

For purposes of § 1.263A-15(a)(2), the exclusion of purchase money obligations given by the lessor to the lessee (or a party related to the lessee) in a sale and leaseback transaction under former section 168(f)(8) as enacted by ERTA will be considered to be a reasonable position for the application of section 263A(f) in taxable years beginning before January 1, 1995. Consequently, a taxpayer changing a method of accounting for property that is not inventory in the hands of the taxpayer to conform to the temporary regulations may elect to include interest incurred after December 31, 1986, in taxable years beginning on or after December 31, 1986 (the general effective date of section 263A), and before January 1, 1995, in the determination of its adjustment under section 481(a). A taxpayer changing a method of accounting for property that is inventory in the hands of the taxpayer to conform to the temporary regulations must revalue its beginning inventory in the year of change as if the new method of accounting had been in effect during all prior years.

#### 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 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. Please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** for applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the 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 Grant Anderson of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is 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 1.263A-9 is amended by revising paragraphs (a)(4)(vii), and (viii) and adding paragraph (a)(4)(ix) to read as follows:

#### § 1.263A-9 The avoided cost method.

(a) \* \* \*

(4) \* \* \*

(vii) Reserves, deferred tax liabilities, and similar items that are not treated as debt for Federal income tax purposes, regardless of the extent to which the taxpayer's applicable financial accounting or other regulatory reporting principles require or support treating these items as debt;

(viii) Federal, State, and local income tax liabilities, deferred tax liabilities under section 453A, and hypothetical tax liabilities under the look-back method of section 460(b) or similar provisions; and

(ix) [Reserved]. For further guidance, see § 1.263A-9T(a)(4)(ix).

\* \* \* \* \*

■ **Par. 3.** Section 1.263A-9T is added to read as follows:

#### § 1.263A-9T The avoided cost method (temporary).

(a) (1) through (3) [Reserved]. For further guidance, see § 1.263A-9(a)(1) through (3).

(4) *Definition of eligible debt.* Except as provided in this paragraph (a)(4), *eligible debt* includes all outstanding debt (as evidenced by a contract, bond, debenture, note, certificate, or other evidence of indebtedness). Eligible debt does not include—

(i) through (viii) [Reserved]. For further guidance, see § 1.263A-9(a)(4)(i) through (viii).

(ix) A purchase money obligation given by the lessor to the lessee (or a party that is related to the lessee) in a sale and leaseback transaction involving an agreement qualifying as a lease under § 5c.168(f)(8)-1 through § 5c.168(f)(8)-11 of this chapter. See § 5c.168(f)(8)-1(e) *Example (2)* of this chapter.

(b) through (g) [Reserved]. For further guidance, see § 1.263A-9(b) through (g).

■ **Par. 4.** Section 1.263A-15T is added to read as follows:

#### § 1.263A-15T Effective dates, transitional rules, and anti-abuse rule (temporary).

(a)(1) and (2) [Reserved]. For further guidance, see § 1.263A-15(a)(1) and (2).

(3) Section 1.263A-9T applies to interest incurred in taxable years beginning on or after May 20, 2004,

except that, in the case of property that is inventory in the hands of the taxpayer, § 1.263A-9T applies to taxable years beginning on or after May 20, 2004. However, taxpayers may elect to apply § 1.263A-9T to interest incurred in taxable years beginning on or after January 1, 1995, or, in the case of property that is inventory in the hands of the taxpayer, to taxable years beginning on or after January 1, 1995. A change in a taxpayer's treatment of interest to a method consistent with § 1.263A-9T is a change in method of accounting to which sections 446 and 481 apply.

(b) and (c) [Reserved]. For further guidance, see § 1.263A-15(b) and (c).

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: May 10, 2004.

**Gregory F. Jenner,**

*Acting Assistant Secretary of the Treasury.*

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### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[COTP Southeast Alaska 04-001]

RIN 1625-AA00

#### Safety Zone; Peril Strait, Cozian Reef, Motor Vessel LeConte, Southeast Alaska

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing an emergency temporary safety zone in an area one-half mile around the Motor Vessel LeConte, which ran aground in Peril Strait, Alaska. The Motor Vessel LeConte is currently aground on Cozian Reef and has sustained damage. The temporary safety zone is necessary to protect mariners from the dangers associated with ongoing operations and to allow workers to safely conduct salvage and pollution prevention operations. This action will restrict vessels from approaching within one-half mile of the Motor Vessel LeConte at all times until salvage and pollution prevention operations are complete.

**DATES:** This rule is effective from May 10, 2004, until June 30, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket COTP

Southeast Alaska 04-001 and are available for inspection or copying at USCG Marine Safety Juneau, 2760 Sherwood Lane, Suite 2A, Juneau, Alaska, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Stephanie Conrad, project officer, USCG Marine Safety Office Juneau, at (907) 463-2450.

**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. The Coast Guard is taking this action for the immediate protection of vessels and personnel operating in the vicinity of the grounded Motor Vessel LeConte.

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**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to provide for the safety of persons and vessels conducting salvage and environmental clean-up operations in the vicinity of the Motor Vessel LeConte. Because of the danger posed by the damaged vessel, immediate action is necessary to provide for the safety of mariners.

**Background and Purpose**

The Coast Guard is establishing a temporary safety zone that will restrict vessel traffic in the vicinity of Cozian Reef, Peril Strait, within one-half mile of the Motor Vessel LeConte. Vessels are prohibited from entering the zone without the permission of the Captain of the Port, Southeast Alaska. The temporary safety zone is necessary to protect mariners from the hazards associated with the ongoing operations around the Motor Vessel LeConte. Public notifications will be made via marine broadcasts and other advisories so mariners can adjust their plans accordingly. Coast Guard vessels operating in the vicinity of Cozian Reef will also advise mariners of the area closure.

**Discussion of Rule**

The Coast Guard is establishing a safety zone around the Motor Vessel LeConte, which has run aground on Cozian Reef in position 57°34' N, 135°26' W. The zone will comprise an area one-half mile around the Motor Vessel LeConte. Within the zone, only

vessels with the permission of the Captain of the Port, Southeast Alaska are permitted to enter. The limited size of the zone is designed to minimize the impact on other vessels transiting the area.

**Regulatory Evaluation**

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. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). This finding is based on the limited size of the safety zone. Because the zone is so small, transiting vessels will be able to transit around the zone, thus it will have minimal, if any, impact on vessels transiting the waters of Peril Strait. Marine information broadcasts will advise mariners of the safety zone and its restrictions.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have 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 may affect the owners or operators of vessels intending to transit in the vicinity of Cozian Reef, some of which may be small entities. This safety zone will not have a significant economic impact on these entities because marine traffic will still be able to transit around the area while operations are ongoing.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer 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 create 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 Effects

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 analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule creates no additional vessel traffic and thus imposes no additional burdens on the environment. It simply provides guidelines for vessels transiting in Peril Strait so that vessels may transit safely in the vicinity of the Motor Vessel LeConte. Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. From May 10, 2004 through June 30, 2004, temporarily add § 165.T17–018 to read as follows:

#### § 165.T17–018 Safety Zone; Peril Strait, Cozian Reef, Motor Vessel LeConte, Southeast Alaska.

(a) *Location.* The following area is a safety zone: all waters within one-half mile of the Motor Vessel LeConte. Specifically, an area one-half mile around the location where the Motor Vessel LeConte has run aground at position 57°34' N, 135°26' W, in Peril Strait, Southeast Alaska.

#### (b) *Regulations.*

(1) All persons and vessels are required to comply with the general regulations governing safety zones found in section 165.23 of this part.

(2) All vessels are prohibited from entering the safety zone without the permission of the Captain of the Port, Southeast Alaska. Permission to enter the zone may be gained by contacting the Captain of the Port's designated On Scene Commander as specified below. In addition, all persons must comply with the instructions of Coast Guard Captain of the Port representatives or designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws.

(3) Permission to enter the safety zone can be gained by contacting the On Scene Commander, the Captain of the Port's representative enforcing the safety zone. The On Scene Commander can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (907) 463–2450.

(c) *Enforcement period.* This section will be enforced from May 10, 2004, until June 30, 2004. If enforcement ends before June 30, 2004, the Coast Guard will do a broadcast notice to mariners informing mariners that the zone is no longer being enforced.

(c) *Enforcement period.* This section will be enforced from May 10, 2004, until June 30, 2004. If enforcement ends before June 30, 2004, the Coast Guard will do a broadcast notice to mariners informing mariners that the zone is no longer being enforced.

Dated: May 10, 2004.

John P. Sifling,

Commander, United States Coast Guard,  
Captain of the Port, Southeast Alaska.

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### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[CGD09–04–016]

RIN 2115–AA00

#### Security Zone; Duluth Harbor, Duluth, MN

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone in Duluth's inner harbor for the Decommissioning ceremony of the Coast Guard Cutter Sundew. The security zone is necessary to ensure the security of dignitaries attending this ceremony on May 27, 2004. The security zone is intended to restrict vessels from a portion of Duluth Harbor in Duluth, Minnesota.

**DATES:** This rule is effective from 10 a.m. (local) until 3 p.m., May 27, 2004.

**ADDRESSES:** 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 [CGD09–04–016] and are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Duluth, 600 South Lake Ave, Canal Park, Duluth, Minnesota 55802, between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Greg Schultz, U.S. Coast Guard Marine Safety Office Duluth, at (218) 720–5285.

#### 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. Additionally, 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**. The exact date of the event was not known with sufficient time to allow for the publication of an NPRM followed by an effective date