million of fiscal year 2003 IRR Program funds to tribal governments for ongoing IRR activities and construction projects.

**Takings Implications (Executive Order 12630)**

With respect to Executive Order 12630, the rule does not have significant takings implications since it involves no transfer of title to any property. A takings implication assessment is not required.

**Federalism (Executive Order 13132)**

With respect to Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This rule does not affect the relationship between state governments and the Federal Government because this rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

**Civil Justice Reform (Executive Order 12988)**

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 1988. This rule contains no drafting errors or ambiguity and is clearly written to minimize litigation, provide clear standards, simplify procedures, and reduce burden. This rule does not preempt any statute. Under the Transportation Equity Act for the 21st Century negotiated rulemaking, we have published a proposed rule and funding formula (67 FR 51328, August 7, 2002). A final funding formula for fiscal year 2004 will be published in 2003. The rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to $25 million of fiscal year 2003 IRR Program funding.

**Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this rule does not impose record keeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq*. We already have all of the necessary information to implement this rule.

**National Environmental Policy Act**

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of this rule will be subject later to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

**Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)**

Pursuant to the President's Executive Order 13175 of November 6, 2000, ''Consultation and Coordination with Indian Tribal Governments,'' we have consulted with tribal representatives throughout the negotiated rulemaking process and in developing this rule. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects and have determined that this rule preserves the integrity and consistency of the relative need formula process we have used since 1993 to distribute IRR Program funds. We are making a change from previous years (which we also made for fiscal years 2000, 2001, and 2002 IRR Program funds (*see* **Federal Register** notices at 65 FR 37697, 66 FR 17073, and 67 FR 44355) to modify the FHWA Price Trends Report indices for non-reporting states which do not have current price trends data reports. The yearly FHWA Report is used as part of the process to determine the cost-to-improve portion of the relative need formula. Consultation with tribal governments and tribal organizations is ongoing as part of the TEA–21 negotiated rulemaking process

**List of Subjects in 25 CFR Part 170**

Highways and Roads, Indians-lands.

For the reasons set out in the preamble, we are amending Part 170 in Chapter I of Title 25 of the Code of Federal Regulations as follows.

## PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

1. The authority citation for part 170 continues to read as follows:

**Authority:** 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e–2(i); 23 U.S.C. 101(a), 202, 204), unless otherwise noted.

2. Add § 170.4b to read as follows:

**§ 170.4B What formula will BIA use to distribute $25 million of fiscal year 2003 Indian Reservation Roads Program funds?**

On January 13, 2003 we will distribute $25 million of fiscal year 2003 IRR Program funds authorized under Section 1115 of the Transportation Equity Act for the 21st Century, Public Law 105–178, 112 Stat. 154. We will distribute the funds to Indian Reservation Roads projects on or near Indian reservations using the relative need formula established and approved in January 1993. The formula has been modified to account for non-reporting States by inserting the latest data reported for those states for use in the relative need formula process.

Dated: December 16, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 03–343 Filed 1–7–03; 8:45 am]

**BILLING CODE 4310–LY–M**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[COTP San Diego 02–026]**

**RIN 2115–AA97**

## Security Zones; Port of San Diego, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing moving and fixed security zones around and under all cruise ships that are located in and near the Port of San Diego. These security zones are needed for national security reasons to protect the public and ports from potential terrorist acts. Entry into these zones will be prohibited, unless specifically authorized by the Captain of the Port of San Diego.

**DATES:** This rule is effective on December 21, 2002 at 11:59 p.m. (PST).

**ADDRESSES:** Comments and material received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 02–026], and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Dr., San Diego, CA, 92101, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Rick Sorrell,

Chief of Port Operations, U.S. Coast Guard Marine Safety Office San Diego, at (619) 683–6495.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On November 1, 2002, we published a notice of proposed rulemaking (NPRM) entitled Security Zones, Port of San Diego, CA in the **Federal Register** (67 FR 212). We received 1 letter commenting on the proposed rule. No public hearing was requested, and none was held.

On November 5, 2001, we issued a temporary rule under docket COTP San Diego 01–020 which was published in the **Federal Register** (67 FR 6648, Feb. 13, 2002) under temporary section 165.T11–030 of Title 33 of the Code of Federal Regulations (CFR). In that rulemaking, the Coast Guard established a rule creating 100-yard security zones around cruise ships that enter, are moored in, or depart from the Port of San Diego.

On June 21, 2002, a change in effective period for the temporary rule was issued, under docket COTP SD 02–013, and was published in the **Federal Register** (67 FR 41845, June 20, 2002) under the same previous temporary section 165.T11–030, which is set to expire at 11:59 p.m. on December 21, 2002. The Captain of the Port has determined the need for continued security regulations exists. This final rule differs slightly from temporary section 165.T11–030 in one way. Although, while implicit in the temporary rule, the security zones proposed here will be described as extending from the water's surface to the sea floor. This more specific description is intended to discourage unidentified scuba divers and swimmers from coming within close proximity of a cruise ship.

Accordingly, this rulemaking makes permanent the temporary security zones established on November 5, 2001, under docket COTP San Diego 01–020, 33 CFR 165.T11–030 published in the **Federal Register** at 67 FR 6648 (February 13, 2002). That temporary rule's effective period was extended until December 21, 2002 by a notice in the **Federal Register** dated June 20, 2002 (67 FR 41845).

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** because the threat of maritime attacks is real as evidenced by the attack of a tanker vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215) that the security of the U.S. is endangered by the 9/11/01 attacks and that such disturbances continue to endanger the international relations of the U.S.

See also *Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, 67 Fed. Reg. 58317 (September 13, 2002); *Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism*, 67 Fed. Reg. 59447 (September 20, 2002). Additionally a Maritime Advisory was issued to: *Operators of U.S. Flag and Effective U.S. Controlled Vessels and other Maritime Interests*, detailing the current threat of attack, MARAD 02–07 (October 10, 2002). The current temporary rule is set to expire December 21, 2002, and any delay in the effective date of this final rule is impractical and contrary to the public interest.

**Background and Purpose**

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 and section 104 of the Maritime Transportation Security Act of November 25, 2002 (50 U.S.C. 191 *et seq*) (Magnuson Act) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a cruise ship would have on the public interest, the Coast Guard is establishing security zones around and under cruise ships entering, departing, or moored within the port of San Diego. These security zones will help the Coast Guard prevent vessels or persons from engaging in terrorist actions against cruise ships. The Coast Guard believes the establishment of security zones is prudent for cruise ships because they carry multiple passengers.

**Discussion of Comments and Changes**

We received one letter from the local port authority commenting on the definition of a cruise ship used in the notice of proposed rulemaking. The definition in the notice of proposed rulemaking defined ''cruise ship'' as a ''passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; capable of making international voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked, disembarked, or at a port of call in the San Diego port''.

The local port authority noted that this definition of ''cruise ship'' would include various commercial sport fishing vessels that homeport in San Diego. After consideration of the comment, the Coast Guard has changed the definition of a ''cruise ship'' from ''over 100 feet in length'' to ''100 gross tons or more''. This change will eliminate commercial sport fishing vessels from the definition of ''cruise ship''.

**Regulatory Evaluation**

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. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, l979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The effect of this regulation will not be significant due to the minimal time that vessels will be restricted from the area. Also, the zones will encompass only a small portion of the waterway. The Port of San Diego can accommodate only a few cruise ships moored at the same time. Most cruise ship calls at

each location occur on only one day each week, and are generally less than 18 hours in duration. Furthermore, vessels will be able to pass safely around the zones, and vessels and people may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port.

The sizes of the zones are the minimum necessary to provide adequate protection for the cruise ships, their crews and passengers, other vessels operating in the vicinity of the cruise ships and their crews, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the Port of San Diego and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking a cruise ship in the main ship channels, effectively limiting the use of the channel. However, the moving security zones will only be effective during cruise ship transits, which will last for approximately 60 minutes. In addition, vessels are able to safely transit around the zones while a vessel is moored or at anchor in the Port of San Diego.

**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 proposed rule would not have a significant economic impact on a substantial number of small entities. We expect this proposed rule may affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in these small portions near the cruise ships covered by these security zones, of the port of San Diego. The impact to these entities would not be significant since these zones are proposed to encompass only small portions of the waterway for limited period of times (while the cruise ships are transiting, moored). Delays, if any, are expected to be less than sixty minutes in duration. Small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. When a cruise ship is at anchor, vessel traffic will have ample room to maneuver around the security zone. The outbound or inbound transit of a cruise ship will last about 60 minutes. Although this regulation prohibits simultaneous use of portions of the channel, this prohibition is of short duration. While a cruise ship is moored, commercial traffic and small recreational traffic will have an opportunity to coordinate movement through the security zone with the patrol commander.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Joseph Brown, Marine Safety Office San Diego, (619) 683–6495.

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).

**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.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

**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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

**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.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

**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.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

**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.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

**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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

**Environment**

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are proposing to establish a security zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add § 165.1108 to read as follows:

**§ 165.1108 Security Zones; Cruise Ships, Port of San Diego, California.**

(a) *Definition.* ''Cruise ship'' as used in this section means a passenger vessel, except for a ferry, 100 gross tons or more, authorized to carry more than 12 passengers for hire; capable of making international voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked, disembarked or at a port of call in the San Diego port.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is anchored at a designated anchorage within the San Diego port area inside the sea buoys bounding the port of San Diego.

(2) The shore area and all waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is moored at any berth within the San Diego port area inside the sea buoys bounding the Port of San Diego; and

(3) All waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is underway on the waters inside the sea buoys bounding the Port of San Diego.

(c) *Regulations.* (1) In accordance with the general regulation in § 165.33 of the part, entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, San Diego or his designated representative.

(2) Persons desiring to transit the area of the security zones may contact the Captain of the Port at telephone number (619) 683–6495 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zones by the San Diego Harbor Police.

Dated: December 13, 2002.

**S. P. Metruck,**

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

[FR Doc. 03–315 Filed 1–7–03; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Part 200

**RIN 1810–AA91**

### Title I—Improving the Academic Achievement of the Disadvantaged; Correction

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Final regulations; correction.

**SUMMARY:** The Department of Education published in the **Federal Register** of December 2, 2002, regulations governing the programs administered under Title I, parts A, C, and D of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (hereinafter referred to as the Title I programs). The December 2, 2002, document contained minor errors. Additionally, some material was inadvertently left out of the Analysis of Comments and Changes appendix to the document. This document corrects the errors and adds the omitted material to the appendix.

**DATES:** These regulations are effective January 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** For subparts A, D, and E of part 200, Jacquelyn C. Jackson, Ed. D. Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826.

For subparts B and C of part 200, Francisco Garcia, Director, Migrant Education Program, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E217, FB–6, Washington, DC 20202–6135. Telephone: (202) 260–0089.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** In the final regulations published on December 2, 2002 (67 FR 71710) make the following corrections:

1. On page 71716, in the second column, the introductory text of § 200.13(b) is corrected by adding the acronym ''AYP'' following the word ''define''.

2. On page 71720, in the first column § 200.29(a) is correctly designated as paragraph (a)(1).

3. On page 71741, in the appendix, in the second column, after the fourth line, add the following text to read:

* * * * *

*Comment:* Several commenters noted a ''catch-22'' in the requirement to demonstrate increasing proficiency by limited English proficient students, since lack of English proficiency is the defining characteristic of this group and successful students ''graduate'' from, and thus are no longer counted in, the subgroup. Two commenters recommended that the final regulations