

Approved: September 9, 2011.

**M. Robb Hyde,**

*Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).*

Dated: September 13, 2011.

**J.M. Beal,**

*Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2011-0575]

RIN 1625-AA00

#### Safety Zone; Swim Around Charleston, Charleston, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary moving safety zone during the Swim Around Charleston, a swimming race occurring on waters of the Wando River, the Cooper River, Charleston Harbor, and the Ashley River, in Charleston, South Carolina. The Swim Around Charleston is scheduled to take place on Sunday, October 23, 2011. The temporary safety zone is necessary for the safety of the swimmers, participant vessels, spectators, and the general public during the event. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

**DATES:** This rule is effective from 10 a.m. until 4 p.m. on October 23, 2011.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2011-0575 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0575 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary final rule, call or e-mail Ensign John R. Santorum, Sector Charleston Office of Waterways Management, Coast Guard; telephone 843-740-3184, e-mail [John.R.Santorum@uscg.mil](mailto:John.R.Santorum@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On July 1, 2011, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Swim Around Charleston, Charleston, SC in the **Federal Register** (76 FR 38586). We received no comments on the proposed rule. No public meeting was requested, and none was held.

##### Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to ensure the safety of the swimmers, participant vessels, spectators, and the general public during the Swim Around Charleston.

##### Discussion of Comments and Changes

The Coast Guard did not receive any comments to the proposed rule, and no changes were made to the regulatory text.

##### Discussion of Rule

On Sunday, October 23, 2011, the Swim Around Charleston is scheduled to take place on the waters of the Wando River, the Cooper River, Charleston Harbor, and the Ashley River, in Charleston, South Carolina. The Swim Around Charleston will consist of a 10-mile swim that starts at Remley's Point on the Wando River, crosses the main shipping channel of Charleston Harbor, and finishes at the General William B. Westmoreland Bridge on the Ashley River.

This rule establishes a temporary moving safety zone of a 75-yard radius around the Swim Around Charleston participant vessels that are officially associated with the swim on the waters of the Wando River, the Cooper River, Charleston Harbor, and the Ashley River, in Charleston, South Carolina. The temporary safety zone will be enforced from 10 a.m. until 4 p.m. on

October 23, 2011. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port Charleston by telephone at 843-740-7050, or a designated representative via VHF radio on channel 16, to request authorization.

##### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, 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.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will only be enforced for a total of six hours; (2) the safety zone will move with the participant vessels so that once the swimmers clear a portion of the waterway, the safety zone will no longer be enforced in that portion of the waterway; (3) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Charleston or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

##### 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 following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Wando River, the Cooper River, Charleston Harbor, and the Ashley River in Charleston, South Carolina encompassed within the safety zone from 10 a.m. until 4 p.m. on October 23, 2011. For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, 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 (Pub. L. 104–121), in the NPRM 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). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 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.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone that will be enforced for a total of six hours. An environmental analysis checklist and a 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. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

- 2. Add a temporary § 165.T07–0575 to read as follows:

**§ 165.T07–0575 Safety Zone; Swim Around Charleston, Charleston, SC.**

(a) *Regulated Area.* The following regulated area is a moving safety zone: all waters within a 75-yard radius around Swim Around Charleston participant vessels that are officially associated with the swim. The Swim Around Charleston swimming race consists of a 10-mile course that starts at Remley's Point on the Wando River in approximate position 32°48'49" N, 79°54'27" W, crosses the main shipping channel of Charleston Harbor, and finishes at the General William B. Westmoreland Bridge on the Ashley River in approximate position 32°50'14" N, 80°01'23" W. All coordinates are North American Datum 1983.

(b) *Definition.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated area.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 10 a.m. until 4 p.m. on October 23, 2011.

Dated: September 7, 2011.

**M.F. White,**

*Captain, U.S. Coast Guard, Captain of the Port Charleston.*

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**BILLING CODE 9110–04–P**

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 261**

**RIN 0596–AC98**

**Prohibitions—Developed Recreation Sites**

**AGENCY:** Forest Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Forest Service is making a purely technical, non-substantive change to Forest Service regulations, which will conform Forest Service regulations to U.S. Department of Justice (DOJ) regulations implementing Title II of the Americans with Disabilities Act (ADA). Effective March 15, 2011, these regulations use the phrase “service animal” to refer to a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability. Accordingly, the references to “seeing eye dog” are being changed to “service animal.”

**DATES:** The rule is effective September 21, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Mary King, Assistant Director for Enforcement and Liaison at 703–605–4527 or via e-mail: [mking@fs.fed.us](mailto:mking@fs.fed.us).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

**1. Background**

Effective March 15, 2011, DOJ regulations implementing Title II of the ADA use the term “service animal” to refer to a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability. This final rule replaces “seeing eye dog” with “service animal” in Forest Service regulations at 36 CFR 261.16(j) and (k) to conform to DOJ’s revised regulations.

**2. Section-by-Section Analysis**

**36 CFR Part 261, Subpart A**

*Section 261.16 Developed Recreation Sites.* Paragraph (j) currently prohibits

“bringing in or possessing an animal, other than a seeing eye dog, unless it is crated, caged, or upon a leash not longer than six feet, or otherwise under physical restrictive control.” This final rule amends paragraph (j) prohibit, “bringing in or possessing an animal, other than a service animal, unless it is crated, caged, or upon a leash not longer than six feet, or otherwise under physical restrictive control.”

Paragraph (k) currently prohibits “bringing in or possessing in a swimming area an animal, other than a seeing eye dog.” This final rule amends paragraph (k) to prohibit, “bringing in or possessing in a swimming area an animal, other than a service animal.”

**3. Regulatory Certifications**

*Environmental Impact*

This final rule revises law enforcement regulations governing certain activities on National Forest System lands. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions. The Department has determined that this final rule falls within this category of actions and that no extraordinary circumstances exist which require preparation of an environmental assessment or environmental impact statement.

This final rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review. It has been determined that this final rule is not significant. This final rule will not have an annual effect of \$100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This final rule will not interfere with an action taken or planned by another agency, nor will this final rule raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of those programs. Accordingly, this final rule is not subject to review by the Office of Management and Budget under E.O. 12866.

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*) This final rule makes a purely technical, non-substantive change to Forest Service regulations. Therefore, the Department has determined that this final rule will not