

**§ 40.25a Pipe tobacco and roll-your-own tobacco tax rates and classification.**

\* \* \* \*

(b) \* \* \*

(4) During the period from June 22, 2009, through March 23, 2010, manufacturers may continue to remove products as pipe tobacco in packages that do not bear the declaration “pipe tobacco” in the manner prescribed in paragraph (b)(3)(i) of this section.

■ 3. Section 40.216c is revised to read as follows:

**§ 40.216c Package use-up rule.**

(a) During the period from June 22, 2009, through March 23, 2010, a manufacturer of tobacco products may remove packages of pipe tobacco or roll-your-own tobacco that do not meet the requirements of § 40.216a(a) or § 40.216b(a), provided that such packages bear the designation “Tax Class L” (to designate pipe tobacco) or “Tax Class J” (to designate roll-your-own tobacco) and were in use prior to June 22, 2009.

(b) During the period from June 22, 2009, through March 23, 2010, a manufacturer may remove roll-your-own tobacco for which the applicable designation is “cigar tobacco,” “cigarette wrapper,” or “cigar wrapper” even if the packages of such products do not meet the requirements of § 40.216b.

**PART 41—IMPORTATION OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO**

■ 4. The authority citation for part 41 continues to read as follows:

**Authority:** 26 U.S.C. 5701–5705, 5708, 5712, 5713, 5721–5723, 5741, 5754, 5761–5763, 6301, 6302, 6313, 6402, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 5. In § 41.30, paragraph (b)(3) is amended by removing the words “Any tobacco” and adding, in their place, the words “Subject to paragraph (b)(4) of this section, any tobacco”, and a new paragraph (b)(4) is added to read as follows:

**§ 41.30 Pipe tobacco and roll-your-own tobacco.**

\* \* \* \*

(b) \* \* \*

(4) During the period from June 22, 2009, through March 23, 2010, importers may continue to remove products as pipe tobacco in packages that do not bear the declaration “pipe tobacco” in the manner prescribed in paragraph (b)(3)(i) of this section.

■ 6. Section 41.72c is revised to read as follows:

**§ 41.72c Package use-up rule.**

(a) During the period from June 22, 2009, through March 23, 2010, an importer of tobacco products may remove packages of pipe tobacco or roll-your-own tobacco that do not meet the requirements of § 41.72a(a) or § 41.72b(a), provided that such packages bear the designation “Tax Class L” (to designate pipe tobacco) or “Tax Class J” (to designate roll-your-own tobacco) and were in use prior to June 22, 2009.

(b) During the period from June 22, 2009, through March 23, 2010, an importer may remove roll-your-own tobacco for which the applicable designation is “cigar tobacco,” “cigarette wrapper,” or “cigar wrapper” even if the packages of such products do not meet the requirements of § 41.72b.

■ 7. In § 41.81, paragraphs (c)(6) and (c)(7) are revised to read as follows:

**§ 41.81 Taxpayment.**

\* \* \* \*

(c) \* \* \*

(6) *For pipe tobacco:* The importer will show the designation “pipe tobacco”, the number of pounds and ounces, the rate of tax, and the tax due.

(7) *For roll-your-own tobacco:* The importer will show the designation “roll-your-own tobacco” or any other acceptable designation (“cigarette tobacco”, “cigarette wrapper”, “cigar tobacco”, or “cigar wrapper”), the number of pounds and ounces, the rate of tax, and the tax due.

\* \* \* \*

**PART 45—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, FOR USE OF THE UNITED STATES**

■ 8. The authority citation for part 45 continues to read as follows:

**Authority:** 26 U.S.C. 5702–5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805; 44 U.S.C. 3504(h).

■ 9. Section 45.45c is revised to read as follows:

**§ 45.45c Package use-up rule.**

(a) During the period from June 22, 2009, through March 23, 2010, a manufacturer of tobacco products may remove packages of pipe tobacco or roll-your-own tobacco that do not meet the requirements of § 45.45a(a) or § 45.45b(a), provided that such packages bear the designation “Tax Class L” (to designate pipe tobacco) or “Tax Class J” (to designate roll-your-own tobacco) and were in use prior to June 22, 2009.

(b) During the period from June 22, 2009, through March 23, 2010, a manufacturer may remove roll-your-own tobacco for which the applicable designation is “cigar tobacco,” “cigarette wrapper,” or “cigar wrapper” even if the packages of such products do not meet the requirements of § 45.45b.

Signed: August 23, 2009.

**John J. Manfreda,**  
*Administrator.*

Approved: September 4, 2009.

**Timothy E. Skud,**  
*Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.*

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**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket No. USCG–2009–0755]

RIN 1625–AA00

**Safety Zone: Robert Moses Causeway Bridge State Boat Channel, Captree, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the waters of the State Boat Channel surrounding the Robert Moses Causeway located in Captree, New York due to ongoing construction. This rule is necessary to protect vessels transiting the area from hazards imposed by construction barges and equipment; entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound, New Haven, CT.

**DATES:** This interim rule is effective from September 24, 2009 until May 28th, 2010. The safety zone has been enforced with actual notice since September 8, 2009. Comments and related material must reach the Coast Guard on or before November 9, 2009. Requests for public meetings must be received by the Coast Guard on or before October 1, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG–2009–0755 using any one of the following methods:

(1) *Federal eRulemaking Portal:*  
<http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of

Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery*: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this interim rule, call or e-mail, Chief Petty Officer Christie Dixon, Waterways Management, Coast Guard Sector Long Island Sound: telephone 203-468-4459, e-mail *Christie.M.Dixon@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

##### **Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-0755), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2009-0755" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

##### **Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2009-0755" and click "Search." Click the "Open Docket Folder" in the "Actions" column. 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

##### **Privacy Act**

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

##### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one on or before October 1, 2009, using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the

public meeting, contact Chief Petty Officer Christie Dixon, Waterways Management, Coast Guard Sector Long Island Sound at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

##### **Regulatory Information**

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because insufficient time exists prior to the beginning of construction to allow for a full notice and comment period. Further, any delay encountered in this regulation's effective date would be contrary to the public's interest as immediate action is needed to ensure the safety of vessels transiting in the State Boat Channel in the vicinity of the Robert Moses Causeway Bridge during construction.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. A delay or cancellation of this ongoing construction project is not in the public interest and would further disrupt the flow of vehicular and maritime traffic. In addition, this safety zone is necessary to ensure the continued safety of the maritime public and construction workers throughout the completion of this essential repair project.

##### **Background and Purpose**

The New York Department of Transportation has been rehabilitating portions of the Robert Moses Causeway Bridge and recently determined that additional work is needed and will be rehabilitating the northbound section of the Robert Moses Causeway Bridge located over the State Boat Channel in Captree, NY beginning on September 8th, 2009. These repairs are needed to ensure the continued safe operation of the bridge when being raised to accommodate vessel traffic. To complete the repairs on the bridge, construction barges will need to block the waterway throughout the course of the rehabilitation project. To ensure the

continued safety of the boating community and the construction workers during the completion of this project, the Coast Guard is establishing a safety zone on the navigable waters of the State Boat Channel within 100-yards to either side of the Robert Moses Causeway Bridge. This safety zone is necessary to protect boaters from the hazards posed by construction equipment located on the waterway during the rehabilitation work and to protect the construction workers from the dangers caused by vessels and vessel wake near the barges. Vessels may utilize the Great South Bay or Jones Inlet as an alternative route to using the State Boat Channel, allowing vessels to avoid the safety zone and construction while adding minimal additional transit time. Marine traffic may also transit outside of the established safety zone during the effective dates thus allowing navigation to continue in all other areas of the State Boat Channel, except the portion delineated by this rule.

#### Discussion of Rule

This regulation establishes a temporary safety zone on the State Boat Channel within 100-yards to either side of the Robert Moses Causeway Bridge. This action is intended to prohibit all vessels from entering the designated portion of the State Boat Channel unless prior permission has been received from the Captain of the Port Long Island Sound.

The effective period of this safety zone is from September 8th, 2009 through May 28th, 2010, inclusive. Entry into this zone during the effective period is prohibited unless authorized by the Captain of the Port Long Island Sound. If construction is completed and the barges are removed prior to May 28th, 2010, the safety zone will no longer be enforced and the Coast Guard will advise the public of the cancellation of the safety zone through marine information broadcasts and local notice to mariners.

Any violation of the safety zone described herein is punishable by, among other things, civil and criminal penalties, *in rem* liability against the offending vessel, and the initiation of suspension or revocation proceedings against Coast Guard-issued merchant mariner credentials.

#### 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.

#### Regulatory Planning and Review

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

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: Vessels may transit in all areas of the State Boat Channel other than the area of the safety zone, and may utilize other routes to transit around the safety zone and construction with minimally increased transit time.

#### 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 transit in those portions of the State Boat Channel that are covered by the safety zone. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. 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.

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 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 establishes a safety zone and therefore falls under the categorical exclusion in paragraph (34)(g). 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, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01-0755 to read as follows:

#### § 165.T01-0755 Safety Zone: Robert Moses Causeway Bridge State Boat Channel, Captree, New York.

(a) *Location.* The following area is a safety zone: All navigable waters of the Federal channel on the State Boat Channel in Captree, NY, from surface to bottom, within 100 yards to either side of the Robert Moses Causeway Bridge.

(b) *Definitions.* The following definition applies to this section:

*Designated on-scene patrol personnel,* means any commissioned, warrant and petty officers of the U.S. Coast Guard operating Coast Guard vessels who have been authorized to act on the behalf of the Captain of the Port Long Island Sound.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Long Island Sound.

(3) All persons and vessels must comply with the Coast Guard Captain of the Port or the designated on-scene patrol personnel.

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

(5) Persons and vessels may request permission to enter the zone on VHF-16 or via phone at (203) 468-4401.

(d) *Effective period.* This rule is effective from September 8th, 2009, through May 28th, 2010, inclusive.

Dated: September 4, 2009.

**Kevin C. Burke,**

*Commander, U.S. Coast Guard, Acting Captain of the Port Long Island Sound.*

[FR Doc. E9-22981 Filed 9-23-09; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 36

RIN 2900-AN26

### Loan Guaranty: Assistance to Eligible Individuals in Acquiring Specially Adapted Housing; Cost-of-Construction Index

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs' (VA's) Loan Guaranty regulations concerning assistance to eligible individuals in acquiring specially adapted housing. This final rule implements provisions of the Housing and Economic Recovery Act of 2008, which authorized VA to provide for automatic annual increases in the dollar amounts available to certain Specially Adapted Housing grant recipients.

**DATES:** *Effective Date:* October 26, 2009.

**FOR FURTHER INFORMATION CONTACT:** Katherine Faliski, Assistant Director for Loan Policy and Valuation, Loan Guaranty Service (26), Veterans Benefits