

use in appropriate patient population, or for appropriate clinical decision).

(7) The labeling and training information must include:

- (i) A warning that the device is not to be used as a stand-alone diagnostic.
- (ii) A detailed summary of the clinical performance testing, including any adverse events and complications.
- (iii) The intended use population and the intended use environment.
- (iv) Any instructions technicians should convey to patients regarding the collection of EEG data.
- (v) Information allowing clinicians to gauge clinical risk associated with integrating the EEG interpretive assessment aid into their diagnostic pathway.
- (vi) Information allowing clinicians to understand how to integrate the device output into their diagnostic pathway when the device is unable to provide a classification or final result.

Dated: March 23, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-07010 Filed 3-26-15; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 66

[Docket ID: DOD-2011-OS-0099]

RIN 0790-A178

#### Qualification Standards for Enlistment, Appointment, and Induction

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Interim final rule.

**SUMMARY:** This rule updates policies and responsibilities for basic entrance qualification standards for enlistment, appointment, and induction into the Armed Forces and delegates the authority to specify certain standards to the Secretaries of the Military Departments. It establishes the age, aptitude, character/conduct, citizenship, dependents, education, medical, physical fitness, and other disqualifying conditions that are causes for rejection from military service. Other standards may be prescribed in the event of mobilization or national emergency. This rule sets standards designed to ensure that individuals under consideration for enlistment, appointment, and/or induction are able to perform military duties successfully,

and to select those who are the most trainable and adaptable to Service life.

**DATES:** *Effective Date:* This rule is effective March 27, 2015. Comments must be received by May 26, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and or Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

#### FOR FURTHER INFORMATION CONTACT:

Dennis J. Drogo, (703) 697-9268.

#### SUPPLEMENTARY INFORMATION:

##### Executive Summary

##### *I. Purpose of This Regulatory Action*

This rule updates policies and responsibilities for basic entrance qualification standards for enlistment, appointment, and induction into the Armed Forces and delegates the authority to specify certain standards to the Secretaries of the Military Departments.

##### *II. Summary of the Major Provisions of This Regulatory Action*

(a) Establishes age, aptitude, character/conduct, citizenship, dependents, education, medical, physical fitness, and other disqualifying conditions that are causes for rejection from military service. Other standards may be prescribed in the event of mobilization or national emergency.

(b) Sets standards designed to ensure that individuals under consideration for enlistment, appointment, and/or induction are able to perform military duties successfully and to select those who are the most trainable and adaptable to Service life.

(c) Removes provisions related to homosexual conduct.

##### *III. Costs and Benefits of This Regulatory Action*

The benefit of publishing this interim final rule is that it establishes standards

to ensure that those who are enlisted, appointed, or inducted are the best qualified to complete their prescribed training and the best able to adapt to the military life. Failure to maintain these standards would result in a high attrition of personnel and would significantly increase training costs. The success of today's All-volunteer military is dependent on this policy.

#### Justification for Interim Final Rule

This rule is being published as an interim final rule to provide required updates in DoD policy and procedures that impact the public. It has been almost 10 years since these policies and procedures have been updated. Some policy changes and court decisions have a great impact on the eligibility of potential applicants entry into the military. All language addressing homosexual conduct has been removed in accordance with the December 22, 2010, repeal of the Don't Ask Don't Tell policy, which opened military service to homosexuals, and the subsequent *United States vs. Windsor* decision (570 U.S. 12, 133 S. Ct 2675 (2013)) which found section 3 of the Defense of Marriage Act (DOMA) unconstitutional. By removing all references to homosexuality, otherwise qualified applicants are now free to apply and enroll in a military academy without prejudice or fear of reprisal. This interim rule is required immediately to remove any legal and policy restrictions which would prevent a potential applicant from entry into a military based solely on their sexual orientation.

It is important for DoD to have current and up-to-date enlistment, appointment, and induction standards, which are essential in defining the measures necessary to evaluate and qualify civilians for military service. A critical component of this update is the clarification of one of the underlying purposes of the enlistment, appointment, and induction standards which is to minimize entrance of persons who are likely to become disciplinary cases, security risks, or who are likely to disrupt good order, morale, and discipline. The Military Services are responsible for the defense of the Nation and should not be viewed as a source of rehabilitation for those who have not subscribed to the legal and moral standards of society at-large. The necessity of publishing these current standards, as an interim final rule, is vital to the DoD meeting its mission to man the All Volunteer Force with qualified citizens.

## Regulatory Procedures

*Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"*

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim final rule has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB) under the requirements of these Executive Orders.

*Sec. 202, Public Law 104-4, "Unfunded Mandates Reform Act"*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This document will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

*Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)*

The Department of Defense certifies that this interim final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

*Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)*

It has been certified that 32 CFR part 66 does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The following exiting clearances will be utilized:

0701-0101—"Air Force ROTC College Scholarship Application"

0701-0150—"Air Force Recruiting Information Support System—Total Forces (AFRISS-TF)"

0702-0073—"U.S. Army ROTC 4-year College Scholarship Application"

0702-0111—"Army ROTC Referral Information"

0703-0020—"Enlistee Financial Statement"

0704-0006—"Request for Verification of Birth"

0704-0173—"Record of Military Processing—Armed Forces of the United States"

0704-0413—"Medical Screening of Military Personnel"

0704-0415—"Application for Department of Defense Common Access Card—DEERS Enrollment"

The Department will continue to review its processes to identify collection instruments and consider how these collection tools may be improved and make revisions accordingly. The Department welcomes comments on how you think we can improve on our information collection activities.

*Executive Order 13132, "Federalism"*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This interim final rule will not have a substantial effect on State and local governments.

### List of Subjects in 32 CFR Part 66

Armed forces, Qualification standards.

■ Accordingly 32 CFR part 66 is added to read as follows:

## PART 66—QUALIFICATION STANDARDS FOR ENLISTMENT, APPOINTMENT, AND INDUCTION

Sec.

66.1 Purpose.

66.2 Applicability.

66.3 Definitions.

66.4 Policy.

66.5 Responsibilities.

66.6 Enlistment, appointment, and induction criteria.

66.7 Enlistment waivers.

**Authority:** 10 U.S.C. 504, 505, 520, 532, 12102, 12201, and 12205.

### § 66.1 Purpose.

In accordance with the authority in DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))" (available at <http://www.dtic.mil/whs/directives/corres/pdf/512402p.pdf>), this part:

(a) Updates established policies and responsibilities for basic entrance

qualification standards for enlistment, appointment, and induction into the Military Services and delegates the authority to specify certain standards to the Secretaries of the Military Departments.

(b) Establishes the standards for age, aptitude, citizenship, dependents, education, medical, character/conduct, physical fitness, and other disqualifying conditions, which are cause for non-qualification for military service. Other standards may be prescribed in the event of national emergency.

(c) Sets standards designed to ensure that individuals under consideration for enlistment, appointment, or induction are able to perform military duties successfully, and to select those who are the most trainable and adaptable to Service life.

### § 66.2 Applicability.

This part applies to:

(a) Office of the Secretary of Defense, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as the "DoD Components").

(b) Applicants for initial enlistment into the Military Services Regular and Reserve Components.

(c) Applicants for appointment as commissioned or warrant officers in the Regular and Reserve Components.

(d) Applicants for reenlistment following release from active duty into subsequent Regular or Reserve Components (including the Army National Guard of the United States and the Air National Guard of the United States) after a period of more than 6 months has elapsed since discharge.

(e) Applicants for contracting into the Reserve Officer Training Corps (ROTC), and all other Military Services special officer personnel procurement programs, including the Military Service Academies.

(f) All individuals being inducted into the Military Services.

### § 66.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purposes of this part.

*Adjudicating authority.* Any government official who is empowered to make findings or determinations

concerning an alleged criminal offense (adult and juvenile) and establish responsibility for commission of the offense. Examples include judges, courts, magistrates, prosecutors, hearing officers, military commanders (for Article 15 actions pursuant to 10 U.S.C. chapter 47, suspension of dependent privileges, or similar actions), probation officers, juvenile referees, and parole officers or boards.

*Adverse adjudication (adult or juvenile).*

(1) A finding, decision, sentence, or judgment by an adjudicating authority, against an individual, that was other than unconditionally dropped or dismissed or the individual was acquitted is considered adverse adjudication. If the adjudicating authority places a condition or restraint that leads to dismissal, drops the charges, acquits, or the records are later expunged, or the charge is dismissed after a certain period of time, the adjudication is still considered adverse. A suspension of sentence, not processed, or a dismissal after compliance with imposed conditions is also adverse adjudication. This includes fines and forfeiture of bond in lieu of trial.

(2) A conviction for violating any federal law (including 10 U.S.C. chapter 47), or any State or municipal law or ordinance) is considered an adverse adjudication. For example, a shoplifter is reprimanded and required by the on-scene police officer, store security guard, or manager to pay for the item before leaving the store but is not charged, not found guilty, or is not convicted. In this situation, there is no adverse adjudication because no legal proceedings occurred and no adjudicating authority was involved.

*Conviction.* The act of finding a person guilty of a crime, offense, or other violation of the law by an adjudicating authority.

*Dependent.*

(1) A spouse of an applicant for enlistment.

(2) An unmarried adopted child or an unmarried step-child under the age of 18 living with the applicant.

(3) An unmarried biological child of the applicant under the age of 18.

(4) Any person living with the applicant who is, by law or in fact, dependent upon the applicant for support, or who is not living with the applicant and is dependent upon the applicant for over one-half of his or her support.

*Reserve components.* Includes the Army National Guard of the United States, the Army Reserve, the Navy Reserve, the Marine Corps Reserve, the

Air National Guard of the United States, the Air Force Reserve, and the Coast Guard Reserve.

*Restitution.* Any compensation in time, labor, or money for the adverse effects of an offense as a result of agreements from judicial or prosecutorial involvement. For example, an individual is adversely adjudicated for vandalism and is ordered by the adjudicating authority to replace or repair the damaged property.

*Service review.* A formal review of condition(s) or event(s) that, based on Service-specific standards, may make an applicant for enlistment ineligible to serve. Once a Service review is complete, the Service may grant an exception to policy to allow an individual to serve. These standards are subject to change at the discretion of the Service.

*Waiver.* A formal request to consider the suitability for service of an applicant who because of inappropriate conduct, dependency status, current or past medical conditions, or drug use may not be qualified to serve. Upon the completion of a thorough examination using a "whole person" review, the applicant may be granted a waiver. The applicant must have displayed sufficient mitigating circumstances that clearly justify waiver consideration. The Secretaries of the Military Departments may delegate the final approval authority for all waivers.

#### **§ 66.4 Policy.**

It is DoD policy to:

(a) Use common entrance qualification standards for enlistment, appointment, and induction into the Military Services.

(b) Avoid inconsistencies and inequities based on ethnicity, gender, race, religion, or sexual orientation in the application of these standards by the Military Services.

(c) Judge the suitability of individuals to serve in the Military Services on the basis of their adaptability, potential to perform, and conduct.

#### **§ 66.5 Responsibilities.**

(a) Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), the Assistant Secretary of Defense for Reserve Affairs (ASD(RA)) acts as an advisor to the USD(P&R) on the Reserve enlistment and appointment standards.

(b) Under the authority, direction, and control of the USD(P&R), the Assistant Secretary of Defense for Health Affairs (ASD(HA)) acts as an advisor to the USD(P&R) on the medical requirements of the standards in § 66.6.

(c) Under the authority, direction, and control of the USD(P&R), the Assistant Secretary of Defense for Readiness and Force Management (ASD(R&FM)):

(1) Acts as an advisor to the USD(P&R) on the height and weight requirements of the standards in § 66.6.

(2) Ensures the U.S. Military Entrance Processing Command assists the Military Services in implementing the standards in § 66.6 of this part.

(d) The Secretaries of the Military Departments:

(1) Oversee conformance with this part.

(2) Recommend suggested changes to this part to the USD(P&R) as necessary.

(3) Establish other Service-specific standards as necessary to implement this part.

(4) Review all standards on an annual basis.

(5) Establish procedures to grant waivers, accomplish reviews, and require individuals to meet the appropriate standards or be granted an exception pursuant to 10 U.S.C. 504(a).

(6) Request approval from the USD(P&R) for generalized exceptions to these standards as permitted by law.

(7) Use the standards in § 66.6 to determine the entrance qualifications for all individuals being enlisted, appointed, or inducted into any component of the Military Services.

#### **§ 66.6 Enlistment, appointment, and induction criteria.**

(a) *General eligibility criteria*—(1) *Entrance considerations.* Accession of qualified individuals will be a priority when processing applicants for the Military Services.

(2) *Eligibility determination.* Eligibility will be determined by the applicant's ability to meet all requirements of this part, to include obtaining waivers. Applicants will not be enlisted, appointed, or inducted unless all requirements of this part are met.

(b) *Basic eligibility criteria*—(1) *Age.* (i) To be eligible for Regular enlistment, the minimum age for enlistment is 17 years and the maximum age is 42 years in accordance with 10 U.S.C. 505. The maximum age for a prior service enlistee is determined by adding the individual's years of prior service to age 42. The Secretary concerned will establish enlistment age standards for the Reserve Components in accordance with 10 U.S.C. 12102.

(ii) Age limitations for appointment as a commissioned or warrant officer normally depend on the Military Service concerned. In accordance with 10 U.S.C. 532, most persons appointed as commissioned officers must be able

to complete 20 years of active commissioned service before their 62nd birthday to receive a Regular commission.

(iii) In accordance with 10 U.S.C. 12201, a person will be at least 18 years of age for appointment as a Reserve Officer. The maximum age qualification for initial appointment as a Reserve Officer will not be less than 47 years of age for individuals in a health profession specialty designated by the Secretary concerned as a specialty critically needed in wartime.

(iv) In accordance with 32 U.S.C. 313, to be eligible for original enlistment in the National Guard, a person must be at least 17 years of age and under 45, or under 64 years of age and a former member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps. To be eligible for reenlistment, a person must be under 64 years of age.

(v) In accordance with 32 U.S.C. 313, to be eligible for appointment as an officer of the National Guard, a person must be at least 18 years of age and under 64 years of age.

(2) *Citizenship.* (i) To be eligible for Regular or Reserve enlistment, an individual must meet one of the conditions outlined in 10 U.S.C. 504(b); however, the Secretary concerned may authorize the enlistment of a person not described in this section if the Secretary determines that such enlistment is vital to the national interest.

(ii) To be eligible for appointment as a commissioned officer (other than as a commissioned warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, the individual must be a citizen of the United States as outlined in 10 U.S.C. 532. The Secretary of Defense (or the Secretary of Homeland Security for the Coast Guard) may waive the requirement of U.S. citizenship with respect to a person who has been lawfully admitted to the United States for permanent residence, or for a United States national otherwise eligible for appointment as a cadet or midshipman in accordance with 10 U.S.C. 2107(a), when the Secretary determines that the national security so requires, but only for an original appointment in a grade below the grade of major or lieutenant commander.

(iii) To be eligible for appointment as a Reserve Officer in an armed force, the individual must be a citizen of the United States or lawfully admitted to the United States for permanent residence in accordance with 8 U.S.C. 1101 *et seq.* (also known as the "Immigration and Nationality Act") or have previously served in the Military

Services or in the National Security Training Corps as outlined under 10 U.S.C. 12201.

(iv) To be eligible for enlistment in the National Guard, a person must meet one of the conditions in 10 U.S.C. 504(b); however, the Secretary concerned may authorize the enlistment of a person not described in this section if the Secretary determines that such enlistment is vital to the national interest.

(v) To become an officer of the Army National Guard of the United States or the Air National Guard of the United States, the individual must first be appointed to, and be federally recognized in, the same grade in the Army National Guard or the Air National Guard. In accordance with 10 U.S.C. 12201, the individual must be a citizen of the United States or lawfully admitted to the United States for permanent residence in accordance with 8 U.S.C. 1101 *et seq.* or have previously served in Military Service or in the National Security Training Corps.

(3) *Education.* (i) Possession of a high school diploma is desirable, although not mandatory, for enlistment in any component of the Military Services. 10 U.S.C. 520 states that a person who is not a high school graduate may not be accepted for enlistment in the Military Services unless the score of that person on the Armed Forces Qualification Test (AFQT) is at or above the thirty-first percentile. 10 U.S.C. 520 also states that a person may not be denied enlistment in the Military Services solely because he or she does not have a high school diploma if his or her enlistment is needed to meet established strength requirements.

(ii) Bearers of alternative credential (e.g., General Educational Development certificates and certificates of attendance) and non-graduates may be assigned lower enlistment priority based on first-term attrition rates for those credentials. DoD Instruction 1145.01, "Qualitative Distribution of Military Manpower" (available at <http://www.dtic.mil/whs/directives/corres/pdf/114501p.pdf>) identifies the authority for establishing the qualitative distribution objectives for accessions.

(iii) Educational requirements for appointment as a commissioned or warrant officer are determined by each Military Service. 10 U.S.C. 12205 establishes education requirements for certain Reserve appointments. Generally, and unless excepted under 10 U.S.C. 12205, a baccalaureate degree is required for appointment above the grade of first lieutenant in the Army, Air Force, and Marine Corps Reserves or lieutenant junior grade in the Navy

Reserve, or to be federally recognized in a grade above the grade of first lieutenant as a member of the Army National Guard or Air National Guard. In addition, special occupations (e.g., physician or chaplain) may require additional vocational credentials as determined by the Secretary concerned.

(4) *Aptitude.* (i) Overall aptitude requirements for enlistment and induction are based on applicant scores on the AFQT derived from the Armed Services Vocational Aptitude Battery. Applicant scores are grouped into percentile categories. Persons who score in AFQT Category V (percentiles 1–9) are ineligible to enlist. In accordance with 10 U.S.C. 520, the number of persons who enlist in any Armed Force during any fiscal year (*i.e.*, accession cohort) who score in AFQT Category IV (percentiles 10–30) may not exceed 20 percent of the total number of persons enlisted by Service. DoD Instruction 1145.01 identifies the authority for establishing the qualitative distribution objectives for accessions.

(ii) For officers and warrant officers, no single test or instrument is used as an aptitude requirement for appointment.

(5) *Medical.* (i) In accordance with DoD Instruction 6130.03, "Medical Standards for Appointment, Enlistment, or Induction in the Military Services" (available at <http://www.dtic.mil/whs/directives/corres/pdf/613003p.pdf>), the pre-accession screening process will be structured to identify any medical condition, including mental health, that disqualifies an applicant for military service.

(ii) Individuals who fail to meet established medical standards, as defined in DoD Instruction 6130.03, may be considered for a medical waiver. Each Service's waiver authority for medical conditions will make a determination based on all available information regarding the issue or condition. Waiver requirements are outlined in § 66.7.

(6) *Physical fitness.* (i) In accordance with DoD Instruction 1308.3, "DoD Physical Fitness and Body Fat Programs Procedures" (available at <http://www.dtic.mil/whs/directives/corres/pdf/130803p.pdf>), all individuals must meet the pre-accession height and weight standards as prescribed in Table 1 of DoD Instruction 1308.3.

(ii) The Military Services may have additional physical fitness screening requirements.

(7) *Dependency status.* (i) The Military Services may not enlist married individuals with more than two dependents under the age of 18 or unmarried individuals with custody of

any dependents under the age of 18; however, the Secretary concerned may grant a waiver for particularly promising entrants. Waiver requirements are outlined in § 66.7 of this part.

(ii) The Military Services will specify the circumstances under which individuals who have dependents may become commissioned officers or warrant officers; variations in policy may be affected by the commissioning source (*e.g.*, Service Academies, ROTC, or Officer Candidate School).

(8) *Character/conduct.* The underlying purpose of these enlistment, appointment, and induction standards is to minimize entrance of persons who are likely to become disciplinary cases, security risks, or who are likely to disrupt good order, morale, and discipline. The Military Services are responsible for the defense of the Nation and should not be viewed as a source of rehabilitation for those who have not subscribed to the legal and moral standards of society at-large. As a minimum, an applicant will be considered ineligible if he or she:

(i) Is under any form of judicial restraint (bond, probation, imprisonment, or parole).

(ii) Has a significant criminal record. 10 U.S.C. 504 prohibits any person who has been convicted of a felony from being enlisted in any of the Military Services; however, 10 U.S.C. 504 authorizes a waiver in meritorious cases. Except as limited by paragraph (b)(8)(iii) of this section, persons convicted of felonies may request a waiver to permit their enlistment. The waiver procedure is not automatic, and approval is based on each individual case. Waiver requirements are outlined in § 66.7 of this part.

(iii) Has a State or federal conviction or a finding of guilty in a juvenile adjudication for a felony crime of rape, sexual abuse, sexual assault, incest, any other sexual offense, or when the disposition requires the person to register as a sex offender. In these cases, the enlistment, appointment, or induction will be prohibited and no waivers are allowed.

(iv) Has been previously separated from the Military Services under conditions other than honorable or for the good of the Military Service concerned.

(v) Has exhibited antisocial behavior or other traits of character that may render the applicant unfit for service.

(vi) Receives an unfavorable final determination by the DoD Consolidated Adjudication Facility on a completed National Agency Check with Law and Credit (NACLC) or higher-level investigation, which is adjudicated to

the National Security Standards in accordance with Executive Order 12968, during the accession process.

(A) An applicant may be accessed (including shipping him or her to training or a first duty assignment) provided that a NACLC or higher-level investigation was submitted and accepted by the investigative service provider (OPM) and an advanced fingerprint was conducted, and OPM did not identify any disqualifying background information.

(B) If NACLC adjudication is not completed until after accession, any additional disqualifying information identified during the adjudication should be transmitted to the appropriate personnel or human resource offices, as determined by the Services, for appropriate action.

(9) *Drugs and alcohol.* A current or history of alcohol dependence, drug dependence, alcohol abuse, or other drug abuse is incompatible with military life and does not meet military standards in accordance with DoD Instruction 6130.03. Pursuant to DoD Instruction 1010.01, "Military Personnel Drug Abuse Testing Program (MPDATP)" (available at <http://www.dtic.mil/whs/directives/corres/pdf/101001p.pdf>), the pre-accession screening process is structured to identify individuals with a history of drug (including pharmaceutical medications, illegal drugs and other substances of abuse) and alcohol abuse.

(i) Drug use (to include illegal drugs, other illicit substances, and pharmaceutical medications), drug abuse, and alcohol abuse may be self-admitted by an applicant, discovered during the medical screening process, or identified by the drug and alcohol test (DAT), which is administered at the Military Entrance Processing Stations (MEPS) or other approved military processing facility.

(ii) Current or history of alcohol dependence, drug dependence, alcohol abuse, or other drug abuse may be a medically disqualifying condition based on the standards in accordance with DoD Instruction 6130.03. The MEPS Chief Medical Officer, or equivalent, when the physical is not performed at MEPS, will make that determination based on all of the information available on a case-by-case basis. These instances will be treated as a medical disqualification and handled in accordance with the guidance provided in paragraphs (b)(5)(i) through (b)(5)(ii) of this section.

(iii) Individuals who test positive for illegal drugs on the DAT, which is administered as part of the accession physical, will be disqualified. A waiver

may be requested. Waiver requirements are outlined in § 66.7.

(iv) Service qualification standards, regarding drugs and alcohol, may be more restrictive.

#### **§ 66.7 Enlistment waivers.**

(a) *Waiver requirements.* In accomplishing whole person reviews of enlistment eligibility, the following categories and combinations of categories would require a favorable waiver determination by the Secretary of the Military Department concerned for the applicant to be considered qualified.

(1) *Medical waiver.* A medical waiver is required for enlistment qualification of an applicant who has or may have had a disqualifying medical condition in accordance with DoD Instruction 6130.03.

(2) *Dependent waiver.* A dependent waiver is required when an applicant is married with more than two dependents under the age of 18 or when an applicant is unmarried and has custody of any dependents under the age of 18.

(3) *Conduct waiver.* In processing conduct waiver requests, the Military Services will require information about the "who, what, when, where, and why" of the offense in question; and letters of recommendation from responsible community leaders, such as school officials, clergy, and law enforcement officials, attesting to the applicant's character or suitability for enlistment.

(i) A Conduct Waiver is required when the final finding of the courts or other adjudicating authority is a conviction or other adverse adjudication of:

(A) One "major misconduct" offense, or;

(B) Two "misconduct" offenses, or;

(C) A pattern of misconduct.

(1) One "misconduct" offense and four "non-traffic" offenses.

(2) Five or more "non-traffic" offenses.

(ii) Use the Table of this section to determine the appropriate level of offense and applicable code. See paragraph (b) of this section for additional guidance.

(4) *Drug waiver.* A drug waiver is required when an applicant or enlistee is confirmed positive for the presence of drugs at the time of the original or subsequent physical examination (*i.e.*, tests positive on the DAT at a MEPS or equivalent facility). Drug waivers for these applicants may be considered and granted or rejected only after the disqualification period established in section 6 of Enclosure 7 of DoD Instruction 1010.16, "Technical

Procedures for the Military Personnel Drug Abuse Testing Program (MPDATP)" (available at <http://www.dtic.mil/whs/directives/corres/pdf/101016p.pdf>) ends.

(b) *Classifying conduct offenses.* The procedures that will be used in the classifying and coding of all conduct offenses are:

(1) *Initial classification.* Align the offense that is the subject of adverse adjudication with an offense from the Table of this section. As an exception,

any offense classified as a felony under State or federal jurisdiction will be treated as a major misconduct offense for DoD purposes regardless of where similar charges are listed.

(2) *Non-similar offenses.* If unable to find a similar charge, the Military Services will:

(i) Treat the offense as a major misconduct offense if the adjudicating authority can impose a maximum period of confinement that exceeds 1 year.

(ii) Treat the offense as a misconduct offense if the adjudicating authority can impose a maximum period of confinement that exceeds 6 months but is not more than 1 year.

(iii) Treat all other offenses as either other non-traffic offenses or traffic offenses, depending on the nature of the offense.

*Table to § 66.7—Conduct Waiver Codes*

Offense code	Offense title
<b>TRAFFIC OFFENSES</b>	
100 .....	Bicycle ordinance violation.
101 .....	Blocking or retarding traffic.
102 .....	Contempt of court for minor traffic offenses.
103 .....	Crossing yellow line; driving left of center.
104 .....	Disobeying traffic lights, signs, or signals.
105 .....	Driving on shoulder.
106 .....	Driving uninsured vehicle.
107 .....	Driving with blocked vision and/or tinted window.
108 .....	Driving with expired plates or without plates.
109 .....	Driving with suspended or revoked license.
110 .....	Driving without license.
111 .....	Driving without registration or with improper registration.
112 .....	Driving wrong way on one-way street.
113 .....	Failure to appear for traffic violations.
114 .....	Failure to comply with officer's directive.
115 .....	Failure to have vehicle under control.
116 .....	Failure to signal.
117 .....	Failure to stop or yield to pedestrian.
118 .....	Failure to submit report after accident.
119 .....	Failure to yield right-of-way.
120 .....	Faulty equipment such as defective exhaust, horn, lights, mirror, muffler, signal device, steering device, tail pipe, or windshield wipers.
121 .....	Following too closely.
122 .....	Hitchhiking.
123 .....	Improper backing such as backing into intersection or highway, backing on expressway, or backing over crosswalk.
124 .....	Improper blowing of horn.
125 .....	Improper passing such as passing on right, passing in no-passing zone, passing stopped school bus, or passing pedestrian in crosswalk.
126 .....	Improper turn.
127 .....	Invalid or unofficial inspection sticker or failure to display inspection sticker.
128 .....	Jaywalking.
129 .....	Leaving key in ignition.
130 .....	Leaving scene of accident (when not considered hit and run).
131 .....	License plates improperly displayed or not displayed.
132 .....	Operating overloaded vehicle.
133 .....	Racing, dragging, or contest for speed.
134 .....	Reckless, careless, or imprudent driving (considered a traffic offense when the fine is less than \$300 and there is no confinement). Court costs are not part of a fine.
135 .....	Reserved for future use.
136 .....	Seat belt and/or child restraint violation.
137 .....	Skateboard, roller skate, or inline skate violation.
138 .....	Speeding.
139 .....	Spilling load on highway.
140 .....	Spinning wheels, improper start, zigzagging, or weaving in traffic.
141 .....	Violation of noise control ordinance.
142 .....	Other traffic offenses not specifically listed.
143 .....	Reserved for future use.
144 .....	Reserved for future use.
<b>NON-TRAFFIC OFFENSES</b>	
200 .....	Altered driver's license or identification.
201 .....	Assault (simple assault with fine or restitution of \$500 or less and no confinement).
202 .....	Carrying concealed weapon (other than firearm); possession of brass knuckles.
203 .....	Check, worthless, making or uttering, with intent to defraud or deceive (less than \$500).

Offense code	Offense title
204 .....	Committing a nuisance.
205 .....	Conspiring to commit misdemeanor.
206 .....	Curfew violation.
207 .....	Damaging road signs.
208 .....	Discharging firearm through carelessness or within municipal limits.
209 .....	Disobeying summons; failure to appear (other than traffic).
210 .....	Disorderly conduct; creating disturbance; boisterous conduct.
211 .....	Disturbing the peace.
212 .....	Drinking alcoholic beverages on public transportation.
213 .....	Drunk in public.
214 .....	Dumping refuse near highway.
215 .....	Failure to appear, contempt of court (all offenses except felony proceedings).
216 .....	Failure to appear, contempt of court (felony proceedings).
217 .....	Failure to stop and render aid after accident.
218 .....	Fare and/or toll evasion.
219 .....	Harassment, menacing, or stalking.
220 .....	Illegal betting or gambling; operating illegal handbook, raffle, lottery, or punchboard; cockfighting.
221 .....	Indecent exposure.
222 .....	Indecent, insulting, or obscene language communicated directly or by telephone to another person.
223 .....	Jumping turnstile (to include those States that adjudicate jumping a turnstile as petty larceny).
224 .....	Juvenile adjudications such as beyond parental control, incorrigible, runaway, truant, or wayward.
225 .....	Killing a domestic animal.
226 .....	Littering.
227 .....	Loitering.
228 .....	Malicious mischief (fine or restitution of \$500 or less and no confinement).
229 .....	Pandering.
230 .....	Poaching.
231 .....	Purchase, possession, or consumption of alcoholic beverages or tobacco products by minor.
232 .....	Removing property from public grounds.
233 .....	Removing property under lien.
234 .....	Robbing an orchard.
235 .....	Shooting from highway.
236 .....	Throwing glass or other material in roadway.
237 .....	Trespass (non-criminal or simple).
238 .....	Unlawful assembly.
239 .....	Unlawful manufacture, sale, possession, or consumption of liquor in public place.
240 .....	Unlawful use of long-distance telephone calling card.
241 .....	Using or wearing unlawful emblem and/or identification.
242 .....	Vagrancy.
243 .....	Vandalism (fine or restitution of \$500 or less and no confinement).
244 .....	Violation of fireworks laws.
245 .....	Violation of fish and game laws.
246 .....	Violation of leash laws.
247 .....	Violation of probation.
248 .....	Other non-traffic offenses not specifically listed.
249 .....	Reserved for future use.

#### MISCONDUCT OFFENSES

300 .....	Aggravated assault, fighting, or battery (more than \$500 fine or restitution or confinement).
301 .....	Carrying of weapon on school grounds (other than firearm).
302 .....	Concealment of or failure to report a felony.
303 .....	Contributing to delinquency of minor.
304 .....	Crimes against the family (non-payment of court-ordered child support and/or alimony).
305 .....	Criminal mischief (more than \$500 fine or restitution or confinement).
306 .....	Criminal trespass.
307 .....	Desecration of grave.
308 .....	Domestic battery and/or violence not considered covered by 18 U.S.C. 922, referred to in this issuance as the "Lautenberg Amendment").
309 .....	Driving while drugged or intoxicated; driving while ability impaired; permitting driving under the influence.
310 .....	Illegal or fraudulent use of a credit card or bank card (value less than \$500).
311 .....	Larceny or conversion (value less than \$500).
312 .....	Leaving scene of an accident or hit and run.
313 .....	Looting.
314 .....	Mailbox destruction.
315 .....	Mailing of obscene or indecent matter (including e-mail).
316 .....	Possession of marijuana or drug paraphernalia.
317 .....	Prostitution or solicitation for prostitution.
318 .....	Reckless, careless, or imprudent driving (considered a misdemeanor when the fine is \$300 or more or when confinement is imposed; otherwise, considered a minor traffic offense).
319 .....	Reckless endangerment.
320 .....	Resisting arrest or eluding police.

Offense code	Offense title
321 .....	Selling or leasing weapons.
322 .....	Stolen property, knowingly receiving (value less than \$500).
323 .....	Throwing rocks on a highway; throwing missiles at sporting events; throwing objects at vehicles.
324 .....	Unauthorized use or taking of a vehicle or conveyance from family member; joy riding.
325 .....	Unlawful carrying of firearms or carrying concealed firearm.
326 .....	Unlawful entry.
327 .....	Use of telephone, Internet, or other electronic means to abuse, annoy, harass, threaten, or torment another.
328 .....	Vandalism (more than \$500 fine or restitution or confinement).
329 .....	Willfully discharging firearm so as to endanger life; shooting in public.
330 .....	Other misconduct offenses not specifically listed.
331 .....	Reserved for future use.
332 .....	Reserved for future use.

#### MAJOR MISCONDUCT OFFENSES

400 .....	Aggravated assault; assault with dangerous weapon; maiming.
401 .....	Arson.
402 .....	Attempt to commit a felony.
403 .....	Breaking and entering with intent to commit a felony.
404 .....	Bribery.
405 .....	Burglary.
406 .....	Carjacking.
407 .....	Carnal knowledge of a child.
408 .....	Carrying of weapon on school grounds (firearm).
409 .....	Check, worthless, making or uttering, with intent to defraud or deceive (over \$500).
410 .....	Child abuse.
411 .....	Child pornography.
412 .....	Conspiring to commit a felony.
413 .....	Criminal libel.
414 .....	Domestic battery and/or violence as defined in the Lautenberg Amendment. (Waiver not authorized if applicant was convicted of this offense.)
415 .....	Embezzlement.
416 .....	Extortion.
417 .....	Forgery, knowingly uttering or passing forged instrument (except for altered identification cards).
418 .....	Grand larceny or larceny (value of \$500 or more).
419 .....	Grand theft auto.
420 .....	Hate crimes.
421 .....	Illegal and/or fraudulent use of a credit card, bank card, or automated card (value of \$500 or more).
422 .....	Indecent acts or liberties with a child; molestation.
423 .....	Indecent assault.
424 .....	Kidnapping or abduction.
425 .....	Mail matter; abstracting, destroying, obstructing, opening, secreting, stealing, or taking (not including the destruction of mail-boxes).
426 .....	Manslaughter.
427 .....	Murder.
428 .....	Narcotics or habit-forming drugs, wrongful possession or use (not including marijuana).
429 .....	Negligent or vehicular homicide.
430 .....	Perjury or subornation of perjury.
431 .....	Possession or intent to use materials in a manner to make a bomb or explosive device to cause bodily harm or destruction of property.
432 .....	Public record; altering, concealing, destroying, mutilating, obligation, or removing.
433 .....	Rape, sexual abuse, sexual assault, criminal sexual abuse, incest, or other sex crimes. (See paragraph (b)(8)(iii) of § 66.6 of this part; waivers for these offenses are not authorized.)
434 .....	Riot.
435 .....	Robbery (including armed).
436 .....	Sale, distribution, or trafficking of cannabis (marijuana) or any other controlled substance (including intent).
437 .....	Sodomy (only when it is nonconsensual or involves a minor).
438 .....	Stolen property, knowingly received (value of \$500 or more).
439 .....	Terrorist threats (including bomb threats).
440 .....	Violation of civil rights.
441 .....	Other major misconduct offenses not specifically listed.
442 .....	Reserved for future use.
443 .....	Reserved for future use.



Dated: March 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison  
Officer, Department of Defense.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket Number USCG-2015-0018]

RIN 1625-AA08

#### Special Local Regulation; Charleston Race Week, Charleston Harbor; Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a special local regulation on the waters of Charleston Harbor in Charleston, South Carolina during Charleston Race Week, a series of sailboat races. The races are scheduled to take place on April 17, 2015 through April 19, 2015. Approximately 300 sailboats are anticipated to participate in the races. The special local regulation is necessary to provide for the safety of life on the navigable waters of the United States during the races. The special local regulation consists of three race areas. Except for those persons and vessels participating in the sailboat races, persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the race areas unless authorized by the Captain of the Port Charleston or a designated representative.

**DATES:** This rule is effective on April 17, 2015 through April 19, 2015. This rule will be enforced daily from 8:30 a.m. until 5:00 p.m.

**ADDRESSES:** Documents indicated in this preamble are part of docket USCG-2015-0018. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "Search." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 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 rule, call or email Chief Warrant Officer Christopher Ruleman, telephone (843) 740-3184, email [Christopher.L.Ruleman@uscg.mil](mailto:Christopher.L.Ruleman@uscg.mil). If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of Proposed Rulemaking

##### A. Regulatory History and Information

On February 19, 2015, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulation; Charleston Race Week, Charleston, SC in the **Federal Register**. We received no comments on the proposed rule. No public meeting was requested, and none was held.

##### B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to insure safety of life on navigable waters of the United States during three Charleston Race Week sailboat races.

##### C. Discussion of the Final Rule

From April 17, 2015 through April 19, 2015, Charleston Ocean Racing Association will host three sailboat races on Charleston Harbor in Charleston, South Carolina during Charleston Race Week. Approximately 300 sailboats will be participating in the three races. The rule establishes a special local regulation on certain waters of Charleston Harbor in Charleston, South Carolina. The special local regulation will be enforced daily from 8:30 a.m. until 5:00 p.m. on April 17, 2015 through April 19, 2015. The special local regulation consists of the following three race areas.

1. *Race Area #1.* All waters encompassed within an 800 yard radius of position 32°46'23" N, 79°55'11" W.

2. *Race Area #2.* All waters encompassed within a 900 yard radius of position 32°45'54" N, 79°54'41" W.

3. *Race Area #3.* All waters encompassed within a 900 yard radius of position 32°46'09" N, 79°53'52" W.

Except for those persons and vessels participating in the sailboat races, persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the race areas unless specifically 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 any of the race areas 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 race areas 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. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

##### D. Regulatory Analyses

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

###### 1. Regulatory Planning and Review

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, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) Although persons and vessels will not be able to enter, transit through, anchor in, or remain within the regulated areas without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement periods; (2) persons and vessels may still enter, transit through, anchor in, or remain within the regulated areas if authorized by the Captain of the Port Charleston or a designated representative; and (3) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

###### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the