

of the airport, and within 2.8 miles each side of the Muskegon VORTAC 266° radial extending from the 6.8-mile radius to 12.7 miles west of the airport, and within 1.3 miles each side of the Muskegon VORTAC 271° radial extending from the VORTAC to the 6.8-mile radius of the airport and within a 6.3-mile radius of the Grand Haven Memorial Airpark.

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Issued in Des Plaines, Illinois on November 13, 2002.

Richard K. Petersen,

Assistant Manager, Air Traffic Division, Great Lakes Region.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter I, Subchapter E

Negotiated Rulemaking, No Child Left Behind Act of 2001, Public Law 107-110

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent to form a negotiated rulemaking committee; request for nominations for tribal representatives for No Child Left Behind Negotiated Rulemaking Committee membership.

SUMMARY: The Secretary of the Interior is announcing the Department's intent to form a Negotiated Rulemaking Committee to develop recommendations for proposed regulations under the No Child Left Behind Act of 2001. The Secretary will select tribal representatives for the committee from among individuals nominated by the representatives of the tribal (contract and grant schools) and tribally operated schools pursuant to this notice. As required by the No Child Left Behind Act, tribal committee representatives selected will, to the maximum extent possible, proportionately reflect students from tribes served by the Bureau of Indian Affairs-funded school system. In addition, the Secretary will consider geographical location, size, and type of school and facility and interests of parents, teachers, administrators, and school board members in selecting tribal committee representatives.

DATES: Nominations for tribal committee membership and comments on the establishment of this Committee, including additional interests other than those identified in this notice, must be postmarked or faxed by January 9, 2003.

ADDRESSES: Send nominations and comments to No Child Left Behind Negotiated Rulemaking Committee Nominations, c/o Starr Penland, Office of Indian Education Programs, Bureau of Indian Affairs, U.S. Department of the Interior, MS 3512-MIB, 1849 C Street, NW., Washington, DC 20240, or FAX to Starr Penland at 202-273-0030.

Nominations and comments received will be available for inspection at the address listed above from 7:45 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Catherine Freels, Designated Federal Official, No Child Left Behind Negotiated Rulemaking, U.S. Department of the Interior, Office of the Regional Solicitor, Southwest Region, 505 Marquette Avenue, NW., Albuquerque, New Mexico, 87102, telephone 505-248-5605, FAX 505-248-5623.

SUPPLEMENTARY INFORMATION:

I. Introduction

The purpose of the No Child Left Behind Negotiated Rulemaking Committee is to serve as an advisory committee under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA) to provide recommendations to the Secretary of the Interior for proposed regulations under Public Law 107-110 for which Congress has authorized rulemaking. (Sections 1116(g), 1124, 1127, sections 1130, 1136, and 1043.) The objectives of the committee are to represent the interests that will be significantly affected by the final regulations, to negotiate in good faith, and to reach consensus, where possible, on recommendations to the Secretary for the proposed regulations.

In order to proceed with negotiated rulemaking, the NRA requires that the Secretary make certain findings when establishing a negotiated rulemaking committee. In addition to finding that there is a need for negotiated rulemaking under the Act, the Secretary has determined that there are a limited number of identifiable interests that will be significantly affected by the rule; there is a reasonable likelihood that a committee can be convened of persons who will adequately represent those interests which would be significantly affected by the rule and who are willing to negotiate in good faith to reach a consensus on the proposed rule; the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule; and the Department has adequate resources and is willing to

commit such resources, including technical assistance, to the rulemaking committee.

II. Background

Public Law 107-110, section 1138 the No Child Left Behind Act of 2001, requires the Secretary to issue proposed regulations relating to several specific areas of Indian education by June 2003. The Act requires the Secretary to develop these regulations using the negotiated rulemaking process. It also requires the following:

1. The Secretary must form the negotiated rulemaking committee under the Negotiated Rulemaking Act (NRA) and the Federal Advisory Committee Act (FACA) to negotiate and develop recommendations for proposed regulations.

2. Before establishing a negotiated rulemaking committee, the Secretary must conduct regional consultation meetings to obtain guidance on the content of the proposed regulations.

3. In establishing a negotiated rulemaking committee, the Secretary must reflect the unique government-to-government relationship between Indian tribes and the United States.

4. The Secretary must ensure that the committee is comprised only of representatives of the Federal Government and of Indian tribes; select the tribal representatives of the committee from among individuals nominated by the representatives of the tribal and tribally operated schools; and ensure, to the maximum extent possible, that the tribal representative membership on the committee reflects the proportionate share of students from tribes served by the Bureau-funded school system. (The table at the end of this notice shows tribal enrollment in Bureau-funded schools. For each of the 20 tribes with the largest enrollment, the list shows the number of students and the percentage of total enrollment that the tribe represents. For the remaining tribes, the table contains the aggregate enrollment and percentage. We will use these percentages in determining proportional representation.)

The Act specifies six sections that are authorized to be negotiated to produce recommendations for a proposed rule by the June 2003 deadline:

1. Section 1116(g), which covers defining adequate yearly progress which is the essential measurement for determining that schools are providing quality education;

2. Section 1124, which covers establishing separate geographic attendance areas for each Bureau-funded school;

3. Section 1127, which covers establishing a formula for determining the minimum annual amount of funds necessary to fund each Bureau-funded school;

4. Section 1130, which covers establishing a system for the direct funding and support of all Bureau-funded schools under the formula established under section 1127;

5. Section 1136, which covers establishing guidelines to ensure the constitutional and civil rights of Indian students regarding the right to privacy, freedom of religion and expression, and due process in connection with disciplinary actions (suspension and expulsion); and

6. Section 1043, which covers establishing a method for administration of grants under the Tribally Controlled Schools Act of 1988. These sections of the Act are available on the OIEP web site at <http://www.OIEP.bia.edu>.

III. The Concept of Negotiated Rulemaking

The negotiated rulemaking process is fundamentally different from the usual development process for proposed rules. Most proposed regulations are drafted by a Federal agency without public participation and are then published for public comment. Affected parties submit comments supporting their positions during the public comment period without communicating with other affected parties. Under the negotiated rulemaking process, an advisory committee of representatives of the interests that will be significantly affected by the final rule negotiates the provisions of the proposed rule with the agency. Negotiated rulemaking allows the Federal agency and the affected interests represented on the committee to discuss possible approaches to various issues and to negotiate the content of the regulations before a proposed rule is published. It also allows the affected parties to share information, knowledge, expertise, and technical abilities and to resolve their concerns about the rule before publication.

The key principles of negotiated rulemaking are that agreement is by consensus of all the interests and that no one interest or group controls or dominates the process. The NRA defines consensus as the unanimous concurrence among interests represented on a negotiated rulemaking committee, unless the committee itself unanimously agrees to use a different definition. The Secretary, to the maximum extent possible consistent with the Department's legal obligations, will use the consensus of the advisory

committee as the basis for the proposed regulations.

A. Facilitation

Experience of various Federal agencies in negotiated rulemaking has demonstrated that using a trained, third-party neutral to facilitate the process will assist all parties during negotiations to identify their real interests, reevaluate their positions, communicate effectively, find common ground, and reach consensus where possible. The Secretary has contracted with Lucy Moore Associates of Santa Fe, New Mexico to assist with the regional consultation meetings prior to the formation of the committee, to provide a report of issues and interests identified at those meetings, and to provide facilitation and training at the first committee meeting. With the approval of the committee, Lucy Moore Associates will facilitate the subsequent committee meetings and provide other services as outlined in the NRA. Lucy Moore has 20 years experience as a mediator and facilitator, working on a wide variety of issues with tribal governments and communities.

B. Establishing the No Child Left Behind Negotiated Rulemaking Committee

The No Child Left Behind Negotiated Rulemaking Committee is an advisory committee under FACA. As required by the Act, the committee will be formed and will operate under the NRA and FACA. The purpose of the negotiated rulemaking committee is to negotiate and recommend to the Secretary the provisions of the proposed regulations. Committee members will not receive pay for their membership, but will be compensated for travel and *per diem* expenses while performing official committee business, consistent with the provisions of 5 U.S.C. 568(c) and Federal travel regulations. Alternates will not be reimbursed for travel and *per diem* unless they are representing a committee member who is unable to attend a meeting. Alternate members will not be permitted to represent those individuals appointed by the Secretary without prior written agreement with the Department.

Because of the tight deadline for publishing proposed rules, committee members must be able to invest considerable time and effort in the negotiated rulemaking process. Committee members must be able to attend committee meetings which will be held at least monthly in the regions which have Bureau-funded schools, work on committee work groups between committee meetings, and negotiate in good faith toward a

consensus on issues before the committee. The Secretary is seeking tribal committee representative nominees with demonstrated ability to communicate well with groups or interests they will represent. Because of the complexity of the issues the committee will consider and the need for continuity, the Secretary reserves the right to replace any member who is unable to fully participate in the committee's meetings.

Tribal committee membership must reflect:

- The statutory requirements under the Act for tribal representation of tribes served by Bureau-funded schools; selection from among individuals nominated by representatives of the tribal and tribally operated schools; and tribal committee membership reflecting a proportionate share of students from the tribes served by the Bureau-funded school system; and

- The interests identified through the regional consultation meetings held in August and September 2002, or in comments submitted to the Department by September 15, 2002, pursuant to the **Federal Register** notice at 67 FR 47827 (July 22, 2002) or other interests identified in response to this notice.

The Secretary's decision on the composition of the committee will be based on the requirements of the Act, achieving a balanced committee, whether an interest will be affected significantly by the final rule, whether that interest is already adequately represented by tribal nominees, and whether the potential addition would adequately represent that interest.

C. Administrative and Technical Support

The Office of Indian Education Programs will provide technical support for the committee. A Project Management Office (PMO) will arrange meeting sites and accommodations, ensure adequate logistical support (equipment, personnel, *etc.*) at committee meetings, provide committee members with all relevant information, distribute written materials, ensure timely reimbursement of authorized expenses for committee members, maintain records of the committee's work, and support the committee as otherwise required. OIEP personnel will provide technical support on various Indian Education issues as needed.

D. Training

At the first meeting of the No Child Left Behind Negotiated Rulemaking Committee, a neutral third-party facilitator will provide training on negotiated rulemaking, interest-based

negotiations, consensus-building, and team-building. In addition, at the first meeting committee members will make organizational decisions concerning protocols, scheduling, and facilitation of the committee. All committee members must attend the first meeting.

IV. Interests Identified Through Consultation

Under section 562 of the NRA, "interest" is defined as follows: "interest means, with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner." through 14 regional consultation meetings for OIEP personnel, educators at Bureau schools, and tribal officials, parents, teachers, administrators, and school board members of tribes served by Bureau-funded schools and through written comments, the following interests were identified: Teachers; parents; school board members; students; school staff; school administrators; state departments of education; public school representatives; and federal decision-makers. In addition, it was recommended that different types and sizes and geographic representation of schools should be represented in the appointments from the interest groups above, including: Grant/tribally-controlled schools; off-reservation boarding schools; small schools; and alternative schools. In addition, at each regional consultation meeting there were numerous oral comments giving guidance on proposed regulations.

There may be other interests not yet identified that will be significantly affected by the final rule. The Department is accepting comments until January 9, 2003, identifying other interests that may be significantly affected by the final regulations.

V. Request for Nominations

Under the requirements stated in the Background section, the Secretary invites representatives of tribal (contract and grant schools) and tribally operated schools to nominate tribal representatives to serve on the committee and tribal alternates to serve if the representative is unavailable. Because committee membership should reflect the diversity of tribal interests, representatives of tribal (contract and grant schools) and tribally operated schools should nominate representatives who will:

1. Represent the interests of students, parents, teachers, school board members, and school administrators they are nominated to represent;
2. Reflect the spectrum of grant/tribally-controlled schools, off-reservation boarding schools, various size schools, and alternative schools in the geographic regions;
3. Communicate with the constituencies they represent; and
4. Participate fully in the committee's activities.

VI. Submitting Nominations

The Secretary will consider only nominations for tribal committee representatives nominated through the process identified in this **Federal**

Register notice. Nominations received in any other manner or for Federal representatives will not be considered. Only the Secretary may nominate Federal employees to the committee.

Nominations must include the following information about each nominee for tribal committee member:

1. the nominee's name, business address, telephone and fax number (and e-mail address, if applicable);
2. The tribal interest(s) to be represented by the nominee (teacher, parent, school administrators, or school board member) and whether the nominee will represent the interest of grant/tribally-controlled schools, off-reservation boarding schools, small or large school or alternative schools in a specific geographic region (see section IV of this notice) or other interest related to this rulemaking, as the tribe may designate; and
3. A resume reflecting the nominee's qualifications and experience in Indian education (including being a parent of a student attending a Bureau-funded school) to adequately represent the interest(s) identified in (2) above.

To be considered, nominations must be received by the close of business on January 9, 2003, at the location indicated in the **ADDRESSES** section.

Dated: December 3, 2002.

Neal A. McCaleb,
Assistant Secretary—Indian Affairs.

Proportionate share is reflected in the percentages of students from the tribes served by Bureau-funded schools. The percentages of the 20 tribes with the most students is as follows:

Tribe	Student count: student year 01-02	State	Percent
Eastern Navajo	4,665	NM
Western Navajo	4,362	AZ
Chinle Navajo	3,579	AZ
Ft. Defiance Navajo	3,361	AZ
Shiprock, Navajo	2,379	NM
Total Navajo	18,346		38.09
Oglala Sioux	3,296	SD	6.84
Turtle Mt. Chippewa	2,146	ND	4.46
MS Choctaw	1,889	MS	3.92
Cheyenne River Sioux	1,377	SD	2.86
Hopi	1,321	AZ	2.74
Eastern Cherokee	1,156	NC	2.40
Rosebud Sioux	1,008	SD	2.09
Standing Rock Sioux	948	SD/ND	1.97
White Mt. Apache	911	AZ	1.89
Gila River	864	AZ	1.79
Tohono O'odham	768	AZ	1.59
Pueblo of Laguna	562	NM	1.17
Sisseton Wahpeton Sioux	541	SD	1.12
Three Affiliated	497	ND	1.03
Spirit Lake Sioux	485	ND	1.01
Mescalero Apache	441	NM	.92
Pueblo of San Felipe	418	NM	.87

Tribes	Student count: student year 01-02	State	Percent
Ramah Navajo	393	NM	.82
Crow Creek Sioux	389	SD	.81
Total for 20 tribes	37,756		78.39
Other tribes	10,410		21.61

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Houston-Galveston-02-009]

RIN 2115-AA97

Security Zones; Captain of the Port Houston-Galveston Zone

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is issuing a supplemental notice of proposed rulemaking for a notice of proposed rulemaking published June 11, 2002 in which we proposed to establish security zones within the Ports of Houston, Morgan's Point, Bayport, Texas City, and Freeport, Texas. These zones are needed to protect waterfront facilities, persons, and vessels from subversive or terrorist acts. Entry of persons and vessels into these zones would be prohibited except as authorized by this rule or by the Captain of the Port Houston-Galveston.

DATES: Comments and related material must reach the Coast Guard on or before February 10, 2003.

ADDRESSES: You may mail comments and related material to Marine Safety Office Houston-Galveston, 9640 Clinton Drive, Galena Park, TX, 77547. Marine Safety Office Houston-Galveston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Houston-Galveston between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Junior Grade (LTJG) George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671-5100.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Houston-Galveston-02-009], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Houston-Galveston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. The President has continued the national emergencies he declared following those attacks (67 FR 58317 (Sep. 13, 2002) (continuing the emergency declared with respect to terrorist attacks); 67 FR 59447 (Sep. 20, 2002) (continuing emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the terrorist attacks (E.O. 13,273, 67 FR 56215 (Sep. 3, 2002) (security of U.S. endangered by

disturbances in international relations of U.S. and such disturbances continue to endanger such relations).

In response to these terrorist acts, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. The Captain of the Port Houston-Galveston established temporary security zones around highly industrialized areas within the Captain of the Port Houston-Galveston Zone. These zones were published on June 11, 2002 [COTP Houston-Galveston-02-011] (67 FR 39851) and November 5, 2002 [COTP Houston-Galveston-02-018] (67 FR 67301).

On June 11, 2002, we published an NPRM entitled "Security Zones; Captain of the Port Houston-Galveston Zone" [COTP Houston-Galveston-02-009] (67 FR 39919). The NPRM proposed to replace the existing temporary security zones with permanent zones. The comment period for the NPRM expired on August 12, 2002. We received only two comments on this rule and both of these comments asked for information on how to comment on the proposed rule. As a result of these comments and to reflect changes in the size of the security zones proposed, the Coast Guard is issuing a supplemental notice of proposed rulemaking.

Discussion of Proposed Rule

Vessels operating within the Captain of the Port Houston-Galveston Zone are potential targets of terrorist attacks, or platforms from which terrorist attacks may be launched upon other vessels, waterfront facilities and adjacent population centers. The Ports of Houston, Morgan's Point, Bayport, Texas City, and Freeport are all heavily industrialized areas with general cargo facilities, container terminals, and bulk liquid transfer facilities.

The proposed rule establishes security zones around areas concentrated with commercial facilities considered critical to national security. These facilities are located in narrow manmade harbors or along narrow depth-restricted ship channels. A terrorist attack within these security zones could have a significant adverse impact on national security and the national economy.