

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 M16475.1D, 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 which 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 the establishment of a safety zone.

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. 1226, 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 new temporary zone § 165.T11-162 to read as follows:

**§ 165.T11-162 Safety Zone; Paradise Point Fourth of July Fireworks; Mission Bay, San Diego, CA.**

(a) *Location.* The limits of the safety zone are all the navigable waters within 600 feet of the fireworks barge located at approximately 32°46.36' N, 117°14.57' W.

(b) *Enforcement Period.* This section will be enforced from 8:45 p.m. to 9:30 p.m. on July 3, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by

the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF-FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 5, 2009.

**T.H. Farris,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

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**BILLING CODE 4910-15-P**

#### DEPARTMENT OF AGRICULTURE

##### Forest Service

#### 36 CFR Part 223, 261

**RIN 0596-AB81**

#### Sale and Disposal of National Forest System Timber; Special Forest Products and Forest Botanical Products

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of delay of effective date.

**SUMMARY:** The Department is delaying the effective date of this rule. The Department previously delayed the effective date on March 30, 2009. More time is needed for the Forest Service to properly respond to the comments and to consider any potential changes to the rule. A **Federal Register** document will be published in the future that responds to the comments and sets the effective date. The rule regulates the sustainable free use, commercial harvest, and sale of special forest products and forest botanical products from National Forest System lands.

**DATES:** Effective May 29, 2009, the effective date for the rule published at 73 FR 79367, December 29, 2008, and delayed at 74 FR 14049, March 30, 2009, is delayed indefinitely. Forest Service will publish notification in the **Federal Register** when an effective date is established.

#### FOR FURTHER INFORMATION CONTACT:

Richard Fitzgerald, Forest Service, Forest Management Staff, (202) 205-

1753. 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:** The Department is delaying the effective date of the final rule published December 29, 2008 (73 FR 79367), which regulates the sustainable free use, commercial harvest, and sale of special forest products and forest botanical products from National Forest System lands. The Department previously delayed the effective date on March 30, 2009 (74 FR 14049). Further delay is necessary, because more time is needed for the Forest Service to properly respond to the comments and to consider any potential changes to the rule.

Dated: May 27, 2009.

**Ann Bartuska,**

*Acting Deputy Under Secretary, Natural Resources and Environment.*

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**BILLING CODE 3410-11-P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 38

**RIN 2900-AM53**

#### Headstone and Marker Application Process

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Department of Veterans Affairs (VA) regulations concerning headstones and markers furnished by the Government through the VA headstone and marker program. It updates ordering procedures for headstones and markers and provides instructions for requesting the addition of a new emblem of belief to VA's list of emblems available for inscription on Government-furnished headstones and markers. Additionally, this final rule establishes criteria to guide VA's decisions on requests to add new emblems of belief to the list.

**DATES:** *Effective Date:* July 1, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Lindee Lenox, Director, Memorial Programs Service, Office of Field Programs, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: (202) 501-3100 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On January 19, 2007, VA published a notice of proposed rulemaking in the **Federal Register** (72 FR 2480). We proposed to amend VA's regulations concerning procedures for ordering Government-furnished headstones and markers and to establish requirements for requesting the addition of a new emblem of belief to VA's list of emblems available for inscription on headstones and markers. We provided a 60-day comment period, which ended on March 20, 2007, and received 538 comments from 522 individuals and 16 organizations. Of the 538 comments, 256 expressed support for VA's approval of a specific emblem of belief. Several other commenters suggested that VA conduct a review of all existing emblem inscriptions to ensure compliance with the proposed rule. Since the proposed rule concerned the procedures for adding a new emblem to the list of emblems available for inscription, not whether a specific emblem should be added pursuant to the proposed procedures or whether each of the 2,774,634 graves currently maintained by VA are marked in accordance with the proposed procedures, these comments are beyond the scope of this rulemaking and will not be addressed in this document.

Several commenters generally questioned the rulemaking process and our standard statements of compliance with regulatory law. A few commenters also requested that we send them separate, written responses to each of their comments. VA is required to follow the rulemaking procedures established by the Administrative Procedure Act, other Federal statutes, and various Executive Orders. Comments concerning those procedures are also beyond the scope of this rulemaking and will not be addressed in this document.

Based on the rationale set forth in the proposed rule and in this document, we adopt the provisions of the proposed rule as a final rule with the changes indicated below.

#### Application Process

Many commenters recommended that VA establish a period within which it must act on a request to add a new emblem of belief to its list of emblems available for inscription on Government-furnished headstones and markers. We disagree and will not make any changes based on these comments.

To ensure that individuals are afforded every opportunity to substantiate their claims and receive the full benefit of VA's duty to assist, VA has not established arbitrary or unnecessary deadlines for deciding

applications for veterans benefits. For the same reasons, we decline to establish such a deadline for emblem requests. Under 38 CFR 38.632(f), VA will provide individuals who submit an incomplete emblem request notice concerning the status of their request and an opportunity to submit additional information. Also, in § 38.632(g), we clarify that VA will decide applications for new emblems only if they are complete. Although we decline to establish an arbitrary deadline for deciding an emblem request, § 38.632(g)(1) limits such requests to cases of immediate need. The request must relate to an application for a Government-furnished headstone or marker for an eligible deceased individual. Previously organizations could request that VA add their emblem to the list of emblems available for inscription when there was no immediate need. Many of the submissions we received from organizations were not actual applications, but merely letters of interest that required research, review, and written responses. Under the new "immediate need" requirement in § 38.632(g)(1), VA will be able to process applications for new emblems within a reasonable time after an interment or other memorial ceremony.

Several commenters suggested that VA could provide greater transparency in the emblem request process by providing notice of receipt of requests and information concerning the status of requests.

We agree that it is important to keep applicants apprised of the status of their requests. As described above regarding § 38.632(g), VA will decide complete requests as soon as possible. Upon receipt of an incomplete request to add a new emblem of belief, § 38.632(f) provides that VA will notify the applicant in writing of any missing information and that he or she has 60 days to submit the information. Further, if the Under Secretary for Memorial Affairs determines that an emblem represents a belief but would adversely affect the dignity and solemnity of the cemetery environment, § 38.632(h)(2) provides for additional notice to the individual concerning remedial options. These measures provide sufficient transparency, and we decline to impose additional administrative requirements at this time.

Some commenters suggested that VA allow living veterans and servicemembers, particularly servicemembers deployed to or serving in combat zones, to request a new emblem of belief in advance of need. We