

What Data Are We Using for the Interim Distribution Funding Formula?

We are using the most current road inventory data (June 2002) maintained by the Bureau of Indian Affairs.

Are There Any Differences in the Distribution of Fiscal Year 2003 IRR Program Funds as Compared to the Distributions of Fiscal Years 2000, 2001 and 2002 IRR Program Funds?

The distribution of fiscal year 2003 IRR Program funds is based on the current relative need formula and the FHWA Price Trends Report indices that were used for the adjusted fiscal years 2000, 2001 and 2002 distribution. In February 2000 the Secretary partially distributed fiscal year 2000 IRR Program funds using the relative need formula. In June 2000 the Secretary distributed the remaining funds under the relative need formula by modifying the FHWA price trend report indices for two nonreporting states, Washington and Alaska, that impact tribes in those nonreporting states. In January 2001 the Secretary partially distributed fiscal year 2001 IRR Program funds using the relative need formula. In June 2001 the Secretary distributed the remaining funds under the relative need formula by modifying the FHWA price trend report indices for non-reporting states. In January 2002 the Secretary partially distributed fiscal year 2002 IRR Program funds using the relative need formula. In July 2002 the Secretary distributed the remaining funds under the relative need formula by modifying the FHWA price trend report indices for non-reporting states. We are using the same modification process for non-reporting states for distribution of fiscal year 2003 IRR Program funds. For fiscal years 2001 and 2002 we distributed funds in the same manner as in fiscal year 2000, except that we reserved up to \$19.53 million for administrative capacity building for federally recognized tribes. We are distributing fiscal year 2003 funds in the same way as fiscal year 2000 IRR Program funds.

Why Does This Temporary Rule Not Allow for Notice and Comment on the First Partial Distribution of Fiscal Year 2002 IRR Program Funds, and Why Is It Effective Immediately?

Under 5 U.S.C. 553(b)(3)(B), notice and public procedure on the first partial distribution under this rule are impracticable, unnecessary, and contrary to the public interest. In addition, we have good cause for making this temporary rule for distribution of 75 percent of fiscal year

2003 IRR Program funds effective immediately under 5 U.S.C. 553(d)(3).

Notice and public procedure would be impracticable because of the urgent need to distribute 75 percent of fiscal year 2003 IRR Program funds. Approximately 1300 road and bridge construction projects are at various phases that require additional funds this fiscal year to continue or complete work, including 220 deficient bridges and the construction of approximately 7300 miles of roads. Fiscal year 2003 IRR Program funds will be used to design, plan, and construct improvements (and, in some cases, to reconstruct bridges). Without this immediate partial distribution of fiscal year 2003 IRR Program funds, tribal and BIA IRR projects will be forced to cease activity, placing projects and jobs in jeopardy. Waiting for notice and comment on this temporary rule would be contrary to the public interest. In some of the BIA regions, approximately 80 percent of the roads in the IRR system (and the majority of the bridges) are designated school bus routes. Roads are essential access to schools, jobs, and medical services. Many of the priority tribal roads are also emergency evacuation routes and represent the only access to tribal lands. Approximately 40 percent of the road miles in Indian country are unimproved roads. Deficient bridges and roads are health and safety hazards. Partially constructed road and bridge projects and deficient bridges and roads jeopardize the health and safety of the traveling public. Further, over 600 projects currently in progress are directly associated with environmental protection and preservation of historic and cultural properties. This temporary rule is going into effect immediately because of the urgent need for partially distributing fiscal year 2003 IRR Program funds to continue these construction projects. Distribution of the remaining 25 percent of fiscal year 2003 IRR Program funds will be distributed under the same relative need formula as the first 75 percent of the funds after we review and consider comments.

Clarity of This Temporary Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this temporary rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the temporary rule clearly stated? (2) Does the temporary rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the temporary rule (grouping

and order of sections, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the temporary rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the temporary rule? What else could we do to make the temporary rule easier to understand?

Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this temporary rule is a significant regulatory action requiring review by the Office of Management and Budget because it will have an annual effect of more than \$100 million on the economy. The total amount available for distribution of fiscal year 2003 IRR Program funds is approximately \$196 million and we are distributing approximately \$147 million under this temporary rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2003 IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds. This temporary rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds. This temporary rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports.

This temporary rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. The FHWA has transferred the IRR Program funds to us and fully expects the BIA to distribute the funds according to a funding formula approved by the Secretary. This temporary rule does not alter the budgetary effects on any tribes from any previous or any future distribution of IRR Program funds and does not alter entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This temporary rule does not raise novel legal or policy issues. It is based on the relative need formula in use since 1993. We are changing determination of relative need only by appropriately modifying the FHWA Price Trend Report indices for states that did not report data for the FHWA Price Trends Report, just as we did for the distribution of fiscal year 2002 IRR Program funds.