

I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a significant regulatory action” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on January 4, 2002.

James J. Ballough,

Director, Flight Standards Services.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective February 21, 2002*

Morris, IL, Morris Muni-James R. Washburn Field, RNAV (GPS) RWY 18, Orig

Morris, IL, Morris Muni-James R. Washburn Field, RNAV (GPS) RWY 36, Orig
Davison, MI, Athelone Williams Memorial, VOR RWY 8, Orig
Davison, MI, Athelone Williams Memorial, VOR OR GPS RWY 8, Amdt 3A
CANCELLED

Davison, MI, Athelone Williams Memorial, VOR RWY 8, Orig

Davison, MI, Athelone Williams Memorial, RNAV (GPS) RWY 8, Orig

Davison, MI, Athelone Williams Memorial, RNAV (GPS) RWY 26, Orig

Linden, MI, Prices, VOR-A, Orig

Linden, MI, Prices, VOR OR GPS-A, Amdt 4
CANCELLED

Linden, MI, Prices, RNAV (GPS) RWY 9, Orig
Linden, MI, Prices, RNAV (GPS) RWY 27, Orig

St. Louis, MO, Lambert-St. Louis Intl, RNAV (GPS) RWY 6, Orig

St. Louis, MO, Lambert-St. Louis Intl, RNAV (GPS) RWY 12L, Orig

St. Louis, MO, Lambert-St. Louis Intl, RNAV (GPS) RWY 12R, Orig

St. Louis, MO, Lambert-St. Louis Intl, RNAV (GPS) RWY 24, Orig

St. Louis, MO, Lambert-St. Louis Intl, RNAV (GPS) RWY 30L, Orig

St. Louis, MO, Lambert-St. Louis Intl, RNAV (GPS) RWY 30R, Orig

Hillsboro, ND, Hillsboro Muni, RNAV (GPS) RWY 16, Orig

Hillsboro, ND, Hillsboro Muni, RNAV (GPS) RWY 34, Orig

Hillsboro, ND, Hillsboro Muni, GPS RWY 16, Orig-B CANCELLED

Hillsboro, ND, Hillsboro Muni, GPS RWY 34, Orig-B CANCELLED

Kenmare, ND, Kenmare Muni, RNAV (GPS) RWY 26, Orig

Beaufort, NC, Michael J. Smith Field, RNAV (GPS) RWY 14, Orig

Beaufort, NC, Michael J. Smith Field, GPS RWY 14, Orig, CANCELLED

Chapel Hill, NC, Horace Williams, VOR/DME RWY 27, Amdt 1

Chapel Hill, NC, Horace Williams, GPS RWY 9, Orig, CANCELLED

Chapel Hill, NC, Horace Williams, GPS RWY 27, Orig, CANCELLED

Chapel Hill, NC, Horace Williams, RNAV (GPS) RWY 9, Orig

Chapel Hill, NC, Horace Williams, RNAV (GPS) RWY 27, Orig

[FR Doc. 02-652 Filed 1-9-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

RIN 1076-AE28

Distribution of Fiscal Year 2002 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 75 percent of fiscal year 2002 Indian Reservation Roads (IRR) Program funds to projects on or near Indian reservations using the relative need formula. As we did in fiscal years 2000 and 2001, we are using the Federal Highway Administration (FHWA) Price Trends report for information to calculate the relative need formula, with appropriate modifications to address non-reporting states. We are reserving up to \$19.53 million to allow federally recognized tribes to apply for \$35,000 each for administrative capacity building and other eligible transportation activities for fiscal year 2002 and we will distribute the balance of the remaining 25 percent of fiscal year 2002 IRR Program funds according to the relative need formula.

DATES: This temporary rule is effective January 10, 2002, through September 30, 2002. We will accept comments on this temporary rule until February 11, 2002.

ADDRESSES: You may send comments on the formula for distribution of the Fiscal Year 2002 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, Chief, Division of Transportation, Office of Trust Responsibilities, 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).

SUPPLEMENTARY INFORMATION:

Background

Where Can I Find General Background Information on the Indian Reservation Roads Program, the Relative Need Formula, the FHWA Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA-21) Negotiated Rulemaking Process?

The background information on the IRR Program, the relative need formula, the FHWA Price Trends Report, and the TEA-21 Negotiated Rulemaking process is detailed in the **Federal Register** Notice dated February 15, 2000 (65 FR 7431). You may obtain additional information on the IRR Program web site at <http://www.irr.bia.gov>.

What Was the Basis for Distribution of Fiscal Years 2000 and 2001 Funds?

For fiscal year 2000 IRR Program funds, the Secretary published two interim rules distributing one-half of the funds in February 2000 and the second half of the funds in June 2000. For fiscal year 2001 IRR Program funds, the Secretary published two interim rules distributing 75 percent of the funds in January 2001, and the remaining 25 percent of the funds in March 2001. These distributions followed the TEA-21 Negotiated Rulemaking Committee's recommendation to the Secretary in January 2000 and November 2000 to distribute fiscal years 2000 and 2001 IRR Program funds under the relative need formula used in 1998 and 1999, while continuing to develop a proposed formula to publish for comment. In addition, in fiscal years 2000 and 2001 we modified the Federal Highway Administration Price Trends Report indices to account for two non-reporting states.

What Is the Basis for Distribution of Fiscal Year 2002 IRR Program Funds?

The Transportation Equity Act for the 21st Century (TEA-21) provides that the Secretary develop rules and a funding formula for fiscal year 2000 and subsequent fiscal years to implement the Indian Reservation Roads program section of the Act. The Negotiated Rulemaking Committee created under Section 1115 of TEA-21 and comprised of representatives of tribal governments and the Federal Government has been diligently working to develop a funding formula that addresses the Congressionally identified criteria,

Committee and tribal recommendations, and is consistent with overall Federal Indian Policy.

The Committee is developing a permanent funding formula that will be published during 2002 in the **Federal Register** for public comment. In the meantime, there are about 1400 ongoing road and bridge construction projects on or near Indian reservations which need fiscal year 2002 funding to continue or complete work. Partially constructed road and bridge projects could pose safety threats. Other road and bridge projects need to be planned or initiated in this fiscal year.

This rule is published as a temporary rule only for interim funding for fiscal year 2002 and sets no precedent for the final rule to be published as required by Section 1115 of TEA-21. The TEA-21 Negotiated Rulemaking Committee agrees that an interim funding formula for fiscal year 2002 is needed. The Committee expects to recommend the publication of a formula for public comment so that a permanent formula can be established for fiscal year 2003, which will begin October 1, 2002. The interim formula for the current fiscal year will also 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 2003.

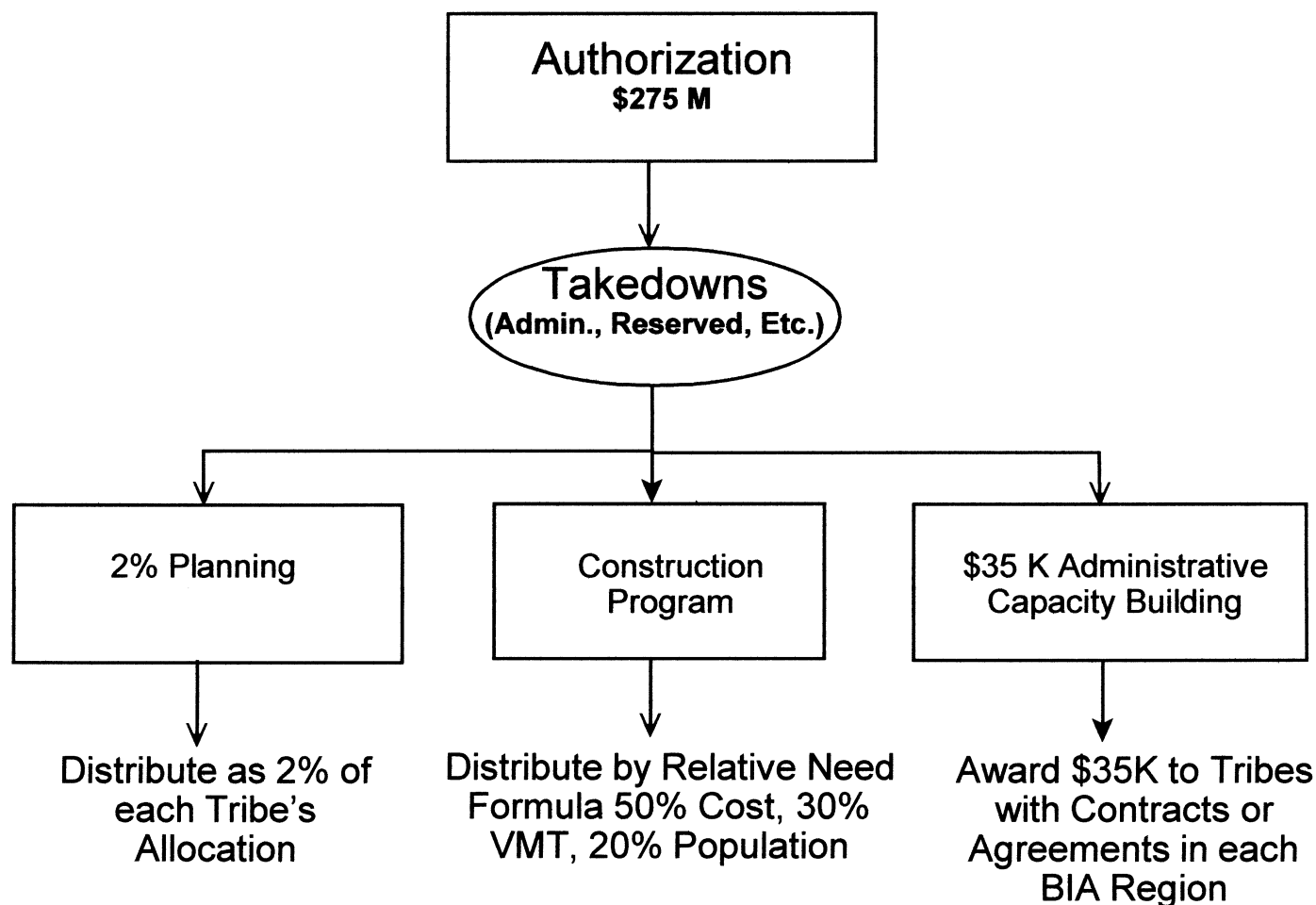
The Secretary is basing this distribution on the TEA-21 Negotiated Rulemaking Committee's tribal caucus recommendation for distribution of fiscal year 2001 IRR Program funds.

How Will the Secretary Distribute Fiscal Year 2002 IRR Program Funds?

Upon publication of this rule and upon enactment of the Department of Transportation Appropriations Act and receipt of contract authority from the Federal Highway Administration, the Secretary will distribute 75 percent of fiscal year 2002 IRR Program funds based on the current relative need formula used in fiscal years 2000 and 2001, and the indices from the FHWA Price Trends Report with appropriate modifications for non-reporting states in the relative need formula distribution process. We will distribute fiscal year 2002 IRR Program funds to the twelve BIA regions using this distribution process. From the remaining 25 percent of fiscal year 2002 IRR Program funds, we are reserving \$19.53 million for federally recognized tribes who apply for and have negotiated contracts or agreements for up to \$35,000 for administrative capacity building and other eligible transportation activities under the IRR Program. We are requesting comments on the appropriateness of \$19.53 million for administrative capacity building and the use of the current relative need formula for distribution of the remaining 25 percent of fiscal year 2002 IRR Program funds.

What Formula Components Are We Using for Distribution of Fiscal Year 2002 IRR Program Funds and How Are They Related?

The following diagram shows the relationship between components for fiscal year 2002 IRR Program funds distribution:



What Data Are We Using for the Interim Distribution Funding Formula?

We are using the most current road inventory data (September 2001) maintained by the Bureau of Indian Affairs.

What Is the Purpose of Administrative Capacity Building?

The primary purpose of administrative capacity building is to provide all tribes an opportunity to participate in the IRR Program by updating transportation needs inventories and performing other transportation planning activities.

How Are We Distributing the Reserved Administrative Capacity Building Funds to the Twelve BIA Regions?

The administrative capacity building funds are to be reserved at BIA until the application/award deadline is met. When we distribute the reserved administrative capacity building funds (\$19.53 million) from the second distribution for 25 percent of fiscal year 2002 IRR Program funds, we will distribute to the twelve BIA regions based on the number of tribes in the

region that request to participate by tribal resolution or other official action of the tribe.

How Will We Provide Administrative Capacity Building Funds to Tribes?

Any federally recognized tribe may apply to the appropriate BIA region for administrative capacity building funds under the Indian Self-Determination and Educational Assistance Act (Pub. L. 93-638) no later than April 15, 2002.

How Will BIA Provide Administrative Capacity Building Services to Direct Service Tribes?

The BIA regions will provide administrative capacity building services to tribes in their regions that request such services.

What Must a Self-Determination or Self-Governance Tribe Provide in Its Application to the BIA Region for Administrative Capacity Building Funds for Fiscal Year 2002?

A self-determination or self-governance tribe must make application to the appropriate BIA Region by April 15, 2002 and must include:

- (a) Scope of work;

(b) Detailed budget not to exceed \$35,000; and

(c) Official tribal resolution or other official action of the tribe requesting the funds.

What Will BIA Do With Any Reserved Funds That Have Not Been Awarded to Tribes for Administrative Capacity Building After August 15, 2002?

We will distribute the remaining funds to the twelve BIA regions based on the relative need formula discussed in this rule. It is important that each tribe submit its application for administrative capacity building within the established deadlines so that we can make a timely reallocation of any reserved funds that are not awarded by August 15, 2002.

Are There Any Differences in the Distribution of Fiscal Year 2002 IRR Program Funds as Compared to the Distributions of Fiscal Years 2000 and 2001 IRR Program Funds?

The distribution of fiscal year 2002 IRR Program funds is based on the current relative need formula and the FHWA Price Trends Report indices that were used for the adjusted fiscal years

2000 and 2001 distribution. In February 2000 the Secretary partially distributed fiscal year 2000 IRR Program funds using the relative need formula. In June 2000 the Secretary distributed the remaining funds under the relative need formula by modifying the FHWA price trend report indices for two non-reporting states, Washington and Alaska, that impact tribes in those non-reporting states. In January 2001 the Secretary partially distributed fiscal year 2001 IRR Program funds using the relative need formula. In June 2001 the Secretary distributed the remaining funds under the relative need formula by modifying the FHWA price trend report indices for two non-reporting states, Washington and Alaska, that impact tribes in those non-reporting states. We are using the same modification process for non-reporting states for distribution of fiscal year 2002 IRR Program funds. For fiscal year 2001 we distributed funds in the same manner as in fiscal year 2000, except that we reserved up to \$19.53 million for administrative capacity building for federally recognized tribes. We are distributing fiscal year 2002 funds in the same way as fiscal year 2001 IRR Program funds.

Why Does This Temporary Rule Not Allow for Notice and Comment on the First Partial Distribution of Fiscal Year 2002 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 temporary rule for distribution of 75 percent of fiscal year 2002 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 75 percent of fiscal year 2002 IRR Program funds. Approximately 1400 road and bridge construction projects are at various phases that require additional funds this fiscal year to continue or complete work, including 196 deficient bridges and the construction of approximately 600 miles of roads. Fiscal year 2002 IRR Program funds will be used to design, plan, and construct improvements (and, in some cases, to reconstruct bridges). Without this immediate partial distribution of fiscal year 2002 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 temporary rule 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. 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 and deficient bridges and roads jeopardize the health and safety of the traveling public. Further, over 200 projects currently in progress 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 partially distributing fiscal year 2002 IRR Program funds to continue these construction projects.

Distribution of the remaining 25 percent of fiscal year 2002 IRR Program funds will be distributed under the same relative need formula as the first 75 percent of the funds after we review and consider comments.

Clarity of This Temporary Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. 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 (Executive Order 12866)

Under the criteria in Executive Order 12866, this temporary rule is a significant regulatory action requiring review by the Office of Management and Budget because it will have an annual effect of more than \$100 million on the economy. The total amount available for distribution of fiscal year 2002 IRR Program funds is approximately \$226 million and we are distributing approximately \$169.5 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 the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2002 IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds.

This temporary rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds. This temporary 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 temporary 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 temporary 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 temporary 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 distribution of fiscal year 2001 IRR Program funds.

Approximately 1400 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 \$169.5 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 2002 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 2002 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.

Government-to-Government Relationship With Tribes

Under 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 this rule preserves the integrity and consistency of the relative need formula process we have used since 1993. The only changes we are making from previous years (which we also made for fiscal years 2000 and 2001) IRR Program funds are 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-improve portion of the relative need formula. Consultation with tribal governments and tribal organizations is ongoing as part of the TEA-21 negotiated rulemaking process and this distribution uses the TEA-21 Negotiated Rulemaking Committee's tribal caucus recommendation.

List of Subjects in 25 CFR Part 170

Highways and Roads, Indians—lands.

For the reasons set out in the preamble, we are 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), 202, 204), unless otherwise noted.

2. Effective January 10, 2002, through September 30, 2002, add § 170.4b to read as follows:

§ 170.4b What formula will BIA use to distribute 75 percent of fiscal year 2002 Indian Reservation Roads funds?

On January 10, 2002, we will distribute 75 percent of fiscal year 2002 IRR Program funds authorized under Section 1115 of the Transportation Equity Act for the 21st Century, Public Law 105-178, 112 Stat. 154. We will distribute the funds to Indian Reservation Roads projects on or near Indian reservations using the relative need formula established and approved in January 1993. We are modifying the formula to account for non-reporting States by inserting the latest data

reported for those States for use in the relative need formula process.

Dated: December 19, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02-268 Filed 1-9-02; 8:45 am]

BILLING CODE 4310-LY-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, 63, 72, and 75

[FRL-7127-4]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and correction to November 15, 2001 Notice of Availability.

SUMMARY: This document announces the availability of applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS)(40 CFR part 60), and the National Emission Standards for Hazardous Air Pollutants (NESHAP)(40 CFR parts 61 and 63). This document also corrects and clarifies the Notice of Availability published in the **Federal Register** on November 15, 2001 (66 FR 57453).

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the ADI at: <http://es.epa.gov/oeca/eptdd/adi.html>. The document may be located by date, author, subpart, or subject search. For questions about the ADI or this document, contact Maria Malave at EPA by phone at: (202) 564-7027, or by e-mail at: malave.maria@epa.gov. For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the

individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background

The General Provisions to the NSPS in 40 CFR part 60 and the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. See 40 CFR 60.5 and 61.06. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which is different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are broadly termed alternative monitoring decisions. Further, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are broadly termed regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number or by string word searches.

Today's notice comprises a summary of 42 such documents added to the ADI on October 19, 2001. The subject, author, recipient, and date (header) of each letter and memorandum is listed in this notice, as well as a brief abstract of the letter or memorandum. Complete

copies of these documents may be obtained from the ADI at <http://es.epa.gov/oeca/eptdd/adi.html>.

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on October 19, 2001; the applicable category; the subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter. We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents.

Correction to November 15, 2001 Notice of Availability

The previous Notice of Availability was published at 66 FR 57453 under the heading "Recent Posting of Agency Regulatory Interpretations Pertaining to Applicability and Monitoring for Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants to the Applicability Determination Index (ADI) Database System." EPA mistakenly included in that notice the statement that "Comments on any of the documents posted on the ADI database system must be submitted on or before January 14, 2002." Please disregard that statement and all associated statements regarding the submission of comments. EPA is not seeking comments on the documents listed in that notice, nor is it seeking comments on any of the documents contained in the ADI database.

EPA notes further that although the November 15, 2001 notice, and this notice, are sufficient to satisfy the publication provisions of 5 U.S.C. 552(a) and 42 U.S.C. 7607(b), the references to those provisions were done by mistake, and were not intended to imply that all of the documents posted on the ADI database fall within the scope of those statutory provisions. Although some of the documents on the ADI database are within the scope of those provisions, others are not, and for this reason, EPA does not refer to those provisions when the Agency publishes a quarterly Notice of Availability of the ADI database.

ADI DETERMINATIONS UPLOADED ON OCTOBER 19, 2001

Control No.	Category	Subpart	Title
M010018	MACT	MMM	Subpart MMM Applicability to Creosote Production Facilities.