the satisfaction of the Captain of the Port. This information will be made available by Marine Information Broadcast when the Captain of the Port removes the daylight

transit restriction. A 1000 foot radius around the construction area is necessary to ensure the safety of vessels transiting the area during the re-construction, prevent any further damage to the bridge, and allow the re-construction vessels and machinery to operate safely. The 1000 foot radius will remain in effect during all hours and until the re-construction is completed. The Coast Guard is establishing a temporary safety zone in a 1000 foot radius around the re-construction of the Queen Isabella Bridge and limiting vessel transit of the Intracoastal Waterway (Mile Marker 665) through the bridge to daylight hours only, until it can be determined that the waters are safe for navigation.

##### **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).

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for a short period of time and notification to the marine community will be made through broadcast notice to mariners.

##### **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. The impact on small entities is expected to be minimal due to the short period of this regulation. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Intracoastal Waterway and the area surrounding the Queen Isabella Bridge while the safety zone is established. This safety zone will not have a significant economic impact on a

substantial number of small entities for the following reasons. This rule will be in effect for only the duration of the re-construction of the Queen Isabella Bridge as a result of the allision. The 1000-foot safety zone does not prohibit commercial traffic (tug and barge combinations) from transiting the Intracoastal Waterway and provides smaller vessels (commercial or recreational) ample room to transit around the safety zone. When these operations are completed the Intracoastal Waterway will be reopened and the safety zone cancelled. Before the effective period, we will issue maritime advisories widely available to users of the Intracoastal Waterway and surrounding navigable waters.

#### 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 the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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 or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

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

#### Civil Justice Reform

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

#### Protection of Children

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

#### Indian Tribal Governments

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

#### Energy Effect

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

#### Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1,

paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available for inspection or copying where indicated under **ADDRESSES**.

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

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

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

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

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. A new § 165.T08-080 is added to read as follows:

#### **§ 165.T08-080 Safety Zone; Queen Isabella Bridge, Gulf Intracoastal Waterway, Brownsville, Texas**

(a) *Location.* The following area is a safety zone: All waters within a 1000-foot radius of vessels and machinery involved in the re-construction of the Queen Isabella Bridge.

(b) *Effective dates.* This regulation becomes effective at 2 p.m. on September 26, 2001 and terminates when the re-construction of the Queen Isabella Bridge is completed and certified by the Texas Department of Transportation to the satisfaction of the Captain of the Port or on September 26, 2002 which ever is earlier.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port Corpus Christi.

(2) The safety zone is in effect during all hours of the day. Vessels transiting the Intracoastal Waterway (Mile Marker 665.0) under the bridge shall proceed at minimum speed to maintain steerageway and during daylight hours only.

(3) No vessels may enter this safety zone unless specifically authorized by the Captain of the Port Corpus Christi. The Captain of the Port will notify the public of changes in the status of this zone by Marine Radio Safety Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: September 26, 2001.

**William J. Wagner III,**

*Captain, U.S. Coast Guard, Captain of the Port Corpus Christi.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 991207325-0063-02; I.D. 100699A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish IFQ Cost Recovery Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Announcement of standard prices and fee percentage for North Pacific halibut and sablefish Individual Fishing Quota (IFQ) cost recovery program.

**SUMMARY:** The National Marine Fisheries Service publishes IFQ standard prices and notification of adjustment of the IFQ fee percentage for the IFQ Cost Recovery Program in the halibut and sablefish fisheries of the North Pacific. This action is intended to provide holders of halibut and sablefish IFQs with information to calculate the payments required for IFQ cost recovery fees due by January 31, 2002.

**DATES:** Effective December 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kristie Balovich, Fee Coordinator, 907-586-7344.

#### SUPPLEMENTARY INFORMATION:

##### Background

NMFS, Alaska Region, administers the halibut and sablefish IFQ programs in the North Pacific. The IFQ Programs are limited access systems authorized by section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982. Fishing under the IFQ Programs began in March 1995. Regulations implementing the IFQ Program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act was amended (by Pub. L. 104-297) to, among other things, require the Secretary of Commerce to "collect a fee to recover the actual costs directly related to the management and enforcement of any . . . individual fishing quota program" (Section 304(d)(2)(A)). Section 304(d)(2)(B) of the Magnuson-Stevens Act specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited. Section 303(d)(4) of the Magnuson-Stevens Act allows NMFS to reserve up to 25 percent of the fees collected for use in an IFQ loan program to aid in financing the purchase of IFQ or quota share (QS) by entry-level and small-vessel fishermen.

NMFS published, on December 27, 1999 (64 FR 72302), a proposed rule to implement the IFQ Cost Recovery Program and published the final rule on March 20, 2000 (65 FR 14919). The final regulations implementing the IFQ Cost Recovery Program are set forth at 50 CFR 679.45.

Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for every pound of IFQ halibut and IFQ sablefish that is landed on his or her IFQ permit(s). The IFQ permit holder is responsible for self-collecting the fee liability for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting a fee liability payment to NMFS on or before the due date of January 31 following the year in which the IFQ landings were made. The dollar amount of the fee due is determined by multiplying the annual IFQ fee percentage (3 percent or less) by the ex-vessel value of each IFQ landing made on a permit and summing the totals of each permit (if more than one).

##### Fee Percentage

Three percent of the ex-vessel value of IFQ halibut and IFQ sablefish harvested is the maximum fee amount allowed by section 304(d)(2)(B) of the Magnuson-Stevens Act. Regulations at § 679.45(d) allow the Administrator, Alaska Region, NMFS (Regional Administrator) to reduce the fee percentage if actual management and enforcement costs could be recovered through a lesser percentage. In this event the Regional Administrator will publish a notification of any adjustment of the

IFQ fee percentage in the **Federal Register** pursuant to § 679.45(d)(4).

For 2001, the Regional Administrator has determined that a fee of 2.0 percent (0.020) is necessary to recover the actual management and enforcement costs. Therefore, the Regional Administrator is adjusting the cost recovery fee applicable to year 2001 IFQ landings from 3 percent (0.03) to 2.0 percent (0.020).

##### Standard Prices

The fee liability is based on the sum of all payments of monetary worth made to fishermen for the sale of the fish. This includes any retro-payments (e.g., bonuses, delayed partial payments, post-season payments) made to the IFQ permit holder for previously landed IFQ halibut or sablefish.

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex-vessel value: "Actual ex-vessel value" and "standard ex-vessel value." "Actual ex-vessel value" is the amount of money an IFQ permit holder received as payment for his or her IFQ fish sold. "Standard ex-vessel value" is the default value on which to base fee liability calculations. However, IFQ permit holders have the option of using "actual ex-vessel value" if they can satisfactorily document those values.

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and sablefish landings, to calculate standard values. The standard prices are described in U.S. dollars per IFQ equivalent pound, for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) means the weight amount, recorded in pounds, for an IFQ landing and calculated as round weight for sablefish and headed and gutted ("net") weight for halibut. NMFS calculates the standard prices to reflect, as closely as possible, by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings. The standard prices for IFQ halibut and IFQ sablefish are listed in the following table. Data from ports are combined as necessary to protect confidentiality of data submissions.