

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****25 CFR Part 170**

RIN 1076-AD99

**Distribution of Fiscal Year 2000 Indian Reservation Roads Funds****AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Temporary Rule and Request for Comments.

**SUMMARY:** We are issuing a temporary rule requiring that we distribute one-half of the Fiscal Year 2000 Indian Reservation Roads (IRR) funds to projects on or near Indian reservations using the Relative Need Formula adopted in 1993. We are also requesting comments on the formula for distribution of the remaining portion of the Fiscal Year 2000 funds. After consideration of comments, we will issue a final rule for distribution of the remaining portion of the Fiscal Year 2000 IRR funds.

**DATES:** This temporary rule is effective on February 15, 2000. Comments on the formula for distribution of the remaining portion of the Fiscal Year 2000 IRR funds must be postmarked by March 16, 2000.

**ADDRESSES:** You may send comments on the formula for distribution of the remaining portion of the Fiscal Year 2000 IRR funds to: LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibility, Bureau of Indian Affairs, 1849 C Street, NW, MS-4058-MIB, Washington, DC 20240. Mr. Gishi may also be reached at 202-208-4359 (phone), 202-208-4696 (fax), or leroygishi@bia.gov (electronic mail).

**FOR FURTHER INFORMATION CONTACT:** LeRoy Gishi, 202-208-4359.

**SUPPLEMENTARY INFORMATION:****Background***What Is the IRR Program?*

Indian Reservation Roads (IRR) are typically among the most poorly maintained roads in the nation, in great need of development and repair. Many tribes do not even have road systems. This creates great difficulty in meeting everyday needs such as busing school students or getting medical attention for the sick and elderly. Tribes are dependent on timely distribution of IRR funds to develop and complete construction on projects started in previous years, especially since weather and time can cause damage to a partially completed project or prevent a project from being started and since many tribes

will be moving into rainy seasons in the near future. The inability to enter construction contracts in a timely fashion further delays and hinders a tribe's ability to provide for its transportation needs.

The IRR program is jointly administered by the Bureau of Indian Affairs (BIA) and the Federal Lands Highway office (FLH) of the Federal Highway Administration. The IRR program governs the planning, design, construction, maintenance and general administrative responsibility for IRR. The duties of each agency under the IRR program are set forth in a Memorandum of Agreement between the two agencies. In brief, the BIA works with tribal governments and tribal organizations to develop an annual priority program of construction projects which is submitted to the FLH for review and approval. Each fiscal year FLH determines the amount of funds available for construction. Then, the FLH and the BIA develop an IRR program funding plan for the fiscal year. Funds are allocated from the FLH to the BIA and distributed by the Secretary of the Interior (Secretary) to IRR projects on or near Indian reservations. Since 1993, IRR funds have been distributed according to the Relative Need Formula.

*What Is the Relative Need Formula?*

The Relative Need Formula is the method by which we have distributed IRR funds each fiscal year for IRR projects in each of the BIA's twelve regions. The Relative Need Formula we are adopting in this temporary rule is based on 20 percent population, 30 percent vehicle miles traveled (average daily traffic multiplied by the total miles in the IRR system), and 50 percent cost-to-improve roads in the IRR system. It will be used to compute the percentage of Highway Trust Funds we distribute to our Regional Offices for use on approved projects in a uniform, equitable manner based on the relative needs of the various Indian reservations. The Relative Need Formula ranks road and bridge improvements by the estimated cost to bring roads and bridges located within or providing access to an Indian reservation to an adequate and safe standard. We have used this funding formula since it was generally accepted by tribes and approved in 1993.

*What Is the Status of the TEA-21 Rule Making Process?*

In 1998, Congress passed the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178. Under TEA-21, the Secretary must issue regulations governing the IRR program

and establish a formula distributing IRR funds for Fiscal Year (FY) 2000 and subsequent years. The Secretary must develop the regulations and funding formula through the use of a negotiated rulemaking process and must issue them by September 1999.

Accordingly, the Secretary established the TEA-21 Negotiated Rulemaking Committee (Committee). As required by TEA-21, tribal representation on the Committee reflects a balance of interests including: geographically diverse small, medium and large tribes; direct service, self-determination and self-governance tribes; and tribes with various levels and types of experience in the diverse concerns of transportation development and management. The Committee consists of 29 tribal representatives and 13 Federal members.

The Committee has met monthly since March 1999 in locations that permit the greatest attendance and participation by tribal members. Among the earliest actions of the Committee was to divide into four workgroups to address the broad areas of concern for the IRR program: the Technical Standards workgroup, the Delivery of Services workgroup, the Policy workgroup and the Funding Formula workgroup. Each of the workgroups works closely with the full Committee to identify specific problems and develop a regulation and formula to address those problems. Despite the diligence of the Committee, it was unable until recently to reach a consensus on a funding formula that would permit the distribution of IRR funds for FY 2000. As a result, there has been no mechanism in place for the distribution of funds during FY 2000.

Recognizing that an inability to distribute IRR funds (totaling approximately \$200 million for FY 2000) causes undue hardship to tribes, the Committee reached a consensus at its January 2000 meeting in Albuquerque, New Mexico, concerning the distribution of funds. The Committee recommended that for FY 2000, the Secretary should distribute funds to IRR projects according to the Relative Need Formula as used in FY 1998 and 1999 (the same formula adopted in 1993 and described above). This recommendation reflects the consensus of the Committee's tribal representatives who are in the best position to articulate what is acceptable to the tribes. Federal members of the Committee agreed to the recommendation, as it allows us to distribute needed money and permits the Federal government to fulfill its duties under the IRR program. This recommendation is consistent with the

TEA-21 requirement that the Secretary distribute funds according to a formula recommended by the Committee. Moreover, it frees the Committee to continue its work toward a final formula and regulations.

This temporary rule will allow the Secretary to distribute one-half of FY 2000 IRR funds according to the Relative Need Formula. As noted above, the temporary rule is effective on the publication of this notice. We are also requesting comments from the public regarding the distribution of the remainder of FY 2000 IRR funds. The Committee will also use those comments in its continuing work towards a final formula for future fiscal years.

*Why Does the Secretary Need To Publish This Temporary Rule in the Federal Register?*

With the Committee's consensus on the tribal Committee members' proposal to distribute FY 2000 IRR funds using the Relative Need Formula, the Secretary is proceeding with this temporary rule to ensure distribution of FY 2000 IRR funds during this fiscal year. Tribes depend on continued funding during their planned one-to-three year road and bridge construction projects. There are approximately 950 ongoing road and bridge construction projects on over 25,000 road miles and 740 bridges on or near Indian reservations that will not continue without FY 2000 funding. This temporary rule allows the Secretary to continue to fund the IRR program to provide safe and adequate bridges and road access to and within Indian reservations, Indian lands and communities by distributing funds through FY 2000. Furthermore, the Committee and the Secretary agreed to use the Relative Need Formula to distribute these funds because both the tribes and the BIA understand its use and because there is currently no potentially effective and reasonably feasible alternative formula.

*Why Does This Temporary Rule Not Allow For Notice and Comment on the Distribution of One-Half of the FY 2000 IRR Funds, and Why Is It Effective Immediately?*

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

2000 IRR funds. Approximately 950 road and bridge construction projects are at various phases that depend on this fiscal year's funds, including 169 deficient bridges and the construction of approximately 400 miles of roads. The FY 2000 IRR funds would be used to design, plan, and construct improvements (and, in some cases, to reconstruct bridges). Designing and planning improvements must take place before the construction season (which is very short for some of the reservations) begins in the next few months.

Waiting for notice and comment on this temporary rule would be contrary to the public interest. In some of our 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. Two-thirds 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 jeopardize the health and safety of the traveling public. Further, over 200 current projects (for which funding would be jeopardized by waiting) 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 these construction projects and the short time available for planning and construction.

Under this temporary rule, we are distributing only one-half of the FY 2000 IRR funds to address the most urgent needs while allowing for public comment on distribution of the other half of the FY 2000 IRR funds. In addition, the Committee is working on a permanent formula, which if adopted by the Secretary will be subject to full public notice and comment before we promulgate it as a final rule.

*Clarity of This Temporary Rule*

Executive Order 12866 requires each agency to write regulations that are easy to understand. In addition to the comments requested above, 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 (E.O. 12866)*

Under the criteria in Executive Order 12866, this temporary rule is a significant regulatory action, and the Office of Management and Budget has reviewed it, because it will have an annual effect of \$100 million or more on the economy. As noted above, the total amount of FY 2000 IRR funds is approximately \$200 million, \$100 million of which we would distribute to IRR projects under this temporary rule. Congress has already appropriated these funds and FLH has already allocated them to BIA. The cost to the government of distributing the IRR funds, especially under the Relative Need Formula with which the tribal governments and tribal organizations and the BIA are already familiar, is therefore negligible. The distribution of the IRR funds does not require the tribal governments and tribal organizations to expend any of their own funds; in fact, distribution of the IRR funds is a benefit. Approximately 950 road and bridge construction projects are at various phases that depend on this fiscal year's funds, including 169 deficient bridges and the construction of approximately 400 miles of roads. Leaving these projects unfunded in FY 2000 would 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 temporary rule conforms to the policies and practices that currently guide our distribution of IRR funds. We do not anticipate that this regulation will have a significant effect on which IRR projects are eligible for funding. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This temporary rule simply adopts the Relative Need Formula that we have used since 1993. In addition, the temporary rule only applies to a portion of the available funds for Fiscal Year 2000, and the final distribution formula may include an adjustment to account for any differences between the amounts distributed under this temporary rule and the distributions under the final formula.

This temporary rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. FLH has transferred the IRR funds to us, and the FLH representatives on the Committee have joined in the consensus mentioned above.

This temporary rule does not alter the budgetary effects or entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This temporary rule simply uses the Relative Need Formula that we have used since 1993. In addition, the temporary rule only applies to a portion of the available funds for Fiscal Year 2000, and the final distribution formula may include an adjustment to account for any differences between the amounts distributed under this temporary rule and the distributions under the final formula.

This temporary rule does not raise novel legal or policy issues. This temporary rule is based on the Relative Need Formula, in use since 1993. We are not changing the current practice with this temporary rule, except by dividing the distribution into two parts.

#### *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, not State and local governments.

#### *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. As noted above, the total amount of FY 2000 IRR funds is approximately \$200 million, \$100 million of which we would distribute to IRR projects under this temporary rule. Congress has already appropriated these funds and FLH has already allocated them to BIA. The cost to the government of distributing the IRR funds, especially under the Relative Need Formula with which the tribal governments and tribal organizations and the BIA are already familiar, is therefore negligible. The distribution of the IRR funds does not require the tribal governments and tribal organizations to expend any of their own funds; in fact, distribution of the IRR funds is a benefit. Approximately 950 road and bridge construction projects are at various phases that depend on this fiscal year's funds, including 169 deficient bridges and the construction of approximately 400 miles

of roads. Delaying work on many of these projects in FY 2000 would create undue hardship on tribes and tribal members, since partially constructed road and bridge projects would jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs.

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 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.

Under 5 U.S.C. 808(2), this temporary rule may take effect immediately upon publication in the **Federal Register** (as noted above in the **DATES** section) because notice and public procedure thereon are impracticable, unnecessary, and contrary to the public interest. Notice and public procedure would be impracticable because of the urgent need to distribute the first half of the FY 2000 IRR funds. Approximately 950 road and bridge construction projects are at various phases that depend on this fiscal year's funds, including 169 deficient bridges and the construction of approximately 400 miles of roads. The FY 2000 IRR funds would be used to design, plan, and construct improvements (and, in some cases, to reconstruct bridges). Designing and planning improvements must take place before the construction season (which is very short for some of the reservations) begins in the next few months.

Waiting for notice and comment on this temporary rule would be contrary to the public interest. In some of our 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. Two-thirds of the road miles in Indian country are unimproved roads. Defective bridges and roads are health and safety hazards. Partially constructed road and bridge projects jeopardize the health and safety of the traveling public. Further, over 200 current projects (for which funding

would be jeopardized by waiting) are directly associated with environmental protection and preservation of historic and cultural properties.

Under this temporary rule, we are distributing only one-half of the FY 2000 IRR funds to address the most urgent needs while allowing for public comment on distribution of the other half of the FY 2000 IRR funds. In addition, the Committee's recommendation for the ultimate distribution formula for IRR funds (after FY 2000) is undergoing public notice and comment as part of the negotiated rulemaking process, and that ultimate formula, if adopted by the Secretary, will again be subject to full public notice and comment before we promulgate it as a final rule.

#### *Unfunded Mandates Reform Act*

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), the 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. Rather, the overall effect of this temporary rule is to provide money to tribal governments for IRR construction projects.

#### *Takings (E.O. 12630)*

With respect to Executive Order 12630, the temporary 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 (E.O. 13132)*

With respect to Executive Order 13132, the temporary 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 temporary 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 E.O. 13132.

#### *Civil Justice Reform (E.O. 12988)*

This temporary 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 temporary rule contains no drafting errors or ambiguity and is written to minimize litigation, provides clear

standards, simplifies procedures, reduces burden, and is clearly written. This temporary rule does not preempt any statute. We are still pursuing the TEA-21 mandated negotiated rulemaking process, and the final distribution formula may include an adjustment to account for any differences between the amounts distributed under this temporary rule and the distributions under the final formula. The temporary 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 pending FY 2000 funding.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act does not apply because this temporary rule does not impose recordkeeping 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 temporary 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 temporary 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.

#### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of May 14, 1998, "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655) and 512 DM 2, we have evaluated any potential effects upon federally recognized Indian tribes and have determined that there are no potential adverse effects. This temporary rule is based on the Relative Need Formula, in use since 1993. We are not changing the current practice with this temporary rule. Consultation with tribal governments and tribal organizations is ongoing as part of the negotiated rulemaking process.

#### Comments

Our practice is to make comments, including the names and addresses of persons commenting, available for public review during regular business hours. Persons commenting as private individuals may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the rulemaking record a commenter's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments. Comments from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

#### List of Subjects in 25 CFR Part 170

Indians—Highways and Roads.

For the reasons set out in the preamble, we are temporarily amending Part 170 in Chapter I of Title 25 of the Code of Federal Regulations as follows.

#### **PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS**

1. The authority citation for part 170 continues to read as follows:

**Authority:** 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e-2(i); 23 U.S.C. 101(a), 208, 308), unless otherwise noted.

2. Add § 170.4b to read as follows:

#### **§ 170.4b What formula will you use to distribute Fiscal Year 2000 Indian Reservation Roads Funds?**

From February 15, 2000 through September 30, 2000, the Secretary will distribute one-half of the Fiscal Year 2000 funds authorized under Section 1115 of the Transportation Equity Act for the 21st Century, Pub. L. 105-178, to Indian Reservation Roads and Bridges projects on or near Indian reservations under the Relative Need Formula established and approved in January 1993. (23 U.S.C. 202(d)).

Dated: February 8, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00-3512 Filed 2-14-00; 8:45 am]

**BILLING CODE 4310-02-P**

#### **OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

#### **29 CFR Part 2200**

#### **Rules of Procedure**

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Final Rule; Extension of Expiration Date.

**SUMMARY:** On February 19, 1999 the Occupational Safety and Health Review Commission issued a final rule amending its rules of procedure to add a new Subpart H consisting of § 2200.120 to 29 CFR. 64 FR 8243. In that section the Commission established a mandatory settlement process known as the Settlement Part as a pilot program for a one-year trial period.

In order to evaluate the Settlement Part, the Commission has concluded that it is necessary to continue the pilot program beyond the original one-year trial period. The Commission will continue to evaluate the results in order to decide whether it should establish the Settlement Part procedure on a permanent basis and whether any modifications should be made. Accordingly, the period during which Subpart H consisting of § 2200.120 is effective is extended to and including September 30, 2000.

**EFFECTIVE DATE:** As of February 15, 2000, the expiration date for Subpart H consisting of § 2200.120 added in the **Federal Register** of February 19, 1999 (64 FR 8246) is extended to and including September 30, 2000. After September 30, 2000, Subpart H consisting of § 2200.120 will no longer be in effect unless extended by the Commission by publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Earl R. Ohman, Jr., General Counsel, One Lafayette Center, 1120 20th St., NW 9th Floor, Washington, DC 20036-3419, phone 202-606-5410.

Dated: February 10, 2000.

**Thomasina V. Rogers,**

*Chairman.*

**Gary L. Visscher,**

*Commissioner.*

**Stuart E. Weisberg,**

*Commissioner.*

[FR Doc. 00-3559 Filed 2-14-00; 8:45 am]

**BILLING CODE 7600-01-M**