

the distribution, there would be no object to a reduction to ACB proportionate to the reduction in IRR Program funds, or, alternatively, to return the remaining funds to FHWA for distribution in fiscal year 2004 under the new Tribal Transportation Allocation Methodology that will be part of the final rule for Indian Reservation Roads.

Response: In fiscal year 2000, the Secretary distributed IRR Program funds as part of the relative need formula as identified in 23 U.S.C. 202 (65 FR 7431, Feb. 15, 2000) and special funds provided as part of a request for projects and distributed to tribal governments and BIA regional offices for transportation planning and bridge designs (65 FR 12026, March 7, 2000). This fiscal year 2003 distribution, as well as the distribution for fiscal years 2001 and 2002, is consistent with the distribution of IRR Program funds as published in the **Federal Register** on February 15, 2000. Funding for the \$18.3 million Fiscal Year 2000 Indian Reservation Roads Funds was a separate **Federal Register** publication and not part of the regular IRR Program funds distribution. The **Federal Register** published on March 7, 2000 states: What Are the Additional Fiscal year 2000 IRR Funds? These additional IRR Program funds are provided as part of the Department of Transportation and Related Agencies Appropriations Act for fiscal year 2000, Public Law 106-69. These funds are not part of other funding as authorized in 23 U.S.C. 202 or as distributed under 25 CFR 170.4b (65 FR 7431, Feb. 15, 2000).

The tribal caucus of the negotiated rulemaking committee was unable to make a consensus recommendation to the full Committee on distributing fiscal year 2003 IRR Program funds. However, the tribal caucus recommended that the Secretary identify sources other than IRR Program funds to include ACB funds in the distribution for fiscal year 2003. Without a tribal caucus consensus on how to distribute fiscal year 2003 IRR Program funds, the Committee, under its protocols, could not make a recommendation to the Secretary as to how to distribute fiscal year 2003 IRR Program funds. Without a recommendation from the Committee, the Secretary must determine how to distribute fiscal year 2003 IRR Program funds. The Secretary could not identify another funding source for ACB.

How Will the Secretary Distribute the Remaining 25 Percent of Fiscal Year 2003 IRR Program Funds?

Upon publication of this rule, the Secretary will distribute the remaining

25 percent (approximately \$50 million) of fiscal year 2003 IRR Program funds based on the current relative need formula used in fiscal years 2000, 2001, 2002 and in the first distribution in fiscal year 2003. We are using the latest indices from the FHWA Price Trends Report with appropriate modifications for non-reporting states in the relative need formula distribution process.

Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this rule is not an economically significant regulatory action because it will not 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 \$208 million and we are distributing approximately \$50 million under this 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 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, adjusting the FHWA Price Trends Report indices for states that do not have current data reports. This 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 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 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 second partial distribution of fiscal years 2000, 2001 and 2002 IRR Program funds and the first partial distribution of fiscal year 2003 IRR funds.

Approximately 1,300 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 rule because it applies only to tribal governments, not state and local governments.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it does not have an annual effect on the economy of \$100 million or more. We are distributing approximately \$50 million under this 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