

law of the tax shelter item or of the entity, plan, or arrangement that gave rise to the item. Thus, a taxpayer's belief (whether independently formed or based on the advice of others) as to the merits of the taxpayer's underlying position is a legal justification.

(3) *Minimum requirements not dispositive.* Satisfaction of the minimum requirements of paragraph (e)(2) of this section is an important factor to be considered in determining whether a corporate taxpayer acted with reasonable cause and in good faith, but is not necessarily dispositive. For example, depending on the circumstances, satisfaction of the minimum requirements may not be dispositive if the taxpayer's participation in the tax shelter lacked significant business purpose, if the taxpayer claimed tax benefits that are unreasonable in comparison to the taxpayer's investment in the tax shelter, or if the taxpayer agreed with the organizer or promoter of the tax shelter that the taxpayer would protect the confidentiality of the tax aspects of the structure of the tax shelter.

(4) *Other factors.* Facts and circumstances other than a corporation's legal justification may be taken into account, as appropriate, in determining whether the corporation acted with reasonable cause and in good faith with respect to a tax shelter item regardless of whether the minimum requirements of paragraph (e)(2) of this section are satisfied.

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**Michael P. Dolan,**

*Acting Commissioner of Internal Revenue.*

Approved: August 18, 1995.

**Leslie Samuels,**

*Assistant Secretary of the Treasury.*

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 100**

[CGD07 95-028]

RIN 2115-AE46

**Special Local Regulations; City of Miami Beach, FL**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Special local regulations are being adopted for the Miami Offshore Grand Prix. The event will be held on September 3, 1995 from 11 a.m. EDT

(Eastern Daylight Time) until 3 p.m. EDT. The regulations are needed to provide for the safety of life on navigable waters during the event.

**EFFECTIVE DATE:** These regulations become effective on September 3, 1995 at 10:30 a.m. EDT and terminate at 3:30 p.m. EDT that day. In the event of inclement weather, an alternate rain date of September 4, 1995 is established with these same times.

**ADDRESSES:** The Environmental Assessment and Finding of No Significant Impact for this rulemaking are available for inspection and copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida.

**FOR FURTHER INFORMATION CONTACT:** LTJG B. E. Dailey, Coast Guard Group Miami, Florida at (305) 535-4492.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. § 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable, as there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

**Drafting Information**

The drafters of these regulations are LTJG Bryan E. Dailey, Project Officer, USCG Group Miami, and LT Jacqueline Losego, Project Attorney, Seventh Coast Guard District Legal Office.

**Discussion of Regulations**

Offshore Power Boat Racing Association, is sponsoring a high speed power boat race with approximately sixty-five (65) race boats, ranging in length from 24 to 50 feet, participating in the event. There will be approximately two hundred (200) spectator craft. The proposed race course includes Government Cut, Miami, Florida, and the Atlantic Ocean offshore Miami Beach, Florida. The race boats will be competing at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard in the navigable waterways.

**Regulatory Evaluation**

This regulation 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. It has been exempted from review by the Office of Management and Budget 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 proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only 5 hours on the day of the event.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**Federalism**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environmental Assessment**

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B. of Commandant Instruction M16475.1B. In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has determined that it will not significantly affect the quality of the human environment. An environmental assessment and finding of no significant impact has been prepared and are available for inspection and copying from LTJG B. Dailey, Coast Guard Group Miami, Florida, (305) 535-4492. As a condition to the permit, the applicant is required to educate the event participants regarding the possible presence of manatees and the appropriate precautions to take if the animals are sighted

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Regulations**

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35-T07-028 is added to read as follows:

**§ 100.35-T07-028 City of Miami Beach, FL.**

(a) *Regulated Area:*

(1) The regulated area begins from that portion of Miami Main Channel at approximate position 25°45'57" N, 080°08'42" W, thence to the southern entrance to the Miami Beach Marina

and approximate position 25°46'10" N, 080°08'28" W, thence south east along the shore to the Western end of Bar Cut to lighted buoy 10 (Light list number 9395) approximate position 25°45'39" N, 080°07'29" W, thence Westward along the Government Cut North Jetty to shore and the shoreline to approximate position 25°48'13" N, 080°07'06" W, thence east approximately 2.4 nautical miles to approximate position 25°48.13' N, 080°05'51" W, thence south to approximate position 25°45'05" N, 080°06'45" W, thence west bearing 295° true to Fisher Island. The regulated area then follows the shoreline of Fisher Island North and West to approximate position 25°45'51" N, 080°08'42" W, thence back to the starting point.

(2) In the Event that sea conditions make it unsafe for the race course to transit through Government Cut, an alternate regulated area has been established by a line joining the following points: 25°46'50" N, 080°07'60" W; thence to 25°46'50" N, 080°07'80" W; thence to, 25°49'20" N, 080°06'80" W; thence to 25°51'10" N, 080°06'70"; thence to 25°51'00" N, 080°07'10" W; thence to along the shoreline to the starting point.

(b) *Special local regulations:*

(1) Entry into the regulated area by other than authorized parade participants or official patrol vessels is prohibited, unless otherwise authorized by the Patrol Commander. At the completion of scheduled races and departure of participants from the regulated area, traffic may resume normal operations. At the discretion of the Patrol Commander, between scheduled racing events, traffic may be permitted to resume normal operations.

(2) The regulated area will be enforced by a regatta patrol. The Coast Guard Patrol Commander will be monitoring VHF-FM channels 16 and 22A. Guide boats will be stationed along the parade route to mark the major course changes.

(3) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(4) Spectators are required to maintain a safe distance from the race course at all times, including 300 yards from those portions of the course where the participants will be engaging in high speed turns, and 100 yards to the Eastern side of the Atlantic Ocean portion of the course. Spectators shall maintain 100 yards distance on either side of participating vessels along the

race route in Bar and Government Cuts as described in paragraph (a)(1).

(c) *Effective dates:* This section becomes effective on September 3, 1995 at 10:30 a.m. EDT and terminates on 3:30 p.m. EDT that day. In the event of inclement weather, an alternate rain date of September 4, 1995 is established with these same times.

Dated: August 10, 1995.

**Roger T. Rufe, Jr.,**

*Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.*

[FR Doc. 95-21691 Filed 8-31-95; 8:45 am]

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### 33 CFR Part 165

[CGD09-95-009]

RIN 2115-AA97

#### Safety Zone; Lake Erie, in the Vicinity of Euclid, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Lake Erie with a one quarter mile radius centered on 41-47.6' N, 081-36.1' W. This safety zone is needed in the warmer summer months to prevent recreational and commercial divers from tampering with the exposed valves on the sunken tank barge Cleveco. Such tampering may lead to the release of oil in quantities that may be harmful to the environment, as the Cleveco contains approximately 165,000 gallons of oil. In addition, the Coast Guard is making preparations to remove the oil from the tank barge this summer. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

**EFFECTIVE DATES:** This regulation becomes effective at 12 noon EST on May 29, 1995, and terminates at 12 noon EST on October 1, 1995, unless terminated earlier by the Coast Guard Captain of the Port, Cleveland, Ohio.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Eric M. King, Chief, Port Operations, Coast Guard Marine Safety Office Cleveland, 1055 East Ninth Street, Cleveland, OH 44114, (216) 522-4405.

#### SUPPLEMENTARY INFORMATION:

##### Background and Purpose

On July 14, 1994, the Army Corps of Engineers and the Coast Guard located the tank barge Cleveco, sunk nine miles offshore from Euclid, Ohio in Lake Erie. The tank barge rests keel up in 70 feet of water and contains approximately

165,000 gallons of oil. On July 16, 1994 a safety zone was established for 180 days to prevent unauthorized personnel from conducting underwater activities on or around the Cleveco, and from impeding the preliminary salvage activities of the Coast Guard and those under their supervision (59 FR 44317; August 29, 1994). Now that the waters of Lake Erie are again warming, establishment of the safety zone is again required for the same reasons. Additionally, the Coast Guard will supervise the removal of oil from the Cleveco this summer. Commercial underwater salvage equipment will be utilized to remove the oil from the barge, requiring heavy equipment and diving apparatus to support below-surface operations. Therefore, persons and vessels will be prohibited from transiting this area.

Persons or vessels requiring entry into or passage through the safety zone must first request authorization from the Captain of the Port or one of his designated representatives. The designated representatives of the Captain of the Port are the senior Coast Guard commissioned, warrant, or petty officer on the vessel enforcing the safety zone, and the Command Duty Officer at Marine Safety Office Cleveland, Ohio. The senior officer on the vessel enforcing the safety zone can be contacted on VHF-FM Channel 16. The Captain of the Port, Cleveland, and the Command Duty Officer at Marine Safety Office Cleveland can be contacted at telephone number (216) 522-4405.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. There were no comments received for the July 16, 1994 safety zone covering the same geographic location. Publication of a notice of proposed rulemaking and delay in the effective date would be contrary to the public interest because the safety zone is necessary to prevent possible loss of life, injury, or damage to property or the environment. In the event that unauthorized recreational or commercial divers tamper with the barge and its associated valves, a major oil release could occur, threatening lives and the environment.

##### Drafting Information

The drafters of this regulation are Lieutenant Eric M. King, project officer, Chief, Port Operations, Marine Safety Office Cleveland, Ohio, Commander M. Eric Reeves, program staff officer, Chief, Marine Port and Environmental Safety Branch, Ninth Coast Guard District, and