

Approximately 1300 road and bridge construction projects are at various phases that depend on this fiscal year's IRR Program funds. Leaving these ongoing projects unfunded will create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs. This rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds. This rule continues to adopt the relative need formula that we have used since 1993.

Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for this temporary rule because it applies only to tribal governments, which are not covered by the Act.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it has an annual effect on the economy of \$100 million or more. 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 tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR program funds does not require tribal governments and tribal organizations to expend any of their own funds.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to Indian tribal governments and tribal organizations for transportation planning, road and bridge construction, and road improvements.

This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), this temporary rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. This temporary rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of \$100 million or greater in any year. The effect of this temporary rule is to immediately provide 75 percent of fiscal year 2003 IRR Program funds to tribal governments for ongoing IRR activities and construction projects.

Takings (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 temporary rule should not affect the relationship between State and Federal governments 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 12988. 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. We are still pursuing the TEA-21 mandated negotiated rulemaking process to set up a permanent funding formula distributing IRR Program funds. 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 75 percent 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

Under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 218), consultation with representatives of Indian tribal governments who serve on the Transportation Equity Act for the 21st Century (TEA-21) Negotiated Rulemaking Committee has occurred. Distributing IRR Program funds under this interim rule has tribal implications in that transportation planning and projects rely on this funding. Distributing funds under this interim rule does not impose direct compliance costs on Indian tribal governments and does not preempt tribal law. While TEA-21 Negotiated Rulemaking Committee tribal representatives agree that we use the funding method for distributing IRR Program funds we have used since 1993, as they have agreed for fiscal years 2000, 2001, and 2002, there is disagreement among tribal representatives about reserving funds (approximately \$20 million) to distribute \$35,000 to each Federally-recognized tribe for administrative capacity building for fiscal year 2003. We reserved administrative capacity building funds in fiscal years 2001 and 2002 and distributed \$35,000 to each Federally-recognized tribe in each year. For fiscal year 2003, however, since there is no consensus to provide administrative capacity building funds, the method of formula distribution of all available funds will reflect the same distribution as in FY2000, FY2001 and FY2002.