

finest 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.*  
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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.