

### 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

Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9527. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on May 12, 2009 (74 FR 22145), VA proposed to amend the Specially Adapted Housing (SAH) regulations (38 CFR part 36, subpart C) to implement provisions of Public Law 110-289, the Housing and Economic Recovery Act of 2008. Section 2605 of the law directed the Secretary of Veterans Affairs to establish a residential home cost-of-construction index for the purpose of increasing certain SAH grant amounts. It also authorized the Secretary to “use an index developed in the private sector that the Secretary determines is appropriate for [this purpose].”

The comment period ended June 11, 2009, and VA received only one response, which was from an association representing homebuilders. This commenter indicated its support for the proposed rule with regard to VA’s plan to implement “much needed increases in grant amounts that are provided to severely disabled Veterans” through the SAH program. However, the commenter disagreed with VA’s choice of index.

VA proposed the Turner Building Cost Index (TBCI) for increasing the amounts of SAH grant assistance available. We based the choice mainly on the fact that the TBCI emphasizes the costs of labor and materials, rather than property values or sales prices. Since property values do not necessarily reflect the expense a Veteran or servicemember might have to incur when adapting a home, we believed the TBCI to be the best-suited index for the SAH program.

The commenter pointed out that, in its opinion, the TBCI is not appropriate, because the TBCI measures primarily non-residential building construction costs. Instead, the commenter recommended that VA adopt an index like the U.S. Census Bureau’s Price Deflator Index of New One-Family Houses Under Construction (“Fisher Index”). The commenter stated that the Census Bureau’s Index is preferable to the TBCI because it tracks new homes under construction as opposed to non-residential buildings. It also pointed out that the Fisher Index is developed by a Government organization whose methodology is readily available.

Due to the commenter’s position, VA further researched the methodologies used to develop the various indices. VA discussed with representatives from

Turner and the U.S. Census Bureau the strengths and weaknesses of applying each of their respective indices (the TBCI, the Fisher Index, and the Laspeyres Price Index) to the SAH program and determined that, at this time, the TBCI is the most appropriate for calculating the annual SAH increases. VA concurs with the commenter’s preference for a cost index that is maintained by a Government organization. However, VA points out that the indices produced by the U.S. Census Bureau are primarily value-driven, as they are derived by subtracting the cost of land and “other costs not related to construction” from the value of the home.

VA believes that, for the purposes of the SAH program, an index based on actual cost of materials and labor is more suitable than one based on the value of homes. The SAH authorizing statutes expressly require payment of SAH assistance based on “costs” to the individual. Section 2605 of the Housing and Economic Recovery Act of 2008 also refers expressly to costs, not value. Additionally, VA has determined that, at least for the first year of implementation, the TBCI will afford Veterans more purchasing power when constructing or adapting a home than the Fisher or Laspeyres indices.

Admittedly, the TBCI is not perfectly tailored for the SAH program. The commenter is correct in that the TBCI is mainly driven by commercial construction costs and that the statute refers to a residential index.

VA has determined, however, that although the TBCI may not be intended for estimating residential construction costs in general, it is a reliable indicator for the types of residential costs unique to the SAH program. For instance, many Veterans need SAH assistance to reinforce their homes with steel piers, purchase wheelchair lifts, and pay engineering fees—all types of expenses not generally associated with residential construction, yet very relevant to Veterans who participate in the SAH program. Furthermore, VA analyzed data from the last forty years and saw that, had SAH assistance been tied to the TBCI during that time, today’s grant amount would be about \$6,000 higher than had it been tied to the Fisher or Laspeyres. Given that the TBCI is cost-based; the types of adaptations in the SAH program are not “typical” residential costs; the difference in the indices over four decades is relatively small; and the advantages of the TBCI weigh in a Veteran’s favor, we have decided to adopt the TBCI as the cost-of-construction index for determining fiscal year 2010 grant amounts.

For the above reasons, we will not make any changes to the proposed rule based upon the comment we received. However, we will monitor the cost indices available in the marketplace and propose changes to VA’s Loan Guaranty regulations if we determine that increases in SAH grant amounts should be based upon an alternative cost-of-construction index.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

#### Paperwork Reduction Act

This document contains no provisions constituting collections of information.

#### Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such a review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined

not to be a significant regulatory action under Executive Order 12866.

### Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), the rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.106, Specially Adapted Housing for Disabled Veterans; and 64.118, Veterans Housing—Direct Loans for Certain Disabled Veterans.

### Lists of Subjects in 38 CFR Part 36

Condominiums, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: September 15, 2009.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

■ For the reasons set out in the preamble, VA amends 38 CFR part 36 (Subpart C) as set forth below.

### PART 36—LOAN GUARANTY

■ 1. The authority citation for part 36 continues to read as follows:

**Authority:** 38 U.S.C. 501 and as otherwise noted.

#### Subpart C—Assistance to Certain Disabled Veterans in Acquiring Specially Adapted Housing

■ 2. Add § 36.4412 to read as follows:

#### § 36.4412 Annual adjustments to the aggregate amount of assistance available.

(a) On October 1 of each year, the Secretary will increase the aggregate amounts of assistance available for grants authorized under 38 U.S.C. 2101(a) and 2101(b). Such increase will be equal to the percentage by which the Turner Building Cost Index for the most recent calendar year exceeds that of the next preceding calendar year.

(b) Notwithstanding paragraph (a) of this section, if the Turner Building Cost

Index for the most recent full calendar year is equal to or less than the next preceding calendar year, the percentage increase will be zero.

(c) No later than September 30 of each year, the Secretary will publish in the **Federal Register** the aggregate amounts of assistance available for the upcoming fiscal year.

(Authority: 38 U.S.C. 2102(e))

[FR Doc. E9-23022 Filed 9-23-09; 8:45 am]

**BILLING CODE 8320-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2009-0293; FRL-8961-6]

### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Lead (Pb) Maintenance Plan Update for Marion County

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a request submitted by the Indiana Department of Environmental Management (IDEM) on April 1, 2009, to revise the Indiana State Implementation Plan (SIP) for lead (Pb). The State has submitted an update to its Pb maintenance plan for Marion County for continued attainment of the 1.5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) National Ambient Air Quality Standard (NAAQS) promulgated in 1978. This update satisfies section 175A of the Clean Air Act (CAA), and is in accordance with EPA's May 10, 2000, approval of the State's Redesignation Request and Maintenance Plan for the Marion County Pb nonattainment areas. Additionally, this Pb maintenance plan satisfies the requirements for maintenance plans contained in the September 4, 1992, EPA memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment."

**DATES:** This direct final will be effective November 23, 2009, unless EPA receives adverse comments by October 26, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0293, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

3. *Fax:* (312) 692-2551.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R05-OAR-2009-0293. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other