

Commencement Bay, WA from 12:01 a.m. on January 6, 2011, through 11:59 p.m. on January 29, 2011. This action is necessary for the security of Department of Defense assets and military cargo during loading and off-loading operations taking place within the Blair Waterway, Commencement Bay, WA. During periods of enforcement, no person or vessel operator may enter the security zone unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

**DATES:** The security zone described in 33 CFR 165.1321 (c)(1) will be enforced from 12:01 a.m. on January 6, 2011, through 11:59 p.m. on January 29, 2011.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or e-mail LTJG Ashley M. Wanzer, Waterways Management Division, Sector Puget Sound, Coast Guard; telephone 206-217-6175, e-mail [SectorPugetSoundWWM@uscg.mil](mailto:SectorPugetSoundWWM@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Blair Waterway security zone in Commencement Bay, WA for protection of military cargo in 33 CFR 165.1321 from 12:01 a.m. on January 6, 2011, through 11:59 p.m. on January 29, 2011. A discussion of these regulations can be found in the preamble of a final rule published December 10, 2004 (69 FR 71709).

Under the provisions of 33 CFR 165.1321, vessel operators may not enter the following security zone described in § 165.1321(c)(1): All waters enclosed by a line connecting the following points: 47°16'57" N, 122°24'39" W, which is approximately the beginning of Pier No. 23 (also known as the Army pier); then northwesterly to 47°17'05" N, 122°24'52" W, which is the end of the Pier No. 23 (Army pier); then southwesterly to 47°16'42" N, 122°25'18" W, which is the approximate location of a private buoy on the end of the sewage outfall; then southeasterly to 47°16'33" N, 122°25'04" W, which is approximately the northwestern end of Pier No. 5; then northeasterly to the northwestern end of Pier No. 1; then southeasterly along the shoreline of the Blair Waterway to the Blair Waterway turning basin; then along the shoreline around the Blair Waterway turning basin; then northwesterly along the shoreline of the Blair Waterway to the Commencement Bay Directional Light (light list number 17159); then northeasterly along the shoreline to the point of origin. [Datum: NAD 1983].

All vessel operators must obtain permission from the COTP or Designated Representative to enter, move within, or exit the security zone during periods of enforcement. To

obtain permission to transit the zone vessel operators can contact the on-scene patrol craft on VHF Channel 16/13 or VST Puget Sound on VHF Channel 14. Operators of vessels 20 meters or greater in length should seek permission from the COTP or a Designated Representative at least 4 hours in advance. Operators of vessels less than 20 meters in length should seek permission at least 1 hour in advance.

Any Coast Guard commissioned, warrant or petty officer may enforce the rules of this section. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation. Vessels and persons granted permission to enter the security zone shall obey all lawful orders or directions of the Captain of the Port or Designated Representative. All vessels shall be operated at a minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.1321 and 5 U.S.C. 552(a).

If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to temporarily grant general permission to enter this zone during breaks between loading and off-loading operations.

Upon notice of temporary periods of suspension of enforcement by the Captain of the Port Puget Sound, all persons and vessels are authorized to enter, transit, and exit this security zone until the zone is reestablished and subject to enforcement.

Dated: January 5, 2011.

**Scott J. Ferguson,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 2011-1034 Filed 1-18-11; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 261

#### RIN 0596-AC93

### Prohibitions in Areas Designated by Order; Closure of National Forest System Lands To Protect Privacy of Tribal Activities

**AGENCY:** Forest Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** This final rule is implementing verbatim sections 8102 and 8104 of the Food, Conservation, and Energy Act of 2008 (FCEA) by adding regulations regarding special closures to

provide for closure of National Forest System lands to protect the privacy of tribal activities for traditional and cultural purposes and by adding definitions for "Indian tribe" and "traditional and cultural purpose." FCEA authorizes the Secretary of Agriculture to ensure access to National Forest System lands, to the maximum extent practicable, by Indians and Indian tribes for traditional and cultural purposes, in recognition of the historic use of National Forest System lands by Indians and Indian tribes.

**DATES:** *Effective Date:* This rule is effective January 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Holbrook, 202-205-1426, Recreation, Heritage, and Volunteer Resources staff. Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service at 800-877-8339 between 8 a.m. and 8 p.m., Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 8104 of the FCEA authorizes the Secretary of Agriculture to ensure access to National Forest System lands, to the maximum extent practicable, by Indians and Indian tribes for traditional and cultural purposes, in recognition of the historic use of National Forest System lands by Indians and Indian tribes. Section 8102 of the FCEA defines "Indian tribe" as any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community that is included in a list published by the Secretary of the Interior under section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1). Section 8102 of the FCEA states that "traditional and cultural purposes" with respect to a definable use, area, or practice means that the use, area, or practice is identified by an Indian tribe as traditional and cultural because of its long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.

Forest Service regulations at 36 CFR part 261, subpart B, establish prohibitions relating to acts or omissions involving National Forest System lands. To implement section 8104 of the FCEA verbatim, the Forest Service is adding a paragraph to 36 CFR 261.53 regarding special closures to provide for closure of National Forest System lands to protect the privacy of tribal activities for traditional and cultural purposes. To implement section 8102 of the FCEA verbatim, the Forest Service is adding a definition for "Indian tribe" as "any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community that is included in a list published by the

Secretary of the Interior under section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1) and a definition for "traditional and cultural purpose" that states that it means, with respect to a definable use, area, or practice, that it is identified by an Indian tribe as traditional and cultural because of its long-established significance or ceremonial nature for the Indian tribe.

#### Good Cause Statement

The Administrative Procedure Act (APA) exempts certain rulemaking from its public notice and comment requirements, including rulemaking involving "public property" (5 U.S.C. 553(a)(2)), such as federal lands managed by the Forest Service. Furthermore, the APA allows agencies to promulgate rules without public notice and comment when an agency for good cause finds that public notice and comment are "impracticable, unnecessary, or contrary to the public interest" (5 U.S.C. 553(b)(B)).

In 1971, Secretary of Agriculture Hardin announced a voluntary waiver of the public property exemption from public notice and comment rulemaking under the APA (July 24, 1971; 36 FR 13804). Thus, agencies in the U.S. Department of Agriculture (USDA) generally provide public notice and comment in promulgating rules. However, the Hardin policy permits USDA agencies to promulgate final rules without public notice and comment when the agencies find for good cause that notice and comment procedures would be impracticable, unnecessary, or contrary to the public interest, consistent with 5 U.S.C. 553(b)(B). The courts have recognized this good cause exception to the Hardin policy and have indicated that since the public notice and comment requirement was adopted voluntarily, the Secretary should be afforded "more latitude" in making a good cause determination. See *Alcaraz v. Block*, 746 F.2d 593, 612 (9th Cir. 1984).

The Department finds that good cause exists to exempt this rulemaking from public notice and comment pursuant to 5 U.S.C. 553(b)(B). Section 8104 of the FCEA allows the Secretary to "temporarily close from public access specifically identified National Forest System land to protect the privacy of tribal activities for traditional and cultural purposes." This rulemaking prohibits public access into or upon an area which is closed to protect the privacy of tribal activities for traditional and cultural purposes. Thus, the prohibition against public access to closed areas under 36 CFR 261.53

merely implements the provision for closure from public access set forth in section 8104 of the FCEA. Such a prohibition against access to closed areas is dictated by section 8104 of the FCEA; the agency has no discretion in implementing these changes. Moreover, the new provisions conform precisely to the newly enacted statute and the corresponding definitions in the statute. Accordingly, because this rulemaking involves purely minor, technical, and nondiscretionary changes, the Department finds that public notice and comment are unnecessary pursuant to 5 U.S.C. 553(b)(B).

#### Regulatory Certifications

##### *Environmental Impact*

This final rule makes purely minor, technical changes to the Forest Service's regulations. 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's conclusion is that this final rule falls within this category of actions and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

##### *Regulatory Impact*

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 is not a significant rule. 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 and safety, or State or local governments. This final rule will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, this final rule is not subject to Office of Management and Budget (OMB) review under E.O. 12866.

##### *Regulatory Flexibility Act*

The Department has considered this final rule in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The final rule makes purely minor, technical changes to the Forest Service's regulations. This final rule will not have a significant economic impact on a substantial number of small entities as

defined by the act because the final rule will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

##### *No Takings Implications*

The Department has analyzed this final rule in accordance with the principles and criteria contained in E.O. 12630. The Department has determined that the final rule will not pose the risk of a taking of private property.

##### *Civil Justice Reform*

The Department has reviewed this final rule under E.O. 12988 on civil justice reform. After adoption of this final rule, (1) All State and local laws and regulations that conflict with this rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

##### *Federalism and Consultation and Coordination With Indian Tribal Governments*

The Department has considered this final rule under the requirements of E.O. 13132 on federalism and has determined that the final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

Moreover, the Department has determined that promulgation of this final rule does not require advance consultation with Indian tribal officials as set forth in E.O. 13175, Consultation and Coordination With Indian Tribal Governments. Section 5(b) of E.O. 13175 requires that, to the extent practicable and permitted by law, agencies shall consult with tribal officials in the promulgation of "any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute." This rulemaking merely implements verbatim two existing statutory provisions, sections 8102 and 8104 of the FCEA, and involves only minor, purely technical, and nondiscretionary

regulatory changes. Moreover, these regulatory changes do not impose substantial direct compliance costs on Indian tribal governments. Accordingly, the Department has determined that advance consultation with Tribes is not required for this rulemaking. In the future if the Department publishes additional directives or guidance on how to implement this regulation in the Forest Service Manual or Forest Service Handbook, the Department will consult with Tribes prior to its publication. At this time, the Department does not intend to publish additional guidance on how to implement this regulation.

#### Energy Effects

The Department has reviewed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Department has determined that this final rule does not constitute a significant energy action as defined in the E.O.

#### Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule will not compel the expenditure of \$100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

#### Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

#### Text of the Final Rule

##### List of Subjects in 36 CFR Part 261

Crime, Law enforcement, National forests.

For the reasons set forth in the preamble, part 261 of title 36 of the Code of Federal Regulations is amended as follows:

#### PART 261—PROHIBITIONS

■ 1. The authority citation for part 261 continues to read as follows:

**Authority:** 7 U.S.C. 1011(f), 16 U.S.C. 472, 551, 620(f), 1133(c), (d)(1), 1246(i).

#### Subpart A—General Prohibitions

■ 2. In § 261.2, add definitions for *Indian tribe* and *traditional and cultural purpose* in alphabetical order to read as follows:

##### § 261.2 Definitions.

\* \* \* \* \*

*Indian tribe* means any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community that is included on a list published by the Secretary of the Interior under section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1).

\* \* \* \* \*

*Traditional and cultural purpose* means, with respect to a definable use, area, or practice, that it is identified by an Indian tribe as traditional or cultural because of its long-established significance or ceremonial nature for the Indian tribe.

\* \* \* \* \*

#### Subpart B—Prohibitions in Areas Designated by Order

■ 3. Amend § 261.53 by adding paragraph (g) to read as follows:

##### § 261.53 Special closures.

\* \* \* \* \*

(g) The privacy of tribal activities for traditional and cultural purposes. Closure to protect the privacy of tribal activities for traditional and cultural purposes must be requested by an Indian tribe; is subject to approval by the Forest Service; shall be temporary; and shall affect the smallest practicable area for the minimum period necessary for activities of the requesting Indian tribe.

Dated: January 11, 2011.

**Jay Jensen,**  
Deputy Under Secretary, NRE.

[FR Doc. 2011–937 Filed 1–18–11; 8:45 am]

**BILLING CODE 3410–11–P**

#### DEPARTMENT OF VETERANS AFFAIRS

##### 38 CFR Part 74

RIN 2900–AM78

#### VA Veteran-Owned Small Business Verification Guidelines

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document affirms as final, with changes, a final rule with

request for comments that implemented portions of the Veterans Benefits, Health Care, and Information Technology Act of 2006. This law requires the Department of Veterans Affairs (VA) to verify ownership and control of veteran-owned small businesses, including service-disabled veteran-owned small businesses. This final rule rescinds the requirement that eligible owners work full-time in the business for which they have applied for acceptance in the Verification Program and that limits participants to a single business. It formally changes the time period for issuance of reconsideration decisions from 30 to 60 days and changes the distribution of profits for limited liability companies and employee stock ownership plans.

**DATES:** *Effective Date:* This final rule is effective February 18, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Gail Wegner, Deputy Director, Center for Veterans Enterprise (OOVE), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, phone (202) 303–3260 x5239.

**SUPPLEMENTARY INFORMATION:** In a final rule with request for comments published in the **Federal Register** on February 8, 2010, (75 FR 6098), we revised 38 CFR part 74 setting forth a mechanism for verifying ownership and control of veteran-owned small businesses (VOSBs), including service-disabled veteran-owned small businesses (SDVOSBs). We solicited comments on the following new interim final requirements: Requiring eligible owners work full-time in the business for which they have applied for acceptance in the VOSB or SDVOSB Verification Program, changing the time period for issuance of reconsideration decisions from 30 to 60 days, and changing the distribution of profits for limited liability companies and employee stock ownership plans. We provided a 30-day comment period which ended on March 10, 2010. We received more than 100 comments on the interim final requirements. The issues raised in the comments are discussed below. Based upon the rationale set forth in this document, we are rescinding the interim final provisions that require owners to work full-time in the business for which they have applied for acceptance in the Verification Program and which limit participants to a single business. We are also formally changing the time period for issuance of reconsideration decisions from 30 to 60 days and changing the distribution of profits for limited liability companies (LLC) and