

that is not usually and customarily collected.

Where a substantial level of effort may be required of non-Federal entities to provide BIA management system information, the effort has been benchmarked to the number of miles of State, local or Tribally owned roads or the number of State, local or Tribally owned bridges within the BIA's jurisdiction. This approach has been applied to the PMS, BMS and SMS. For BIA implementation of the PMS, BMS, and SMS, the total annual burden estimate is 3,600 of the 5,600 hours per year. The level of burden on non-Federal entities for these management systems is modest since the agency will incorporate existing data into the system. Of these three systems, the most substantial burden is associated with the collection of data to implement the BMS. The BMS burden is estimated at 1,400 hours per year. The PMS and SMS burdens are estimated at 1,100 hours per year for each of these management systems.

For the CMS, the non-Federal burden, if applicable, would likely fall to the MPOs, and represents the need for the BIA to coordinate its management system with the MPOs, for those limited instances when a portion of its transportation system is within an MPO area. For estimating purposes, approximately 50 MPOs nationwide may be burdened by the proposed regulation. Forty hours of burden were assigned to each of the 50 MPOs, resulting in a total burden of 2000 hours attributable to the CMS.

The FHWA is required to submit this proposed collection of information to OMB for review and approval, and accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

#### National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that this proposed action would not have any effect on the quality of the environment. An environmental

impact statement is, therefore, not required.

#### Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000, and believes that the proposal will have substantial direct effects on one or more Indian Tribes.

##### *Section 5 (b) of Executive Order 13175 states:*

To the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless:

(1) Funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government; or

(2) The agency, prior to formal promulgation of the regulation,

(A) Consulted with Tribal officials early in the process of developing the proposed regulation.

The Executive Order states similar requirements for any regulation that has Tribal implications and preempts Tribal law.

As stated previously, this rulemaking is statutorily required under section 1115(d) of the TEA-21. While there are no specific additional dedicated funds for implementing this regulation, funds already available under the IRR program can be used for the development, establishment, and implementation of the management systems. The FHWA has utilized key Tribal transportation meetings to consult and coordinate with Indian Tribal Governments on this rulemaking since its inception. At these meetings, the FHWA advised the Tribes of the ANPRM and encouraged them to submit comments and suggestions to the docket. In addition, after the docket was closed, the FHWA shared with them all comments submitted to the docket, including those from State Transportation Departments questioning provisions of the IRR statute.

#### *Tribal Summary Impact Statement*

As stated earlier, the FHWA published an ANPRM on September 1, 1999, to solicit public comments concerning development of this proposed rule pertaining to the BIA and the IRR program (64 FR 47746). Among the comments the FHWA received are the comments from the Tribal representatives to the Indian Reservation Roads Program Negotiated Rulemaking Committee, the United South and Eastern Tribes, Inc., and an intertribal council of twenty-three

federally recognized Tribes. These comments are summarized in the section entitled "Summary of Comments Received on the ANPRM Pertaining to the BIA and the Indian Reservation Roads Program." Specific comments may be obtained by reviewing the materials in the docket.

Pursuant to Executive Order 13175, during the development process of this NPRM, the FHWA participated in a number of consultation sessions on this rulemaking with numerous Tribal government representatives. The purpose of these sessions was to explain the FHWA's intent in developing the NPRM, as well as to seek input and feedback. These discussions were scheduled agenda items with time provided for questions and answers and took place at the following events: The "Transportation Improvements: Experiences Among Tribal, Local, State, and Federal Governments Conference," Albuquerque, NM, October 2000; the "Annual Providers Conference," Anchorage, AK, November 2000; the "Intertribal Transportation Association Annual Meeting," Las Vegas, NV, December 2000; and the "Northern Plains Transportation Exposition," Aberdeen, SD, March 2001.

During these discussions, the Tribes addressed two major concerns. The first concern dealt with the funding for the establishment, development, and implementation of the management systems. As a response, \$ 973.206 of this proposed action states that the IRR program management funds may be used to conduct nationwide management systems activities. Additionally, the IRR two-percent Tribal transportation planning or construction funds may be used for Tribal management systems activities.

The second concern surrounded the Tribes' desire to utilize the IRR Negotiated Rulemaking in lieu of this proposed rule. This comment also was addressed to the ANPRM published on September 1, 1999. The FHWA responds to this comment in this NPRM in the "Summary of Comments Received on the ANPRM Pertaining to the BIA and the Indian Reservation Roads Program" section. As the response indicates, the requirements for the management systems and the requirements for the IRR program are separate. However with the exception of funding, the language set forth in this NPRM is consistent with the draft language on management systems set forth in the IRR Negotiated Rulemaking Notice.