

finer only in the most egregious circumstances.

**Customs response:** CBP disagrees. The statute makes clear that a first offense and subsequent offenses are subject to penalty. There is no indication that Congress contemplated a range of offenses from minor to serious and a different result for minor offenses, whatever they might be. Further, the legislative history demonstrates strong Congressional resolve to stem the flow of counterfeit merchandise into the United States. Strict enforcement of the civil seizure and fine provisions under the statute are the means to accomplish the deterrence Congress envisioned. Violators will have the chance to submit arguments during the petitioning process for mitigation of the fine.

**Comment:** A commenter proposed that an importer/petitioner be permitted to challenge CBP's finding that a good bears a counterfeit mark in its petition to mitigate a fine assessed under section 1526(f).

**Customs response:** CBP does not disagree with this comment. A finding by CBP that a good bears a counterfeit mark forms the basis for a seizure under section 1526(e). A penalty under section 1526(f) follows the seizure under section 1526(e). They are separate proceedings. If a violator can successfully challenge the CBP finding that a good bears a counterfeit mark in the section 1526(e) proceeding, it will not face a section 1526(f) proceeding. In the section 1526(f) proceeding, a petitioner may always raise the issue of whether the good in question bears a counterfeit mark. At that time, CBP may review the validity of the initial finding and may remit the section 1526(f) penalty in appropriate circumstances.

### Conclusion

Based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, CBP believes that the proposed regulatory amendments should be adopted without change. CBP notes that with adoption of these amendments to the regulation, CBP will undertake to similarly amend the guidelines it uses to mitigate penalties assessed under section 1526(f). The current guidelines are set forth in T.D. 99-76, 33 Cust. Bull. No. 43, October 27, 1999.

### Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

### Regulatory Flexibility Act

This amendment to the regulation will result in the language of the regulation more closely adhering to the language of the governing statute, thus clarifying for the public the maximum amount CBP can assess for a civil fine when merchandise bearing a counterfeit mark is imported and seized. Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is therefore certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

### Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, Customs and Border Protection. However, personnel from other offices contributed in its development.

### List of Subjects in 19 CFR Part 133

Counterfeit goods, Penalties, Seizures and forfeitures, Trademarks.

### Amendment to the Regulations

■ For the reasons stated in the preamble, part 133 of the Customs Regulations (19 CFR part 133) is amended as follows:

#### PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

■ 1. The authority citation for part 133 continues to read, in part, as follows:

**Authority:** 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

\* \* \* \* \*

■ 2. Section 133.27 is revised to read as follows:

#### § 133.27 Civil fines for those involved in the importation of merchandise bearing a counterfeit mark.

In addition to any other penalty or remedy authorized by law, CBP may impose a civil fine under 19 U.S.C. 1526(f) on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that bears a counterfeit mark resulting in a seizure of the merchandise under 19 U.S.C. 1526(e) (see § 133.21 of this subpart), as follows:

(a) *First violation.* For the first seizure of merchandise under this section, the fine imposed will not be more than the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price in the United States at the time of seizure.

(b) *Subsequent violations:* For the second and each subsequent seizure under this section, the fine imposed will not be more than twice the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price in the United States at the time of seizure.

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

Approved: July 21, 2003.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*  
[FR Doc. 03-18838 Filed 7-23-03; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP Los Angeles-Long Beach 03-005]

RIN 1625-AA00

#### Safety Zone; Offshore Gran Prix, Huntington Beach, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of the Pacific Ocean near Huntington Beach, California, for the Huntington Beach Offshore Gran Prix powerboat race on August 17, 2003. This temporary safety zone is necessary to provide for public safety in order to protect life and prevent property damage near the racecourse. Persons and vessels are prohibited from entering into or transiting through this safety zone unless authorized by the Captain of the Port or his designated representative.

**DATES:** This rule is effective from 12 a.m. (noon) to 3 p.m. (PDT) on August 17, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP Los Angeles-Long Beach 03-005] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Rob Griffiths, Assistant Chief of Waterways Management Division, at (310) 732-2020.

**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. Final dates and other logistical details for the event were not provided to the Coast Guard in time to draft and publish an NPRM or a temporary final rule 30 days prior to the event, as the event would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to provide a safety zone to ensure the safety of the spectators and other vessels in the area.

For the same reasons stated above, 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**.

**Background and Purpose**

The Coast Guard is establishing a temporary safety zone in the navigable waters of the Pacific Ocean near Huntington Beach, California, for the Huntington Beach Offshore Gran Prix powerboat race on August 17, 2003. Pacific Offshore Powerboat Racing Association is sponsoring the race consisting of approximately 25 offshore powerboats, operating at high speeds, racing along a multi-lap oval course located offshore Huntington Beach between the hours of 12 a.m. (noon) and 3 p.m. (PDT). The course is centered between the entrance to Anaheim Bay and the Huntington Beach Pier, approximately 1/4 nautical mile offshore. This temporary safety zone is necessary to provide for public safety in order to protect life and prevent property damage near the racecourse.

The Coast Guard will close the waterway to all vessels and persons 30 minutes prior to the start of the race and will reopen the waterway approximately 30 minutes after the conclusion of the race if the Coast Guard determines that it is safe to do so. A broadcast notice to mariners will be issued for this event.

**Discussion of Rule**

The description and coordinates for this temporary safety zone are provided for in the regulatory text section below. This area is approximately 1,500 yards wide and 8,000 yards long and is geographically centered between Anaheim Bay and Huntington Beach Pier near Huntington Beach, California.

Persons and vessels are prohibited from entering into or transiting through

this temporary safety zone during the race. By prohibiting persons and vessels from entering the waters near the racecourse, the risk of loss of life and damage to property will be significantly reduced.

U.S. Coast Guard personnel will enforce this safety zone. The Coast Guard may be assisted by other Federal, State, or local agencies, which during this event may include the Coast Guard Auxiliary, Huntington Beach Lifeguards, and Huntington Beach Police.

Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the safety zone described herein, will be punishable by civil penalties (not to exceed \$27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of \$250,000), and *in rem* liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

**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).

Due to the limited scope of the safety zone, the fact that vessel traffic can pass safely around the zone, and the short duration of the zone, the Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

**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.

This rule will possibly affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in the affected area. The impact to these entities would not, however, be significant since this zone will encompass only a small portion of the waterway for a limited period of time and vessels can safely navigate around the safety zone.

For these reasons and the reasons stated in the Regulatory Evaluation section above, 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.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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. The Administrator of the Office

of Information and Regulatory Affairs has not designated it 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.ID, 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 because we are establishing a safety zone.

A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket 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. 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. Add a new § 165.T11–073 to read as follows:

#### § 165.T11–073 Safety Zone; Offshore Gran Prix, Huntington Beach, CA.

(a) *Location.* The following described area constitutes a temporary safety zone: All waters of the Pacific Ocean near Huntington Beach, California, from surface to bottom, encompassed by lines connecting points beginning at latitude 33°43′36″ N, longitude 118°05′0″ W; then to 33°43′16″ N, 118°05′39″ W; then to 33°39′54″ N, 118°02′15″ W; then to 33°40′31″ N, 118°01′39″ W; and then returning to the point of origin. (Datum: NAD 1983).

(b) *Effective period.* This section is effective from 12 noon to 3 p.m. (PDT) on August 17, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of

this part, entry into, transit through, or anchoring within the safety zone is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his or her designated representative.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number (800) 221–8724 or the Patrol Commander on VHF-FM channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

Dated: July 14, 2003.

**John M. Holmes,**

*Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.*

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## DEPARTMENT OF EDUCATION

### 34 CFR Part 263

RIN 1810–AA93

### Indian Education Discretionary Grant Programs

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations governing the discretionary grant programs administered under Title VII of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001, Public Law No. 107–110. The programs governed by this title include grants for the Professional Development program and the Demonstration Grants for Indian Children program. These regulations identify specific application and program requirements that must be set forth in order for applications to be considered for funding, and the requirements for the payback provisions that apply to the Professional Development program. These regulations will govern the grant application process for new awards under both programs for fiscal year 2003 and thereafter, including the payback provisions for the Professional Development program.

**EFFECTIVE DATE:** These regulations are effective July 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Cathie Martin. Telephone: (202) 260–1683 or via Internet: [cathie.martin@ed.gov](mailto:cathie.martin@ed.gov).