

is detailed in the **Federal Register** notice dated February 15, 2000 (65 FR 7431).

Why Are You Publishing This Final Rule?

We are publishing this final rule only for the distribution of the remaining 25 percent of fiscal year 2003 IRR Program funds. This rule sets no precedent for the final rule to be published as required by section 1115 of TEA-21. On June 5, 2003, we published a temporary rule distributing 75 percent of fiscal year 2003 IRR funds (68 FR 33625).

Why Does This Final Rule Not Allow for Notice and Comment on the Final 25 Percent Distribution of Fiscal Year 2003 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 final rule for distribution of the remaining 25 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 the remaining 25 percent of fiscal year 2003 IRR Program funds. Approximately 1,300 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 7,300 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 final 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 final distribution of fiscal year 2003 IRR Program funds 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 rule is going into effect immediately because of the urgent need for distributing the final funds available under the fiscal year 2003 IRR Program to continue these construction projects.

Where Can I Find Information on the Distribution of 75 Percent of Fiscal Year 2003 IRR Funds?

You can find this information in the **Federal Register** notice dated June 5, 2003 (68 FR 33625).

What Comments Did You Receive on the Temporary Rule for Distribution of 75 Percent of Fiscal Year 2003 IRR Program Funds?

In the 30-day comment period after publication of the temporary rule distributing 75 percent of fiscal year 2003 IRR Program funds, we received comments from 24 commenters. One commentator opposed the inclusion of administrative capacity building (ACB) funds in the remaining distribution of fiscal year 2003 IRR Program funds. Twenty-three commenters supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds for various reasons.

Comment: One commentator opposed the inclusion of ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds because IRR Program funds are construction funds for road and bridge projects; inclusion of ACB funds lessens the amount available for construction; and tribes have not expended all of IRR ACB funds distributed in fiscal years 2001 and 2002.

Response: This rule does not include ACB funds in fiscal year 2003. This rule sets no precedent for the final rule to be published as required by section 1115 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 154.

Comment: One commentator supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds to assist tribes who are not current on their IRR inventories and to develop long-range transportation plans.

Response: Both inventory updates and long-range transportation planning activities are eligible activities within the available funding under the IRR authorized funds. The interim formula for fiscal year 2003 will provide tribes with the critical resources to develop inventory data, long-range

transportation plans, transportation improvement programs, and other information necessary to distribute funds under the Tribal Transportation Allocation Methodology in the final rule to be published as required by section 1115 of TEA-21.

Comment: One commentator supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds to level the playing field for small tribes. The commentator requested consideration of a special set-aside of at least 5 percent of IRR program funds for very small tribes.

Response: Funding for ACB in fiscal years 2001 and 2002 was included to provide the opportunities for tribes to apply for a specific amount of funds to perform transportation related activities. The Secretary distributed funds in those years according to the TEA-21 Negotiated Rulemaking Committee's recommendation. Each federally recognized tribe had the opportunity to apply for \$35,000 for ACB for transportation related activities. A special set-aside of any amount of IRR program funds within this distribution would need to be negotiated within the amounts available to each region of the BIA.

Comment: One commentator supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds to assist smaller villages in updating their road inventories and allow villages to participate in the development of their economies.

Response: Updating inventories is an eligible activity within the available funding under the IRR authorized funds. The interim formula for the current fiscal year will provide tribes with the critical resources to develop inventory data, long-range transportation plans, transportation improvement programs, and other information necessary to distribute funds under a new funding formula to be put in place for fiscal year 2004.

Comment: One commentator supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds and including ACB funds in future fiscal year distributions. The commentator also requested adequate consultation, annual disclosure of takedowns and national breakdown of each tribal government's allocation of IRR Program funds.

Response: Providing funds for ACB in fiscal years 2001 and 2002 as part of the distribution of funds was specific to those years based on available funds. ACB funds for those years were expressly not to be considered precedential in future distributions as stated in the funding rules published for