

congressional review requirements in 5 U.S.C. 801–808.

#### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

#### § 558.450 [Amended]

■ 2. Section 558.450 *Oxytetracycline* is amended in the table in paragraph (d)(1)(ix) in entries 1 and 2 in the “Limitations” column by removing “withdraw 5 d before slaughter” and by adding in its place “for No. 053389, withdraw 5 d before slaughter; for No. 066104, 0-day withdrawal”.

Dated: April 14, 2004.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.  
[FR Doc. 04–11026 Filed 5–18–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 170

RIN 1076–AE50

#### Distribution of Fiscal Year 2004 Indian Reservation Roads Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

**SUMMARY:** We are issuing a rule requiring that we immediately distribute \$90 million of fiscal year 2004 Indian Reservation Roads (IRR) funds to projects on or near Indian reservations using the relative need formula. This partial distribution reflects the funds the Federal Highway Administration has allocated to the Department of the Interior and is based on funding appropriated by the Surface Transportation Extension Act of 2003 in effect until April 30, 2004. 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. This

distribution will allow an immediate allocation of funds based on an existing formula, final allocations will be dependent on a final authorization of highway trust funds and a fiscal year 2004 appropriations.

**DATES:** *Effective Date:* May 19, 2004. Section 170.4b expires September 30, 2004.

#### FOR FURTHER INFORMATION CONTACT:

LeRoy Gishi, Chief, Division of Transportation, Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS–20–SIB, Washington, DC 20240. Mr. Gishi may also be reached at (202) 513–7714 (phone) or (202) 208–4696 (fax).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Where Can I Find General Background Information on the Indian Reservation Roads (IRR) Program, the Relative Need Formula, the Federal Highway Administration (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).

##### *Why Are You Publishing This Rule?*

We are publishing this rule to distribute \$90 million of fiscal year 2004 IRR Program funds. This rule sets no precedent for the final rule to be published as required by section 1115 of TEA–21.

*Why Does This Final Rule Not Allow for Notice and Comment on the Partial Distribution of Fiscal Year 2004 IRR Program Funds, and Why Is It Effective Immediately?*

Under 5 U.S.C. 553(b)(3)(B), notice and public procedure on this distribution under this rule are impracticable, unnecessary, and contrary to the public interest. In addition, we have good cause for making this final rule for distribution of the available fiscal year 2004 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 the available fiscal year 2004 IRR Program funds. Approximately 1,300 road and bridge construction projects are at various phases that require additional funds this fiscal year to continue or complete work, including 220 deficient bridges

and the construction of approximately 7,300 miles of roads. Fiscal year 2004 IRR Program funds will be used to design, plan, and construct improvements (and, in some cases, to reconstruct bridges). Without this immediate final distribution of fiscal year 2004 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 final distribution of fiscal year 2004 IRR Program funds 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. Approximately 40 percent 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 600 projects currently in progress are directly associated with environmental protection and preservation of historic and cultural properties. This rule is going into effect immediately because of the urgent need for distributing the final funds available under the fiscal year 2004 IRR Program to continue these construction projects.

*Where Can I Find Information on the Distribution of Fiscal Year 2003 IRR Program Funds?*

You can find this information in the **Federal Register** notice dated June 5, 2003 (68 FR 33625).

*How Will the Secretary Distribute \$90 Million of Fiscal Year 2004 IRR Program Funds?*

Upon publication of this rule, the Secretary will distribute only \$90 million of fiscal year 2004 IRR program funds based on the current relative need formula used in fiscal years 2000, 2001, 2002 and in fiscal year 2003. We are using the latest indices from the FHWA Price Trends Report with appropriate modifications for non-reporting States in the relative need formula distribution process.

*Regulatory Planning and Review (Executive Order 12866)*

Under the criteria in Executive Order 12866, this rule is not a significant regulatory action because it will not have an annual effect of more than \$100

million on the economy. The total amount currently available for distribution of fiscal year 2004 IRR program funds is approximately \$135 million and we are distributing only \$90 million under this rule. Congress has authorized these funds and FHWA has already allocated them to the Bureau of Indian Affairs (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 2004 IRR program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule is consistent with the policies and practices that currently guide our distribution of IRR program funds. This rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. The FHWA has transferred the IRR program funds to us and fully expects the BIA to distribute the funds according to a funding formula approved by the Secretary. This rule does not alter the budgetary effects on any tribes from any previous or any future distribution of IRR program funds and does not alter entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule does not raise novel legal or policy issues. It is based on the relative need formula in use since 1993. We are changing determination of relative need only by appropriately modifying the FHWA Price Trend Report indices for states that did not report data for the FHWA Price Trends Report, just as we did for the partial distributions for fiscal years 2000, 2001, 2002 and 2003 IRR Program funds. Approximately 350 road and bridge construction projects are at various phases that depend on this fiscal year's IRR program funds. Leaving these ongoing projects unfunded will create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs. This rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds.

#### *Regulatory Flexibility Act*

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for this rule because it applies only to tribal governments, not State and local governments.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it does not have an annual effect on the economy of \$100 million or more. We are distributing only \$90 million under this rule. Congress has authorized these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to projects for transportation planning, road and bridge construction, and road improvements. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

#### *Unfunded Mandates Reform Act*

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), this rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. This rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of \$90 million or greater in any year. The effect of this rule is to provide \$90 million of fiscal year 2004 IRR Program funds for ongoing IRR activities and construction projects.

#### *Takings Implications (Executive Order 12630)*

With respect to Executive Order 12630, the rule does not have significant takings implications since it involves no transfer of title to any property. A

takings implication assessment is not required.

#### *Federalism (Executive Order 13132)*

With respect to Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This rule should not affect the relationship between state governments and the Federal Government because this rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

#### *Civil Justice Reform (Executive Order 12988)*

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. This rule contains no drafting errors or ambiguity and is clearly written to minimize litigation, provide clear standards, simplify procedures, and reduce burden. This rule does not preempt any statute. Under the Transportation Equity Act for the 21st Century negotiated rulemaking, we have published a proposed rule and funding formula which is currently being finalized. A final funding formula for fiscal year 2004 will be published in 2004. The rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to \$90 million of fiscal year 2004 IRR Program funding.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act does not apply because this rule does not impose record keeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* We already have all of the necessary information to implement this rule.

#### *National Environmental Policy Act*

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of this rule will be subject later to the

National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

*Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)*

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

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

Highways and roads, Indians—lands.

■ In order to distribute part of fiscal year 2004 IRR Program funds immediately 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. Revise § 170.4b to read as follows:

**§ 170.4b What formula will BIA use to distribute \$90 million of fiscal year 2004 Indian Reservation Roads Program funds?**

On May 19, 2004, we will distribute \$90 million of fiscal year 2004 IRR Program funds authorized under the Surface Transportation Extension Act of 2003, Public Law 108-88, 117 Stat.

1110. 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.

**David W. Anderson,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 04-11280 Filed 5-18-04; 8:45 am]

**BILLING CODE 4310-LY-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[CGD05-04-060]

RIN 1625-AA08

**Special Local Regulations for Marine Events; Severn River, College Creek, and Weems Creek, Annapolis, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of implementation of regulation.

**SUMMARY:** The Coast Guard is implementing the special local regulations at 33 CFR 100.518 for the U.S. Naval Academy Crew Races, marine events to be held April 17, April 24, and May 21, 2004, on the waters of the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the events. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectators and vessels transiting the event area.

**DATES:** 33 CFR 100.518 will be enforced from 5:30 a.m. to 10 a.m. on April 17, 2004, from 5:30 a.m. to 9 a.m. on April 24, 2004 and from 5 a.m. to 8 a.m. on May 21, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ron Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226-1971, (410) 576-2674.

**SUPPLEMENTARY INFORMATION:** The U.S. Naval Academy will sponsor crew races on the waters of the Severn River at Annapolis, Maryland. The events will consist of intercollegiate crew rowing teams racing along a 2000-meter course on the waters of the Severn River. A fleet of spectator vessels is expected to

gather near the event site to view the competition. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.518 will be in effect for the duration of each event. Under provisions of 33 CFR 100.518, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will only be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: April 2, 2004.

**Ben R. Thomason, III,**

*Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. 04-11235 Filed 5-18-04; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[CGD05-03-156]

RIN 1625-AA08

**Special Local Regulations for Marine Events; Nanticoke River, Sharptown, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing permanent special local regulations for an outboard racing regatta held annually on the waters of the Nanticoke River near Sharptown, Maryland. This action is necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in portions of the Nanticoke River during the event.

**DATES:** This rule is effective June 18, 2004.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-03-156 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398-6204.