

Indian Reservation Roads Program Delivery Guide

A Manual for FHWA Program
Agreement Tribes



Federal Highway Administration
U.S. Department of Transportation



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A Manual for FHWA Program Agreement
Tribes

Acronyms

AASHTO	(American Association of State Highway and Transportation Officials)
ACH	(Automated Clearing House)
ADA	(American With Disabilities Act)
ADT	(Average Daily Traffic)
BIA	(Bureau of Indian Affairs)
BIADOT	(Bureau of Indian Affairs Department of Transportation)
CE	(Categorical Exclusion)
CEQ	(Council on Environmental Quality)
CFLHD	(Central Federal Lands Highway Division)
CFR	(Code of Federal Regulations)
CM	(Contract Modification)
EA	(Environmental Assessment)
EFLHD	(Eastern Federal Lands Highway Division)
EIS	(Environmental Impact Statement)
ERFO	(Emergency Relief for Federally Owned Roads)
FHWA	(Federal Highway Administration)
FLH	(Federal Lands Highway)
FONSI	(Finding of No Significant Impact)
HBP	(Highway Bridge Program)
HQ	(Headquarters)
HRRRP	(High Risk Rural Roads Program)
HSIP	(Highway Safety Improvement Program)
IRR	(Indian Reservation Roads)
IRRBP	(Indian Reservation Roads Bridge Program)
IRRHPP	(Indian Reservation Roads High Priority Project)
IRRTIP	(Indian Reservation Roads Transportation Improvement Program)
L RTP	(Long Range Transportation Plan)
MPO	(Metropolitan Planning Organization)
MSHA	(Mine Safety and Health Administration)
MUTCD	(Manual on Uniform Traffic Control Devices)
NACE	(National Association of County Engineers)
NEPA	(National Environmental Policy Act)
NHTSA	(National Highway Traffic Safety Administration)
OMB	(Office of Management and Budget)
OSG	(Office of Self-Governance)
OSHA	(Occupational Safety and Health Administration)
PDDM	(FLH Project Development and Design Manual)
PM&O	(Program Management and Oversight)
PRAE	(Project Related Administrative Expenses)
PS&E	(Plans, Specifications, and Engineering)
RFA	(Referenced Funding Agreement)
RIFDS	(Road Inventory Field Data System)
RNDF	(Relative Need Distribution Factor)
ROW	(Right-of-Way)

SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users)

SHSP (Strategic Highway Safety Plan)

SRTS (Safe Routes to School)

STIP (State Transportation Improvement Program)

STP (Surface Transportation Program)

TCP (Traffic Control Plan)

TERO (Tribal Employment Rights Ordinance)

TFMMS (Transportation Facilities Maintenance Management System)

TSR (Title Status Reports)

TTAP (Tribal Technical Assistance Program)

TTIP (Tribal Transportation Improvement Program)

US DOT (United States Department of Transportation)

WFLHD (Western Federal Lands Highway Division)

Foreword

The Indian Reservation Roads (IRR) program is an important component of a Tribe's overall infrastructure investment strategy. It is a nationally based Federal program, with a number of requirements and responsibilities that each Tribe needs to fully understand as a partner in the process.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Public Law 109-59 (2005), allows Tribes the option of working directly with the Federal Highway Administration (FHWA) in the administration of their IRR program. As required by Section 5(c) of DOT Order 5301.1, "Department of Transportation Programs, Policies, and Procedures affecting American Indians, Alaska Natives, and Tribes," FHWA will work with federally recognized Tribes and their designated representatives "on a government-to-government basis respecting their rights to represent their respective interests."

In administering its IRR Program, a Tribal government is required to comply with applicable provisions of Title 23 of the United States Code, 25 CFR Part 170, and the terms of the Tribe's FHWA IRR Program Agreement. This IRR Program Delivery Guide has been developed to assist Tribes in the management of their IRR program. It is intended to explain the FHWA IRR Program Agreements while providing relevant technical assistance.

A key message reinforced in this IRR Program Delivery Guide is that, while a Tribe may elect to work directly with FHWA in the administration of the IRR program, the Tribe and FHWA will need to continue to involve the Bureau of Indian Affairs and other agencies in certain aspects in the administration of the program. These areas may vary from project to project, but include services such as IRR Inventory updates, right-of-way acquisition, maintenance, and environmental clearances. Thus, coordination and communication with respective Federal, State, and local agencies are critical to the successful delivery of the IRR program.

Roads and bridges are vital transportation links, and are of particular importance in Indian Country. The Federal Highway Administration looks forward to working with Tribes in the successful delivery of this important program.

John R. Baxter
Associate Administrator
Office of Federal Lands Highway
Federal Highway Administration

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I Introduction/Purpose

Under section 1119(g)(4) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU),¹ Tribal governments may enter into Indian Reservation Roads (IRR) Program Agreements directly with the Federal Highway Administration (FHWA) to administer the IRR Program. This Program Guide includes information that may aid Tribal governments in the administration of the IRR Program, sets out the process used by FHWA with respect to the IRR Program, and provides resources which address program matters that may arise in the administration of the IRR Program. This Program Guide may serve as a technical resource for Tribal governments, Federal agencies, and State and local governments. It will be updated as needed.

The fundamental purpose of this document is to provide procedural guidelines to eligible Tribes entering into IRR Program funding agreements with the FWHA. This document is intended to assist Tribes in managing the IRR Program and help facilitate working relationships between Tribes, Federal Agencies, and State and county governments in delivering the IRR Program.

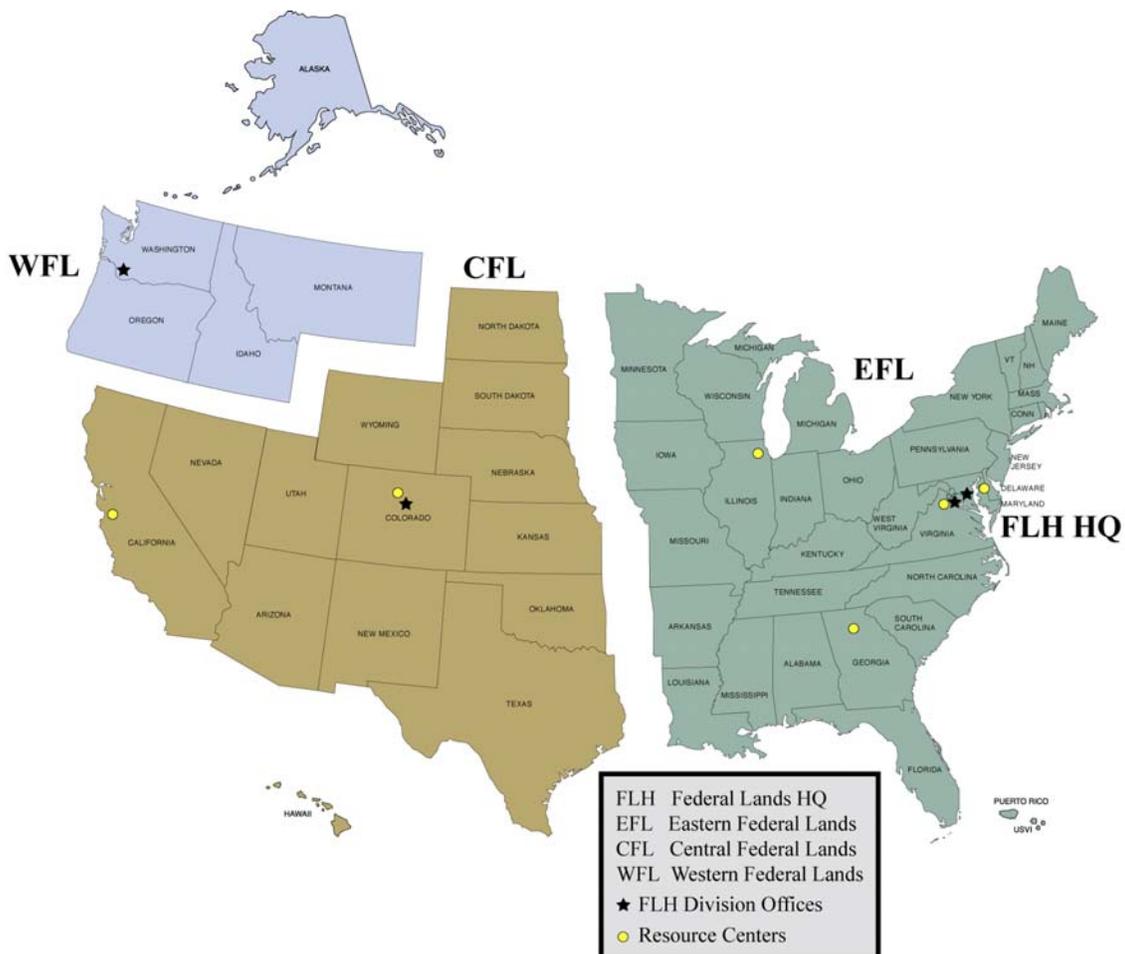
The IRR Program is a part of the FHWA's Federal Lands Highway (FLH) Program established in 23 U.S.C. 204 to address transportation needs of Tribes. The program is jointly administered by the FHWA's FLH and the Bureau of Indian Affairs in accordance with an interagency agreement.

¹ Pub. L. 109-59, 119 Stat. 1144 (August 10, 2005)(codified at 23 U.S.C. § 202(d)(5).

Federal Highway Administration's Office of Federal Lands Highways

The FHWA is charged with the broad responsibility of ensuring that America's roads and highways continue to be the safest and most technologically up-to-date. Although State, local, and Tribal governments own most of the Nation's highways, FHWA provides financial and technical support to them for constructing, improving, and preserving the highway system. The FHWA's annual budget of more than \$30 billion is funded by fuel and motor vehicle excise taxes. The budget is primarily divided between two programs: Federal-aid funding to State and local governments; and Federal Lands Highways (FLH) funding for national parks, national forests, Indian lands, and other land under Federal stewardship.

The Office of FLH is a division of FHWA. The Federal Lands Highway (FLH) divisions, which report to the Headquarters FLH Office, administer FLH programs (Forest Highways, Park Roads and Parkways, Public Lands, Refuge Roads, and Indian Reservation Roads); the Defense Access Roads Program; and the Emergency Relief Program on federally owned roads; provide engineering related services to other Federal agencies, FHWA offices, and foreign countries as directed; and carry out technology and training activities related to FLH projects. There are three FLH divisions (Eastern, Central, and Western) located in Sterling, Virginia; Lakewood, Colorado; and Vancouver, Washington; respectively.



Eastern Federal Lands Highway Division (EFLHD)

The Eastern Federal Lands Highway Division (EFLHD) operates as part of the Federal Lands Highway Program, serving the transportation planning and engineering needs of eastern United States, Puerto Rico, and the Virgin Islands.

Central Federal Lands Highway Division (CFLHD)

The Central Federal Lands Highway Division (CFLHD) operates as part of the Federal Lands Highway Program, serving the transportation planning and engineering needs of the central United States, Hawaii, and American Somoa.

Western Federal Lands Highway Division (WFLHD)

The Western Federal Lands Highway Division (WFLHD) operates as part of the Federal Lands Highway Program, serving the transportation planning and engineering needs of the northwestern United States and Alaska.

FHWA Division Offices

There are 52 Federal-aid division offices (one in each State, the District of Columbia, and Puerto Rico). These division offices are located in the same city as the State Department of Transportation, which is usually the State capital. Federal-aid division offices provide Federal-aid program delivery and technical assistance to partners and customers in the highway transportation industry.

Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) is an agency of the United States Department of the Interior with the primary responsibility for the administration and management of approximately 66 million acres of land held in trust by the United States for American Indians, Indian Tribes, and Alaska Natives. It provides services (directly or through contracts, grants, or compacts) to approximately 1.9 million American Indians and Alaska Natives from the 564 federally recognized Tribes. The BIA is organized by 12 Regions and each Region has an IRR component which provides engineering, construction, and road maintenance services.

Tribal Government

A Tribal Government is the local governing body of a Tribe, band, pueblo, community, village, or group of Native American Indians, or Alaska Natives that exercises governmental functions.

II Program Agreements

A. Statutory/Regulatory Requirements

Under 23 U.S.C. 202(d), the Secretary of Transportation is authorized to enter into funding agreements with an Indian Tribal government to carry out a highway, road, bridge, parkway, or transit program or projects. In exercising responsibility for carrying out the eligible programs and projects, the Tribe assures the Administrator that within available funding, they will meet all applicable health, safety, and labor standards related to the administration, planning, engineering, and construction activities performed. A Tribe that intends to enter into an IRR Program Agreement with FHWA must demonstrate to the satisfaction of the Secretary of Transportation “financial stability and financial management capability during the 3 fiscal years immediately preceding the fiscal year for which the request is being made.” Under 23 U.S.C. 202(d)(5)(f), “an Indian Tribal government that had no uncorrected significant and material audit exceptions in the required annual audit of the Indian Tribal government self-determination contracts or self-governance funding agreements with any Federal agency during the 3-fiscal year period . . . shall be conclusive evidence of the financial stability and financial management capability. Furthermore, Federal law and the standard FHWA IRR Program Agreement, gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under the IRR Program. Under 25 U.S.C. 450e(b) and 23 U.S.C. 204(e), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and subgrants for all work performed under the IRR Program. In addition, under the standard FHWA IRR Program Agreement, the Tribe’s employment rights and contracting preference laws, including Tribal preference laws, apply to work performed under the particular Agreement. Below is a list of some respective laws and regulations related to oversight of the IRR Program.

1. 23 CFR 625 – Design Standards for Highways
2. 23 CFR 630 – Preconstruction Procedures
3. 23 CFR 650 – Bridges, Structures, and Hydraulics
4. 23 CFR 661 – Indian Reservation Road Bridge Program
5. 23 CFR 771 – Environmental Impact and Related Procedures
6. 25 CFR 170 – Indian Reservation Roads Program
7. 29 CFR 1910 – Occupational Safety and Health Standards
8. Other applicable Federal laws and regulations

B. Guidelines/Procedures

The following outline provides the suggested process that is followed once a Tribal government has decided to enter into a funding agreement with FHWA.

1. Tribal Resolution or Authorizing Document stating the Tribe’s intent to enter into an IRR Program Agreement and Referenced Funding Agreement with FHWA. The document should be sent to the following address:

Associate Administrator, Office of Federal Lands Highway (HFL-1)
Federal Highway Administration
1200 New Jersey Avenue, SE, Room E61-235
Washington, DC 20590

2. Financial Management Documentation: Tribes with clean audit histories should request that their auditors prepare a letter attesting to the lack of material audit exceptions for the prior 3-fiscal year period.
3. FHWA-FLH notifies the Bureau of Indian Affairs (BIA). For a Tribe currently participating in a self-governance compact (either individually or as part of a consortium) the FHWA shall notify the Office of Self-Governance (OSG), Department of the Interior, that it has received a letter of intent from the Tribe.
4. FHWA reviews the Tribes' current approved IRRTIP and identifies the following:
 - a. Location of the proposed projects (trust land, fee land, etc.).
 - b. Description of proposed projects (road, bridge, etc.).
 - c. Facility owner of the proposed project (BIA, Tribe, other).
5. FHWA will meet with the Tribe and BIA on an as needed basis to identify projects, activities, and functions associated with the FHWA funding agreement.
6. Based on the identified projects, activities, and functions, the FHWA determines the Project Related Administrative Expenses (PRAE).
7. FHWA, Tribe, and BIA will negotiate any contractible projects, activities, or functions that remain with the BIA and those that will be funded from the Tribe's TTAM share (inventory updates, inventory input, etc.). The respective funds must be provided from the agreement in advance of any funds transferred to the Tribe.
8. FHWA meets with BIA (Region) to negotiate the PRAE that will be done by FHWA and those that will be done by BIA based on the following:

The project Engineering and Construction Engineering Administration activities/responsibilities of each agency and their respective cost will be agreed upon using the PM&O/PRE distribution tables, and PRAE activity list.
9. FHWA negotiates the amount of PRAE funding that will be included in the agreement between FHWA and the Tribe for each project.
10. FHWA will finalize negotiation and provide courtesy copy to BIA.
11. Upon notification funds are withheld or withdrawn from affected BIA Regions.
12. The Tribe prepares an Automated Clearing House (ACH) banking form

13. FHWA transfers funds to the Tribe's account within the agreed upon time period in the IRR Program Agreement and RFA.

III Funding

A. Statutory/Regulatory Requirements

Subject to the availability of funding and in accordance with 23 U.S.C. 202(d)(5)(E), the Administrator shall provide to the Tribe or its designee, funding amount equal to the amount that the Tribe would otherwise receive for the IRR program in accordance with the funding formula applicable to the IRR Program (25 CFR 170, Subpart C), and such additional amount, as determined by the Administrator that would have been withheld by the BIA for the administration of the Tribe's IRR Program or projects.

B. Guidelines/Procedures

1. The Tribe shall submit electronic banking information through an ACH Vendor/Miscellaneous Payment Enrollment Form ([see Appendix A](#)) to the FLH.
2. Funds are made available to FLH.
3. FLH prepares a Referenced Funding Agreement (RFA) form based on the current year Tribal shares and any other applicable funding. The RFA is then sent to the Tribe for signature. After signature, the RFA is returned to FLH.
4. Once FLH receives the signed RFA form, FLH signs the RFA and allocates funds to the Tribes within 30 days.
 - a. ***Types of funds that can be transferred:*** Under the IRR Program Agreement with the FHWA, the types of program funds that can be transferred to the Tribe are described in Chapter 2 of Title 23, U.S.C., program funds. Some funds in addition to the IRR program funds may be transferred to the Tribe. The Tribe should contact FLH to determine which funds may be so transferred.
 - b. ***Availability of funds:*** IRR funds are available for obligation in the fiscal year for which they are authorized plus 3 additional fiscal years. After that point, the funds lapse and are no longer available for obligation. When the funds are provided to the Tribe through the IRR Program Agreement, the funds are deemed obligated.

5. IRR Program funds are Federal funds that may only be expended on allowable expenditures. The allowable expenditures for IRR Program funds are set out at Appendix A to Subpart B of 23 CFR 170. The most common allowable expenditures are:
 - a. Transportation Planning.
 - b. Program Administration, which includes a one time start-up cost. Start-up cost includes, but is not limited to, computers, office furniture and equipment, and software. Costs should be reflected in a budget and must be reasonable and in accordance w/ OMB Circular A-87.
 - c. Environmental Compliance.
 - d. Design.
 - e. Construction.
 - f. Construction Management.
 - g. Road Maintenance, as authorized under SAFETEA-LU section 1119(i); (not more than 25 percent of the funds allocated to a Tribe may be expended for the purpose of maintenance, excluding road sealing, which shall not be subject to any limitation).
 - h. Development and negotiation of Tribal-State road maintenance agreements authorized under section 1119(k) of SAFETEA-LU.
 - i. Equipment Purchase (requires a written notification to and approval by FHWA with justification and back-up documentation showing that it is more economical to purchase than to lease).
 - j. Other IRR Program-eligible activities authorized under Chapter 2 of Title 23 or 25 CFR 170, as amended by SAFETEA-LU, or other applicable law.

IV Transportation Planning

A. Statutory/Regulatory Requirements [25 CFR 400 – 407]

The purpose of transportation planning as defined in 25 CFR 170 is to fulfill goals by developing strategies to meet transportation needs. These transportation strategies should be developed in consideration of current and future land use, economic development, traffic demand, public safety, health, and social needs. In addition, the transportation strategies should consider all modes of transportation including vehicles, transit, pedestrians, bicycles, freight, and as appropriate, rail, air, and water transport.

Transportation planning should be consistent with Tribal policies. In addition, the Tribe should consider coordination with the transportation planning processes at the State, and as appropriate, the Metropolitan Planning Organization (MPO) levels to ensure any programs and projects adjacent to Tribal lands are consistent and appropriate with Tribal needs and interests.

Tribal planners should be aware of the regulations, rules, and codes used by the State DOT, MPO, and local governments in order to maximize opportunities for coordination and partnering. [Appendix B](#) illustrates the Federal references for Tribal governments along with Federal requirements for State and MPOs for the planning process.

Generally, most transportation funding sources available to local agencies, MPOs, and the State DOT, may be used by Tribal governments. However, often these funding sources have specific eligibility requirements, including in some cases the requirement for a documented planning process, such as a long range transportation plan. The Tribe may need to address transportation planning beyond what is required in 25 CFR 170 in order to partner with these agencies and maximize eligibility for available transportation funding. The goal for Tribal transportation planning should be coordination and consideration of the Tribe's transportation system as a whole regardless of the Tribal service area as defined under the IRR program.

B. Guidelines/Procedures

The FLH/Tribal program agreement states that the Tribal government has assumed all functions and duties that the Secretary of the Interior would have performed other than those functions and duties that cannot be legally transferred under the Indian Self Determination and Education Assistance Act (ISDEAA).

The following are the assumed functions and duties for which the Tribal government has taken responsibility when implementing transportation planning:

1. Preparing IRR inventory data updates as needed.
2. Coordinating with States and their political subdivisions, and appropriate planning authorities on regionally significant IRR projects.
3. Developing IRR Program budgets including transportation planning cost estimates.
4. Facilitating public involvement.
5. Participating in transportation planning and other transportation related meetings.

6. Performing traffic studies.
7. Performing preliminary project planning.
8. Conducting special transportation studies.
9. Developing short and long-range transportation plans.
10. Mapping.
11. Performing transportation planning for operational and maintenance facilities.
12. Researching rights-of-way documents for project planning.

The following are the assumed functions and duties for which the FLH has taken responsibility when implementing transportation planning:

1. Reviewing IRR transportation improvement programs developed by the Tribes or other contractors;
2. Reviewing IRR long-range transportation plans developed by the Tribe or other contractors;
3. Preparing and Approving the IRR Transportation Improvement Program (TIP);
4. Ensuring the IRRTIP is on the State TIP;
5. Providing technical assistance to Tribal governments.

Annual Tri-Party Review:

The Tribal government, FLH Headquarters (HQ), and a BIA representative are to meet annually with the intent of reviewing the respective parties' duties and obligations under SAFETEA-LU, the IRR Program, applicable regulations, and the Tribal/FLH program agreement. The goal is to identify actions which the Tribe, FLH HQ, and the BIA can take to ensure the Tribe's successful administration of the transportation programs, functions, services, or activities carried out under the FLH/Tribal program agreement.

Tribal Long Range Transportation Plan

A. Statutory/Regulatory Requirements [25 CFR 410 – 415]

Under the guidance of 25 CFR 170, IRR Long Range Transportation Plans (LRTP) provides the vision for meeting transportation needs in Indian Country. Such plans identify short and long-range transportation improvement strategies that will address current and future transportation needs that should be consistent with Tribal, Federal, and State government policies. The plans address various capital investments and inventory current facilities necessary in preserving existing infrastructure and the transportation system as a whole. This process and the ensuing plan are prerequisites to the expenditure of Federal funds. (See Appendix B) for references to CFR's1.

B. Guidelines/Procedures

The time horizon for the LRTP should be 20 years to match State transportation planning horizons. The Tribal transportation planner should review and update the LRTP at least every 5 years. Plan development, updates, amendments, and adoption should be in accordance with 25 CFR 170 Subpart D. The draft LRTP must be reviewed by the public in accordance with 25 CFR 170.413. Once public review is completed, the LRTP should be approved by the Tribe's transportation committee and/or Tribal Council. Copies of the LRTP should be provided to FLH and other interested parties.

Elements of LRTP:

See Appendix B for an LRTP Element Chart with CFR references. Also included is a side-by-side comparison of Federal Planning requirements under 23 CFR 450 for State DOTs and MPOs. These long range planning document requirements are provided for reference and coordination purposes only.

Approvals:

FLH does not approve Tribal LRTP. FLH will be available for technical assistance during the plan development, update, or amendment prior to adoption by the Tribal Council. Once adopted, FLH will review each plan and prepare a written record of the plan's adherence to applicable laws and regulations. Such reviews will be provided to the Tribal government for their information and will become part of the written record for FLH's use in making Federal planning recommendations.

Publication:

A Tribe's LRTP should be published (to the maximum extent practicable) in electronically accessible formats (.doc, .txt, or .pdf files) and the electronic copies given to FLH and BIA in accordance to the FLH/Tribal Program Agreement Article III – Responsibilities of the Tribe Section 1 D. IV section 3(b). Hard copies and/or electronic versions should be given to other governmental entities and organizations that hold an interest in coordinating transportation projects with the Tribal government.

C. Resources

The following are resources that can assist in developing a short/long range transportation plan:

Weblinks:

1. FHWA Tribal Transportation Planning - <http://www.fhwa.dot.gov/hep/Tribaltrans/index.htm>.
2. Bureau of Indian Affairs Indian Reservation Roads (IRR) Inventory Report - <http://www.doi.gov/bia/roadreservation.html>.
3. National Tribal Technical Assistance Program (TTAP) - <http://www.ltapt2.org/centers/>.

4. Code of Federal Regulations - <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.
5. Office of Federal Lands Highway - <http://www.fhwa.dot.gov/flh/>.

Books/Manuals:

1. *Manual on Uniform Traffic Control Devices*.
2. *Trip Generation*, Institute of Transportation Engineers.
3. *Parking Generation*, Institute of Transportation Engineers.
4. *Transportation Decision-making Information Tools for Tribal Governments – Developing A Long Range Transportation Plan*, FHWA Office of Planning.
5. *Practitioner's Handbook #10: Using the Transportation Planning Process to Support the NEPA Process*, American Association of State Highway and Transportation Officials.

Tribal Transportation Improvement Program (TTIP)

A. Statutory/Regulatory Requirements [25 CFR 170.420 – 428, 442(a)]

The purpose of the TTIP is to document where reasonably anticipated or available funding source(s) will be used to implement the transportation project, thus ensuring the completion of that project. Transportation projects that are funded using the IRR program must be listed on an FHWA approved Indian Reservation Roads Transportation Improvement Program (IRRTIP).

The Tribal TTIP must adhere to all relevant provisions found in 25 CFR 170. Among others, the TTIP must be financially constrained and contain all proposed projects and activities for construction programmed for 3 to 5 years, by indicating the year the project or activity will be implemented.

The projects listed on the TTIP must be consistent with the LRTP (25 CFR 170.421(a)). For those projects funded under the IRR program, the roadway must be listed on the official IRR Inventory (25 CFR 170.442 (a)). For more information on the IRR Inventory, please refer to the “Inventory” section of this manual.

Prior to submitting the TTIP for approval, the public must be allowed the opportunity to review and comment on the TTIP, as required under 25 CFR 170.424. The TTIP must be consistent with the LRTP and incorporated into the IRRTIP, which is subject to approval by FLH HQ and concurred by BIADOT. The table below documents the timeline in 25 CFR 170.425 related to the development, delivery, and approval of the TTIP and IRRTIP.

FHWA will work with the Tribe to ensure that all Federal planning requirements have been met in the development of the proposed IRRTIP. The IRRTIP will be concurred by BIADOT and approved by FLH HQ. The table below documents the timeline in 25 CFR 170.425 related to the development, delivery, and approval of the TTIP and IRRTIP.

IRRTIP Annual Update Calendar 25 CFR 170.425

Fiscal Year 1 st Quarter Oct – Dec	FLH notifies the Tribe of the update and provides projected IRR Program funding amounts and a copy of the current IRRTIP.
2nd – 4th Quarter Jan – on or before July 15	The Tribe reviews any new transportation planning information, priority lists, and TTIP, and forwards an updated TTIP to FLH.
4th Quarter July 16 – Sept	FLH reviews all submitted information with the Tribes. Upon satisfactory submittal, the TTIP is approved and becomes a part of the IRRTIP.

B. Guidelines/Procedures

During the first quarter of the fiscal year, the Tribe will receive a Projected IRR Program Amount letter ([see Attachment P1](#)). The IRR Program projected amount is used to assist in developing the TTIP. The IRR Program projected amount is not a guaranteed funding amount, nor is it to be used as leverage for other funding. The amount documented in the letter is for planning purposes only and fulfilling the requirements of 25 CFR 170.425.

Each Tribal transportation department will receive an electronic form to develop their TTIP from the FLH IRR staff representative ([see Attachment P2](#)). TTIP’s should be submitted in the FHWA approved format.

The TTIP must be financially constrained through a pre-project planning process. Pre-Project Planning Scope ([see Appendix C](#)) provides a rough estimate method for TTIP development. During this phase of TTIP development, the Tribe and FHWA should mutually determine what inherent and/or non-inherent functions the Federal Government will be carrying out.

Inherent Federal function: (no cost)

- National Environmental Policy Act (NEPA) Approval

Non-inherent functions: (cost associated)

- NEPA Documentation
- Design
- Construction (subcontracted)
- Project Management

Projects that are not financially constrained on the TTIP will be considered apart of the illustrative list, as long as they are listed in the LRTP. The unconstrained projects will not be considered for approval on the IRR TIP, nor will they be forwarded to the STIP. Once funds become available for any project identified on the illustrative list, an amendment to the TTIP should be made showing the project as funded and programmed and forwarded to FLH for approval.

Note: If the Tribe determines that a FLH Division will be performing work on a project, whether federally inherent or non-inherent, the Tribe must inform the FLH IRR representative ASAP. FLH Divisions use a system of multiple project resourcing that requires advance notice for projects to be worked into the scheduled and assigned to required personnel.

Submitting the TTIP:

The TTIP package should include the following:

1. Transportation Planning Process and Transportation Improvement Program Development Statement signed and dated (see Attachment P3). The statement streamlines the review process.
2. Tribal Transportation Check list (see Attachment P4).
3. Financially constrained TTIP in FHWA approved form.

The TTIP should be e-mailed to the FLH IRR staff representative. If e-mail is not available, the TTIP may be faxed.

Reviewing the TTIP:

FLH HQ IRR staff will review the TTIP package. If the IRR staff member does not receive a signed Transportation Planning Process and Transportation Improvement Program Development Statement, as described in the above section, then a manual review process will take place.

Manual review of the TTIP consists of verifying the following factors:

1. Planning process established to develop the TTIP.
2. Public Involvement.
3. All projects consistent with LRTP.
4. Projects listed in TTIP on official BIA IRR inventory.
5. Financially constrained.
6. Consultation and coordination with the State and/or MPO for regionally significant projects.

Approving the TTIP:

FLH HQ has until September of the current fiscal year to approve the TTIP. Once the TTIP is approved, the document becomes the official IRR TIP. The Tribe will receive an approval letter (see Attachment P5). If some projects do not qualify, the Tribe will receive a partial TTIP approval (see Attachment P6).

A copy of the IRR TIP will be sent to the FHWA Division Office in the State where the Tribe is located. The division office will send the IRR TIP to the State DOT to be included in the STIP.

Note: Having a project listed on the STIP does not guarantee State funding.

C. Resources

The following are resources that can assist in developing a TTIP:

Books/Manual:

1. Information Tools for Tribal Governments - Developing the Tribal Transportation Improvement Program. FHWA – Office of Planning
<http://www.fhwa.dot.gov/hep/Tribaltrans/topics.htm>.
2. Information Tools for Tribal Governments - Tribal Transportation Funding Resources <http://www.fhwa.dot.gov/hep/Tribaltrans/topics.htm>.

Attachment P1

The Honorable [insert chairperson name]
[insert name of Tribal Government]
[insert address]

[DATE]

Dear Chairperson [NAME]:
Transportation Planning Finding, and the
[DATE of TTIP] Tribal Transportation
Improvement Program (TTIP) Federal Approval

In accordance with 25 CFR 170.425 the Federal Highway Administration (FHWA) Federal Lands Highway (FLH) is providing the [insert tribes name] with a *projected* Indian Reservation Roads (IRR) Program amount to aide the [insert tribe's name] in programming the [insert TTIP year's] Tribal Transportation Improvement Program. *The projected amount is for planning purposes only.*

The projected program amount is developed by (averaging the last five-years of the relative need distribution of the [insert tribe's name]).

The projected IRR program amount is [insert projected amount].

The amount *is not* to be construed as an official Federal IRR allocation nor is it to be used as leverage for other funding. According to IRR Program Agreement between the [insert tribe's name] and Federal Highway Administration, the Reference Funding Agreement (RFA) provides the funding amount to be received for the IRR Program. The projected program amount is not the RFA. *The projected amount is to be used for planning purposes only for assisting the [insert tribe's name] in developing the TTIP.*

If you have any questions concerning this letter please contact your FLH IRR staff.

Attachment P2

FHWA Approved TTIP Form

Example: Transportation Improvement Plan spreadsheet for IRR funds (four years financially constrained). Identify funding for core construction categories. Preliminary Engineering (PE), Construction Engineering (CE), Construction (CN), Transit, and Maintenance. If you are using IRR construction funds for general planning or maintenance, include as an individual project.

FLHIRRTIP SUBMITTAL DOCUMENT

TRIBE:

FUNDING SOURCE: (examples: IRR, IRRBP, 2% Planning, PLH-D)

PROJECT INFORMATION:

PROJECT NAME

PROJECT NUMBER

LOCATION

TYPE OF WORK

LENGTH (miles) COUNTY (name)

STATE (name) CONSTRUCTION YEAR (fiscal year)

COMMENTS:

Activity	CURRENT FY	CURRENT FY+1	CURRENT FY+2	CURRENT FY+3	CURRENT FY+4	TOTAL
Administration						\$0
Planning						\$0
Preliminary Engineering						\$0
Construction						\$0
Construction Engineering						\$0
Transit						\$0
Maintenance						\$0
TOTAL	\$0	\$0	\$0	\$0	\$0	\$0

Attachment P3

**TRANSPORTATION PLANNING PROCESS
AND
TRANSPORTATION IMPROVEMENT PROGRAM
DEVELOPMENT STATEMENT**

The [INSERT TRIBES NAME OR DEPARTMENT] hereby certifies that it has fulfilled the functions and duties of the Secretary of the Interior in accordance with the requirements of 25 CFR 170 in carrying out a planning process and in developing the Transportation Improvement Program (TIP) as indicated by the attached TIP Checklist, as agreed upon in the Indian Reservation Roads Program Agreement with the United States Department of Transportation, for the [INSERT RESERVATION NAME, ALASKA NATIVE VILLAGE OR SERVICE AREA].

[Name and title]
[Entity]
[Date]

Attachment P5

The Honorable [insert chairperson name]
[insert name of Tribal Government]
[insert address]

[DATE]

Dear Chairperson [NAME]:
Transportation Planning Finding, and the
[DATE of TTIP] Tribal Transportation
Improvement Program (TTIP) Federal Approval

The Federal Highway Administration (FHWA) Federal Lands Highway (FLH) received the [DATE of TTIP] Tribal Transportation Improvement Program (TTIP) from [Tribe] requesting approval.

In accordance with 25 CFR 170.426, the Federal Highway Administration (FHWA) and the Bureau of Indian Affairs have reviewed [DATE of TTIP] TTIP, as transmitted by your email dated [xxx]. The submitted TTIP includes the listing of projects, optional self-certification statement, and financial constraint that support approval.

Approval: Based on our review of the [DATE of TTIP] TTIP, the FHWA hereby find that the projects in the [DATE of TTIP] TTIP are based on a transportation planning process that substantially meets the requirements of 25 CFR 170 and confirmed by the Transportation Planning Process and Transportation Improvement Program Development Statement. Therefore, the [DATE] TTIP submitted by [Tribe] is approved.

Approval of the TTIP is not to be construed as a Federal eligibility determination. Each project must satisfy the specific requirements of the program from which Federal funds are being programmed to, as well as other Federal requirements as appropriate before Federal funds are expended.

If you have any questions concerning our action of the transportation planning finding and [DATE of TTIP] TTIP approval, please contact your FLH IRR staff.

Attachment P6

The Honorable [insert chairperson name]
[insert name of Tribal Government]
[insert address]

[DATE]

Dear Chairperson [NAME]:
Transportation Planning Finding, and the
[DATE of TTIP] Tribal Transportation
Improvement Program (TTIP) Federal Approval

The Federal Highway Administration (FHWA) Federal Lands Highway (FLH) received the
[DATE of TTIP] Tribal Transportation Improvement Program (TTIP) from [Tribe]
requesting approval.

In accordance with 25 CFR 170.426, the Federal Highway Administration (FHWA) and the
Bureau of Indian Affairs have reviewed [DATE of TTIP] TTIP, as transmitted by your email
(or mailed) dated [xxx]. The submitted TTIP includes the listing of projects, optional
development statement, and financial constraint that support approval.

Approval: Based on our review of the [DATE of TTIP] TTIP, the FHWA hereby find that the
projects in the [DATE of TTIP] TTIP are based on a transportation planning process that
substantially meets the requirements of 25 CFR 170 and confirmed by [the Transportation
Planning Process and Transportation Improvement Program Development Statement or
oversight procedures]. Therefore, the [DATE] TTIP submitted by [Tribe] is approved except
for those projects subject to the following comments and conditions.
[List the comments and conditions]

Approval of the TTIP is not to be construed as a Federal eligibility determination. Each
project must satisfy the specific requirements of the program from which Federal funds are
being programmed to, as well as other Federal requirements as appropriate before Federal
funds are expended.

If you have any questions concerning our action of the transportation planning finding and
[DATE of TTIP] TTIP approval, please contact your FLH IRR staff.

Inventory Update

A. Statutory/Regulatory Requirements

The official IRR Inventory is governed by 25 CFR 170.225 - 170.228 and 25 CFR 170.442 - 170.445.

B. Guidelines / Procedures

BIA maintains the official IRR Inventory. Periodic updating of inventory information is important to ensure Tribal shares of IRR funding are properly calculated and to determine eligibility of facilities for IRR funding of improvements. Inventory updates should be submitted through the BIA Regional Office. Following is an annual process for inventory updates:

Tribal actions:

1. Review the LRTP to determine if there will be additions to or deletions from the official IRR Inventory and amend the LRTP accordingly.
2. Review the TTIP to determine if adjustments to the sectioning of a route are necessary to properly include an upcoming project in the IRRTIP.
3. Review data fields to determine the need for updates, particularly the fields that are used in the Relative Need Distribution Factor (RNDF) such as current and future average daily traffic (ADT), class, terrain, roadbed condition, and surface condition index.
4. Assemble all attachments required by the BIA to justify/verify the updates.
5. Enter the updated information into the Road Inventory Field Data System (RIFDS) and electronically submit the updates to the BIA Region Office by March 15 with courtesy copies to the FHWA.
6. Correct or complete submissions returned by the BIA Regional Office due to errors or omissions, and submit them electronically to the BIA Regional Office by June 15, with courtesy copies to the FHWA.

BIA Regional Office actions:

1. Provide the Tribe with a copy of the IRR Inventory by November 1.
2. Review phase to include:
 - a) Initial submissions and return errors or omissions to the Tribe by May 15.
 - b) Updated submissions.
3. Certify and submit the data electronically to the Bureau of Indian Affairs Department of Transportation (BIADOT) by July 15.
4. Provide the Tribe a copy of its RNDF distribution percentage by August 15.

C. The Importance of the Inventory

The IRR Inventory is a comprehensive list of all transportation facilities and contains relevant information about those facilities. It is important that the IRR Inventory be complete and accurate. Inventory is an important factor in the Tribal Transportation Allocation Methodology because each Tribe's share of IRR Program funds is determined in part by the transportation facilities included in the inventory. The Tribe should update its IRR Inventory annually to ensure that the Tribe receives its Tribal share as distributed by the formula found in 25 CFR Part 170. In order to make informed decisions about the overall IRR Program, BIA and FHWA need accurate and complete information about the overall state of transportation facilities that serve Tribal communities.

The FHWA will work with the BIA and Tribal officials to ensure that eligible and properly documented routes are considered.

D. Resources

BIA Coding Guide and Instructions,
http://www.doi.gov/bia/indianresroads/irr_coding_guide.pdf.

The June 15, 2006 Memorandum from the Director, Bureau of Indian Affairs,
Subject: "Policy on Minimum Attachments for Acceptance of Indian Reservation Roads/Facilities into the National Road Inventory",
<http://www.ttap.mtu.edu/IRRPCC/MinimumAttachmentsPolicy6-15-06.pdf> .

RIFDS Public User Manual,
<http://www.ttap.mtu.edu/bia/inventory%20files/RIFDS-PUBLIC-USERSMANUAL.pdf>

Draft Coding Guide, <http://www.ttap.mtu.edu/bia/inventory%20files/IRR-CodingGuide-DRAFT.doc>

BIADOT RIFDS training workshops by BIADOT or the Tribal Technical Assistance Programs (TTAP).

V Program/Project Coordination

Coordination and communication is encouraged to ensure that the FLH meets its stewardship and oversight responsibility for the IRR program. Please refer to the chart below for support documentation required during various stages of the program:

STAGES	
Transportation Planning	Provide FLH with a courtesy copy of the LRTPs. Road Inventory Updates will be submitted to the BIA Regional Offices.
Project Scoping/Project Selection	All projects receiving Federal funds must be in a FHWA approved IRR TIP (25 CFR 170.420 – 428). Signed project agreements are recommended before preliminary engineering begins.
NEPA	Signed project agreements should identify the Lead Agency for NEPA compliance (FLH or BIA). Coordination with the Lead Agency during development of the NEPA document is key to avoiding delays when document approval is requested.
Right-of-Way (ROW) Certification	ROW clearance on trust land should be coordinated with BIA.
Detail Design	75 to 95 percent of plans should be submitted to FHWA and the facility owner for review and comment.
Advertisement and Award	In order to advertise, a PS& E package should contain the following: Signed PS&E plans Signed NEPA document Applicable Permits (Utility, 404 permit, etc.) Tribal Resolution ROW Certification Provide a courtesy copy of the PS&E package to the facility owner and FLH.
Construction	Final Project Closeout Report is submitted to the FHWA and the facility owner.

VI Project Agreements

Federal agencies, State agencies, local governments, and Tribal governments may need to coordinate performance of specific tasks in order to efficiently develop and deliver an IRR project in a timely manner. If it is decided that formal documentation is needed to clearly define the roles and responsibilities of each entity involved in the coordinated development of an IRR project, as well as the cost and schedule for producing the work required to develop the project, it is recommended that a Project Agreement be executed between the various agencies. The Project Agreement would need to describe specific roles, responsibilities, and duties to be performed by the coordinating agencies in order to produce the services and products described in the Project Agreement and deliver the project contract documents. According to best project management practice, Project Agreements should be authorized, approved, and signed by agency management and government leaders, and distributed to all personnel contributing to project development work. In this way, the Project Agreement acts as an authoritative charter to guide project development team members in work tasks and coordination requirements.

A. Statutory/Regulatory Requirements

Though not required by law, the FLH strongly recommends that Tribal governments enter into Project Agreements whenever the Tribe decides that Federal agencies, State agencies, or local governments will be performing specific project development activities in order to deliver an IRR project. The FLH also recommends that Tribal governments enter into Project Agreements whenever State or local government holds rights-of-way (ROWs) or will have some or all of the maintenance responsibilities for the completed IRR project.

Under the authority prescribed in 23 U.S.C. 204, FLH can perform any or all phases of IRR project development and construction, if requested by a Tribal government. If so requested, each of the FLH Divisions (Eastern, Central, and Western) may execute individual Project Agreements with Tribal governments to perform any or all project development activities if IRR funds are used. The respective FLH Divisions will coordinate these requests with FLH HQ.

B. Guidelines/ Procedures

If the Tribe determines that a formal Project Agreement is needed to cooperatively advance project development of an IRR project, the Tribe should draft the agreement to ensure that their perspective of other agency or government contributions and coordination is adequately represented. The Project Agreement should be drafted well in advance of starting any project development activities and circulated to the cooperating agencies or governments for review and comment. It is considered good project management practice to then host a project development review meeting to discuss the proposed project and the coordination required, in the context of the Project Agreement, thus solidifying the Project Development Team, who will advance or oversee the work activities contained in the Project Agreement.

The act of formulating a Project Agreement allows all coordinating agencies and governments to cooperatively plan the project development and delivery work, and then work the project development and delivery plan together, to ensure that no steps or concerns are left uncovered. At a minimum, according to best project management practices, a comprehensive Project Agreement should contain:

1. Project planning and background information (project location, current inventory data, road ownership, etc)—including a description of the proposed project and the purpose of, or need for, the proposed project.
2. A project development statement of work—including design criteria and standard plans or specifications to be used, products to be delivered (traffic or accident data, geotechnical or materials reports, NEPA documents, plans and specifications, etc).
3. Agency and governmental roles and responsibilities for performance, reviews, and approvals of specific work tasks—including the personnel who will work on specific tasks and how they may be contacted (i.e., phones, emails), as well as how problems that arise will be resolved by the personnel involved.
4. A schedule and budget for project development work to be performed—including specific milestone dates for delivery of specific work tasks or products, the estimated cost of performing specific work tasks or delivering specific products, and how those work tasks or products will be funded.

5. A project delivery closeout plan—including which agency or government will advertise and award the project, administer the construction contract, and provide construction inspection or engineering services, as well as follow up after construction with permit monitoring and termination, maintenance activities, and ensuring compliance with environmental commitments.

C. Roles and Responsibilities

The following outline provides examples of potential agency or governmental roles and responsibilities when establishing a project agreement for IRR projects advanced by a Tribe under a Program Agreement.

1. Roles of the Tribe (any route on the IRR system):

- a) Drafts Project Agreement, provides review copies for cooperating agencies, and executes the Project Agreement with cooperating agencies.
- b) Identifies project needs and provides resources and other supporting information for project development tasks and products.
- c) Establishes a Project Development Team to develop project Purpose and Need, study project alternatives, and obtain project environmental clearances, pursuant to 23 CFR 771 regulations.
- d) Designs the project and produces the Plans, Specifications, and Engineering Estimate (PS&E).
- e) Provides reviews and certification of project PS&E, standards, and design exceptions.
- f) Advertises, awards, and administers the construction contract.
- g) Inspects and approves the final construction project.

2. Roles of the BIA Regional Office (BIA-owned routes on the IRR system):

- a) Can provide project development services such as environmental documents, archeological reports, ROW appraisal and negotiation, surveys, designs, utility relocation, and construction monitoring. These activities would be undertaken at the request of the Tribe and through the Project Agreement and would be a project cost requiring the Tribe to provide adequate funding to the BIA to complete the tasks.

- b) Has federally inherent ROW responsibilities that include providing Title Status Reports (TSRs), Grants of Easement, and filing ROW documents. These activities are funded by BIA PRAE funds.
- c) Has the primary responsibility for maintenance of the completed project after construction.
- d) Reviews preliminary and final plans as the facility owner.
- e) Provides review and approval of NEPA documents when the Tribe requests BIA to act as the lead Federal agency using PRAE funds.
- f) Attends final inspection and concurs in Tribal acceptance of completed construction project.

3. Roles of FHWA (FLH or FHWA Division for any route on the IRR system):

- a) Appoints a member to the Project Development Team and assists in developing the project Purpose and Need, studying project alternatives, and obtaining project environmental clearance.
- b) Acts in the capacity of lead agency or co-lead agency on Environmental Impact Statement (EIS) NEPA documents, and may be lead agency on other NEPA documents at Tribe's request.
- c) Reviews and executes a Project Agreement with the Tribe and cooperating agencies.
- d) Provides resources and other supporting information for project development tasks and products as requested by the Tribe through the Project Agreement. Each FLH Division can provide project development services such as environmental documents, archeological, wetlands, and topographic surveys, design at the request of the Tribe. These activities would be undertaken by request, only through the Project Agreement, and would be a project cost requiring the Tribe to leave adequate funding with the FHWA to complete the tasks.
- e) Reviews NEPA documentation, PS&E contract documents, standards, and design exceptions.
- f) Reviews construction contract modifications.
- g) Provides final inspection and approval concurrence of completed construction project.

4. Roles of the State DOT (State-owned routes on the IRR system):

- a) Provides resources and other supporting information for project development tasks and products, as requested by the Tribe, through the Project Agreement.
- b) Appoints a member to the Project Development Team and assists in developing the project Purpose and Need, studying project alternatives, and obtaining project environmental clearance.
- c) Obtains necessary ROW and ensures utility relocation (both at State's expense).
- d) Maintains the completed project after construction.
- e) Reviews and executes a Project Agreement with the Tribe and cooperating agencies.
- f) Reviews NEPA documentation, PS&E contract documents, standards, and design exceptions.
- g) Provides final inspection and approval concurrence of completed construction project.
- h) May contribute cooperative funds to assist in the construction of an IRR Project.

5. Roles of the County (or other local agency-owned routes on the IRR system):

- a) Provides resources and other supporting information for project development tasks and products as requested by the Tribe through the Project Agreement.
- b) Appoints a member to the Project Development Team and assists in developing the project Purpose and Need, studying project alternatives, and obtaining project environmental clearance.
- c) Obtains necessary ROW and ensures utility relocation (both at County's expense).
- d) Maintains the completed project after construction.
- e) Reviews and executes a Project Agreement with the Tribe and cooperating agencies.
- f) Reviews NEPA documentation, PS&E contract documents, standards, and design exceptions.

- g) Provides final inspection and approval concurrence of completed construction project.
- h) May contribute cooperative funds to assist in the construction of an IRR Project.

D. Project Agreement Outline

The following outline is an example of a minimum acceptable Project Agreement. It is strongly recommended that items 1 through 5 of the introductory text to this section are incorporated into the Project Agreement in as much detail as possible. The Project Agreement may be titled “Project Charter” or “Project Memorandum of Understanding,” but should still contain the information shown in the sample Project Agreement, in order to adequately coordinate all work activities and deliver the project on time.

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INDIAN RESERVATIONS ROADS PROJECT AGREEMENT

Tribal Government: _____ IRR Route No. & Section: _____

State _____ County: _____ Federal Lands Highway Division: _____

Project No: _____ Project Length (miles): _____ Surface Type: _____

This Project Agreement is entered into between the undersigned parties in accordance with the terms of the IRR Program Agreement between the Federal Highway Administration and (INSERT NAME OF TRIBE) dated (INSERT DATE).

Project Location(s) and Planning Information:

Description of Proposed Project:

Proposed Project Purpose and Need:

Design Standards Reference for Proposed Project:

The following criteria will be applied for this project.

Design speed: _____ Terrain: _____

Design ADT: _____ Design Hourly Volume: _____

Percent Trucks (T): _____ Maximum Superelevation (e_{max}): _____

Design loading: _____ Bridge width: _____

Lead agency for NEPA documentation:

NEPA Studies:

NEPA Document compilation:

NEPA Document approval:

Responsibility for Survey and Mapping:

Responsibility for Geotechnical and Materials Sampling/Testing/Reporting:

Responsibility for Design and PS&E Contract Documents:

Responsibility for Rights-of-Way:

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Responsibility for Utility Relocation:

Responsibility for Ad, Award, and Construction:

Responsibility for Permits:

Responsibility for Post-Construction Environmental Compliance:

Responsibility for Maintenance:

Funding Source(s) and amounts (breakout by responsibility if appropriate):

Project Schedule Milestone Dates:

Amendments to the Project Agreement: The Project Agreement may be modified by mutual agreement of the parties. The Agreement shall be effective as of the **XX** day of **(INSERT MONTH, YEAR)**.

Tribal Government:

County:

By: _____

By: _____

Title: _____

Title: _____

By: _____

Title: _____

Federal Highway Administration:

_____ Division

BIA Region:

By: _____

Title: _____

By: _____

Title: _____

State:

By: _____

Title: _____

VII NEPA and Other Environmental Requirements EPA

A. Statutory/Regulatory Requirements

The cultural resource and environmental requirements for the IRR Program are listed in 25 CFR 170, Subpart D, Appendix A and includes the following:

1. 16 U.S.C. 1531, Endangered Species Act
2. 16 U.S.C. 4601, Land and Water Conservation Fund Act (Section 6(f)).
3. 16 U.S.C. 661-667d, Fish and Wildlife Coordination Act.
4. 23 U.S.C. 138, Preservation of Parklands.
5. 25 U.S.C. 3001-1013, Native American Graves Protection and Repatriation Act.
6. 33 U.S.C. 1251, Federal Water Pollution Control Act and Clean Water Act.
7. 42 U.S.C. 7401, Clean Air Act.
8. 42 U.S.C. 4321, National Environmental Policy Act.
9. 49 U.S.C. 303, Preservation of Parklands.
10. 7 U.S.C. 4201, Farmland Protection Policy Act.
11. 50 CFR part 402, Endangered Species Act regulations.
12. 7 CFR part 658, Farmland Protection Policy Act regulations.
13. 40 CFR part 93, Air Quality Conformity and Priority Procedures for use in Federal-aid Highway and Federally Funded Transit Programs.
14. 23 CFR part 771, Environmental Impact and Related Procedures.
15. 23 CFR part 772, Procedures for Abatement of Highway Traffic Noises and Construction Noises.
16. 23 CFR part 777, Mitigation of Impacts to Wetlands and Natural Habitat.
17. 36 CFR part 800, Protection of Historic Properties.
18. 40 CFR parts 260-271, Resource Conservation and Recovery Act.
19. Applicable Tribal/State laws.
20. Other applicable Federal laws and regulations.

Included in the listing of environmental requirements is the National Environmental Policy Act of 1969 (42 U.S.C. 4321; PL 91 90). The purpose of the National Environmental Policy Act (NEPA) is to ensure better decision-making with regard to the implementation of projects that affect the environment, by ensuring that Federal agencies consider the potential environmental consequences of their proposals, document their analysis, and make information available to the public for comment prior to project implementation. Section 2 of the statute states that its purposes are to:

“[d]eclare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.”

Regulations for implementing NEPA for IRR projects are found in the Council on Environmental Quality (CEQ) regulations (40 CFR 100-1508) and the FHWA implementing regulations (23 CFR 771).

B. Guidelines/Procedures

Early in the project development process a preliminary NEPA classification should be selected in accordance with 23 CFR 771.115 – Classes of Actions. If a Categorical Exclusion (CE) or Environmental Assessment (EA) is the appropriate classification, the Tribal government should designate a NEPA lead Federal agency (lead agency) to be responsible for approving the NEPA documentation. (FLH will be available upon request to facilitate discussions between the Tribal government, BIA and the FHWA Federal-Aid Division to help the Tribe make a well informed designation.) To avoid delays in the approval process, the lead agency should be consulted throughout development of the NEPA document.

Categorical Exclusion (CE)

It is expected that most IRR projects will be appropriately classified as CEs. [Attachment N1](#) provides supplemental guidance used by the Western Federal Lands Highway Division (WFLHD) of FLH when preparing a CE.

CATEGORICAL EXCLUSIONS (CE)

Western Federal Lands Highway Division (WFLHD) of the Federal Highway Administration (FHWA) generally complies with requirements for documented categorical exclusions (CEs) (23 CFR 771.117 (d)) as described in the outline below.

INTRODUCTION - The CE begins with an introduction with a brief description of the:

- proposed project,
- project location,
- project sponsors, and
- project funding.

PURPOSE AND NEED - This section briefly describes the condition or conditions that require relief and WFLHD's purpose in taking action.

PROPOSED ACTION - In this section of the CE, the project details are identified. This includes the actions for the entire footprint of the project that will be awarded under contract, including but not limited to:

- type of work,
- corridor location,
- length,
- road width,
- number of lanes,
- design speed,
- surface type,
- major structures,
- material sources,
- staging areas,
- waste areas,
- mitigation areas, and
- any other major features.

It should be clear to the reader how the proposed action will address the problem identified in the purpose and need.

ENVIRONMENTAL ACTIVITIES - To demonstrate that a federally-funded action is categorically excluded under the National Environmental Policy Act (NEPA), the project must demonstrate compliance with the following related environmental laws and Executive Orders. In analyzing the project impacts for compliance with these laws, you must consider the effects of the entire area of the proposed action described above. Please note that this is not a comprehensive list of all environmental laws but a list of those that are typically addressed)

Clean Water Act and Executive Order 11990- Wetlands Finding – The Clean Water Act regulates any discharge of a pollutant into waters of the United States. The most common type of discharge from road construction projects is fill material into wetland areas and waters of the U.S. If wetlands are determined to be in the area, a wetland delineation must be completed following the methods in the 1987 Army Corps of Engineers Wetland Delineation Manual. Executive Order (EO) 11990 requires a finding to demonstrate that there is no practical alternative to the proposed construction in wetlands, and the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use.

For this requirement, the CE must identify the number of wetlands identified from the delineation that will be impacted by the proposed action and any mitigation, if applicable. Furthermore, WFLHD must demonstrate compliance with EO 11990 by providing a finding that there is no practicable alternative to construction in wetlands.

Coastal Zone Management Act- If the project is within an area with an approved coastal zone management plan, the CE must have a consistency determination to demonstrate that the project is consistent to the maximum extent practicable with the enforceable policies of the plan. Coordination with the agency responsible for the State's Coastal Zone Management Plan must occur. If possible, the CE should show the date of responsible agency's concurrence with WFLHD's consistency determination.

Endangered Species Act- The Endangered Species Act (ESA) provides for the conservation of endangered and threatened species and the ecosystems upon which they depend. Section 7 of the act requires federal agencies to consult with the U.S. Fish and Wildlife Service (USFWS) and National Oceanic Atmospheric Administration (NOAA) -Fisheries, as appropriate, to insure that actions they authorize, fund or carry out are not likely to jeopardize the continued existence of threatened or endangered (T&E) species or result in the destruction or adverse modification of critical habitat for these species. A Biological Evaluation or Assessment may need to be prepared if there are known listed species in the project area. Contact USFWS for a listing of these species in your area.

The CE should document what T&E species are in the project area and the project's effect to these species. The CE should use the effect determinations as provided in the ESA and document when the consulting agency (NOAA Fisheries or USFWS) concurred with WFLHD's effect determination if the project was determined to have a potential effect to T&E species. The CE should describe any mitigation if applicable.

National Historic Preservation Act- The National Historic Preservation Act (NHPA) applies to all properties on or eligible for inclusion on the National

Register of Historic Places (NRHP). A cultural resources survey must be completed to identify potentially eligible properties. Consultation with the State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), and/or any applicable Tribal Historic Preservation Officer (THPO) will result in concurrence on the identification and assessment of these properties.

The CE needs to document compliance with Section 106 of the NHPA by documenting what the project's effects are to properties on or eligible to NRHP and the date SHPO/ACHP/THPO concurred with WFLHD's effect determinations. The CE should describe any mitigation, if applicable.

Section 4(f) - A Section 4(f) analysis is needed only when an alternative uses a resource protected under Section 4(f) of the US DOT ACT 1966. These resources include publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance as determined by such officials. A use is defined as permanently incorporating the 4(f) resource into a transportation facility. A 4(f) analysis must document that (1) there is no prudent and feasible alternative to the use of such land, and (2) and such program includes all possible planning to minimize harm to such park, recreation areas, wildlife and waterfowl refuge, or historic sites resulting from such use."

The CE should demonstrate compliance with Section 4(f). If it was a full or programmatic Section 4(f), it should briefly describe the activities conducted and how the conclusions were reached. If a *de-minimus* 4(f) applied to the project, this Section should document how the requirements of the *de-minimus* were met.

Public Involvement - In this section of the CE, there should be a brief discussion of the agency coordination and public involvement activities.

Permits - The section should list all permits and any stipulations known at this time. This could include, but is not limited to:

- 404 authorization from the U.S. Army Corps of Engineers for dredge or fill materials into waters of the U.S.
- Water quality certification may be required from the appropriate Regional Water Quality Control Board (Section 401).

CONCLUSION - On a separate and last page of the CE, provide the conclusion that project qualifies as a categorical exclusion. The CE should reference categorical exclusion justifications in 40 CFR 1508 and 23 CFR 771.117. The language normally used is:

Based on the information listed above, WFLHD has determined this project; (1) will not have a significant effect on the human environment, and (2) falls within the category of actions covered by FHWA's categorical exclusion regulations. Therefore, this work meets the definition of a Categorical Exclusion (CE) contained in 40 CFR 1508.4. WFLHD finds this work constitutes an action covered under the National Listing of Categorical Exclusions, 23 CFR 771.117 (a) because: 1) the action will not induce significant impacts to planned growth or land use for the area; 2) the action will not require the relocation of any people; 3) the action will not have a significant impact on any natural, cultural, recreational, historic, or other resource; 4) the action will not involve significant air, noise, or water quality impacts; 5) the action will not have significant impacts on travel; and 6) the action will not otherwise, either individually or cumulatively, have any significant environmental impacts. Furthermore, WFLHD finds this work constitutes an action within the National Listing of Categorical Exclusions, 23 CFR 771.117 (d)(1), because it is a modernization of a highway by rehabilitation. The proposed rehabilitation does not include any unusual circumstances as listed in 23 CFR 771.117(b) that would make the CE classification improper.

In the yellow-highlighted section, the CE should reference which category the project qualifies, in this example it is 23 CFR 771.117 (d) (1).

SIGNATURES – Following the *CONCLUSION*, the CE should have two signature blocks. The first is by the author, which is under *RECOMMENDED BY:*. The last signature is the approval, which is titled, *APPROVED BY:*, which is for the approving official. Both need to be dated. At WFLHD, the Environmental Manager has the authority to approve CEs.

DRAFT1/28/2010

Environmental Assessment (EA)

[Attachment N2](#) provides an example of supplemental guidance which is used by the WFLHD when preparing an EA.

The EA is subject to Administration approval before it is made available to the public as an Administration document (23 CFR 771.119(c)). Major comments will need to be addressed before the document will be approved. Approval is documented by a signature on the title page of the EA.

If an EA receives relatively few comments, changes are not required, no significant impacts have been identified, and the EA identifies a preferred alternative, a Finding of No Significant Impact (FONSI) can be prepared and signed. However, if there are substantial comments, changes are required, or a preferred alternative was not identified, an amended EA will need to be prepared and issued before FLH prepares and issues a FONSI.

ENVIRONMENTAL ASSESSMENTS

Western Federal Lands Highway Division complies with requirements for environmental assessments for environmental assessments (EAs) and finding of no significant impacts (FONSI) as specified in 23 CFR 771.119 and 771.123 usually in the format used below.

The following outline is generally used for chapters when WFLHD prepares an EA.

1. Cover Sheet
 2. Signatory Sheet
 3. Table of Contents
 4. List of Abbreviations
 5. Description of the Proposed Action
 6. Purpose of and Need for the Project
 7. Alternatives
 8. Affected Environment or Environmental Setting
 9. Environmental Consequences¹
 10. Section 4(f) (if applicable)
 11. Coordination
 12. Appendices
1. **COVER SHEET**- The cover sheet lists the type of National Environmental Policy Act (NEPA) document the title of project, the location, the project sponsor, and the date (month & year).
 2. **SIGNATORY SHEET** - The signatory sheet contains the following:
 - a. The title, *Environmental Assessment*
 - b. The information, *Submitted Pursuant to Public Law 91-190, National Environmental Policy Act*
 - c. Our full title, *U.S. Department of Transportation, Federal Highway Administration, Western Federal Lands Highway Division*
 - d. The list of cooperating agencies
 - e. A signature block, including the date, for the Director of Project Delivery at WFLHD.
 - f. The contact person, including address and phone number and date in month and year.
 3. **TABLE OF CONTENTS**
 4. **LIST OF ABBREVIATIONS** – Usually WFLHD provides a list of abbreviations one would find listed in the EA for the reader to easily reference.

¹ The Chapters on *Affected Environment* and *Environmental Consequences* can be combined.

5. **DESCRIPTION OF THE PROPOSED ACTION** – This is the opening chapter of the EA that contains introductory information such as a brief project description, lead, cooperating, and partner agencies, funding and a description of the following items:
 - a. *Location of the Proposed Project* – This text is often accompanied by maps and figures.
 - b. *Scope and Nature of the Proposed Work*
 - i. **Funding**
 - ii. **Planning by Others**
6. **PURPOSE OF AND NEED FOR THE PROJECT** - This chapter of the EA describes the condition or conditions requiring relief and WFLHD's purpose in taking action. Often the EA describes the problems and the consequences of not taking action. This section should clearly demonstrate that a need exists and should define the need in terms understandable to the general public. It is critically important to provide sufficient data to convince the reader that the need exists. Therefore it is recommended that each need be discussed in turn, with accompanying data. The purpose and need will be the basis for development of the alternatives, including the identification of the preferred alternative. Charts, tables, maps, and other illustrations are encouraged as useful presentation techniques.
7. **ALTERNATIVES** – This chapter identifies the alternatives developed throughout the scoping and NEPA process. In it, it describes the:
 - a. *No Action Alternative* – The no action alternative provides the baseline and the consequences should nothing be done to address the conditions requiring relief. It is preferable to give an estimated cost for the *no action* alternative.
 - b. *Reasonable Alternatives* – Reasonable alternatives should be developed to a comparable level of detail. If a preferred alternative has been identified, this should be documented in this chapter, and the reasons should be stated why it is preferred. It is preferable to give estimated costs.
 - c. *Other Alternatives* - Alternatives that were considered but rejected should be briefly discussed with the reasons why they were eliminated or rejected.
 - d. *Entire Action* – As stated for CEs, the alternatives should take into account the entire action, not just the road project itself. This would include, but would not be limited, to the following:
 - i. **Type of work**
 - ii. **Corridor location**
 - iii. **Length**
 - iv. **Road width**
 - v. **Number of lanes**
 - vi. **Design speed**
 - vii. **Surface type**
 - viii. **Major structures**

- ix. **Material sources**
 - x. **Staging areas**
 - xi. **Waste areas**
 - xii. **Mitigation areas**
 - xiii. **Other major features**
8. **AFFECTED ENVIRONMENT OR ENVIRONMENTAL SETTING.** In this chapter of the EA, there needs to be a description of the environmental conditions in the study area. For this chapter, the study area needs to be defined, and it may need to be defined differently depending on the resource described. The setting topic areas usually covered are:
- a. *Geology*
 - b. *Soils*
 - c. *Climate*
 - d. *Air Quality*
 - e. *Noise*
 - f. *Waters and Water Quality*
 - g. *Wetlands*
 - h. *Vegetation, including T&E species*
 - i. *Wildlife and Fish, including T&E species*
 - j. *Land Use*
 - k. *Socioeconomics*
 - l. *Transportation*
 - m. *Historic and Archaeological Resources*
 - n. *Hazardous Materials*
 - o. *Public Services and Utilities*
 - p. *Recreations*
 - q. *Aesthetics*
9. **ENVIRONMENTAL CONSEQUENCES** – In this chapter, the EA describes how the environmental topic areas listed in the chapter above will be affected by all the reasonable alternatives. The discussion should be limited to information and issues that have a bearing on possible impacts, including the mitigation. Impacts may be adverse or beneficial, and the data and analyses should be commensurate with the importance of the impacts. In this chapter in the EA, the text must show how all applicable executive orders and environmental laws and regulations were met (some are listed in the text on CEs). Photographs, illustrations, tables, figures, and other graphics should be used with the text.
10. **SECTION 4(F)** – In the EA, insert a section for 4(f) analysis if needed. Some of the 4(f) discussion may be pertinent to both the *Environmental Setting* and *Environmental Consequences* chapters also.

11. *COORDINATION* – Comments received from public involvement efforts should be described in this chapter. Usually a chronology of coordination and consultation efforts is provided.
12. *APPENDICES* – Usually pertinent coordination results are provided in the appendices such as concurrence letters under Section 7 of the ESA, Section 106 of the NHPA, Consistency Concurrence for the Coastal Zone Management Act, etc.

Sample

Environmental Impact Statements (EIS)

In accordance with SAFETEA-LU Section 6002, FHWA shall be the lead agency or joint-lead agency for projects when an EIS is prepared. In accordance with the Council on Environmental Quality (CEQ) and FHWA regulations and guidance, the lead agency determines the NEPA class of action and the purpose and need for the project, and is responsible for ensuring that NEPA requirements and other environmental requirements are met. Section 6002 also specifies changes from current NEPA procedures, including new obligations for a public comment process for project purpose and need and for project alternatives, and requires the development of a coordination plan and schedule that must be provided to all participating agencies and made available to the public. All Title 23 funded projects, for which the Notice of Intent was published in the Federal Register after August 11, 2005, must designate FHWA as lead agency or joint-lead agency and follow the specified process.

It is expected that few if any IRR projects will be appropriately classified as an EIS. If an EIS is required, FHWA will work closely with the Tribe to address all requirements.

C. Resources

Guidance for preparing NEPA documents in accordance with CEQ and FHWA implementing regulations is provided in the [FLH Project Development and Design Manual](#) (PDDM) at the following website address: <http://www.wfl.fhwa.dot.gov/design/manual/>. Chapter 3 of the PDDM includes a flow chart of the environmental process used by FLH to develop projects. Chapter 3 also includes guidance for compliance with other environmental laws that typically apply to transportation projects.

VIII PS&E Development Requirements

A. Statutory/Regulatory Requirements

23 U.S.C. 202(d)(2)(F)(ii) allows an Indian Tribal government to approve plans, specifications, and estimates (PS&Es). The Tribe must provide assurances that the construction will meet or exceed applicable health and safety standards. A State-licensed civil engineer must certify that the PS&E meets applicable health and safety standards. The Tribe must provide a copy of the certification to the Deputy Assistant Secretary for Tribal Government Affairs or the Assistant Secretary for Indian Affairs. The following list provides regulations that the Tribal government follows when approving PS&E packages:

1. Public Hearing Requirements

Criteria to determine if a public hearing will be held are listed in 25 CFR 170.436. Requirements for a “Notice of No Public Hearing” are listed in 25 CFR 170.437. Public hearing requirements are in 25 CFR 170.438 - 170.441.

2. Archeological and Environmental Requirements

Criteria governing cultural resource and environmental requirements are in 25 CFR 170.450 and 25 CFR 170.451 and in Appendix A to Subpart D.

3. Design Standards

Design standards are governed by 25 CFR 170.454 - 170.456 and may be any of the following as applicable:

- a) Standards listed in 25 CFR 170, Appendix B to Subpart D.
- b) FHWA-approved State design standards.
- c) FHWA-approved Tribal design standards that are consistent with or exceed applicable Federal standards.

Design exception requests must be submitted to the FHWA by the Tribe. The engineer of record must submit written documentation with appropriate supporting data, sketches, details, and justification based on engineering analysis.

The FHWA may grant design exceptions for:

- a) Experimental features on projects, and
- b) Projects where conditions warrant that exceptions be made.

The FHWA can approve a project design exception only after giving due consideration to all project conditions such as:

- a) Maximum service and safety benefits for the dollar invested.
- b) Compatibility with adjacent features.
- c) Probable time before reconstruction of the project due to changed conditions or transportation demands.

The FHWA has 30 days from receiving the request to approve or decline the design exception.

4. Review and approval of PS&E package requirements

Criteria governing review and approval of PS&E packages are in 25 CFR 170.460 through 25 CFR 170.463. The content of the PS&E package includes, at a minimum, the following:

- a) Plans that meet or exceed design, health, and safety standards.
- b) Specifications that ensure that materials and construction techniques will meet acceptable standards.
- c) Estimates that reasonably anticipate the project cost.
- d) A Tribal resolution or other authorized document supporting the project.
- e) Certification that right-of-way clearances have been obtained.
- f) Certification that required environmental, archeological, and cultural clearances have been obtained.
- g) Design exceptions have been identified and approved (if used in the plans).

B. Guidelines / Procedure

1. PS&E Development Process

- a) For a BIA or tribally owned facility:
 - (i) Engage the services of a licensed professional engineer to supervise design and approval of the PS&E package.
 - (ii) Ensure that the licensed professional engineer has certified that the PS&E meets or exceeds the design, health, and safety standards in Appendix B to subpart D of 25 CFR 170.
 - (iii) Before soliciting bids for the project, provide a copy of the certification and approved PS&E package to the Deputy Assistant Secretary for Tribal Government Affairs with a copy to the BIA Regional Director and the FLH Associate Administrator.
- b) For a facility maintained by a public authority other than the BIA or a Tribe, in addition to following the process of part (A):

- (i) Develop an agreement between the public authority and the Tribe that delineates the roles and responsibilities of the two entities for the development, construction, and continued maintenance of the project after construction.
- (ii) Provide the public authority the opportunity to review and comment on the Tribe's PS&E package when it is between 75 and 95 percent complete, unless an agreement between the Tribe and the public authority states otherwise.
- (iii) Allow the public authority at least 30 days for review and comment unless the Tribe and the public authority agree upon a longer period of time.
- (iv) Before soliciting bids for the project, certify in writing to the FHWA Administrator that it afforded the public authority an opportunity to review and comment on the PS&E package and received no written comments from the public authority that prevent the Tribe from proceeding with the project.

2. Utility Coordination

If utility adjustments are necessary to construct a project, it is essential that utility companies be advised well in advance of any improvements that will affect their facilities. When plans for a project are at the 30 percent design stage, it is recommended that copies be sent to the utility companies. Again, when they are at the 50 percent design stage a second set of plans, including cross-sections, is sent for utility conflict identification and design purposes. At the 90 percent design stage, a third set of plans is sent to the utility for final design of utility relocations. During this time the utility company and the owner agency should draft agreements which outline areas of responsibility, estimates and division of costs, and utility plans approval.

3. Permits and Clearances

All required permits must be obtained prior to advertising the project for construction bids. Requirement permits include, but are not limited to wetlands, railroads, airports, and utilities. Permits and clearances are secured during the final design of the project.

4. Project Development Milestones

The following outlines a traditional approach to highway design process and identifies milestones needed in order to ensure the PS&E package is complete:

- a) **30 Percent Plans:** Preliminary plans generally contain complete base map information and roadway information. Preliminary alignment is set and this information is used to identify whether additional field survey data is needed for utility delineation, subsurface exploration, and hydraulic and environmental surveys. A meeting is generally held at this stage with all project development disciplines, and stakeholders to discuss the progress of the project. The NEPA documentation should be completed with information developed at this stage, before further design is completed, in order to ensure that all environmental considerations can be incorporated into the final design.
- b) **90 Percent Plan Review:** Detailed project design is complete at this stage. At this stage a meeting is held to review the final plans. The meeting provides stakeholders a last opportunity to comment on the plans and specifications.

5. Submittal of the PS&E Package

Upon completion, the Tribe should provide FHWA and the facility owner with a complete PS&E package. The approved PS&E package is to be provided to the FHWA and the owner prior to contracting for construction or beginning work if construction will be force account.

C. Resources

FLHP's Project Development and Design Manual (PDDM) has many detailed process recommendations and may be found at: <http://www.wfl.fhwa.dot.gov/design/manual/>.

An example of a PS&E Certification Checklist is included for reference in Appendix D.

IX Construction Requirements

A. Statutory/Regulatory Requirements

All construction and construction monitoring is governed under 25 CFR 170.470 - 170.474.

25 CFR 170.470, Appendix B to Subpart D lists design standards that may be used for roads and bridges. Tribes may propose road and highway bridge construction standards that are consistent with or exceed these standards. Other FHWA-approved, State or Tribal road and highway bridge construction standards may also be used. Any proposed standards not included in the above referenced regulation must be submitted to FHWA for approval.

The Tribe must meet applicable labor standards in accordance with Mine Safety and Health Administration (MSHA) regulations found in 30 CFR 1 - 199, Mineral Resources, developed pursuant to the Federal Mine Safety and Health Act of 1977 (PL 91-173) as amended, and in accordance with the Occupational Safety and Health Administration (OSHA) regulations found in 29 CFR 1900, Labor - Construction Standards, developed pursuant to the Occupational Safety and Health Act of 1970 (PL 91-596) as amended.

With respect to Indian Employment Preference/Tribal Preference/TERO, please see 25 CFR 170.910 - 25 CFR 170.917 for further information in these areas.

B. Recommended Process Procedures

1. Pre-Construction Conference/Walk Through/Photographs

Prior to beginning any construction project, the Tribe should hold a pre-construction conference. The purpose of the conference is to discuss the plans and specifications for the project, any unusual conditions, the contractor's plan and schedule of operation, type and adequacy of equipment, labor requirements, equal employment opportunity requirement, Tribal Employment Rights Ordinance (TERO), maintenance of traffic, requirements for traffic control, the contractor's responsibilities for accident prevention, material sources and testing requirements, subcontracting requirements, required submissions, and any other pertinent items which would result in a better job understanding.

It is recommended that the Tribe and the contractor walk through the project and take photographs prior to beginning construction. Additional photographs of the project should be taken during construction to document the progress of the project until completion and final inspection.

2. Submittal Review

Prior to beginning work on a construction project, the contractor should begin submitting documentation for materials that are intended for use on the project. A log of all of the contractor's submittals should be maintained through the duration of the project including payrolls, material certifications, test reports, and other routine items.

3. Construction Project File Set-up

a) Tribal On-site Representative's (TOSR) Daily Diaries

The TOSR should maintain project diaries documenting construction operations, progress, meetings, telephone conversations, and problems encountered. Daily entries, with signature should be made. If the TOSR is absent from the project, the daily entries should be made and signed by the person left in charge during their absence.

b) Inspector's Daily Reports

The project inspector should prepare a daily report that fully documents the contractor's construction operations and pay quantities. The TOSR should review and sign the daily report. The TOSR should establish a process for reviewing, endorsing, and providing feedback as necessary, on contractor produced records.

c) Contractor's Daily Reports

It is recommended that the Tribe require the contractor to maintain daily records of equipment, personnel, and construction operations.

d) Project Files

The TOSR should establish a uniform filing system for use in construction field offices. Establishing and maintaining this system will ensure compliance with 25 CFR 472, which states that project records have to be maintained properly and be readily available when needed.

4. Inspection

a) Work Site Safety, Worker Safety, and Work Zone Traffic Control

The TOSR is responsible for ensuring that day-to-day project inspections are carried out during construction. The inspections should include a review of project safety.

As part of the daily inspections, the Tribe should complete a Work Zone Traffic Control inspection to assure compliance with the approved project standards. The Traffic Control Checklist ([See Appendix F](#)) is provided as a guideline for these inspections and may be modified to meet project requirements.

A Safety Checklist ([See Appendix E](#)) is also included for reference to assist the TOSR. This checklist identifies critical elements of work zone traffic safety and OSHA conditions that should be checked during an inspection. The checklist should be completed by the Tribe at least once during each construction season for that particular project. The checklist was developed to minimize subjective reporting and to help determine if the contractor's safety plan and policy, plus the approved traffic control plan are being followed throughout the duration of the project. Upon request of the Tribe, an FLH representative may be available to take part in the safety review.

If the TOSR becomes aware of any unsafe condition resulting from the contractor's action or inaction or a possible violation of either OSHA standards or reasonable standards of construction safety practice, the contractor must be immediately notified in writing. The Tribe should be involved in this process and should be copied on any correspondence regarding safety issues.

b) Construction Standards

Quality Assurance/Quality Control (QA/QC) must be performed on all projects. The TOSR should oversee the activities of the construction contractors and monitor their work to ensure compliance with plans and specifications.

c) Materials

Construction administration and QC by the contractor and quality assurance by the Tribe should include continuous on-site inspections throughout construction, by competent, technically qualified, and experienced inspectors.

The TOSR should ensure that all materials being incorporated into the project conform to contract requirements. At a minimum, this work should include:

- (i) Confirming that contractor sampling/testing is performed in accordance with the sampling/testing frequencies stipulated in the contract and project specifications.
- (ii) Ensuring that the contractor's testing company maintains properly calibrated equipment and qualified personnel to perform the required work.
- (iii) Maintaining all materials test results and documents for project records. It is recommended that records of all failing test results be supplemented with a follow-up passing test result. Any reporting discrepancies; i.e., errors, omissions, or conflicts, should be corrected and documented properly.
- (iv) Receiving and maintaining materials certifications for all manufactured/non-tested materials incorporated into the project.
- (v) Sampling and Testing – Ensuring that all test samples are taken in accordance with the approved project standards and contract requirements, and that they are sent to the testing company for verification testing and analysis.

d) Quantity Measurements

Before any measurements are taken on a project, the TOSR should study the plans, specifications, and special contract requirements to determine what is to be measured and how the measurement will be completed.

e) Sediment and Erosion Control Inspections

The TOSR should ensure that the contractor provides permanent and temporary erosion control measures in accordance with the approved erosion control plan, so as to minimize erosion and sedimentation during and after construction. It is recommended that inspections be carried out at least weekly and/or after significant rain events.

5. Construction Schedule Review

If specified in the contract, a contractor must submit a construction schedule to the TOSR. This construction schedule represents the sequence in which the contractor plans to perform the contract work. The TOSR should review the schedule and work with the contractor to verify that the construction schedule generally represents the activities that logically occur during the completion of the construction project. Updates to the construction schedule should be submitted according to requirements set out in the Tribal policy.

6. Progress Payments

The payment and invoice process, as well as the contractor's obligations, should be emphasized at the preconstruction conference. The contractor should understand the negative impacts that could result from failure to provide required materials and documentation, test reports, and/or certifications. The requirements for the processing of progress payments that are included in the contract should be reviewed in detail as well.

7. Contract Modifications

Only the Professional Engineer of record may change an IRR project's PS&E during construction. Substantial changes to a construction contract should only be completed in coordination with the Tribe and the facility owner. Records of the approved change orders, along with documentation of the work involved, such as photographs, diaries, daily reports, costs, and time must be maintained by the TOSR to assist in determining final costs and liability.

8. Project Progress Meetings

The TOSR should hold regularly scheduled meetings with the contractor's superintendent or representative to discuss the contractor's work progress, future plan, schedule of work, and any problems arising on the project. The frequency of the meetings should be determined by the complexity of the project.

9. Weekly/Monthly Status Reports

The TOSR should keep the Tribe and facility owner aware of the current state of the project by submitting a project status report to them on a regular basis.

10. Construction Project Reviews

In accordance with Section 1(F)(4) of Article III in the Program Agreement, FHWA has the opportunity to visit project sites on a monthly basis or at critical project milestones. This visit may also be carried out by a mutually agreed upon delegated representative as well. FHWA will give the Tribe reasonable advance

written notice of inspection. A Construction Project Field Review (See Appendix G) will be completed during the visit and discussed/reviewed with the TOSR. FHWA will not provide direction or instruction to the Tribe's contractor or any subcontractor at any time. If a problem is discovered during an on-site monitoring visit, FHWA will promptly notify the TOSR and, if asked, provide technical assistance.

11. Construction Project Closeout

The construction contract closeout process will commence after all contract work has been completed and accepted. The closeout documents are typically generated by the TOSR.

- a) The Tribe should provide a construction report that accounts for the funds expended to date on the project, as well as the as-built plans to the facility owner and the FHWA for final inspection.
- b) A final inspection should be conducted to determine whether the project has been completed in reasonable conformity with the PS&E. It is recommended that this be completed within 14 days of the completion of all contract activities. It is recommended that the TOSR schedule the final inspection so that officials from the Tribe, facility owner, and FHWA are able to participate, as well as the contractor and maintenance personnel. All project information made available during final inspection per 25 CFR 472-474 can also be used to develop the IRR construction project closeout report.

A final inspection review form (See Appendix H) will be completed by an FHWA representative. Once completed, the form will be forwarded to the Tribe for review and consideration.

- c) After final inspection, the completion of any required corrections, and final acceptance of the project by the Tribe and the facility owner, the Tribe must submit a final project closeout report to FHWA and the facility owner. This report should consist of the final accounting of all IRR construction project expenditures, the final as-built plans, and photographs should be completed within 4 months of the date of acceptance.
- d) Final Contract Modification (CM) – Actual final item quantities often vary from the original contract item quantities and as a result, a final CM may be required in order to close out the contract. The final CM will change the item quantities to match the actual amounts incorporated into the project. This work should be carried out by the TOSR.
- e) The Final Estimate – The final estimate should account for all final quantities, a time count, and any assessment of liquidated damages. The final amount of the contract should also be identified.

- f) Claims – It is recommended that the Tribe, the facility owner, and the contractor address and resolve any pending claims, which pertain to the contract as part of the close-out process.
- g) The Tribe should receive and maintain all project records. The records should include certifications indicating that all of the materials used on the project were in conformance with project specifications. The U.S. Department of Transportation recommends that project records be maintained for at least 10 years.
- h) Letter of Acceptance – A letter of acceptance should be provided to the contractor. A courtesy copy can also be given to the facility owner and the FHWA.

C. Resources

<http://www.fhwa.dot.gov/construction/>.

X Road Maintenance

A. Statutory / Regulatory Requirements

IRR funds may be used for maintenance in accordance with 23 U.S.C. 204(c). BIA road maintenance requirements are in 25 CFR 170.800 - 170.813. Eligible maintenance activities are listed in 25 CFR 170 Appendix A to Subpart G.

B. Guidelines / Procedures

In accordance with 23 U.S.C. 204(c), not more than 25 percent of the IRR Program funds allocated to a Tribe may be expended for the purpose of maintenance. This percentage excludes road sealing, which is not subject to any limitation.

The Tribe is responsible for making the determination of what can be considered a cost-effective means of extending the service life of a transportation system.

Maintenance should be included on the FHWA approved IRRTIP before funds are expended, although each activity does not need to be listed as a separate line item. One line item can be used and should be labeled as “maintenance.”

Equipment can be purchased using these funds after the tribe provides the FLH Associate Administrator with written notice and analysis showing that it is more economical to purchase than lease.

Additional maintenance funds are available through the Bureau of Indian Affairs using Self-Determination or Self-Governance contracting or compacting procedures.

C. Resources

Resources include American Association of State Highway and Transportation Officials (AASHTO) road and bridge maintenance manuals and maintenance management system manuals, National Association of County Engineers (NACE) action guides, and other Federal, State, Tribal, or local government maintenance standards. In addition, the BIA, with input from the IRR Program Coordinating Committee, will develop an IRR Transportation Facilities Maintenance Management System (TFMMS) for budgeting, prioritizing, and scheduling maintenance activities.

XI Program Reporting

A. Statutory Requirements

Under the IRR Program Agreement, developed in accordance with section 202(d)(5) of Title 23 U.S.C., the Tribe should provide the FLH a courtesy copy of its annual single agency audit report; semi-annual progress reports (See Appendix I) which contain a narrative of the work accomplished; and semi-annual financial status reports using an SF269A - Financial Status Report (See Appendix J) or such similar form as is used by the DOT.

B. Guidelines/ Procedures

The Tribe should provide the semi-annual reports to the FLH within 90 days following the conclusion of the reporting period, which shall run from October 1 to March 31 and from April 1 to September 30.

XII Additional Funding Resources

IRR Bridge Program

A. Statutory/Regulatory Requirements

Section 1119 of SAFETEA-LU made significant changes to the IRR Bridge Program (IRRBP) 23 CFR 661 (See Appendix N) by establishing new policies and provisions. In addition, it authorizes \$14 million of distinct and separate funds per year for the replacement or rehabilitation of structurally deficient or functionally obsolete bridges located on IRR. IRRBP funds can be transferred to the Tribe under the FHWA/Tribal program agreement.

B. Guidelines/Procedures

Application package for Preliminary Engineering

In accordance with 23 CFR 661.25, the Tribe will submit the application package for preliminary engineering (PE) funding directly to FLH. The application package should contain the following:

1. An IRRBP PS&E certification checklist (see Appendix L), IRRBP TIP, project scope of work, detailed cost for PE, and SI&A sheet (see Appendix K).
2. For non-BIA IRR bridges, the application package must also include a Tribal resolution supporting the project and identification of the required minimum 20 percent local funding match.

FLH will determine the IRRBP project eligibility for funding and will place these projects in the queue after receipt of a complete application package. Incomplete application packages will not be eligible and will be returned for revision and resubmission along with a notation providing the reason for return. Funding for the approved eligible projects in the queue will be made available to the Tribe under the FHWA/Tribal agreement.

Application package for Construction

In accordance with 23 CFR 661.27, the Tribe will submit the application package for construction request directly to FLH. The application package should contain the following:

1. A complete application package for construction consisting of: a copy of the approved PS&E, the IRRBP PS&E certification checklist, SI&A sheet, and the IRRBP TIP.
2. For non-BIA IRR bridges, the application package must also include a copy of a letter from the bridge's owner approving the project and its PS&E, a Tribal resolution supporting the project, and identification of the required minimum 20 percent local funding match. All environmental and archeological clearances and complete grants of public rights-of-way must be acquired prior to submittal of the construction application package.

FLH will determine the IRRBP project eligibility for funding and will place these projects in the queue after receipt of a complete application package. Incomplete application packages will not be eligible and will be returned for revision and resubmission along with a notation providing the reason for return. Funding for the approved eligible projects in the queue will be made available to the Tribe under the FHWA/Tribal agreement.

Eligible activities for IRRBP funds (23 CFR 661.15):

- a) IRRBP funds can be used to carry out PE, construction, and CE activities of projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions, or install scour countermeasures for structurally deficient or functionally obsolete IRR bridges, including multiple pipe culverts.
- b) If a bridge is replaced under the IRRBP, IRRBP funds can also be used for the demolition of the old bridge.

Criteria for bridge eligibility (23 CFR 661.17):

- a) Bridge eligibility requires the following:
 - (i) Have an opening of 20 feet or more.

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- (ii) Be located on an IRR that is included in the IRR Inventory.
 - (iii) Be structurally deficient or functionally obsolete.
 - (iv) Be recorded in the National Bridge Inventory (NBI) maintained by the FHWA.
- b) Bridges that were constructed, rehabilitated, or replaced in the last 10 years, are only eligible for seismic retrofit or installation of scour countermeasures.

Funding limitations on individual IRRBP project (23 CFR 661.37):

- a) An IRRBP eligible BIA and Tribally owned IRR bridge is eligible for 100 percent IRRBP funding, with a \$150,000 maximum limit for PE.
- b) An IRRBP eligible non-BIA owned IRR bridge is eligible for up to 80 percent IRRBP funding, with a \$150,000 maximum limit for PE and \$1,000,000 maximum limit for construction. The minimum 20 percent local match will need to be identified in the application package. IRR Program construction funds received by a Tribe may be used as the local match.
- c) Requests for additional funds above the referenced thresholds may be submitted along with proper justification to FLH for consideration. The request will be considered on a case-by-case basis. There is no guarantee for the approval of the request for additional funds.

IRR High Priority Project

A. Statutory/Regulatory Requirements

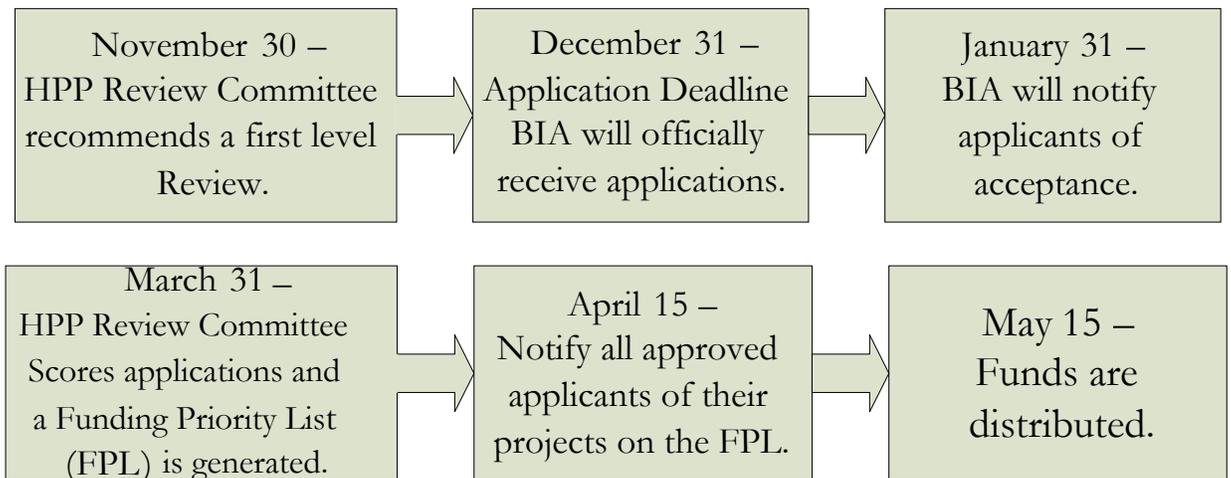
The intent of the IRR High Priority Project (IRRHPP) program is to provide funding to Tribal governments whose annual IRR allocation is insufficient to complete its highest priority projects and for emergency/disaster projects as defined in 25 CFR 170.206.

B. Guidelines/ Procedures

A Tribe may apply for IRRHPP funds by submitting a complete application for a non-emergency disaster project (See Appendix M) to the FLH by November 30, however, an emergency/disaster application (See Appendix M) may be submitted at any time during the fiscal year. Applications are forwarded to the BIA by December 31. Eligible applicants may have only one IRRHPP application pending at any time. This includes emergency/disaster applications. Projects will be ranked and funded based on criteria identified in 25 CFR 170.209.

IRRHPP funds cannot be used for transportation planning, research, routine maintenance activities, and items listed in 25 CFR, 170.116.

Application Timeline:



Safety

Every year, more than 40,000 motorists die and almost 3,000,000 are injured on our Nation's roadways. Fatalities and injuries resulting from motor vehicle crashes are a particular concern within Indian Country. Between 1975 and 2002, the number of fatal crashes on Indian reservations increased more than 50 percent, while the number of fatal crashes in the Nation declined 2 percent.

American Indians suffer far more from motor vehicle related deaths and injuries than would be expected, given their proportion of the population. In general, Native Americans have the highest risk of motor vehicle related deaths of all ethnic groups. Motor vehicle crashes are the leading cause of death for Native Americans ages 4 to 44.

This section includes various safety programs that are administered by the FHWA and the National Highway Traffic Safety Administration (NHTSA). The programs represent multiple strategies—engineering, education, and enforcement—that collectively help reduce the number of motor vehicle related crash fatalities and injuries.

FHWA Administered Programs:

Highway Safety Improvement Program – HSIP

(23 U.S.C. 148)

A. Statutory/Regulatory Requirements

Section 1401 of SAFETEA-LU includes the program and policy language for implementing the new “core” Highway Safety Improvement Program (HSIP), which is codified in section 148 of Title 23 of the United State Code (23 U.S.C. 148).

This is a Federal-aid funding program which began in fiscal year 2006 to achieve a significant reduction in traffic fatalities and serious injuries on all public roads. The HSIP emphasizes a data-driven, strategic approach to improving highway safety that focuses on results.

B. Guidelines/Procedures

To obligate funds under the new 23 U.S.C. 148, a State must:

1. Develop and implement a strategic highway safety plan (SHSP).
2. Produce a program of projects or strategies to reduce safety problems.
3. Evaluate the plan on a regular basis.
4. Submit an annual report to the Secretary.

The SHSPs should be developed by State DOTs after consultation with prescribed safety stakeholders. Tribal Governments are encouraged to work with State DOTs

and/or the FHWA division offices in the development of the State's SHSPs because funds can only be obligated on projects included in the SHSP. The plans are required to include a crash data system that can perform problem identification and countermeasure analysis, address all four E's—engineering, education, enforcement, and emergency medical services—and management and operations on all public roads. The plans should describe a program of projects or strategies to reduce or eliminate safety hazards, and be approved by the State Governor or the responsible State agencies.

C. References/Resources

<http://safety.fhwa.dot.gov/safetealu/factsheet1401hsip.htm>.

http://safety.fhwa.dot.gov/state_program/hsip/index.htm.

Others -- Major Set-Asides Included in HSIP

Elimination of Hazards Relating to Railway-Highway Crossings (23 U.S.C. 130): The program sets aside funds (\$220 million per year), from the HSIP, for the elimination of hazards and the installation of protective devices at railway-highway crossings. All public crossing safety improvement projects meeting the eligibility description in 23 U.S.C. 130 are eligible for funding, including, but not limited to, elimination of hazards, installation of protective devices, and grade crossing separation.

<http://safety.fhwa.dot.gov/safetealu/factsheet1401drhxhazards.htm>.

High Risk Rural Roads Program – HRRRP (23 U.S.C. 148): Approximately 60 percent of fatalities occur on rural roads, and the purpose of this program is to achieve a significant reduction in traffic fatalities and incapacitating injuries on rural major or minor collectors, and/or rural local roads. With \$90 million per year, the HRRRP funds construction and operational improvements on roadways that have accident rates for fatalities and incapacitating injuries that exceed the statewide average on rural major or minor collectors, or a rural local road that will likely have increases in traffic volume likely to create an accident rate above the statewide average for the respective roadway functional classes. Implementation requires comprehensive crash data for all public roads.

<http://safety.fhwa.dot.gov/safetealu/hrrrpmemo.htm>.

Safe Routes to School - SRTS

(SAFETEA-LU Sections: 1101(a)(17), 1404)

A. Statutory/Regulatory Requirements

Created by SAFETEA-LU, the SRTS Program is funded at \$612 million over 5 Federal fiscal years (FY 2005-2009) and is administered by State DOTs.

The purpose of the program is to enable and encourage children, including those with disabilities, to walk and bicycle to school; to make walking and bicycling to school safe and more appealing; and to facilitate the planning, development, and implementation of projects that will improve safety, and reduce traffic, fuel consumption, and air pollution in the vicinity of schools.

B. Guidelines/Procedures

Each State administers its own program and develops its own procedures to solicit and select projects for funding. Tribal governments are encouraged to work with State DOTs and/or the FHWA Division office in the State to apply for SRTS funding.

The SRTS Program is funded for infrastructure and non-infrastructure projects and to administer SRTS programs that benefit elementary and middle school children in grades K - 8. Funds are administered by State DOTs to provide financial assistance to Tribal, State, regional, and local agencies; including non-profit organizations that demonstrate the ability to meet the requirements of the program.

Infrastructure - Eligible infrastructure-related projects include the planning, design, and construction of infrastructure-related projects that will substantially improve the ability of students to walk and bicycle to school, including:

1. Sidewalk improvements.
2. Traffic calming and speed reduction improvements.
3. Pedestrian and bicycle crossing improvements.
4. On-street bicycle facilities.
5. Off-street bicycle and pedestrian facilities.
6. Secure bicycle parking facilities.
7. Traffic diversion improvements in the vicinity of schools.

According to the FHWA's SRTS Program Guidance issued on January 3, 2006 (http://safety.fhwa.dot.gov/saferoutes/srtsguidance.htm#_Toc123542165), for infrastructure projects, public funds must be spent on projects within the public ROW. This may include projects on private land that have public access easements. Public property includes lands that are owned by a public entity, including those lands owned by public school districts. Construction and capital improvement projects also must be located within approximately two miles of a primary or middle school (grades K – 8). Schools with grades that extend higher than grade 8, but which include grades that fall within the eligible range, are eligible to receive infrastructure improvements. In addition, the State SRTS Coordinator position in each State is funded from the infrastructure portion of the State's SRTS Program apportionment.

Non-infrastructure – According to the FHWA's SRTS Program Guidance, each State must set aside from its SRTS annual apportionment not less than 10 percent and not more than 30 percent of the funds for noninfrastructure-related activities, including:

1. Public awareness campaigns and outreach to press and community leaders.
2. Traffic education and enforcement in the vicinity of schools (within approximately two miles).
3. Student sessions on bicycle and pedestrian safety, health, and environment.
4. Funding for training, volunteers, and managers of safe routes to school programs.

C. References/Resources

<http://safety.fhwa.dot.gov/saferoutes/index.htm>.

www.saferoutesinfo.org.

NHTSA Administered Programs

State and Community Highway Safety Grant Program

(23 U.S.C. 402)

A. Statutory/Regulatory Requirements

Sections 2001 and 2002 of SAFETEA-LU reauthorized the State and Community Highway Safety formula grant program (Section 402 of chapter 4 of Title 23, U.S.C.) to support State highway safety programs, designed to reduce traffic crashes and resulting deaths, injuries, and property damage.

B. Guidelines/Procedures

For every year between fiscal years 2006 and 2009, the BIA receives approximately \$4.3 million for highway safety. This fund is administered by the Office of Indian Highway Safety Program. Tribes are encouraged to work with the BIA's Office of Indian Highway Safety Program when considering applying for those funds.

The States and the BIA may use these grant funds only for highway safety purposes. At least 40 percent of the funds received by the States are to be expended by political subdivisions of the State (which can include Tribes). However, 95 percent of the funds apportioned to the Secretary of the Interior under this section will be expended by Tribes to carry out highway safety programs within their jurisdictions.

C. References/Resources

http://www.nhtsa.gov/nhtsa/whatsup/TEA21/GrantMan/HTML/07_Sect402Leg23US_C_Chap4.html.

State Traffic Safety Information System Improvement Grants Program
(23 U.S.C. 408)

A. Statutory/Regulatory Requirements

Section 2006 of SAFETEA-LU reauthorizes the State Traffic Safety Information System Improvement Grants Program (Section 408 of Title 23, U.S.C.) to encourage States to adopt and implement effective programs to improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of State data that is needed to identify priorities for national, State, and local highway and traffic safety programs; to evaluate the effectiveness of efforts to make such improvements; to link these State data systems, including traffic records, with other data systems within the State; and to improve the compatibility of the State data system with national data systems and data systems of other States to enhance the ability to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.

B. Guidelines/Procedures

A State may use these grant funds only to implement such data improvement programs.

As one of the “States,” the BIA receives this fund, which is also administered by the Office of Indian Highway Safety Program. Tribes are encouraged to work with the BIA’s Office of Indian Highway Safety Program when considering applying for those funds.

The BIA received \$300,000 from NHTSA in fiscal year 2006.

C. References/Resources

http://www.nhtsa.gov/nhtsa/whatsup/TEA21/GrantMan/HTML/Sec_2006_408.html.

Note: Since the BIA is not a direct recipient of the following funds, Tribes are encouraged to work with the Governor’s Highway Safety Offices in their States when considering applying for these funds.

Alcohol-Impaired Driving Countermeasures Incentive Program

(SAFETEA-LU Section 1113, 1122, 2007, 6003; 23 U.S.C. 410; 49 CFR 1.5)

The purpose of this program is to reduce collisions resulting from driving while under the influence of alcohol or other controlled substances.

http://www.nhtsa.gov/nhtsa/whatsup/TEA21/GrantMan/HTML/Section_410_Legislation1.html.

http://www.nhtsa.gov/nhtsa/whatsup/TEA21/GrantMan/HTML/alcohol_impaireddriving.html.

Occupant Protection Incentive Grant Program

(SAFETEA-LU Section 2004; 23 U.S.C. 405)

The purpose of this program is to reduce roadway deaths and injuries resulting from unrestrained or improperly restrained occupancy within a motor vehicle. A State may use the grant funds only to implement and enforce occupant protection programs.

http://www.nhtsa.gov/nhtsa/whatsup/TEA21/GrantMan/HTML/405_amended_FINALReg_12-05.html.

Child Safety and Child Booster Seat Incentive Program

(SAFETEA-LU Section 2011; 23 U.S.C. 405(f))

This new incentive program was established by SAFETEA-LU for the enactment and enforcement of child restraint laws requiring children up to 65 pounds and under 8 years of age to be properly restrained in a child safety or booster seat.

http://www.nhtsa.gov/nhtsa/whatsup/TEA21/GrantMan/HTML/2011_FRImplementingGuidance.pdf.

Safety Belt Performance Program

(SAFETEA-LU Section 2005; 23 U.S.C. 406)

This new incentive grant program under SAFETEA-LU encourages the enactment and enforcement of laws requiring the use of safety belts in passenger motor vehicles. These are one-time grants to States that pass primary seat belt laws. States may use these grants for any safety purpose that (a) corrects or improves a hazardous roadway location or (b) proactively addresses highway safety problems. However, at least \$1M received must be obligated for behavioral highway safety activity.

http://www.nhtsa.gov/nhtsa/whatsup/TEA21/GrantMan/HTML/Sec_2005_406.html
http://www.nhtsa.gov/nhtsa/whatsup/TEA21/GrantMan/HTML/FR_Implementing_Guidance_1-25-06.pdf.

Other Federal-Aid Programs

The statutes governing the Federal-aid Highway Program are found in Title 23, United States Code (23 U.S.C.). This section highlights a few of the Federal-aid programs found in the Guide to Federal-aid Programs and Projects <http://www.fhwa.dot.gov/federalaid/projects.cfm>.

CMAQ Congestion Mitigation and Air Quality Improvement Program – CMAQ

A. Statutory/Regulatory Requirements

CMAQ is governed by Title 23, Section 149 of the United States Code. This program is to reduce transportation-related emissions in air quality non-attainment and maintenance areas.

CMAQ funds are apportioned to States by formula based on population and the severity of ozone and carbon monoxide pollution in their non-attainment or maintenance areas.

B. Guidelines/Procedures

Tribes should contact their State DOTs or FHWA division offices in the State when considering applying for funding this program.

C. Resources

<http://www.fhwa.dot.gov/environment/cmaqpgs/>.
<http://www.fhwa.dot.gov/federalaid/projects.cfm>.

National Scenic Byways Program

A. Statutory/Regulatory Requirements

The National Scenic Byways Program is governed by Title 23, Section 162 of the United States Code, and is administered by the Federal Highway Administration. The program is a grass-roots collaborative effort established to help recognize, preserve, and enhance selected roads throughout the United States.

B. Guidelines/Procedures

Indian Tribes may nominate a road as a National Scenic Byway, an All-American Road, or one of America's Byways, and may pursue grants directly through the FHWA or through a State DOT for eligible projects associated with the development of an Indian Tribe's scenic byway program.

C. Resources

<http://www.fhwa.dot.gov/hep/byways/index.htm>.

Highway Bridge Program (HBP)

A. Statutory/Regulatory Requirements

HBP is governed by Title 23, Section 144 of the United States Code. The purpose of the Highway Bridge program is to improve the condition of the Nation's highway bridges through replacement, rehabilitation, and preventive maintenance. This program provides funds to assist States in improving the condition of their bridges through replacement, rehabilitation, and systematic preventative maintenance.

B. Guidelines/Procedures

Tribes should contact their State DOTs or FHWA division office in the State when considering applying for funding this program.

C. Resources

<http://www.fhwa.dot.gov/federalaid/projects.cfm>.

Surface Transportation Program (STP)

A. Statutory/Regulatory Requirements

STP is governed by Title 23, Section 133 of the United States Code. This program provides flexible funding options for a broad array of transportation projects.

B. Guidelines/Procedures

Tribes should contact their State DOTs or FHWA division offices in the States when considering applying for funding this program.

C. Resources

<http://www.fhwa.dot.gov/safetealu/factsheets/stp.htm>.
<http://www.fhwa.dot.gov/federalaid/projects.cfm>.

XIII Appendix A (ACH Vendor/Miscellaneous Payment)

**ACH VENDOR/MISCELLANEOUS PAYMENT
ENROLLMENT FORM**

OMB No. 1510-0056

This form is used for Automated Clearing House (ACH) payments with an addendum record that contains payment-related information processed through the Vendor Express Program. Recipients of these payments should bring this information to the attention of their financial institution when presenting this form for completion. See reverse for additional instructions.

PRIVACY ACT STATEMENT	
<p>The following information is provided to comply with the Privacy Act of 1974 (P.L. 93-579). All information collected on this form is required under the provisions of 31 U.S.C. 3322 and 31 CFR 210. This information will be used by the Treasury Department to transmit payment data, by electronic means to vendor's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Automated Clearing House Payment System.</p>	

AGENCY INFORMATION	
FEDERAL PROGRAM AGENCY	
AGENCY IDENTIFIER:	AGENCY LOCATION CODE (ALCI):
ACH FORMAT: <input type="checkbox"/> CCD+ <input type="checkbox"/> CTX	
ADDRESS:	
CONTACT PERSON NAME:	TELEPHONE NUMBER: ()
ADDITIONAL INFORMATION:	

PAYEE/COMPANY INFORMATION	
NAME	SSN NO. OR TAXPAYER ID NO.
ADDRESS	
CONTACT PERSON NAME:	TELEPHONE NUMBER: ()

FINANCIAL INSTITUTION INFORMATION	
NAME:	
ADDRESS:	
ACH COORDINATOR NAME:	TELEPHONE NUMBER: ()
NINE-DIGIT ROUTING TRANSIT NUMBER: _ _ _ _ _ _ _ _ _	
DEPOSITOR ACCOUNT TITLE:	
DEPOSITOR ACCOUNT NUMBER:	LOCKBOX NUMBER:
TYPE OF ACCOUNT: <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS <input type="checkbox"/> LOCKBOX	
SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL: (Could be the same as ACH Coordinator)	TELEPHONE NUMBER: ()

AUTHORIZED FOR LOCAL REPRODUCTION

SF 3881 (Rev. 2/2003)
Prescribed by Department of Treasury
31 U.S.C. 3322; 31 CFR 210

XIV Appendix B (LRTP Element Chart with CFR References)

Long Range Transportation Planning	References
Approved by the Tribal Council Policy body. (What is date of adoption?)	Best Practice
The time horizon for long-range transportation planning should be 20 years to match State transportation planning horizons.	25 CFR 170.410
Includes both long- and short-range <i>strategies</i> that address current and future land use, economic development, traffic demand, public safety, health, and social needs. Lead to an integrated intermodal transportation system that facilitates the efficient movement of people and goods.	25 CFR 170.411
Identifies approach in addressing current and future transportation demand. (Trip generation reports, forecast, etc.)	25 CFR 170.400 25 CFR 170.410 25 CFR 170.411(b)
Identifies existing and future transportation network. (Official IRR Inventory, proposed routes, routes to be included in IRR inventory, transit, water, air, etc.)	Best Practice
Identifies pedestrian walkway and bicycle transportation facilities.	25 CFR 170.101(a)(1) 25 CFR 170.144
Assesses the investment necessary to preserve the existing system.	25 CFR 170.152 (d) 25 CFR 170.806
Describes proposed improvements in sufficient detail to develop cost estimates.	25 CFR 170.402(b)(10)
Are sensitive environmental and archeological sites identified or noted.	25 CFR 170.450 (b) 25 CFR 170.415
Includes an acceptable <i>financial plan</i> that demonstrates consistency of proposed transportation investments with available and projected resources.	25 CFR 170.411 (j)
Estimated revenues identify both existing and proposed source (local, State, Federal, Tribal, and private).	
Provided early and continuing opportunity for public official and citizen involvement, in accordance with the Public Involvement regulations.	25 CFR 170.413, 170.435-441
Consultation and coordination with States and/or MPO's for regionally significant projects.	25 CFR 170.415
A prioritized list of short- and long-term transportation needs.	25 CFR 170.411(i)

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Statewide Planning Requirements (23 CFR 450.214, 450.216)	Metropolitan Planning Requirements (23 CFR 450.322, 450.324)
Develop long-range plan (20-year horizon) that addresses the planning factors.	Develop long-range plan (20-year horizon) that addresses the planning factors.
Considers capital, operations, and management strategies, investment to preserve, and efficient use of the transportation system.	Include both long range and short range strategies/actions that lead to the development of a multimodal transportation system.
Include short range planning studies.	Include projects, operation and management strategies, capital investments, design concept and scope, bike/pedestrian facilities, transportation and transit enhancement activities.
	For non-attainment areas, coordinate with developing TCMs in the SIP – must meet the air quality conformity requirements for the LRP.
Include Safety element (SHSP).	Include Safety element (SHSP).
Include a Security element.	Include a Security element.
Develop in cooperation with MPOs.	Develop in cooperation with the State.
Consult with non-metropolitan local officials.	
Consult with Tribal governments.	Consult with Tribal governments, as appropriate.
Consult with State, Tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.	Consult with State, Tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.
Include potential environmental mitigation activities.	Include discussion of potential environmental mitigation activities.
Include public involvement.	Include public participation.
<u>May</u> include a financial plan.	Meet the fiscal constraint (financial plan) requirements for the LRP.
Make LRP available (published and electronically accessible format).	Make LRP available (published and electronically accessible format).
Continually evaluate, revise, and periodically update the LRP as appropriate.	Review and update the LRP every 4 years in non-attainment and maintenance areas, and at least every 5 years in attainment areas.
Copies of LRP are made available to FHWA and FTA.	Copies of LRP are made available to Governor, FHWA, and FTA.
Develop STIP that's consistent with the LRP.	Develop TIP that's consistent with the LRP.

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II.) **Existing Facility** Will these facilities be impacted? If so, what will be the cost?

Culverts: ___ Yes ___ No
Guard Rail: ___ Yes ___ No
Fence: ___ Yes ___ No Waterline: ___ Yes ___ No
Power: Buried ___ Yes ___ No Overhead ___ Yes ___ No
Telephone: Buried ___ Yes ___ No Overhead ___ Yes ___ No
Other Utilities: _____

III.) **Socioeconomic/Environmental**

Considered: Endangered Species___ Historical/Archeological ___
Are wetlands present? ___ Yes ___ No Is a public hearing needed? ___ Yes ___ No

IV.) **Proposed Project Development** (place a check mark next to the proposed entity to perform the work)

SURVEY:
___ Tribe ___ BIA Region/Agency ___ FLH

NEPA:
___ BIA ___ FLH (Lead Federal agency responsible for writing NEPA decision)

PREPARING NEPA DOCUMENTS:
___ Tribe ___ BIA Region/Agency ___ FLH

ARCHEOLOGICAL/HISTORICAL:
___ Tribe ___ BIA Region/Agency ___ FLH

DESIGN:
___ Tribe ___ BIA Region/Agency ___ FLH

RIGHT OF WAY RELOCATION:
___ Tribe ___ BIA Region/Agency ___ FLH

Type of ROW: ___ Fee ___ Non Fee

XVI Appendix D (PS&E Certification Checklist)

PS&E Certification Checklist

Project Name _____

Tribe _____

Agency _____ Reservation _____

State _____ County _____

Project Location _____

Type of work _____

Agency with Jurisdiction over Facility _____

_____ The project facility is included in the IRR program inventory.

_____ The project is on a FHWA-approved IRRTIP.

_____ Public involvement has been completed in accordance with 25 CFR 170.435 through 170.441.

_____ Appropriate construction easements, maintenance and utility agreements have been obtained in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 for fee lands and 25 CFR 169 for trust lands.

_____ Cultural resource and environmental requirements listed in Appendix A to Subpart D of 25 CFR 170 have been met.

_____ This PS&E package meets or exceeds applicable design, health and safety standards listed in Appendix B to Subpart D of 25 CFR 170.

_____ For other than facilities under Tribal and BIA jurisdiction, the owner public authority was provided an opportunity to review and comment on the Tribe's PS&E package when it was between 75 and 95 percent complete.

Tribal Approval _____ Date _____

Licensed Professional Engineer Approval _____

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State of Registration _____

Expiration Date _____

Registration Number _____

XVII Appendix E (Safety Checklist)

Safety Checklist for the Review of Construction Projects	
Item	Checked
TEMPORARY TRAFFIC CONTROL	
General	
Is the project constructible using the construction Traffic Control Plan (TCP) as shown in the PS&E? Does the traffic control affect the design, such as material requirements from roadways used for public use during the construction? Traffic restrictions?	
Is there enough work area and staging areas for the Contractor to do the necessary construction operations? Does the construction traffic control allow for Contractor access?	

Item	Checked
PERMANENT TRAFFIC CONTROL	
Signing	
Are the signs being used per the new MUTCD?	
Do the sign messages convey the intended actions that are required to be taken?	
Do the signs have the proper legends, sizes, color combinations, and reflectivity?	
Is the location of the sign per the MUTCD? Are the signs properly spaced? Are the layout measurements tied to a physical feature so the Contractor can do the layout in the field? Is there proper sight distance to the sign?	
Is it physically possible to place the sign where indicated? Is there sufficient horizontal clearance?	
Any existing signing that needs to be replaced to be in accordance with the MUTCD? Any conflicting existing signing?	
Markings	
Item	Checked
Have passing zones been verified? Matching existing?	
Handicap parking meets ADA requirements?	
Striping requirements per the new MUTCD? Meets Centerline warrants? Meets edgeline warrants?	

Safety Checklist for the Review of Construction Projects	
Item	Checked
What is the design speed of the construction traffic control? Is the speed based on the existing posted speed? If not, why?	
Is the work site safe for both traffic and workers?	
Construction Signing	
Item	Checked
Are the signs being used per the MUTCD? If the situation calls for a standard traffic control scheme, do the advance warning signs match those shown in the standard layouts in the MUTCD?	
Do the sign messages convey the intended actions that are required to be taken?	
Do the signs have the proper legends, sizes, color combinations, and reflectivity? The MUTCD provides that the minimum letter size for signs should not be less than five inches for low volume traffic.	
Is the location of the sign per the MUTCD? Are the signs properly spaced? Are the layout measurements tied to a physical feature so the Contractor can do the layout in the field?	
Are there existing signs within the construction zone that may conflict with the Traffic Control Plan? Do any of the existing signs obscure the view of advance warning signs?	
If stage construction is used, is the signing from stage to stage consistent (sign types and locations)? If not, could it be made more consistent?	
Is a detour provided? If a numbered route, are the numbered routes used for the detour? Are all access points properly signed? If a detour is not provided could a detour work?	
Is it physically possible to place the sign where indicated? Is there sufficient horizontal clearance?	
Is there a need for any pedestrian or bicycle signing?	
Channelizing Devices	
Item	Checked
Are the correct devices used for a particular operation? • Drums should be used instead of barricades, type II. • Temporary concrete barriers should not be used as a channelizing device.	
Are channelizing tapers located correctly? Are they the correct length? Are devices spaced correctly in the taper? Are they spaced correctly in the work area?	
Do the devices meet MUTCD requirements for size, type, color, and reflectivity?	
Are the devices properly ballasted (weighted down)?	

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Safety Checklist for the Review of Construction Projects	
Pavement Markings	
Item	Checked
Are short-term markings required? If so, do they coincide with MUTCD 6D and Federal Lands Highway policy?	
Is marking consistent, especially during stage construction?	
Do existing pavement markings conflict with the proposed temporary markings?	

Lighting Devices	
Item	Checked
Are warning lights used correctly? • Warning lights, type A should be used on drums or barricades to mark point hazards, or on the first two devices in a taper. • Warning lights, type B, if used, should be used on signs and the batteries should be placed no higher than 12 inches off the ground. • Warning lights, type C should be used on drums or barricades used in a series for delineation, except as provided above.	
Are arrow panels placed on the shoulder adjacent to the beginning of the taper? If there is limited shoulder, the arrow board should be placed in the closed lane towards the beginning of the taper. Is there adequate sight distance for the arrow board?	
Is the arrow panel being used correctly? • Arrow panels should not be used in "passing arrow" mode on two-lane two-way roadways, shoulder closures, or lanes shifts. • For the cases listed above the arrow board can be used in the "caution" mode.	

Barriers	
Item	Checked
Are untreated temporary barrier ends exposed to traffic?	
Is the area between the barrier and the travel lanes relatively flat (approximately 10:1)?	
Are temporary barriers required due to drop-off close to the travel lanes? Are existing barriers being removed such that the hazards they were protecting are now a hazard during the construction?	
Is temporary barrier properly accounted for? For stage construction, use the greatest amount of barrier required for a particular stage as the barrier quantity, and remember to account for storing barrier during stages with less than the greatest amount for moving barrier.	
Are construction areas properly shielded?	

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Safety Checklist for the Review of Construction Projects	
Item	Checked
Temporary barriers do deflect. Is there any problem associated with this possible deflection? Should the barrier be bolted to the pavement or bridge deck?	
Is it physically possible to place barriers as shown in the TCP? If used on a bridge deck removal is barrier placed on a cantilever that may fail? Do the barrier flares shown in the TCP make the barrier have to be placed down a	

Item	Checked
Are there any steep embankments?	
Are barriers flared away from the roadway in accordance with AASHTO Roadside Design Guide?	
Flaggers	
If flaggers are being used are the proper warning signs displayed?	
Is the flagging station visible to oncoming traffic?	
When the flagger is not on station, is the flagger sign covered or removed?	
Miscellaneous	
Item	Checked
Does the Project Engineer have names and phone numbers of persons to contact in case of emergencies? If there are special construction events (i.e., roadway closures) are there provisions for the Contractor to notify the Project Engineer in advance so the Engineer can notify authorities?	
Are roadway drop-offs excessive? Should they be protected? Should the Contract provide that the construction be completed to the same elevation by the end of each construction day? Is that practical? Should and can steel plates be used?	
Does the Contract identify time restrictions placed so that the Contractor can only perform work during certain times? Are these restrictions valid?	
Is there a possibility of pedestrians and cyclists in the project area? Are they taken into account?	
Does the traffic control or construction operations cause drainage problems?	
For projects with stage construction, when the traffic control is switched from one stage to the next, are there provisions in the Contract to accomplish that operation? Can the traffic control switching be accomplished during the time frames provided in the contract? Can it be done under traffic?	

XVIII Appendix F (Traffic Control Checklist)

Print Form Submit by Email

TRAFFIC CONTROL DEVICES CHECK SHEET

DAY/DATE: WEATHER: *TCS:
TIME: PROJECT#:

Enter the deficiencies noted, along with location.
Examples include: Poor reflectivity, Need cleaning or maintenance, Improper placement, Wrong device used.

Enter when the contractor was notified of the problem and the time when it was corrected.

ITEM # 63503C- ARROW BOARDS, TYPE C: Total # of Deficiencies:

Comments:

Time Contractor Notified of Deficiencies: Time Corrected:

ITEM # 63507- CONSTRUCTION SIGNS: Total # of Deficiencies:

Comments:

Time Contractor Notified of Deficiencies: Time Corrected:

ITEM # 63508B- DRUM, TYPE B: Total # of Deficiencies:

Comments:

Time Contractor Notified of Deficiencies: Time Corrected:

***TRAFFIC CONTROL SUPERVISOR (TCS)**

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ITEM # 63505B- BARRICADE, TYPES 2 & 3:

Total # of Deficiencies:

Comments:

Time Contractor Notified of Deficiencies:

Time Corrected:

ITEM # 63521A/C- WARNING LIGHT, TYPES A & C:

Total # of Deficiencies:

Comments:

Time Contractor Notified of Deficiencies:

Time Corrected:

ITEM # 63521A/C- VARIABLE MESSAGE SIGN (VMS):

Total # of Deficiencies:

Comments:

Time Contractor Notified of Deficiencies:

Time Corrected:

ITEM # 63521A/C- OTHER DEVICES/ITEMS:

Total # of Deficiencies:

Comments:

Time Contractor Notified of Deficiencies:

Time Corrected:

GENERAL COMMENTS:

All traffic control devices within project (except those listed above) conformed with the MUTCD and contract.

FHWA ENGINEER: _____

DATE:

XIX Appendix G (Construction Project Field Review)

Are general alignment, typical section, overall geometries, sight distance, etc., in close conformity with the plans?

Are the following items adequately provided for?

Proper guardrail end treatment and length-of-need?

Safe slopes and ditch configurations?

Signs and pavement markings (permanent and temporary) in accordance with MUTCD?

Clear zone free of hazardous obstacles?

Bridges, culverts, drainage structures, seeding and erosion control (erosion control plan on file)?

Inspection staff adequate for the type of work being done?

Materials testing/inspection procedures, if observed, being performed properly and at appropriate frequency?

Are daily inspection reports on file? (compaction, bituminous density, etc.)

Who performs materials testing?

Where is it done? Are test reports available or on file?

Is assurance testing being performed?

By whom?

Are project records in proper order?

Is the project diary current and on hand?

Who fills it out?

Are entries properly made?

What is the overall quality of work/workmanship?

Who performs field inspections?

Who are the subcontractors and what work (including percentage) are they performing?

Field Issues

Is construction signing adequate?

What is the trailer's condition?

Are labor employment provisions posted?

Who is performing construction supervision (Tribe Agency, consultant)?

Project staff

Who performs 2nd level inspection and how often?

Are reports available on file?

Observation about contractor's staff, equipment, workmanship

Observe operations (concrete, asphalt, drainage, grading)

Observations about quality of work, safety, traffic& erosion control, compliance with Plans etc.). .

Other Project Records:

Is monthly narrative and work progress report submitted to the Tribe?

Are there photos taken before, during and after construction?

Are all material sources certified/approved? Are they kept on file?

Other Remarks:

Contract Modifications

How many?

Reason(s) for CM

Final Inspection:

Date:

Who attended?

Written report?

Final construction report: (final voucher, as built plans, etc.)

XX Appendix H (Construction Project Final Inspection)

The Final Inspector shall review the plans, notes, and applicable specifications and then inspect the full length of the project. The following items should be addressed during the final inspection:

Item	Checked
Safety - Are the following items adequately provided for? Items may be checked by randomly selected sections rather than inspecting all affected routes.	
General	
Proper guardrail end treatment and length-of-need?	
Safe slopes and ditch configurations?	
Signs and pavement markings (permanent and temporary) in accordance with MUTCD?	
Clear zone free of hazardous obstacles?	

Item	Checked
Roadway-Drainage-Structures	
General	
Rideability - If the project involves new pavement, resurfacing, bridge replacement, or a bridge overlay, it must be checked to see if it meets the applicable contract surface tolerance requirements. If the surface tolerances do not meet the contract requirements, the project must not be accepted.	
Drainage - The pavements, a random selection of underdrains, ditches, conduits, catch basins, and other items must have positive drainage and be free of obstructions.	
Structures - Bridges must be checked for all items which constitute the completed structure, both above and below the deck.	
Erosion Control - Roadside items must be checked to see that all erosion control items have been placed or established.	

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Item	Checked
Materials	
General	
Materials testing/inspection procedures, if observed, being performed properly and at appropriate frequency?	
Who performs materials testing?	
Where is it done? Are test reports available or on file?	
Is assurance testing being performed? By whom?	
Are materials testing reports on file? (compaction, bituminous density, etc.)	
Are all material sources certified/approved?	
Project Records	
Item	Checked
Are project records in proper order?	
Is the project diary current and on hand? Who filled it out?	
Are entries properly made?	
What is the overall quality of work/workmanship?	
Who performs field inspections?	
Are reports on file for Initials, Intermediates, and Finals?	

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Other Project Records	
Item	Checked
Is monthly narrative and work progress report submitted to Region Office?	
Are there photos taken before, during and after construction?	

Contract Modifications	
Item	Checked
How many?	
Reason(s) for CM?	

Miscellaneous	
Item	Checked
Cleanup - The project is not acceptable if cleanup is not complete. All borrow and waste areas must be restored.	
Other	
Other	

Final Inspection:

Date:

Who attended?

Written report?

Final construction report: (final voucher, as built plans, etc.)

XXI Appendix I (Program Accomplishment Report)

NAME OF TRIBE
FY XXXX IRR Program Accomplishment Report

Total IRR Program funds received: _____

Work Accomplished:

- **Design and Construction projects**
 - o Design Projects
 - BIA Route 124
 - Description – 3.1 mile project from MP 2.3 to MP 5.4. Project will consist of grading and drainage improvements, mill and overlay, and striping.
 - Estimated Cost - \$1,200,000
 - % Complete – 30
 - Critical Issues – Environmental Clearances, easements
 - o Construction Projects
 - BIA Route 125
 - Description – resurfacing project (double chip seal) for 2 miles from MP 6 to MP 8
 - Award Amount - \$750,452.00
 - % Complete – 100%
 - Critical issues - Major weather delays
- **Planning**
 - o Funds Utilized - \$54,000
 - o Activities Undertaken
 - Development of CS/TIP documents
 - RIFDS Updates
 - Development of Tribal Safety Plan
- **Maintenance**
 - o Funds Utilized - \$20,000
 - o Activities Undertaken
 - Snow removal
 - Mowing
 - Patching
 - New Equipment
- **Transportation Department Operations**
 - o Funds Utilized - \$54,000
 - o Activities Undertaken
 - Salaries
 - Computers
 - Utilities

XXII Appendix J (Financial Status Report)

FINANCIAL STATUS REPORT

(Short Form)

(Follow instructions on the back)

1. Federal Agency and Organizational Element to Which Report is Submitted		2. Federal Grant or Other Identifying Number Assigned By Federal Agency		OMB Approval No. 0348-0038	Page of pages
3. Recipient Organization (Name and complete address, including ZIP code)					
4. Employer Identification Number		5. Recipient Account Number or Identifying Number		6. Final Report <input type="checkbox"/> Yes <input type="checkbox"/> No	
7. Basis <input type="checkbox"/> Cash <input type="checkbox"/> Accrual					
8. Funding/Grant Period (See instructions) From: (Month, Day, Year)		To: (Month, Day, Year)		9. Period Covered by this Report From: (Month, Day, Year)	
To: (Month, Day, Year)					
10. Transactions:			I Previously Reported	II This Period	III Cumulative
a. Total outlays					0.00
b. Recipient share of outlays					0.00
c. Federal share of outlays					0.00
d. Total unliquidated obligations					
e. Recipient share of unliquidated obligations					
f. Federal share of unliquidated obligations					
g. Total Federal share(Sum of lines c and f)					0.00
h. Total Federal funds authorized for this funding period					
i. Unobligated balance of Federal funds(Line h minus line g)					0.00
11. Indirect Expense	a. Type of Rate(Place "X" in appropriate box) <input type="checkbox"/> Provisional <input type="checkbox"/> Predetermined <input type="checkbox"/> Final <input type="checkbox"/> Fixed				
	b. Rate	c. Base	d. Total Amount	e. Federal Share	
12. Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.					
13. Certification: I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.					
Typed or Printed Name and Title				Telephone (Area code, number and extension)	
Signature of Authorized Certifying Official				Date Report Submitted November 26, 2007	

NSN 7540-01-218-4387

269-202

Standard Form 269A (Rev. 7-97)
Prescribed by OMB Circulars A-102 and A-110

XXIII Appendix K (Structure Inventory and Appraisal Sheet)

Year: State: Structure: Federal Agency:

USE OF THIS DOCUMENT IS SUBJECT TO 23 USC SEC 409.

*****IDENTIFICATION*****				-----	
(1) STATE NAME:	CODE:			SUFFICIENCY RATING:	
(8) STRUCTURE NUMBER:					STATUS:
(5) INVENTORY ROUTE (ON/UNDER):			*****CLASSIFICATION*****		CODE
(2) HIGHWAY AGENCY DISTRICT:			(112) NBIS BRIDGE LENGTH:		
(3) COUNTY CODE:	(4) PLACE CODE:			(104) HIGHWAY SYSTEM:	
(6) FEATURES INTERSECTED:			(26) FUNCTIONAL CLASS:		
(7) FACILITY CARRIED:			(100) STRAHNET HIGHWAY:		
(9) LOCATION:			(101) PARALLEL STRUCTURE:		
(11) KILOMETERPOINT:			(102) DIRECTION OF TRAFFIC:		
(12) BASE HIGHWAY NETWORK:	CODE			(103) TEMPORARY STRUCTURE:	
(13) LRS INVENTORY ROUTE & SUBROUTE:			(105) FEDERAL LANDS HIGHWAYS:		
(16) LATITUDE: DEG MIN SEC			(110) DESIGNATED NATIONAL NETWORK:		
(17) LONGITUDE: DEG MIN SEC			(20) TOLL:		
(98) BORDER BRIDGE STATE CODE:	% SHARE:			(21) MAINTAIN:	
(99) BORDER BRIDGE STRUCTURE NUMBER:			(22) OWNER:		
				(37) HISTORICAL SIGNIFICANCE:	
*****STRUCTURE TYPE AND MATERIAL*****				*****CONDITION*****	
(43) STRUCTURE TYPE MAIN - MATERIAL:					CODE
(44) STRUCTURE TYPE APPR - MATERIAL:	CODE			(58) DECK:	
(45) NUMBER OF SPANS IN MAIN UNIT:					(59) SUPERSTRUCTURE:
(46) NUMBER OF APPROACH SPANS:					(60) SUBSTRUCTURE:
(107) DECK STRUCTURE TYPE:	CODE:			(61) CHANNEL AND CHANNEL PROTECTION:	
(108) WEARING SURFACE / PROTECTIVE SYSTEM:					(62) CULVERTS:
(A) TYPE OF WEARING SURFACE:	CODE:			*****LOAD RATING AND POSTING*****	
(B) TYPE OF MEMBRANE:	CODE:			CODE	
				(31) DESIGN LOAD:	
				(63) OPERATING RATING METHOD:	
				(64) OPERATING RATING:	
				(65) INVENTORY RATING METHOD:	
				(66) INVENTORY RATING:	

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FHWA-37 PROJECTS ASSOCIATED WITH THIS
BRIDGE
APPRPROJECT FEDERAL FUNDS

STRUCTURE #	PROJ.	PROJ. SUFFIX	PROG. CODE	DATE LAST ACT.	FUNDS

PROJECT SUFFIX:

BRIDGE TYPE IMPROVEMENT:

DETAIL TYPE IMPROVEMENT:

(SC) STEP CODE:

XXIV Appendix L (IRRBP PS&E Certification Checklist)

**INDIAN RESERVATION ROAD BRIDGE PROGRAM (IRRBP)
PLANS, SPECIFICATION AND ESTIMATE CERTIFICATION CHECKLIST**

Project Name: _____ Project Number: _____

Structure No. (item 8): _____ ID Number: _____ Region: _____

Agency: _____ Reservation: _____ County: _____

State: _____

Project Location: _____

General Description of the Work: _____

Ownership: _____, if non-BIA owned provide the following:

Name of Owner: _____ Point of Contact: _____ Point of Contact's

Phone No. _____

Sufficiency Rating: _____ (See attached SI&A data sheet for this project)

Status: _____ Structurally Deficient _____ Functionally Obsolete

Type of Construction: _____ Replacement _____ Rehabilitation, ADT(item 29): _____

Detour Length (item 19): _____ (km) Truck ADT (item 109): _____ (%)

Function Class(item 26): _____

Do School Buses use this bridge? ___ Yes ___ No, If yes How many trips per day _____

Safety Issues involved with this project? _____

Does the bridge project ave Right of Way? ___ Yes ___ No, If yes Date obtained _____

NEPA Compliance, Date: _____

Archaeological/Cultural Resources Compliance, Date: _____

PS&E Approval, Date: _____

Amount of Funds Requested: \$ _____

XXV Appendix M (IRRHPP Applications)

IRR High Priority Project Application (non-emergency / disaster)		
Tribal / Applicant Information		Scoring Information
1	Name _____	18 ACCIDENT DATA (last 5 years)
2	Address _____	19 AADT _____
	line 1: _____	20 # of Fatality Accidents _____
	line 2: _____	21 # of Injury Accidents _____
3	County/State _____	22 # of Property Damage Accidents _____
4	BIA Region _____	23 Years Since Last IRR Project _____
5	Tribal Representative _____	24 Total Project Amount \$ _____
6	Title _____	25 Matching Funds Available \$ _____
7	Phone # _____	26 HPP Funds Requested \$ _____
8	Fax # _____	27 GEOGRAPHICAL ISOLATION
9	Tribal Authorization/ Resolution Date _____	28 Route Functional Classification _____
		29 Construction Need _____
		30 ALL WEATHER ACCESS
		31 Number of all weather access elements _____
Project Information		
10	Project Name _____	
11	Project Description _____	
12	Project Type _____	
13	Route Number _____	
14	Section Number _____	
15	Project I.D. # _____	
16	Project Length _____	
17	NBIS # (if applicable) _____	
32	Submitted By: _____ (name & title)	
	Signature: _____	Date: _____
33	Reviewed By: _____ (name & title)	
	Signature: _____	Date: _____



IRR HPP Regional Checklist Non-Emergency / Disaster	
<input type="checkbox"/>	Tribal Annual IRR Allocation Verification Appropriate BIA Documentation Provided by Region
<input type="checkbox"/>	Eligible IRR HPP Activity (supporting documentation) IRR Inventory verification - (5704 summary sheet RIFDS) Tribal resolution - Priority
<input type="checkbox"/>	PS&E Verification Signed / Stamped Plan Cover Sheet & Engineers Estimate or PS&E Approval requirements per Title 23, Chapter 2, sec 202 (d) (2) (F) (ii).
<input type="checkbox"/>	Application Form Completed
<input type="checkbox"/>	Accident & Fatality Rate Data (if applicable) ADT Data for Candidate Route Certifiable source of data from law enforcement or governmental agency indicating the location and type of the accident.
<input type="checkbox"/>	Years since Last IRR Project BIA Federal Finance System Documentation
<input type="checkbox"/>	Percent Match Verification MOU of responsible agency or matching entity with contact information.
<input type="checkbox"/>	All Weather Access Verification Strip Map - Indicating project proximity to elements.
<input type="checkbox"/>	Other Attachments (not required) Complete Plans Photos
Regional Certification	
Prepared By:	_____
Date:	_____
Regional Roads Engineer:	_____
Date:	_____

Instructions to IRR HPP Application Form (non-emergency / disaster)

Item #	Description
Tribal / Applicant Information	
1	Name Input the name of the applicable Reservation / Tribal community / Native Alaskan Village / Rancheria.
2	Address Input the Mailing Address of the applicable Reservation / Tribal community / Native Alaskan Village / Rancheria.
3	County / State Input the county and state in which is applicable to the project
4	BIA Region Input the appropriate BIA Region
5	Tribal Representative Input the appropriate tribal contact representative.
6	Title Title of appropriate tribal contact representative.
7	Phone # Phone number of tribal contact.
8	Fax # Fax number of tribal contact.
* 9	Tribal Authorization / Resolution Tribal Authorization by resolution required for HPP program according to Sec. 170.210 (f) 'Documentation from the tribe providing authority for BIA to place the project on an IRRHPP TIP if the project is selected and approved.' In addition the resolution must identify proposed HPP project as the highest priority. Attach to application.
Project Information	
10	Project Name Input name of proposed HPP project.
11	Project Description Input as much information as necessary to adequately describe the overall proposed project, scope and location. For example: <i>Earthwork, Grading, Drainage, Aggregate, Pavement, Erosion Control etc.</i> Any other information regarding the up-grade or route enhancements.
12	Project Type Choose from the following: Construction, Non-Bridge PS&E Development, Bridge Replacement PS&E Development, Bridge Rehabilitation PS&E Development.
13	Route Number Input IRR Inventory Route Number(s)
14	Section Number Input IRR Inventory Section Number(s)
15	Project I.D. # Input BIA Project ID number if available.
16	Project Length Input over-all length of project.
17	NBIS # Input the National Bridge Inventory System number if appropriate to proposed project.

* Items that require verification/attachments per IRR HPP Checklist

Scoring Information

- 18 **Accident Data (last 5 years)**
The following data is required for the Weighted Highway Index (WHI).
- * 19 **AADT - Annual Average Daily Traffic**
AADT is ADT multiplied by 365. Input this number for route.
- * 20 **# of Fatality Accidents**
Input the number of accidents on specified route and section in which there have been fatalities.
- * 21 **# of Injury Accidents**
Input the number of accidents on specified route and section in which there have been injuries.
- * 22 **# of Property Damage Accidents**
Input the number of accidents on specified route and section in which there have been property damage.
- 23 **Years Since Last IRR Project**
Input the number of years since the last COMPLETED IRR Project.
- 24 **Total Project Amount**
Input total project dollar amount
- * 25 **Matching Funds Available**
Input the amount of applicable matching funds available. Match indicate dollars from a Non-IRR source to be utilized in the project. Will require certification. Utilized for percent match element of scoring matrix - evaluated against TOTAL project amount.
- 26 **HPP Funds Requested**
Include the amount of HPP dollars requested to include preliminary engineering, construction, and construction engineering.
- 27 **Geographical Isolation**
The following data is required in order to determine geographical isolation criteria.
- 28 **Route Functional Classification**
Input the IRR Inventory Functional Classification for route and section.
- 29 **Construction Need**
Input the IRR Inventory Construction Need for route and section.
- * 30 **All Weather Access**
The following information is utilized to determine the number of all weather access elements per scoring matrix. Each element is required to directly access proposed project. (directly access means that element 'touches' project within the proposed project limits) Will require mapping information for certification.
- * 31 **Number of All Weather Access Elements**
Input the number of all weather access elements:
Employment - Jobs or Employment
Commerce - Business or Trade
Health - Hospital, Clinic, Pharmacy, Dental etc.
Safety - Fire, Police, Law Enforcement etc.
Educational Resources - Elementary Schools, High Schools, Colleges, Library, Technical or Trade School etc.
Housing - Residential Housing
- 32 **Submitted By**
Name and title of person submitting application.
- 33 **Reviewed By**
Name and title of BIA Regional Reviewing Official.

* Items that require verification/attachments per IRR HPP Checklist

IRR High Priority Project Application Emergency/Disaster	
Tribal / Applicant Information	Project Information
1 Name _____	14 Project Name _____
2 Address _____ line 1: _____ line 2: _____	15 Route Number _____
3 County/State _____	16 Section Number _____
4 BIA Region _____	17 Project I.D. # _____
5 Tribal Representative _____	18 Project Length _____
6 Title _____	19 NBIS # (if applicable) _____
7 Phone # _____	20 Ownership of Route _____
8 Fax # _____	21 Terrain _____
9 Tribal Authorization/ Resolution Date _____	22 Surface Width _____
10 Pending IRRHPP Application? _____	23 Surface Type _____
11 Contacted Regional ERFO Coordinator? _____	24 Amount Requested \$ _____
	25 Date of Event _____
	
Emergency/Disaster Information	
12 Description and Cause of Damage	
13 Scope/Description of Proposed Repairs	
26 Submitted By: _____ (name & title)	
Signature: _____	Date: _____
27 Reviewed By: _____ (name & title)	
Signature: _____	Date: _____

IRR HPP Regional Checklist - Emergency / Disaster

Tribal Annual IRR Allocation Verification

Appropriate BIA Documentation Provided by Region

Eligible IRR HPP Activity (supporting documentation)

IRR Inventory verification - (5704 summary sheet RIFDS)
Tribal resolution - Priority

Application Form Completed

Other Attachments

Photos

Location Map

Preliminary sketches or drawings illustrating the damage or proposed repairs.

Any official ERFO related documentation available

Regional Certification

Prepared By: _____

Date: _____

Regional Roads Engineer: _____

Date: _____

Instructions to IRR HPP Application Form - Emergency / Disaster	
Item #	Description
Tribal / Applicant Information	
1	Name Input the name of the applicable Reservation / Tribal community / Native Alaskan Village / Rancheria.
2	Address Input the Mailing Address of the applicable Reservation / Tribal community / Native Alaskan Village / Rancheria.
3	County / State Input the county and state in which is applicable to the project
4	BIA Region Input the appropriate BIA Region
5	Tribal Representative Input the appropriate tribal contact representative.
6	Title Title of appropriate tribal contact representative.
7	Phone # Phone number of tribal contact.
8	Fax # Fax number of tribal contact.
* 9	Tribal Authorization / Resolution Tribal Authorization by resolution required for HPP program according to Sec. 170.210 (f) 'Documentation from the tribe providing authority for BIA to place the project on an IRRHPP TIP if the project is selected and approved.' In addition the resolution must identify proposed HPP project as the highest priority. Attach to application.
10	Pending IRR Application Indicate yes or no. Eligibility per 170.205 (3) (b) 'Eligible applicants may have only one HPP application pending at any time. This includes emergency / disaster applications.
11	Contacted Regional ERFO Coordinator? Indicate yes or no. per 170.207 applicants are encouraged to apply for FHWA/ERFO Program funding if the project meets the requirements of the program.
Emergency / Disaster Information	
12	Description and Cause of Damage Input as much information as necessary to adequately describe event which occurred and subsequent damage to the route. Per 170.206. Declare major disaster declaration if known.
13	Scope / Description of Proposed Repairs Input as much information as necessary to adequately describe the overall proposed project, scope and location. For example: Earthwork, Grading, Drainage, Aggregate, Pavement, Erosion Control etc.

* Items that require verification/attachments per IRR HPP Checklist

Project Information

- 14 **Project Name**
Name of project.
- 15 **Route Number**
Input IRR Inventory Route Number(s)
- 16 **Section Number**
Input IRR Inventory Section Number(s)
- 17 **Project I.D. #**
Input BIA Project ID number if available.
- 18 **Project Length**
Input over-all length of project.
- 19 **NBIS #**
Input the National Bridge Inventory System number if appropriate to proposed project.
- 20 **Ownership of Route(s)**
Indicate who owns (responsible for) route(s).
- 21 **Terrain**
Indicate terrain type - Flat, Rolling, Mountainous etc.
- 22 **Surface Width**
Width of travel-way surface
- 23 **Surface Type**
Surface type of route(s) - Aggregate, Pavement etc.
- 24 **Amount Requested**
Dollar amount estimated for repairs described.
- 25 **Date of Event**
Specify the date event occurred
- 26 **Submitted By**
Name and title of person submitting application.
- 27 **Reviewed By**
Name and title of BIA Regional Reviewing Official.

** Items that require
verification/attachments
per IRR HPP Checklist*

XXVI Appendix N (23 CFR 661 – IRR Bridge Program)

Federal Register / Vol. 73, No. 58 / Tuesday, March 25, 2008 / Rules and Regulations

15661

Dated: March 13, 2008.

Todd A. Stevenson,
Secretary, Consumer Product Safety
Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—List of Relevant Documents

(The following documents are available from the Commission's Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7923 or from the Commission's Web site (<http://www.cpsc.gov/library/foia/foia.html>)).

1. Briefing memorandum from Robert J. Howell, Acting Assistant Executive Director, EXHR and Patricia K. Adair, Project Manager, Directorate for Engineering Sciences, to the Commission, "Draft Final Amendments to the Standard for the Flammability of Clothing Textiles, 16 CFR Part 1610," January 11, 2008.

2. Memorandum from David Miller, EPHA, Directorate for Epidemiology, to Patricia K. Adair, Project Manager, "General Wearing Apparel Fires—Fatalities and Emergency Department Treated Injuries," December 27, 2007.

3. Memorandum from Dale R. Ray, Directorate for Economic Analysis, to Patricia K. Adair, Project Manager, "Final Regulatory Analyses—Clothing Textiles Standard Amendment," August 6, 2007.

4. Memorandum from Gail Stafford and Weiyang Tao, Directorate for Laboratory Sciences, to Patricia K. Adair, Project Manager, "Response to Comments Received on Notice of Proposed Rulemaking (NPR) for Updating the Standard for the Flammability of Clothing Textiles," October 22, 2007.

5. Memorandum from John R. Murphy, Division of Mechanical Engineering, to Patricia K. Adair, Project Manager, "Response to Comments Received as a Result of the Notice of Proposed Rulemaking (NPR) for Updating the Standard for the Flammability of Clothing Textiles," November 16, 2007.

6. Memorandum from Martha A. Kosh, Office of the Secretary, to ES, "Proposed Changes to Textile Flammability Standard Comments," May 15, 2007.

[FR Doc. E8-5569 Filed 3-24-08; 8:45 am]
BILLING CODE 9355-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feed; Pyrantel; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its animal drug regulations to correct an inadvertent omission in the list of concentrations of pyrantel tartrate Type A medicated articles approved for use by Phibro Animal Health. This action is being taken to improve the accuracy of the animal drug regulations.

DATES: This rule is effective March 25, 2008.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV-6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-276-9019, e-mail: george.haibel@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations in 21 CFR 558.485 to correct an inadvertent omission in the list of concentrations of pyrantel tartrate Type A medicated articles approved for use by Phibro Animal Health. This action is being taken to improve the accuracy of the animal drug regulations.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the 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.

§ 558.485 [Amended]

■ 2. In § 558.485, in paragraph (b)(1), add "48," in numerical sequence.

Dated: March 12, 2008.

Bernadette Dunham,
Director, Center for Veterinary Medicine.
[FR Doc. E8-5928 Filed 3-24-08; 8:45 am]
BILLING CODE 4160-01-S

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 661

[FHWA Docket No. FHWA-2007-27536]

RIN 2125-AF20

Indian Reservation Road Bridge Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: Section 1119 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144) makes significant changes to the Indian Reservation Road Bridge Program (IRRBP). In addition, it authorizes \$14 million of IRRBP funds per year for the replacement or rehabilitation of structurally deficient or functionally obsolete Indian Reservation Road (IRR) bridges. This final rule amends the existing IRRBP by establishing new policies and provisions. Also, in this final rule, preliminary engineering (PE) is now an eligible activity.

DATES: Effective April 24, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sparrow, Federal Lands Highway, HFPD-9, (202) 366-9483; or Ms. Vivian Philbin, Federal Lands Highway Counsel, HFFC-16, (720) 963-3445; Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

Internet users may access this document, the notice of proposed rulemaking (NPRM), and all comments received by the DOT by accessing the Federal eRulemaking portal at: <http://www.regulations.gov>. It is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: <http://www.archives.gov> or the Government Printing Office's Web page at <http://www.gpoaccess.gov/nara>.

Background

The Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107), established the IRRBP, codified at 23 U.S.C.

202(d)(4)(B) under which a minimum of \$13 million of IRR Program funds was set aside for a nationwide priority program for improving deficient IRR bridges. On May 8, 2003, the FHWA published a final rule for the IRRBP at 68 FR 24642 (23 CFR 661). This present rulemaking is necessary due to recent legislative changes.

Section 1119 of the SAFETEA-LU authorizes \$14 million per year for fiscal years 2005 through 2009 from the Highway Trust Fund for the IRRBP to carry out PE, construction engineering (CE), and construction to replace or rehabilitate structurally deficient or functionally obsolete IRR bridges. Pursuant to the new statutory requirements, the FHWA developed amendments to the existing IRRBP regulation. This final rule reflects these amendments.

Discussion of Comments Received to the Notice of Proposed Rulemaking

The FHWA published its NPRM on June 5, 2007, at 72 FR 31013 requesting comments to the proposed amendments. In response to the NPRM, the FHWA received comments from the Indian Reservation Road Coordinating Committee (IRRCC) and from three Tribes: The Cherokee Nation, Eastern Band of Cherokee Indians, and the Seminole Nation of Oklahoma. The FHWA addressed each of the comments in adopting this final rule.

The majority of the comments received addressed several common issues. These issues are addressed and discussed under the appropriate section below. The remaining sections did not receive comments and will be adopted as proposed.

Section-by-Section Discussion of Changes

1. What definitions apply to this regulation? (661.5)

Structurally deficient (SD)—The definition was updated to accurately align it with the FHWA's technical definition. A bridge becomes structurally deficient when it reaches the set threshold of one of the six criteria from the FHWA's National Bridge Inventory (NBI). This update does not change the substance of the definition, but rather will reduce ambiguity by making this definition consistent throughout FHWA.

2. When is a bridge eligible for replacement? (661.19) and When is a bridge eligible for rehabilitation? (661.21)

The IRRCC recommends that instead of the sufficiency rating numbers

identified in the NPRM, the final regulation should comply with the latest criteria established by the FHWA's National Bridge Inspection Standards (NBIS) for replacement or rehabilitation of an IRR bridge project.

The FHWA adopted this recommendation. The regulation now states that the rehabilitation and replacement criteria is the same as those used in 23 CFR part 650.409(a). This change is made in order for the IRRBP rule to be consistent with any future changes in the eligibility requirements for rehabilitation or replacement of bridges as established by the FHWA. However, this change will not affect the existing eligibility requirements in the existing regulations.

3. How will a bridge project be programmed for funding once eligibility has been determined? (661.23)

The IRRCC and the Seminole Nation of Oklahoma recommend that the first come first served basis should be eliminated and the criteria for ranking for the bridge applications should follow the provisions proposed under subparagraph (b)(1)–(b)(6) of this section, and deleting the proposed first sentence under subparagraph (b).

The FHWA adopted this recommendation and revised this section to eliminate the first come first served basis. Under this final rule, IRR bridges that are most critical will be given the highest priority for funding.

4. What does a complete application package for PE consist of and how does the project receive funding? (661.25) and What does a complete application package for construction consist of and how does the project receive funding? (661.27)

The Seminole Nation of Oklahoma recommends improving these sections by adding a timeframe (60 or 90 days) for the FHWA to review and return incomplete application packages so projects can be pursued.

The proposed language in these sections states that an incomplete application package would be disapproved and returned for revision and resubmission along with the notation as to why it was disapproved. The FHWA believes that with this provision the projects can still be pursued once the application is completed and resubmitted to the Bureau of Indian Affairs (BIA) and the FHWA.

Likewise, the revised language in these sections clarifies that the Tribes that will receive direct funding from the FHWA are the Tribes who entered into

a contract with the FHWA under an FHWA/Tribal agreement.

5. How does ownership impact project selection? (661.29)

The Cherokee Nation commented that this proposed section places a much higher priority on BIA bridges versus non-BIA bridges even though the statute makes no mention of distinction between the two. They object to the ownership distinctions in the proposed language of this section.

The FHWA believes that the ownership requirement in this section is an issue since the States and counties have ownership and primary responsibility for their bridges. Therefore, a smaller percentage of available funds has been set aside for non-BIA bridges since the States and counties have access to Federal-aid and other funding sources to replace or rehabilitate their bridges, whereas the IRRBP is the only funding source for the BIA and Tribal bridges. As such, the FHWA will retain the language in this section as proposed in the NPRM.

6. What percentage of IRRBP funding is available for PE and construction? (661.33)

The Eastern Band of Cherokee Indians does not agree with the proposal that 15 percent of IRRBP funding be eligible for PE costs. They believe that typical PE costs average 10 percent and that the proposed percentage should be reduced accordingly.

The FHWA maintains that given the historic average size of the projects, the 15 percent limit for PE is adequate and feels that this percentage represents the average cost of PE on the size of projects typically funded through this program. Therefore, the FHWA has adopted the language as proposed.

7. What percentage of IRRBP funding is available for use on BIA owned IRR bridges and non-BIA owned IRR bridges? (661.35)

The Cherokee Nation disagrees with the proposed regulation in this section in that the larger percentage of the IRRBP funds is set aside for BIA bridges versus the non-BIA bridges.

The FHWA's response to the comment is that the existing regulation states that up to 80 percent of the annual funding will be available for use on BIA and Tribally owned bridges with the remaining funds to be used for non-BIA owned bridges. This final rule utilizes the same funding distribution but it has the ability to shift funds between BIA and Tribally owned, and non-BIA owned bridge projects at various times during the fiscal year so

as to maximize the number of projects funded and the overall effectiveness of the program regardless of ownership.

8. What are the funding limitations on individual IRRBP projects? (661.37)

The Cherokee Nation, Eastern Band of Cherokee Indians, and the Seminole Nation of Oklahoma made similar comments on this section. These Tribes disagree with the funding limitation established by the FHWA for construction of non-BIA owned bridges. Likewise, they feel that the requirement to provide 20 percent matching funds in order to qualify for IRRBP funds would result in unfair treatment for some Tribes.

The proposed funding ceiling of \$1,000,000 for non-BIA owned bridges was developed based on a review of historical data on IRRBP funded projects. The FHWA determined that non-BIA owned bridge projects have an average project size less than \$600,000, and more than 75 percent of the projects were funded at a level below \$1,000,000. However, to meet funding flexibility, this section will now allow a Tribe to request additional funds for non-BIA owned projects that are above the thresholds by submitting a written justification for consideration to the FHWA. The approval of the requests would be considered on a case-by-case basis.

9. What should be done with a deficient BIA owned IRR bridge if the Indian Tribe does not support the project? (661.59)

The FHWA revised the proposed section in the NPRM to clarify that when the Tribe does not support a deficient IRR bridge for rehabilitation or replacement, the deficient IRR bridge can still remain open for traffic provided the structure's load rating is reduced to protect the safety of the motoring public.

Other

The IRRCC recommends that the proposed regulation be revised to clarify that a Tribally owned bridge be treated the same as a BIA-owned bridge for purposes of eligibility for replacement or rehabilitation and preliminary engineering costs.

The FHWA adopted the recommendation and Tribal bridges are now considered the same as BIA owned with regard to the funding criteria to align it to the IRR Program policy as established in 25 CFR part 170. The Tribal bridges are now eligible to receive 100 percent of funding for construction and \$150,000 maximum limit for PE.

Distribution and Derivation Tables

For ease of reference, distribution and derivation tables are provided for the current sections and the new sections, as follows:

DISTRIBUTION TABLE

Old section	New section
661.1	661.1.
661.3	661.3—Revised.
661.5	661.5—Revised.
661.7	661.7—Revised.
661.9	661.23—Redesignated and Revised.
661.11	661.41—Redesignated and Revised.
661.13	Removed.
661.15	661.9—Redesignated.
661.17	661.11—Redesignated.
661.19	Removed.
661.21	661.13—Redesignated.
661.23	661.15—Redesignated and Revised.
661.25	661.17—Redesignated and Revised.
661.27	661.19—Redesignated and Revised.
661.29	661.21—Redesignated and Revised.
661.31	661.29—Redesignated and Revised.
661.33	661.31—Redesignated and Revised.
661.35	661.35—Revised.
661.37	661.37—Revised.
661.39	Removed.
661.41	661.27—Redesignated and Revised.
661.43	Removed.
661.45	661.57—Redesignated.
661.47	661.39—Redesignated and Revised.
661.49	661.43—Redesignated and Revised.
661.51	661.47—Redesignated and Revised.
None	661.25—Added.
None	661.33—Added.
None	661.45—Added.
None	661.49—Added.
None	661.51—Added.
None	661.53—Added.
None	661.55—Added.
None	661.59—Added.

DERIVATION TABLE

New section	Old section
661.1	661.1.
661.3	661.3.
661.5	661.5.
661.7	661.7.
661.9	661.15.
661.11	661.17.
661.13	661.21.
661.15	661.23.
661.17	661.25.
661.19	661.27.
661.21	661.29.
661.23	661.9.
661.25	None.

DERIVATION TABLE—Continued

New section	Old section
661.27	661.41.
661.29	661.31.
661.31	661.33.
661.33	None.
661.35	661.35.
661.37	661.37.
661.39	661.47.
661.41	661.11.
661.43	661.49.
661.45	None.
661.47	661.51.
661.49	None.
661.51	None.
661.53	None.
661.55	None.
661.57	661.45.
661.59	None.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and USDOT Regulatory Policies and Procedures

The FHWA has determined that this action would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. This rule would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this action on small entities and has determined that this action would not have a significant economic impact on a substantial number of small entities. This final rule amends the existing regulations pursuant to section 1119 of SAFETEA-LU and would not fundamentally alter the funding available for the replacement or rehabilitation of structurally deficient or functionally obsolete IRR bridges. For these reasons, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L.

104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$128.1 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, tribal governments and the private sector.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA met with the IRRCC at three separate meetings in Tulsa, Oklahoma, in February, 2006; Denver, Colorado, in March, 2006; and Hinckley, Minnesota, in August, 2006, to jointly review the proposed regulation and provide the IRRCC with the opportunity to make recommendations prior to publishing the NPRM. The IRRCC was established under 25 CFR part 170 by the Secretaries of the Interior and Transportation, to provide input and recommendation to BIA and FHWA in developing IRR Program policies and procedures and to supplement government-to-government consultation by coordinating and obtaining input from Tribes, BIA, and FHWA. The IRRCC consists of primary and alternate Tribal representatives from each of the 12 BIA Regions, along with 2 non-voting Federal representatives (one each from BIA and FHWA).

The proposed regulation was first distributed to the IRRCC at the Tulsa meeting referenced above. The IRRCC then met in a special meeting in Denver, Colorado, specifically to review the regulation and develop recommendations for the FHWA rulemaking. The funding workgroup of the IRRCC was assigned the task of carrying forth the recommendations to FHWA. In Hinckley, Minnesota, the FHWA met with the funding workgroup and together they reviewed the

comments. The NPRM reflected the results of the initial IRRCC input.

The FHWA and IRRCC met again in August 2007 in Ketchikan, Alaska. At that meeting, the IRRCC reviewed the published NPRM and provided recommendations and comments to FHWA. All aspects of the regulation were reviewed by the IRRCC and the comments received by the IRRCC and its members are discussed above in the section-by-section discussion.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. We have determined that it is not a significant energy action under that order since it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain collection of information requirements for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not cause any environmental risk to health or

safety that might disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this rule under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights. The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 661

Indian Reservation Road Bridge Program.

Issued on: March 14, 2008.

James D. Ray,
Acting Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, by revising part 661 to read as set forth below:

PART 661—INDIAN RESERVATION ROAD BRIDGE PROGRAM

- Sec.
- 661.1 What is the purpose of this regulation?
- 661.3 Who must comply with this regulation?
- 661.5 What definitions apply to this regulation?
- 661.7 What is the IRRBP?
- 661.9 What is the total funding available for the IRRBP?
- 661.11 When do IRRBP funds become available?
- 661.13 How long are these funds available?
- 661.15 What are the eligible activities for IRRBP funds?
- 661.17 What are the criteria for bridge eligibility?
- 661.19 When is a bridge eligible for replacement?
- 661.21 When is a bridge eligible for rehabilitation?

- 661.23 How will a bridge project be programmed for funding once eligibility has been determined?
- 661.25 What does a complete application package for PE consist of and how does the project receive funding?
- 661.27 What does a complete application package for construction consist of and how does the project receive funding?
- 661.29 How does ownership impact project selection?
- 661.31 Do IRRBP projects have to be listed on an approved IRR TIP?
- 661.33 What percentage of IRRBP funding is available for PE and construction?
- 661.35 What percentage of IRRBP funding is available for use on BIA and Tribally owned IRR bridges, and non-BIA owned IRR bridges?
- 661.37 What are the funding limitations on individual IRRBP projects?
- 661.39 How are project cost overruns funded?
- 661.41 After a bridge project has been completed (either PE or construction) what happens with the excess or surplus funding?
- 661.43 Can other sources of funds be used to finance a queued project in advance of receipt of IRRBP funds?
- 661.45 What happens when IRRBP funds cannot be obligated by the end of the fiscal year?
- 661.47 Can bridge maintenance be performed with IRRBP funds?
- 661.49 Can IRRBP funds be spent on Interstate, State Highway, and Toll Road IRR bridges?
- 661.51 Can IRRBP funds be used for the approach roadway to a bridge?
- 661.53 What standards should be used for bridge design?
- 661.55 How are BIA and Tribal owned IRR bridges inspected?
- 661.57 How is a list of deficient bridges to be generated?
- 661.59 What should be done with a deficient BIA owned IRR bridge if the Indian Tribe does not support the project?

Authority: 23 U.S.C. 120(j) and (k), 202, and 315; Section 1119 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144); and 49 CFR 1.48.

§ 661.1 What is the purpose of this regulation?

The purpose of this regulation is to prescribe policies for project selection and fund allocation procedures for administering the Indian Reservation Road Bridge Program (IRRBP).

§ 661.3 Who must comply with this regulation?

Public authorities must comply to participate in the IRRBP by applying for preliminary engineering (PE), construction, and construction engineering (CE) activities for the replacement or rehabilitation of structurally deficient and functionally

obsolete Indian Reservation Road (IRR) bridges.

§ 661.5 What definitions apply to this regulation?

The following definitions apply to this regulation:

Approach roadway means the portion of the highway immediately adjacent to the bridge that affects the geometrics of the bridge, including the horizontal and vertical curves and grades required to connect the existing highway alignment to the new bridge alignment using accepted engineering practices and ensuring that all safety standards are met.

Construction engineering (CE) is the supervision, inspection, and other activities required to ensure the project construction meets the project's approved acceptance specifications, including but not limited to: additional survey staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates.

Functionally obsolete (FO) is the state in which the deck geometry, load carrying capacity (comparison of the original design load to the State legal load), clearance, or approach roadway alignment no longer meets the usual criteria for the system of which it is an integral part.

Indian Reservation Road (IRR) means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaska Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

Indian reservation road bridge means a structure located on an IRR, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of the openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

Life cycle cost analysis (LCCA) means a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs, such as maintenance, user costs, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.

National Bridge Inventory (NBI) means the aggregation of structure inventory and appraisal data collected to fulfill the requirements of the National Bridge Inspection Standards (NBIS).

Plans, specifications and estimates (PS&E) means construction drawings, compilation of provisions, and construction project cost estimates for the performance of the prescribed scope of work.

Preliminary engineering (PE) means planning, survey, design, engineering, and preconstruction activities (including archaeological, environmental, and right-of-way activities) related to a specific bridge project.

Public authority means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

Public road means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

Structurally deficient (SD) means a bridge becomes structurally deficient when it reaches the set threshold of one of the six criteria from the FHWA NBI.

Structure Inventory and Appraisal (SI&A) Sheet means the graphic representation of the data recorded and stored for each NBI record in accordance with the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges (Report No. FHWA-PD-96-001).

Sufficiency rating (SR) means the numerical rating of a bridge based on its structural adequacy and safety, essentiality for public use, and its serviceability and functional obsolescence.

§ 661.7 What is the IRRBP?

The IRRBP, as established under 23 U.S.C. 202(d)(4), is a nationwide priority program for improving structurally deficient and functionally obsolete IRR bridges.

§ 661.9 What is the total funding available for the IRRBP?

The statute authorizes \$14 million to be appropriated from the Highway Trust Fund in Fiscal Years 2005 through 2009.

§ 661.11 When do IRRBP funds become available?

IRRBP funds are authorized at the start of each fiscal year but are subject to Office of Management and Budget apportionment before they become available to FHWA for further distribution.

§ 661.13 How long are these funds available?

IRRBP funds for each fiscal year are available for obligation for the year authorized plus three years (a total of four years).

§ 661.15 What are the eligible activities for IRRBP funds?

(a) IRRBP funds can be used to carry out PE, construction, and CE activities of projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions, or install scour countermeasures for structurally deficient or functionally obsolete IRR bridges, including multiple pipe culverts.

(b) If a bridge is replaced under the IRRBP, IRRBP funds can be also used for the demolition of the old bridge.

§ 661.17 What are the criteria for bridge eligibility?

(a) Bridge eligibility requires the following:

- (1) Have an opening of 20 feet or more;
- (2) Be located on an IRR that is included in the IRR Inventory;
- (3) Be structurally deficient or functionally obsolete, and
- (4) Be recorded in the NBI maintained by the FHWA.

(b) Bridges that were constructed, rehabilitated or replaced in the last 10 years, will be eligible only for seismic retrofit or installation of scour countermeasures.

§ 661.19 When is a bridge eligible for replacement?

To be eligible for replacement, the bridge must be considered structurally deficient or functionally obsolete and must be in accordance with 23 CFR part 650.409(a) for bridge replacement. After an existing bridge is replaced under the IRRBP, it must be taken completely out of service and removed from the inventory. If the original bridge is considered historic, it must still be removed from the inventory, however the Tribe is allowed to request an exemption from the BIA Division of Transportation (BIADOT) to allow the bridge to remain in place.

§ 661.21 When is a bridge eligible for rehabilitation?

To be eligible for rehabilitation, the bridge must be considered structurally deficient or functionally obsolete and must be in accordance with 23 CFR part 650.409(a) for bridge rehabilitation. A bridge eligible for rehabilitation may be replaced if the life cycle cost analysis is conducted which shows the cost for bridge rehabilitation exceeds the replacement cost.

§ 661.23 How will a bridge project be programmed for funding once eligibility has been determined?

(a) All projects will be programmed for funding after a completed application package is received and accepted by the FHWA. At that time, the project will be acknowledged as either BIA and Tribally owned, or non-BIA owned and placed in either a PE or a construction queue.

(b) All projects will be ranked and prioritized based on the following criteria:

- (1) Bridge sufficiency rating (SR);
 - (2) Bridge status with structurally deficient (SD) having precedence over functionally obsolete (FO);
 - (3) Bridges on school bus routes;
 - (4) Detour length;
 - (5) Average daily traffic; and
 - (6) Truck average daily traffic.
- (c) Queues will carryover from fiscal year to fiscal year as made necessary by the amount of annual funding made available.

§ 661.25 What does a complete application package for PE consist of and how does the project receive funding?

(a) A complete application package for PE consists of the following: the certification checklist, IRRBP transportation improvement program (TIP), project scope of work, detailed cost for PE, and SI&A sheet.

(b) For non-BIA IRR bridges, the application package must also include a tribal resolution supporting the project and identification of the required minimum 20 percent local funding match.

(c) The IRRBP projects for PE will be placed in queue and determined as eligible for funding after receipt by FHWA of a complete application package. Incomplete application packages will be disapproved and returned for revision and resubmission along with a notation providing the reason for disapproval.

(d) Funding for the approved eligible projects on the queues will be made available to the Tribes, under an FHWA/Tribal agreement, or the Secretary of the Interior upon availability of program funding at FHWA.

§ 661.27 What does a complete application package for construction consist of and how does the project receive funding?

(a) A complete application package for construction consists of the following: a copy of the approved PS&E, the certification checklist, SI&A sheet, and IRRBP TIP. For non-BIA IRR bridges, the application package must also include a copy of a letter from the bridge's owner approving the project and its PS&E, a tribal resolution supporting the project, and identification of the required minimum 20 percent local funding match. All environmental and archeological clearances and complete grants of public rights-of-way must be acquired prior to submittal of the construction application package.

(b) The IRRBP projects for construction will be placed in queue and determined as eligible for funding after receipt by FHWA of a complete application package. Incomplete application packages will be disapproved and returned for revision and resubmission along with a notation providing the reason for disapproval.

(c) Funding for the approved eligible projects on the queues will be made available to the Tribes, under an FHWA/Tribal agreement, or the Secretary of the Interior upon availability of program funding at FHWA.

§ 661.29 How does ownership impact project selection?

Since the Federal government has both a trust responsibility and owns the BIA bridges on Indian reservations, primary consideration will be given to eligible projects on BIA and Tribally owned IRR bridges. A smaller percentage of available funds will be set aside for non-BIA IRR bridges, since States and counties have access to Federal-aid and other funding to design, replace and rehabilitate their bridges and that 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds apportioned to the State. The program policy will be to maximize the number of IRR bridges participating in the IRRBP in a given fiscal year regardless of ownership.

§ 661.31 Do IRRBP projects have to be listed on an approved IRR TIP?

Yes. All IRRBP projects must be listed on an approved IRR TIP. The approved IRR TIP will be forwarded by FHWA to the respective State for inclusion into its State TIP.

§ 661.33 What percentage of IRRBP funding is available for PE and construction?

Up to 15 percent of the funding made available in any fiscal year will be

eligible for PE. The remaining funding in any fiscal year will be available for construction.

§ 661.35 What percentage of IRRBP funding is available for use on BIA and Tribally owned IRR bridges, and non-BIA owned IRR bridges?

(a) Up to 80 percent of the available funding made available for PE and construction in any fiscal year will be eligible for use on BIA and Tribally owned IRR bridges. The remaining funding in any fiscal year will be made available for PE and construction for use on non-BIA owned IRR bridges.

(b) At various times during the fiscal year, FHWA will review the projects awaiting funding and may shift funds between BIA and Tribally owned, and non-BIA owned bridge projects so as to maximize the number of projects funded and the overall effectiveness of the program.

§ 661.37 What are the funding limitations on individual IRRBP projects?

The following funding provisions apply in administration of the IRRBP:

(a) An IRRBP eligible BIA and Tribally owned IRR bridge is eligible for 100 percent IRRBP funding, with a \$150,000 maximum limit for PE.

(b) An IRRBP eligible non-BIA owned IRR bridge is eligible for up to 80 percent IRRBP funding, with a \$150,000 maximum limit for PE and \$1,000,000 maximum limit for construction. The minimum 20 percent local match will need to be identified in the application package. IRR Program construction funds received by a Tribe may be used as the local match.

(c) Requests for additional funds above the referenced thresholds may be submitted along with proper justification to FHWA for consideration. The request will be considered on a case-by-case basis. There is no guarantee for the approval of the request for additional funds.

§ 661.39 How are project cost overruns funded?

(a) A request for additional IRRBP funds for cost overruns on a specific bridge project must be submitted to BIADOT and FHWA for approval. The written submission must include a justification, an explanation as to why the overrun occurred, and the amount of additional funding required with supporting cost data. If approved by FHWA, the request will be placed at the top of the appropriate queue (with a contract modification request having a higher priority than a request for additional funds for a project award) and funding may be provided if available.

(b) Project cost overruns may also be funded out of the Tribe's regular IRR Program construction funding.

§ 661.41 After a bridge project has been completed (either PE or construction) what happens with the excess or surplus funding?

Since the funding is project specific, once a bridge design or construction project has been completed under this program, any excess or surplus funding is returned to FHWA for use on additional approved deficient IRRBP projects.

§ 661.43 Can other sources of funds be used to finance a queued project in advance of receipt of IRRBP funds?

Yes. A Tribe can use other sources of funds, including IRR Program construction funds, on a project that has been approved for funding and placed on the queue and then be reimbursed when IRRBP funds become available. If IRR Program construction funds are used for this purpose, the funds must be identified on an FHWA approved IRR TIP prior to their expenditure.

§ 661.45 What happens when IRRBP funds cannot be obligated by the end of the fiscal year?

IRRBP funds provided to a project that cannot be obligated by the end of the fiscal year are to be returned to FHWA during August redistribution. The returned funds will be re-allocated to the BIA the following fiscal year after receipt and acceptance at FHWA from BIA of a formal request for the funds, which includes a justification for the amounts requested and the reason for the failure of the prior year obligation.

§ 661.47 Can bridge maintenance be performed with IRRBP funds?

No. Bridge maintenance repairs, e.g., guard rail repair, deck repairs, repair of traffic control devices, striping, cleaning scuppers, deck sweeping, snow and debris removal, etc., are not eligible uses of IRRBP funding. The Department of the Interior annual allocation for maintenance and IRR Program construction funds are eligible funding sources for bridge maintenance.

§ 661.49 Can IRRBP funds be spent on Interstate, State Highway, and Toll Road IRR bridges?

Yes. Interstate, State Highway, and Toll Road IRR bridges are eligible for funding as described in § 661.37(b).

§ 661.51 Can IRRBP funds be used for the approach roadway to a bridge?

(a) Yes, costs associated with approach roadway work, as defined in § 661.5 are eligible.

(b) Long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive earth structures, when constructed beyond an attainable touchdown point, are not eligible uses of IRRBP funds.

§ 661.53 What standards should be used for bridge design?

(a) Replacement—A replacement structure must meet the current geometric, construction and structural standards required for the types and volumes of projected traffic on the facility over its design life consistent with 25 CFR part 170, Subpart D, Appendix B and 23 CFR part 625.

(b) Rehabilitation—Bridges to be rehabilitated, as a minimum, should conform to the standards of 23 CFR part 625, Design Standards for Federal-aid Highways, for the class of highway on which the bridge is a part.

§ 661.55 How are BIA and Tribal owned IRR bridges inspected?

BIA and Tribally owned IRR bridges are inspected in accordance with 25 CFR part 170.504–170.507.

§ 661.57 How is a list of deficient bridges to be generated?

(a) In consultation with the BIA, a list of deficient BIA IRR bridges will be developed each fiscal year by the FHWA based on the annual April update of the NBI. The NBI is based on data from the inspection of all bridges. Likewise, a list of non-BIA IRR bridges will be obtained from the NBI. These lists would form the basis for identifying bridges that would be considered potentially eligible for participation in the IRRBP. Two separate master bridge lists (one each for BIA and non-BIA IRR bridges) will be developed and will include, at a minimum, the following:

- (1) Sufficiency rating (SR);
- (2) Status (structurally deficient or functionally obsolete);
- (3) Average daily traffic (NBI item 29);
- (4) Detour length (NBI item 19); and
- (5) Truck average daily traffic (NBI item 109).

(b) These lists would be provided by the FHWA to the BIADOT for publication and notification of affected BIA regional offices, Indian Tribal governments (ITGs), and State and local governments.

(c) BIA regional offices, in consultation with ITGs, are encouraged to prioritize the design for bridges that are structurally deficient over bridges that are simply functionally obsolete, since the former is more critical structurally than the latter. Bridges that have higher average daily traffic (ADT) should be considered before those that have lower ADT. Detour length should

also be a factor in selection and submittal of bridges, with those having a higher detour length being of greater concern. Lastly, bridges with higher truck ADT should take precedence over those which have lower truck ADT. Other items of note should be whether school buses use the bridge and the types of trucks that may cross the bridge and the loads imposed.

§ 661.59 What should be done with a deficient BIA owned IRR bridge if the Indian Tribe does not support the project?

The BIA should notify the Tribe and encourage the Tribe to develop and submit an application package to FHWA for the rehabilitation or replacement of the bridge. For safety of the motoring public, if the Tribe decides not to pursue the bridge project, the BIA shall work with the Tribe to either reduce the bridge's load rating or close the bridge, and remove it from the IRR inventory in accordance with 25 CFR part 170 (170.813).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9386]

RIN 1545-BE80

Abandonment of Stock or Other Securities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains a correction to final regulations (TD 9386) that were published in the Federal Register on Wednesday, March 12, 2008 (73 FR 13124) concerning the availability and character of a loss deduction under section 165 of the Internal Revenue Code for losses sustained from abandoned stock or other securities. These regulations clarify the tax treatment of losses from abandoned securities, and affect any taxpayer claiming a deduction for a loss from abandoned securities.

DATES: The correction is effective March 25, 2008.

FOR FURTHER INFORMATION CONTACT: Sean M. Dwyer at (202) 622-5020 or Peter C. Meisel at (202) 622-7750 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9386) that are the subject of the correction are under section 165 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9386) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9386), which were the subject of FR Doc. E8-4862, is corrected as follows:

On page 13124, column 2, in the preamble, under the paragraph heading "Background", the language "A statement in the preamble to the proposed regulations requires clarification. The preamble described section 165(g)(3) as providing an exception from capital loss treatment for certain worthless securities in a domestic corporation affiliated with the taxpayer. Section 165(g)(3) provides an exception from capital loss treatment for a taxpayer that is a domestic corporation that owns certain worthless securities of a domestic or foreign corporation affiliated with the taxpayer. See § 1.165-5(d)(1) of the Income Tax Regulations." is inserted as a second paragraph.

LaNita Van Dyke,
Chief, Publications and Regulations Branch,
Legal Processing Division, Associate Chief
Counsel, (Procedure and Administration).
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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9389]

RIN 1545-BG74

Disclosure of Return Information in Connection with Written Contracts Among the IRS, Whistleblowers, and Legal Representatives of Whistleblowers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the disclosure of return information, pursuant to section 6103(n) of the Internal Revenue Code (Code), by an officer or employee of the Treasury Department, to a whistleblower and, if

applicable, the legal representative of the whistleblower, to the extent necessary in connection with a written contract among the IRS, the whistleblower and, if applicable, the legal representative of the whistleblower, for services relating to the detection of violations of the internal revenue laws or related statutes. The temporary regulations will affect officers and employees of the Treasury Department who disclose return information to whistleblowers, or their legal representatives, in connection with written contracts among the IRS, whistleblowers and, if applicable, their legal representatives, for services relating to the detection of violations of the internal revenue laws or related statutes. The temporary regulations will also affect any whistleblower, or legal representative of a whistleblower, who receives return information in connection with a written contract among the IRS, the whistleblower and, if applicable, the legal representative of the whistleblower, for services relating to the detection of violations of the internal revenue laws or related statutes. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the Federal Register.

DATES: Effective Date: These temporary regulations are effective on March 25, 2008.

Applicability Date: For dates of applicability, see § 301.6103(n)-2T(f).

FOR FURTHER INFORMATION CONTACT: Helene R. Newsome, 202-622-7950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6103(n) relating to the disclosure of return information in connection with written contracts among the IRS, whistleblowers and, if applicable, their legal representatives.

The Tax Relief and Health Care Act of 2006, Public Law 109-432 (120 Stat. 2958), (the Act) was enacted on December 20, 2006. Section 406 of the Act amends section 7623, concerning the payment of awards to whistleblowers, and establishes a Whistleblower Office within the IRS that has responsibility for the administration of a whistleblower program. The Whistleblower Office, in connection with administering a whistleblower program, will analyze information provided by a

DRAFT1/28/2010

XXVII Appendix O (25 CFR 170 – IRR Program Final Rule)