

determined to amend both rules to add the Regional Counsel of the Division of Enforcement as persons authorized in appropriate cases to disclose certain non-public information to other governmental, judicial or market authorities in carrying out his or her duties. This authority will facilitate the Commission's ability to coordinate and share information with other authorities for regulatory oversight, fitness inquiries and other regulatory purposes. In addition, because the position of Program Coordinator of the Division of Enforcement no longer exists, the Commission is also revising Rules 140.72(a) and 140.73(a) to remove the delegations of authority provided therein to the Program Coordinator of the Division of Enforcement.

III. Related Matters

The Commission has determined that these amendments relate solely to agency organization, procedure and practice. Therefore, the provisions of the Administrative Procedure Act, which generally require notice of proposed rulemaking and provide other opportunities for public participation,¹⁴ are not applicable. The Commission further finds that, because the rules have no adverse effect upon a member of the public, and these changes are being made solely for the purpose of conforming the language of the regulation to the language of the statute, there is good cause to make them effective immediately upon publication in the **Federal Register**.

List of Subjects in 17 CFR Part 140

Authority delegations, organization, functions and procedures of the Commission.

In consideration of the foregoing and pursuant to the authority contained in the Act and, in particular, Sections 2(a), 8 and 8a, 7 U.S.C. 4a, 12 and 12a, the Commission hereby amends Part 140 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

that disclosure is necessary or appropriate to effectuate the purposes of the Act." See § 140.72(a).

¹⁴ 5 U.S.C. 553(b) generally requires notice of proposed rulemaking to be published in the **Federal Register**. That provision states, however, that except when notice or hearing is required by statute, notice is not required for:

(A) * * * interpretative rules, general statements of policy, or rules of agency organization, procedure or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.

PART 140—ORGANIZATION, FUNCTIONS AND PROCEDURES OF THE COMMISSION

1. The authority citation for Part 140 continues to read as follows:

Authority: 7 U.S.C. 4a and 12a.

2. Section 140.72 is amended by revising paragraph (a) to read as follows:

§ 140.72 Delegation of authority to disclose confidential information to a contract market, registered futures association or self-regulatory organization.

(a) Pursuant to the authority granted under sections 2(a)(11), 8a(5) and 8a(6) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the Executive Director, the Deputy Executive Director, the Special Assistant to the Executive Director, the Director of the Division of Trading and Markets, each Deputy Director of the Division of Trading and Markets, the Chief Accountant, the General Counsel, each Deputy General Counsel, the Director of the Division of Economic Analysis, each Deputy Director of the Division of Economic Analysis, the Director of the Market Surveillance Section, the Director of the Division of Enforcement, each Deputy Director of the Division of Enforcement, each Associate Director of the Division of Enforcement, the Chief Counsel of the Division of Enforcement, each Regional Counsel of the Division of Enforcement, each of the Regional Coordinators, each of the Directors of the Market Surveillance Branches, the Director of the Office of International Affairs, and the Deputy Director of the Office of International Affairs, the authority to disclose to an official of any contract market, registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934, any information necessary or appropriate to effectuate the purposes of the Act, including, but not limited to, the full facts concerning any transaction or market operation, including the names of the parties thereto. This authority to disclose shall be based on a determination that the transaction or market operation disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors or that disclosure is necessary or appropriate to effectuate the purposes of the Act. The authority to make such a determination is also delegated by the Commission to the Commission employees identified in this section. A Commission employee delegated authority under this section may exercise that authority on his or her own

initiative or in response to a request by an official of a contract market, registered futures association or self-regulatory organization.

* * * * *

3. Section 140.73 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 140.73 Delegation of authority to disclose information to United States, States, and foreign government agencies and foreign futures authorities.

(a) Pursuant to sections 2(a)(11), 8a(5) and 8(e) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the General Counsel or, in his or her absence, to each Deputy General Counsel, the Director of the Division of Enforcement, each Deputy Director of the Division of Enforcement, the Chief Counsel of the Division of Enforcement, each Associate Director of the Division of Enforcement, each Regional Counsel of the Division of Enforcement, the Director of the Division of Economic Analysis or, in his or her absence, each Deputy Director of the Division, the Director of the Market Surveillance Section, the Director of the Division of Trading and Markets or, in his or her absence, each Deputy Director of the Division of Trading and Markets, and the Director of the Office of International Affairs or, in his or her absence, the Deputy Director of the Office of International Affairs, the authority to furnish information in the possession of the Commission obtained in connection with the administration of the Act, upon written request, to:

(1) Any department or agency of the United States, including for this purpose an independent regulatory agency, acting within the scope of its jurisdiction;

* * * * *

Issued in Washington, DC on January 4, 2001, by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 01-595 Filed 1-8-01; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

Distribution of Fiscal Year 2001 Indian Reservation Roads Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Temporary rule.

SUMMARY: We are issuing a temporary rule requiring that we distribute 75 percent of fiscal year 2001 Indian Reservation Roads (IRR) funds to projects on or near Indian reservations using the relative need formula. As we did in fiscal year 2000, we are using the Federal Highway Administration (FHWA) Price Trends report for the relative need formula distribution process, with appropriate modifications to address non-reporting states. In this distribution 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 2001.

DATES: This temporary rule is effective January 9, 2001 through September 30, 2001. We are requesting comments on or before February 8, 2001.

ADDRESSES: Submit comments to LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW, MS-4058-MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, may 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 Year 2000 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. This distribution followed the TEA-21 Negotiated Rulemaking Committee's recommendation to the Secretary in January, 2000 to distribute fiscal year 2000 IRR program funds under the relative need formula used in 1998 and 1999 while continuing to develop alternative formulas for comment. In addition, 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 2001 IRR Program Funds?

The Transportation Equity Act for the 21st Century 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.

Permanent funding formula options have been developed and agreed upon by the Committee and tribal representatives. These options will be published at a later date 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 2001 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 2001 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 2001 is needed. The Committee expects to recommend the publication of two alternative formulas for public comment so that a final permanent formula can be established for the next fiscal year. The interim

formula for fiscal year 2001 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 2002 and thereafter.

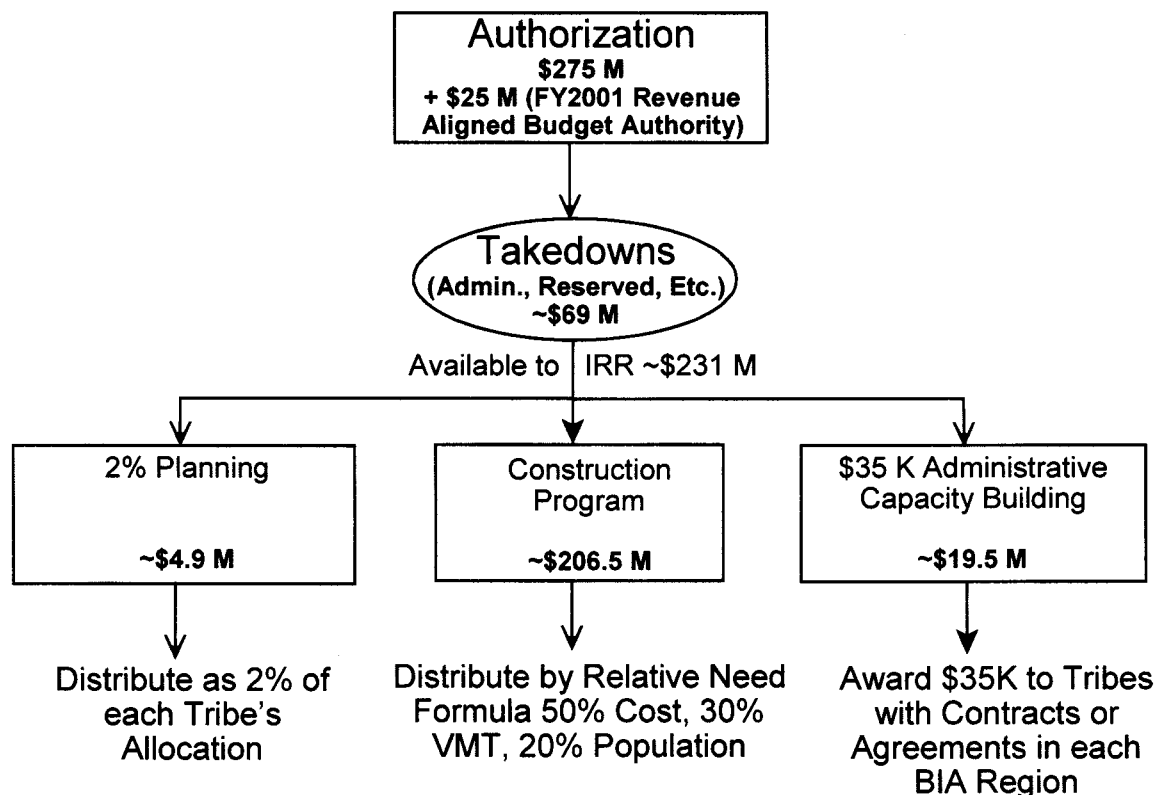
The TEA-21 Negotiated Rulemaking Committee's tribal caucus recommended that the Secretary distribute fiscal year 2001 funds on the same basis as fiscal year 2000 funds, including a provision for an administrative capacity building set-aside. Under a special Congressional appropriation in fiscal year 2000, we distributed \$18.3 million for transportation planning and the design of deficient IRR bridges.

How Will the Secretary Distribute Fiscal Year 2001 IRR Program Funds?

Upon publication of this rule, the Secretary will distribute 75 percent (approximately \$169.5 million) of fiscal year 2001 IRR program funds based on the current relative need formula used in fiscal year 2000, and the indices from the FHWA Price Trends Report with appropriate modifications for non-reporting states in the relative need formula distribution process. In this distribution 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. Fiscal year 2001 funds will be distributed to the twelve BIA regions using this distribution process. The remaining 25 percent of fiscal year 2001 IRR program funds will be distributed under the same relative need formula as the first 75 percent of the funds, after comments are reviewed and any necessary changes to the distribution are made.

What Formula Components Are We Using for Distribution of Fiscal Year 2001 Funds and How Are They Related?

The following diagram shows the relationship between components for fiscal year 2001 IRR program funds distribution:



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

We are using the most current road inventory data (June 2000) 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 the BIA Division of Transportation until the application/award deadline is met. We are distributing the reserved administrative capacity building funds (\$19.53 million) 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 (P.L. 93-638) no later than March 15, 2001.

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 2001?

A self-determination or self-governance tribe must make application to the appropriate BIA Region by March 15, 2001 and must include:

- (a) Scope of work; and
- (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, 2001?

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, 2001.

Are There Any Differences in the Distribution of Fiscal Year 2001 IRR Program Funds as Compared to the Two Distributions of Fiscal Year 2000 IRR Program Funds Under the First and Second Temporary Rules Published in February 2000 and June 2000?

The distribution of fiscal year 2001 IRR program funds are based on the current relative need formula and the FHWA Price Trends Report indices that were used for the adjusted FY 2000 distribution. On February 15, 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. We are using the same modification process for non-reporting states for distribution of fiscal year 2001 IRR program funds. We are partially distributing fiscal year 2001 IRR program funds upon publication of this rule (75 percent) and we will distribute the remaining 25 percent of the funds following the 30-day comment period. In the first partial distribution of fiscal

year 2001 funds we are reserving \$19.53 million for administrative capacity building. Any federally recognized tribe may apply for \$35,000 for such activities.

Why Does This Temporary Rule Not Allow for Notice and Comment on the First Partial Distribution of Fiscal Year 2001 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 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 2001 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 2001 IRR program funds will be used to design, plan, and construct improvements (and, in some cases, to reconstruct bridges). Without this partial distribution of fiscal year 2001 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 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 2001 funds to continue these construction projects.

We are providing for a 30-day comment period upon publication of this temporary rule for comments on distribution of the remaining 25 percent

of fiscal year 2001 IRR program funds. We will review and consider comments on distributing the remaining 25 percent of fiscal year 2001 IRR program funds before the second distribution.

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 because it will have an annual effect of more than \$100 million on the economy. The total amount available for distribution of fiscal year 2001 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 2001 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 second partial distribution of fiscal year 2000 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, 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. 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 2001 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. 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 2001 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

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 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 year 2000 IRR program funds (see **Federal Register** Notice 65 FR 7431)) 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 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), 202, 204), unless otherwise noted.

2. Effective January 9, 2001 through September 30, 2001, add § 170.4b to read as follows:

§ 170.4b What formula will BIA use to distribute 75 percent of fiscal year 2001 Indian Reservation Roads funds?

On January 9, 2001 we will distribute 75 percent of fiscal year 2001 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. The formula has been modified to account for non-reporting states by inserting the latest data reported for those states for use in the relative need formula process. In addition, we are reserving \$19.53 million of this distribution to allow federally recognized tribes to apply for \$35,000 for administrative capacity building for fiscal year 2001.

Dated: December 29, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 01-376 Filed 1-8-01; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 95-054]

RIN 2115-AF17

Regattas and Marine Parades

AGENCY: Coast Guard, DOT.

ACTION: Final rule and withdrawal of interim rule.
