

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 partial distributions for fiscal years 2000, 2001, 2002 and 2003 IRR Program funds. Approximately 350 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.

#### **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 only \$25 million under this rule. Congress has authorized 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 projects 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 rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. This 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 rule is to immediately provide \$25 million of fiscal year 2004 IRR Program funds for ongoing IRR activities and construction projects.

#### **Takings Implications (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 rule should not affect the relationship between state governments and the Federal government 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. Under The Transportation Equity Act for the 21st Century negotiated rulemaking, we have published a proposed rule and funding formula which is currently being finalized. A final funding formula for

fiscal year 2004 will be published in 2004. 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 \$25 million of fiscal year 2004 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 (Executive Order 13175)**

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," we have consulted with tribal representatives throughout the negotiated rulemaking process. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects and have determined that this rule preserves the integrity and consistency of the relative need formula process we have used since 1993 to distribute IRR Program funds. We are making a change from previous years (which we also made for fiscal years 2000, 2001, 2002 and 2003 IRR Program funds (see **Federal Register** notices at 65 FR 37697, 66 FR 17073, 67 FR 44355 and 68 FR 33625 ) to modify the FHWA Price Trends Report indices for non-reporting states which do not have current price trends data reports. The yearly FHWA Report is used as part of the process to determine the cost-to-