

fiscal years (FY) available during TEA-21 (FY 1999–FY 2003) except for \$4.9 million. The \$4.9 million would be available for additional bridge projects in FY 2004 and provide a stop gap measure during the period following TEA-21's expiration at the end of FY 2003 until the reauthorization process is complete. Projecting ahead to FY 2004, 65 additional bridges are planned for PS&E completion that will require roughly \$36.5 million in IRRBP construction funds. Likewise, in FY 2005, 24 bridges are planned for PS&E completion requiring approximately \$9.3 million in IRRBP funds. Based on the current use of the IRRBP funds and the need for additional funds beyond TEA-21, the FHWA has determined that the interim rules are working.

(b) The concern, particularly within Oklahoma, that some Indian tribes would not have access to the IRRBP funds during the fiscal years of TEA-21 is unfounded. To date, 26 percent of the IRRBP funds has been spent on bridges in Oklahoma. Other major beneficiaries of IRRBP funds include Indian tribes within New Mexico (17 percent) and Arizona (9 percent). To date, all eligible bridge projects submitted for processing have been funded.

(c) Two Indian tribes and the TEA-21 Negotiated Rulemaking Tribal Caucus urged that the \$1.5 million limitation be eliminated for non-BIA owned bridges or even simply waived. The FHWA has determined that to remove the \$1.5 million limitation would jeopardize both the IRRBP statute and its legislative history that envisions a national program to address the large number of deficient IRR bridges. This rule does not address Indian people in terms of Reservation status. Rather, the rule identifies two separate classifications of IRR bridges, namely those owned by the BIA and those owned by a State, county or other entity. Based on a recent query of the National Bridge Inventory, out of an inventory of approximately 4,400 IRR bridges there are roughly 1,069 that are deficient. The average age for IRR bridges exceed 40 years and as the IRR bridge infrastructure's becomes older the propensity to become deficient increases. If the \$1.5 million limitation were removed for non-BIA owned IRR bridges, it would jeopardize the funding for the 66 bridges that are currently undergoing or completing bridge PS&E's this year and would greatly limit the number of deficient IRR bridges (both BIA-owned and non-BIA owned) which could be funded for replacement or rehabilitation in the future. Finally, 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds appropriated to the States. The

States currently have access to Surface Transportation Program funds and Highway Bridge Replacement and Rehabilitation funds that can be used on deficient non-BIA owned IRR bridges. Removal of the matching requirement and funding cap would contravene the statutory intent by allowing non-BIA owned IRR bridges to be fully funded with IRR funds.

Conclusion

For the reasons stated above, the FHWA adopts as a final rule the interim final rule published on July 19, 1999, at 64 FR 38565.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or the U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rule will be minimal. This action merely adopts as final the interim final rule that has been in effect since July 19, 1999.

This final rule will not adversely affect, in a material way, any sector of the economy. In addition, this final rule will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs as this action just continues what has been in effect since 1999.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this final rule on small entities including Indian tribal governments (ITGs) and local governments and has determined it will not have a significant economic impact on a substantial number of small entities. The funding available to ITGs under the IRRBP has a beneficial economic impact by contributing to replacement and or rehabilitation of deficient IRR bridges. These bridges are vital to the transportation infrastructure and economic development on Indian reservations. By replacing or rehabilitating deficient IRR bridges the IRRBP is key to enhancing transportation and the movement of goods and services in Indian country.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L.

104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year.

Additionally, the definition of “Federal mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Indian tribal governments (ITGs) have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The IRRBP permits this type of flexibility to the ITGs.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000. The FHWA has determined that participation in the IRRBP by the ITGs is optional, however; it is advantageous to the ITG to participate since the program provides bridge construction and construction monitoring funds for eliminating existing deficient IRR bridges. The ITG