

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****25 CFR Part 170**[No. BIA–2014–0005; 167A2100DD/  
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RIN 1076–AF19

**Tribal Transportation Program****AGENCY:** Bureau of Indian Affairs,  
Interior.**ACTION:** Final rule.

**SUMMARY:** This final rule updates the Tribal Transportation Program regulations (formerly the Indian Reservation Roads Program) to comply with statutory updates. The Tribal Transportation Program is a program to address the surface transportation needs of Tribes. This rule reflects statutory changes in the delivery options for the program, clarifies the requirements for proposed roads and access roads to be added to, or remain in, the inventory, revises certain sections that were provided for informational purposes, and makes technical corrections.

**DATES:** This rule is effective December 7, 2016. Compliance with § 170.443 for proposed roads currently in the NTTFI to remain in the inventory is required by November 7, 2017.

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**I. Executive Summary of Rule**

This final rule revises 25 CFR part 170 to:

- Comply with legislation governing the Tribal Transportation Program (TTP);
- Reflect changes in the delivery options for the TTP that are available to Tribal governments;
- Make technical corrections to clarify program-related responsibilities and requirements for Tribal governments, the Bureau of Indian Affairs, and the Federal Highway Administration (FHWA);
- Clarify the requirements for proposed roads and access roads to be added to, or remain in, the National Tribal Transportation Facility Inventory (NTTFI), which was formerly known as

the Indian Reservation Roads Inventory; and

- Revise certain sections of the current rule that were provided for informational purposes by removing certain sections that are no longer required by statute and adding information to direct the reader to BIA or FHWA Web sites where additional information is available.

On December 19, 2014, BIA and FHWA published a proposed rule for 25 CFR part 170 and then conducted Tribal consultation sessions at six locations throughout the country during January and February of 2015. *See* 79 FR 76192. Written comments on the Proposed Rule were accepted at the consultations as well as by email and mail through March 20, 2015. Before publishing the proposed rule, BIA and FHWA distributed draft revisions of 25 CFR part 170 to Tribes and published a notice of consultations on the draft revisions. These consultations were conducted at three locations in May of 2013. *See* 78 FR 21861 (April 12, 2013).

**II. Background**

*What is the Tribal Transportation Program (TTP)?*

The Tribal Transportation Program (TTP) was known as the Indian Reservation Roads (IRR) Program until Congress changed the name to the Tribal Transportation Program (TTP). The TTP is authorized as part of the Federal Lands Highway Program under Chapter 2 of Title 23, to address the surface transportation needs of Tribes.

*Who administers the TTP?*

The program is jointly administered by the Bureau of Indian Affairs (BIA) and FHWA Office of Federal Lands Highway (FLH). The TTP is managed under a memorandum of agreement between FHWA and BIA that was established in 1983, and amended in 1992. A “National Business Plan” will replace both the current memorandum of agreement, as amended, and the Stewardship Plan that was established in 1996.

*How was the TTP established?*

The TTP’s predecessor program, the IRR Program, was established on May 26, 1928. *See* 45 Stat. 750, 25 U.S.C. 318(a). The statute authorized the Secretary of Agriculture (which had responsibility for Federal roads at that time) to cooperate with State highway agencies and DOI to survey, construct, reconstruct, and maintain Indian reservation roads serving Tribal lands. In 1982, Congress created the Federal Lands Highway Program (FLHP) under

the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97–424. The FLHP is a coordinated program that addresses access needs to and within Indian and other Federal lands, and the TTP continues as a funding category of this program. STAA also expanded the IRR system, as it was then known, to include Tribally-owned public roads as well as state and county-owned roads.

STAA was followed in 1987 by the Surface Transportation Uniform Relocation Assistance Act (STURAA). *See* Pub. L. 100–17. In 1991, Congress enacted the Intermodal Surface Transportation Efficiency Act (ISTEA), which authorized 2 percent of program funds to be used for transportation planning. *See* Pub. L. 102–240. ISTEA also established Indian Local Technical Assistance Program (Indian LTAP) Centers, which are now known as Tribal Technical Assistance Centers (TTACs).

ISTEA was followed by the Transportation Equity Act for the 21st Century (TEA–21), which was signed into law in 1998. *See* Public Law 105–178. TEA–21 authorized \$1.6 billion of Federal Highway Trust funds for the IRR Program from Fiscal Years 1998 to 2003, and provided that Tribal governments could request to enter into contracts or agreements under the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93–638, as amended, for IRR Program roads and bridges. TEA–21 also established the Indian Reservation Roads Bridge Program (IRRBP), at 23 U.S.C. 202(d)(3)(B), under which a minimum of \$13 million of IRR Program funds were 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 that has since been amended and is found at 23 CFR part 661. TEA–21 also directed the Secretary of the Interior to establish a negotiated rulemaking committee to develop regulations governing the IRR program along with a formula for the distribution of IRR Program funds. Interior established the negotiated rulemaking committee and published the Final Rule on July 19, 2004 at 25 CFR part 170. *See* 69 FR 43090. Since that rule was published, Congress has enacted three statutory updates that affect the TTP, including changing the name of the program from the IRR Program to the TTP. The final rule published today reflects regulatory changes necessary to implement those statutory updates.

*What is the purpose of the TTP?*

The purpose of the TTP is to provide safe and adequate transportation and public roads that are within, or provide

access to, Tribal land, or are associated with a Tribal government, visitors, recreational users, resource users, and others, while contributing to economic development, self-determination, and employment of Indians and Alaska Natives. As of October 2015, the NTTFI consisted of approximately 47,900 miles of BIA and Tribally-owned public roads, 101,300 miles of State, county, and local government public roads, and 12,500 miles of proposed roads.

#### *How is the TTP funded?*

The TTP is authorized under 23 U.S.C. 202 and receives its funding through the Department of Transportation's annual appropriations act. BIA and FHWA jointly administer the distribution of TTP funds as directed under 23 U.S.C. 202(b) and other applicable laws and regulations.

#### *What statutory updates does this final rule address?*

This final rule addresses updates from three statutes:

- The Safe, Accountable, Flexible and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU), Public Law 100–59 (August 10, 2005);
- Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141 (July 6, 2012); and
- The “Fixing America’s Surface Transportation Act (FAST Act), Public Law 114–94 (December 4, 2015), which became effective, retroactive to October 1, 2015.

A year after Interior published its 2004 final rule, Congress enacted the SAFETEA-LU, which effectively amended certain provisions of the regulations, but the regulations have not been revised until today. Additionally, SAFETEA-LU for the first time authorized the Secretary of Transportation and the Secretary of the Interior (Secretaries) to enter into what are known today as “Program Agreements” that allow Tribes to carry out all but the inherently Federal functions of the TTP in accordance with the ISDEAA.

MAP–21 struck the existing laws governing the IRR Program and established the TTP. *See* section 1119, Public Law 112–141, (striking the IRR Program from 23 U.S.C. 201–204, and establishing the TTP at 23 U.S.C. 201 and 202). MAP–21 also created a new formula for distribution of TTP funds among Tribes, which had the effect of overriding the Relative Need Distribution Formula (RNDF) that was published in 2004 at 25 CFR part 170, subpart C. *See* 23 U.S.C. 202 (b)(3). Although the RNDF is no longer used to directly determine Tribal share funding,

certain historical aspects of the RNDF continue to be factors in the current TTP formula calculations. MAP–21 also identified how certain roads included in the NTTFI impact funding within the new formula. *See* 23 U.S.C. 202 (b)(1). In addition, MAP–21 provided new definitions for terms utilized in the TTP. *See* section 1103, Public Law 112–141.

The FAST Act kept the changes enacted by Congress under MAP–21, but added annual reporting requirements at 23 U.S.C. 201 (c)(6)(C). *See* section 1117, Public Law 114–94. The FAST Act also created the Tribal Transportation Self-Governance Program (TTSGP) at 23 U.S.C. 207, and directed the Secretary of Transportation to engage in negotiated rulemaking to develop regulations governing the TTSGP. *See* section 1121, Public Law 114–94. Except for references to TTSGP as a contracting option, this rule does not address the TTSGP.

#### *How did the Department handle public comments on the proposed rule?*

The proposed rule was published on December 19, 2014, and provided for a 120-day comment period through March 20, 2015. The Department received electronic and written comments and posted them on its Web site at [www.regulations.gov](http://www.regulations.gov). We received many comments at Tribal consultation sessions and received 21 written comment submissions during the public comment period. Most comment submissions contained more than one comment on a variety of issues in the proposed rule. The written comment submissions and transcripts of the consultation meetings are available at [www.bia.gov/WhoWeAre/BIA/OIS/Transportation](http://www.bia.gov/WhoWeAre/BIA/OIS/Transportation).

The Federal workgroup either accepted comments, accepted comments with modification(s), or rejected comments. This preamble includes a discussion of the changes from the proposed rule to this final rule that were a result of major substantive public comments received on the proposed rule.

Some commenters made recommendations for changes that were not accepted or not acted upon for various reasons (such as requests for unnecessary detail, unclear requests, requests or comments that were unresponsive to the proposed rule or comments that were beyond the scope of the rule). Some commenters made statements of opinion or position, but requested or indicated no changes. Several commenters discussed issues that were the responsibility of other government entities and were therefore beyond the authority of the Secretary of

the Interior to change. We did not adopt these changes. Some commenters requested modifications that required additional statutory authority or modifications to the statutory funding formula for the TTP and their comments could not be adopted. A few commenters made suggestions for grammatical changes which were accepted.

In addition to changes based on public comments, DOI reviewed the rule for legal and policy issues and edited the rule for clarity, conciseness, and **Federal Register** format. Some sections were combined or rearranged and others were revised under Departmental or **Federal Register** requirements. Where questions and answers were found not to be entirely consistent in language, we revised them for consistency.

#### *What other changes does the final rule make?*

Beyond the changes discussed above, the final rule carries forward changes included in the proposed rule to reflect MAP–21's new, statutory funding formula for the TTP that replaced the funding formula developed through negotiated rulemaking (and included in 25 CFR part 170, dated July 19, 2004). MAP–21 established a four-year transition into the statutory formula beginning with Fiscal Year 2013 through Fiscal Year 2016. The FAST Act did not change the funding formula established by MAP–21, so the formula used to allocate TTP funds for Fiscal Year 2016 will be applied in future years, as well.

Additionally, the final rule reflects the FAST Act's new Tribal reporting requirements involving TTP obligations and expenditures, descriptions and status information of projects and activities that are being undertaken, and number of jobs created or retained by those projects and activities.

We also made editorial and substantive changes to clarify or correct omissions in the proposed rule. These include responding to the many helpful written comments and discussions at the consultations citing the convenience of “one-stop shopping” for users of this part, so updated appendices have returned in the final rule.

Changes were also made to subpart D—Transportation Improvement Programs, where we clarified the processes and requirements for submission and approval of a Tribal Transportation Improvement Program (TTIP).

The final rule also adds section 170.240 to reflect the annual reporting requirements as required by 23 U.S.C. 201(c)(6)(C).

### III. Responses to Comments Received on the Proposed Rule

The following summarizes and addresses the major, substantive comments received on each subpart of the proposed rule. In some instances, several commenters are represented as one comment—having made similar or identical comments. Grammatical changes, minor wording revisions, and other purely style-oriented comments are not discussed; however, changes to the final rule reflect such public comments. The section number references are to the final rule.

#### A. Subpart A—Policies, Applicability, and Definitions

*Comment:* The rule should clarify and discuss in greater detail FHWA's expanded role in the TTP since the enactment of SAFETEA-LU in 2005.

*Response:* References to "FHWA" were added in many locations to better reflect the joint program management and oversight responsibility that FHWA shares with BIA for the TTP.

*Comment:* Change the language in § 170.2(e) from "should" to "shall" or "must," when referring to how the Secretaries interpret Federal laws or regulations to facilitate the inclusion of programs covered by this part or government-to-government agreements.

*Response:* The language in § 170.2(e) was adopted as part of the negotiated rulemaking and no change was made in the proposed or final rule. The Secretaries must interpret Federal laws or regulations liberally in favor of Tribes.

*Comment:* A Tribe asked how the Secretary's policy facilitates Tribal planning, and asked what the contractible, non-inherently Federal administrative functions are.

*Response:* The final rule reinserts appendix A to subpart E, which identifies the non-contractible functions of the TTP. The Department commits to future consultation with Tribes on how to refine this list of non-contractible functions.

*Comment:* Add language referencing fiscal constraints of the TTP such as the phrase "subject to available funding."

*Response:* All of the contracting methods available under the TTP, including the ISDEAA, Program Agreements, self-governance and other appropriate agreements, include the phrase "subject to available funding" or similar language referencing fiscal constraints. A definition for financial constraint or fiscal constraint was added to § 170.5.

*Comment:* Substitute the term "transit facility" for "bus station" in the definition of "BIA Transit Facility."

*Response:* The final rule makes this change in the definition.

*Comment:* The rule should specify how and which Federal transportation programs besides the TTP will require Tribal consultations.

*Response:* No changes were made because this rule addresses only the TTP. FHWA and BIA must abide by Federal law, Executive Orders, and Departmental policies on Tribal consultations.

*Comment:* Correct the statutory citation for the definition of "maintenance" and define "preventive maintenance" to enhance principles of asset management.

*Response:* We corrected the definition of "maintenance" and we added a definition for "preventative maintenance."

*Comment:* Expand the definition of "National Tribal Transportation Facility" to reflect the full statutory definition.

*Response:* This change was made and the definition now reflects the full statutory definition.

*Comment:* Clarify the definitions of "program agreement" and "program management and oversight (PM&O) funds" to reflect that a portion of "program related administrative expenses" (PRAE) may be made available to Tribes contracting for the TTP using program agreements.

*Response:* The final rule clarifies the definition of "program agreement" along with § 170.613, which refers to the source of funds used to pay for non-contractible, inherently Federal PM&O/PRAE activities.

*Comment:* The change in the definition of "access road" was unnecessary, but if changes are to be made they should reflect the recommendation of the TTP Coordinating Committee.

*Response:* The definition of "access road" was simplified, and § 170.447 was added and reflects the TTP Coordinating Committee's unanimous recommendation, which was accepted by the Secretaries, on the allowable lengths for an access road that may be included in the NTTFI.

*Comment:* Include a statutory citation supporting the authority for "other appropriate agreements" within the definition of "agreement," with a clarification that "other appropriate agreements" are optional for Tribes and not mandatory under the TTP.

*Response:* The final rule adds the requested citation to the definition of "agreement," but the requested clarification is unnecessary because the TTP does not mandate use of a

particular program delivery option among those available to Tribes.

*Comment:* In addition to defining the term "asset management," add the term "preventative maintenance" as well.

*Response:* The final rule adds the definition of "preventative maintenance."

*Comment:* The "BIA system inventory" should not be limited to the pre-2004 limitation on inclusion in the NTTFI.

*Response:* No change was made because the definition reflects the statutory language established under MAP-21 and carried forward by the FAST Act.

*Comment:* Substitute the phrase "transit facility" for the phrase "bus station" because "transit facility" is less restrictive.

*Response:* The final rule substitutes "transit facility" for "bus station" throughout the rule.

*Comment:* The definition of "constrained funding" needs additional information discussing financially constrained Transportation Improvement Programs.

*Response:* The final rule clarifies the definition of "constrained funding" and modifies § 170.421 to include additional information.

*Comment:* Clarify the definition of "exterior boundaries" at § 170.5 to correspond to boundaries established by other laws, or the laws and regulations governing other programs.

*Response:* For purposes of the TTP, the final rule includes "exterior boundaries" under the definition of "access road."

*Comment:* Clarify the definition of "consultation" to be consistent with Federal directives and insure that Tribal consultation is meaningful and carried out before a proposed decision or policy is implemented.

*Response:* The final rule moves the definition to Subpart B, Tribal Transportation Program Policy and Eligibility, under the subheading "Consultation, Collaboration, and Coordination," and clarifies the term at § 170.100(a) with links to the Departments' Consultation Policies and Plans.

*Comment:* Create a new definition for "proposed primary access route," and add the statutory language referencing "the shortest practicable distance between two points."

*Response:* The final rule adds a definition for primary access route and clarifies the definition of all proposed facilities.

*Comment:* Add language tracking the requirements of 23 U.S.C. 202(b)(1)(D)

regarding additional facilities that may be added to the NTTFI.

*Response:* The final rule adds language referencing additional facilities so the final definition of “National Tribal Transportation Facility Inventory (NTTFI)” adheres to the statute.

*Comment:* Provide more clarity in the definition of “public road” as to what roadways could be considered truly public rather than roadways that require a separate right-of-way.

*Response:* No changes were made. The language in the rule tracks the definition of “public road” at 23 U.S.C. 101(a)(21). Other regulations address the requirements for right-of-ways on Tribal lands held in trust by the United States. See 25 CFR part 169.

*Comment:* There should be additional limitations on inclusion of proposed roads in the NTTFI.

*Response:* The final rule updates requirements for adding proposed roads to the NTTFI under § 170.443, based upon recommendations by the TTPCC that were accepted by the Secretaries.

#### *B. Subpart B—Tribal Transportation Program Policy and Eligibility*

*Comment:* The regulation should require States to consult with Tribal governments as part of the public comment process before submitting a State Transportation Improvement Program for approval by FHWA.

*Response:* The statutory requirements for State-Tribal consultation for Statewide transportation planning and projects are referenced in §§ 170.105 through 170.110.

*Comment:* Modify the appendix to subpart B's list of eligible uses of TTP funds to allow for specific, additional eligible uses for the funds.

*Response:* The appendix contains an extensive list of eligible uses of TTP funds, with directions that the list should be interpreted in a manner that permits, rather than prohibits, the proposed use of funds. Section 170.113 provides instructions for seeking Secretarial approval for additional uses of TTP funds.

*Comment:* Add the requirements for approval of purchase construction equipment to the regulation.

*Response:* The final rule adds § 170.113(a) to address this comment.

*Comment:* Include a reference in each section of the rule that discusses the availability of non-TTP funds to 23 U.S.C. 202(a)(9), which authorizes funds received from States, counties, or local governments to be credited to the TTP.

*Response:* The final rule's sections discussing the availability of non-TTP funds now include a reference to 23

U.S.C. 202(a)(9) and direct the reader to § 170.627, which describes the requirements for implementation of 23 U.S.C. 202(a)(9). See §§ 170.125, 170.131, 170.133. Additionally, the limitation on the source of funds eligible for transfer in § 170.627 of the proposed rule was removed in accordance with the direction provided under 23 U.S.C. 202(a)(9) that any funds received from a State, county or local subdivision shall be credited to the TTP.

*Comment:* Require each member of the Tribal Transportation Coordinating Committee (TTPCC) to communicate regularly and substantively with all of the Tribes in the region the member represents.

*Response:* The final rule includes a new section that requires members of the TTPCC to disseminate information from TTPCC meetings to the Tribes they represent. See § 170.137(d).

#### *C. Subpart C—Tribal Transportation Program Funding*

*Comment:* Several factors contributing to the determination of Tribal shares under the TTP funding formula should be changed.

*Response:* The factors contributing to determination of Tribal shares under the TTP funding formula are directed by statute at 23 U.S.C. 202(b) and cannot be changed by regulation.

*Comment:* The TTP funding formula fails to take into consideration the number of acres of lands held in trust by the Secretary for a Tribe.

*Response:* The factors contributing to determination of Tribal shares under the TTP funding formula are directed by statute at 23 U.S.C. 202(b) and cannot be changed by regulation.

*Comment:* Change § 170.226 to provide for Tribal appeals of the calculation of their share of funds determined by the TTP funding formula.

*Response:* Section 170.226 provides for Tribal appeals of population data. The remainder of the data used in the TTP funding formula for determining Tribal shares cannot be subject to appeal because it is determined by the statutory formula found at 23 U.S.C. 202(b).

#### *D. Subpart D—Planning, Design, and Construction of Tribal Transportation Program Facilities*

*Comment:* Include the development of a Long Range Transportation Plan (LRTP) as an eligible use of planning funds.

*Response:* The final rule now includes the development of an LRTP as an eligible use of planning funds.

*Comment:* Add Tribal newspapers as an acceptable resource for providing notice to the public of Tribal

transportation planning or focus group meetings as required under § 170.413(a)(1).

*Response:* The final rule now allows the use of publicly-distributed Tribal newspapers for providing notice of Tribal transportation planning or focus group meetings. See § 170.413(a)(1).

*Comment:* It is unclear whether financial constraints apply to a Transportation Improvement Program (TIP).

*Response:* The final rule modifies § 170.421 to clarify the applicability of financial constraint requirements to a TIP.

*Comment:* Clarify whether projects funded by non-TTP sources and made available under agreements authorized by 23 U.S.C. 202(a)(9) must be included on a Tribal Transportation Improvement Program (TTIP).

*Response:* The final rule clarifies § 170.421 and now provides that all such projects must be included on a TTIP.

*Comment:* The process for amending an approved TTIP should not require additional public involvement.

*Response:* The final rule clarifies the public involvement requirements for amending a TTIP, and now closely follows the planning requirements for states as directed by 23 U.S.C. 134 and 135. See §§ 170.422, 170.423.

*Comment:* The rule should explain the difference between those transportation facilities in the NTTFI that generate funding and those that do not.

*Response:* The statute establishes the road mileage that must be used to generate funding as part of the formula. Even though a road does not generate funding, however, it does not mean that it has or will be removed from the NTTFI.

*Comment:* If the intent of the BIA is to remove proposed roads that do not meet the requirements to be included in the NTTFI, then clarify whether the roads that are removed will generate funding under the formula.

*Response:* The final rule describes the information that must be updated within one year of publication of the final rule in order for a proposed road to remain in the NTTFI. See § 170.443. While the road may be removed from the NTTFI, the statute directs that the mileage of the removed road continue to generate funding if it meets the eligibility requirements of the funding formula's mileage factor. See 23 U.S.C. 202 (b)(3)(B)(i).

*Comment:* Clarify the right-of-way or easement documentation requirements for a proposed route to be added to, or remain in, the NTTFI.

*Response:* The final rule defines the documentation requirements for a proposed road to be added to, or remain in, the NTTFI. See § 170.443.

*Comment:* Include the boundaries to be used for determining the maximum length of an access road.

*Response:* The final rule adds a new section that identifies the boundaries used to determine the maximum length of an access road that were developed by consensus recommendation of the TTPCC and accepted by the Secretaries. See § 170.447.

*Comment:* Do not impose deadlines for submitting data for transportation facilities to be added to the NTTFI.

*Response:* This comment was rejected because the deadlines are required for BIA and FHWA to generate an official NTTFI for administrative and reporting purposes for each fiscal year.

*Comment:* Data specifying incidental costs should no longer be part of the requirements for an NTTFI submission.

*Response:* Incidental costs data is a requirement because the overall cost to improve the NTTFI is needed for administrative and reporting purposes for each fiscal year.

*Comment:* The proposed rule omits references to statutory or regulatory provisions that expand authority to use Categorical Exclusions under the National Environmental Policy Act (NEPA) to streamline the requirements for environmental compliance for projects involving the construction or maintenance of roads.

*Response:* The final rule adds a new section that provides that the Categorical Exclusions for NEPA at 23 CFR 771.117 shall apply to all qualifying TTP projects involving the construction or maintenance of roads. See § 170.453.

*Comment:* Modify § 170.460(c) to be consistent with the requirements of 25 CFR part 169.

*Response:* The final rule modifies § 170.460(c) to state that the project package must comply with the requirements of 25 CFR part 169, if applicable.

*Comment:* Tribes operating the program under the terms of a TTP addendum to a self-governance compact should be required to submit project packages to BIA or FHWA, or otherwise comply with § 170.460.

*Response:* The final rule removes the submission requirements from § 170.460, but similar requirements remain in § 170.461 because BIA and FHWA need this information to fulfill their stewardship and oversight responsibility for the expenditure of TTP funds. Additionally, while the language was slightly modified in the

proposed rule, this requirement was developed as part of the negotiated rule published in 2004.

*Comment:* Section 170.471 of the proposed rule needs to better clarify the roles and responsibilities of the parties in administering projects under Program Agreements.

*Response:* The final rule revises § 170.471 to identify that the administration of the project will be carried out in accordance with 25 CFR part 170 and the agreement in effect between the Tribe and the BIA or FHWA.

*Comment:* Section 170.473 should state that a right-of-way is not required where a Tribe is constructing a road on its trust or restricted fee land if no other interests in the land are affected.

*Response:* The comment was not adopted. 25 CFR part 169 controls the requirements for obtaining or otherwise administering right-of-ways, not 25 CFR part 170.

*Comment:* Section 170.502 should include a reference to Federal and Tribal management systems for maintenance.

*Response:* The comment was not adopted. TTP funds are intended to be used primarily for construction; maintenance is addressed by other appropriations.

*Comment:* Development of a nationwide TTP management system should be done in consultation with Tribes.

*Response:* The reference to consultation was removed from the proposed rule in error; it has been corrected by returning the consultation reference to the rule.

#### *E. Subpart E—Service Delivery for Tribal Transportation Program*

*Comment:* Add a reference to partial year funding to Notice of Funds Availability in § 170.600.

*Response:* The final rule includes this change.

*Comment:* The rule should identify the funds that can be used to pay for non-contractible functions and activities.

*Response:* The final rule adds § 170.613 to provide this information.

*Comment:* Add a new section that discusses funds awarded and transferred to Tribes pursuant to 23 U.S.C. 202(a)(9) for distribution under their current TTP delivery mechanisms.

*Response:* The final rule adds § 170.627 in response to this comment.

#### *F. Subpart F—Program Oversight and Accountability*

*Comment:* Sections 170.702 through 170.704 of the proposed rule establish a

new Federal authority to review and monitor the performance of all TTP activities.

*Response:* The final rule clarifies that TTP reviews are carried out in accordance with Title 23 of the CFR, the terms of the Tribe's TTP delivery mechanism, including Program Agreements or other appropriate agreements, 2 CFR part 200 as applicable, and the National Business Plan.

#### *G. Subpart G—Maintenance Programs*

*Comment:* The regulation should include the BIA Road Maintenance Program (RMP) and the use of those funds on BIA system roads.

*Response:* The final rule does not include the RMP because the RMP is not authorized by Title 23 or funded by the TTP. Subpart G was updated to reflect changes in SAFETEA-LU that were later modified in MAP-21 and carried forward in the FAST Act, and to clarify the eligible maintenance activities funded only through the TTP.

*Comment:* The rule should include language to ensure that the Secretary of the Interior provides the necessary funding to address maintenance of the BIA Road System.

*Response:* Funding for the RMP comes from appropriations for the Department of the Interior, Bureau of Indian Affairs. Since the RMP is not authorized by Title 23 or funded by the TTP, the rule does not address the RMP, nor can it seek to compel the Secretary of the Interior to request funding for the BIA Road System.

*Comment:* Reinstate the appendix listing maintenance activities eligible for TTP funding.

*Response:* The final rule updates the appendix and returns it to its rightful place in the rule.

#### *H. Subpart H—Miscellaneous Provisions*

*Comment:* Revise § 170.910 to better describe where Tribes can obtain TTP information and the role of BIA or FHWA for providing additional program or project information.

*Response:* The final rule identifies the BIA and FHWA TTP Web sites and clarifies the responsibility of BIA or FHWA to respond to Tribal requests for TTP information that may not be available on their respective Web sites.

*Comment:* Reinstate § 170.926 and discuss the varied ways that Tribes can contract to perform TTP functions, services and activities.

*Response:* The final rule does not reinstate § 170.926 because § 170.627 discusses the varied ways Tribes can contract to perform TTP functions, services and activities.

*Comment:* Reinstate non-TTP reference information in the final rule.

*Response:* The rule covers only the TTP but the rule directs the reader to BIA, FHWA or other Web sites where current information may be found.

*Comment:* Expand § 170.943 that discussed the Tribal High Priority Projects Program.

*Response:* The FAST Act did not reauthorize the Tribal High Priority Projects Program, which made § 170.943 inapplicable. For this reason, the final rule removes § 170.943.

#### *I. Additional Comments*

*Comment:* Reinstate the appendices to subparts B, C, D, E and G.

*Response:* The final rule reinstates the appendices for subparts B, D, E and G. The appendices to subpart C were not reinstated because they were superseded by the statutory funding formula enacted under MAP-21 at 23 U.S.C. 202(b), which was carried forward by the FAST Act.

*Comment:* Change specific items that appear in the appendices to the negotiated rule published in 2004.

*Response:* The appendices to subparts B, D, E and G that have been reinstated were revised only to reflect statutory changes, modifications recommended by the TTPCC and approved by the Secretaries, or where further clarification was necessary.

#### **IV. Summary of Revisions to the Regulations**

##### *Revisions to Subpart A—General Provisions and Definitions*

The final rule revises this subpart to:

- Be consistent with the language used throughout 23 U.S.C. 201 and 202;
- Outline the policies, guidance manuals, directives, and procedures that govern the TTP under the program delivery options that are available to Tribes; and
- Include new and updated definitions that are used throughout the rule.

##### *Revisions to Subpart B—Tribal Transportation Program Policy and Eligibility*

The final rule revises this subpart to be consistent with the FAST Act by:

- Revising the language discussing Federal, Tribal, State, and local governments' coordination, collaboration, and consultation responsibilities;
- Updating the list of eligible uses of TTP funding and the point of contact information for funding eligibility requests;
- Updating provisions regarding cultural access roads, toll roads,

recreation, tourism, trails, airport access roads, transit facilities and seasonal transportation routes;

- Changing the name “Indian Local Technical Assistance Program” to “Tribal Technical Assistance Centers” (TTACs);
- Including a description of the eligible uses and distribution of TTP-Safety set-aside funding; and
- Updating the TTP Coordinating Committee responsibilities regarding information dissemination requirements and scheduling of committee meetings.

##### *Revisions to Subpart C—Tribal Transportation Program Funding*

The final rule revises this subpart to do the following:

- Remove the chart showing the flow of TTP funds;
- Reflect the statutory formula and methodology as contained in 23 U.S.C. 202 to distribute TTP funds including new formula factors, set-asides, supplemental funding and transition period;
- Remove the sections of the current regulation governing the IRR Program High Priority Projects, as it no longer exists;
- Revise how the NTTFI relates to the long-range Tribal transportation planning process;
- Revise the appeal process for fund distribution to be consistent with 23 U.S.C. 202; and
- Remove the appendices to subpart C of the current regulation because they are not applicable to the statutory funding formula established in 23 U.S.C. 202.

##### *Revisions to Subpart D—Planning, Design, and Construction of Tribal Transportation Program Facilities*

This subpart contains revisions to the sections involving NTTFI submissions, and the review and approval of plans, specifications and estimates (PS&Es). A section on the TTP Bridge Program was added to reflect the changes as a result of the enactment of MAP-21. A section on Tribal data collection and reporting was added to reflect the requirements of 23 U.S.C. 201(c)(6)(C) that were added as a result of the FAST Act.

##### *Revisions to Subpart E—Service Delivery for Tribal Transportation Program*

This subpart revises the sections involving Notice of Funds Availability (NOFA), contracts and agreements, including savings. The final rule also updates the appendix to subpart E to be consistent the FAST Act.

##### *Revisions to Subpart F—Program Oversight and Accountability*

This subpart revises the stewardship and oversight roles and responsibilities for the TTP to reflect changes in the way the TTP is delivered to Tribes. The current regulations regarding program reviews were moved to this subpart and updated to be consistent with the FAST Act.

##### *Revisions to Subpart G—Maintenance*

The final rule updates this subpart to clarify the maintenance activities and funding amounts that are eligible for TTP funding as identified in 23 U.S.C. 202(a)(8).

##### *Revisions to Subpart H—Miscellaneous*

The final rule updates this subpart to be consistent with statutory references that changed due to the enactment of several highway authorization laws (SAFETEA-LU, MAP-21, and FAST Act). The sections involving emergency relief and hazardous and nuclear waste transportation were removed because they contained only reference information that is now available on BIA and FHWA Web sites.

#### **V. Procedural Requirements**

##### *A. Regulatory Planning and Review (E.O. 12866 and 13563)*

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

##### *B. Regulatory Flexibility Act*

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

because Tribes are not small entities under the Regulatory Flexibility Act.

*C. Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of \$100 million or more because this rule affects only surface transportation for Tribes.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because it does not affect costs or prices.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because the rule addresses Tribal surface transportation within the United States.

*D. Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

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

This rule does not affect a taking of private property or otherwise have taking implications under E.O. 12360. A takings implication assessment is not required.

*F. Federalism (E.O. 13132)*

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient

Federalism implications to warrant the preparation of a summary impact statement, because the rule primarily addresses the relationship between the Federal Government and Tribes. A Federalism summary impact statement is not required.

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

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)*

The Department of the Interior strives to strengthen its government-to-government regulations with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and have identified substantial direct effects on federally recognized Indian Tribes that will result from this rule. This rule will affect funding for Tribes' surface transportation needs under the TTP. Accordingly, we have consulted with the affected Tribes on a government-to-government basis and have fully considered Tribal views in the final rule. Specifically, as discussed above, we held multiple consultation sessions with Tribes during development of the proposed rule and during the public comment period on the proposed rule.

*I. Paperwork Reduction Act*

This rule contains information collection requirements, and the Office

of Management and Budget (OMB) has approved the information collections under the Paperwork Reduction Act (PRA).

*OMB Control Number:* 1076-0161.

*Title:* 25 CFR 170, Tribal Transportation Program.

*Brief Description of Collection:* The information submitted by Tribes allows them to participate in planning the development of transportation needs in their area; the information provides data for administration, documenting plans, and for oversight of the program by the Department. The revision accounts for updates made to the regulations as a result of passage of MAP-21 and FAST Act legislation. Some of the information such as the providing inventory updates (25 CFR 170.444), the development of a long range transportation plan (25 CFR 170.411 and 170.412), the development of a Tribal transportation improvement program (25 CFR 170.421), and annual report (25 CFR 170.420) are mandatory to determine how funds will allocated to implement the Tribal Transportation Program. Some of the information, such as public hearing requirements, is necessary for public notification and involvement (25 CFR 170.437 and 170.438), while other information, such as a request for exception from design standards (25 CFR 170.456), is voluntary.

*Type of Review:* Revision of currently approved collection.

*Respondents:* Federally recognized Indian Tribal governments.

*Number of Respondents:* 281 on average (each year).

*Number of Responses:* 1,630 on average (each year).

*Frequency of Response:* On occasion.

*Estimated Time per Response:* (See table below).

*Estimated Total Annual Hour Burden:* 23,448 hours.

Citation 25 CFR 170	Information	Average number of hours per response	Average number responses per year	Estimated annual burden hours
170.240 .....	Annual Report .....	20	281	5,620
170.443 .....	Provide and Review Information .....	20	141	2,820
170.411 .....	Long Range Transportation Plan Contents .....	40	113	4,520
170.421 .....	Reporting Requirement for Tribal Transportation Improvement Program (TTIP) .....	10	281	2,810
170.420 .....	Reporting Requirement for Tribal Priority List .....	10	281	2,810
170.412 .....	Submission of Long Range Transportation Plan to BIA and Public, and Further Development .....	40	113	4,520
170.437 .....	Notice of Requirements for Public Hearing .....	0.5	205	103
170.439 .....	Record keeping Requirement—Record of Public Hearing .....	1	205	205
170.456 .....	Provide Information for Exception .....	4	10	40



OMB Control No. 1076–0161 currently authorizes the collections of information contained in 25 CFR part 170. If this proposed rule is finalized, the annual burden hours for respondents will increase by approximately 5,420 hours, primarily because of the new statutory requirement for an annual report (the increase is less than the full 5,620 estimated hours because a previously identified information collection requirement was removed under this rule).

The recordkeeping requirements contained in section 170.472 are authorized under OMB Control No. 1076–0136, applicable to self-determination and self-governance contracts and compacts under 25 CFR 900 and 1000.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

#### *J. National Environmental Policy Act*

This rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, and procedural nature. See 43 CFR 46.210(i).

#### *K. Effects on the Energy Supply (E.O. 13211)*

This rulemaking is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

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

Highways and roads, Indians-lands.

■ For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, revises part 170 in Title 25 of the Code of Federal Regulations to read as follows:

### **PART 170—TRIBAL TRANSPORTATION PROGRAM**

#### **Subpart A—Policies, Applicability, and Definitions**

Sec.

- 170.1 What does this part do?
- 170.2 What policies govern the TTP?
- 170.3 When do other requirements apply to the TTP?
- 170.4 How does this part affect existing Tribal rights?
- 170.5 What definitions apply to this part?
- 170.6 Acronyms.
- 170.7 Information collection.

#### **Subpart B—Tribal Transportation Program Policy and Eligibility**

##### *Consultation, Collaboration, Coordination*

- 170.100 What do the terms “consultation,” “collaboration,” and “coordination” mean?
- 170.101 What is the TTP consultation and coordination policy?
- 170.102 What goals and principles guide program implementation?
- 170.103 Is consultation with Tribal governments required before obligating TTP funds for direct service activities?
- 170.104 Are funds available for consultation, collaboration, and coordination activities?
- 170.105 When must State governments consult with Tribes?
- 170.106 Should planning organizations and local governments consult with Tribes when planning for transportation projects?
- 170.107 Should Tribes and BIA consult with planning organizations and local governments in developing projects?
- 170.108 How do the Secretaries prevent discrimination or adverse impacts?
- 170.109 How can State and local governments prevent discrimination or adverse impacts?
- 170.110 What if discrimination or adverse impacts occur?

##### *Eligible Uses of TTP Funds*

- 170.111 What activities may be carried out using TTP funds?
- 170.112 What activities are not eligible for TTP funding?
- 170.113 How can a Tribe determine whether a new use of funds is allowable?

##### *Use of TTP and Cultural Site or Area Entry Roads*

- 170.114 What restrictions apply to the use of a Tribal transportation facility?
- 170.115 What is a cultural site or area entry road?
- 170.116 Can a Tribe close a cultural site or area entry road?

##### *Seasonal Transportation Routes*

- 170.117 Can TTP funds be used on seasonal transportation routes?

##### *TTP Housing Site or Area Entry Roads*

- 170.118 What terms apply to TTP housing site or area entry roads?
- 170.119 Are housing site or area entry roads and housing streets eligible for TTP funding?

##### *Toll, Ferry and Airport Facilities*

- 170.120 How can Tribes use Federal highway funds for toll and ferry facilities?
- 170.121 Where is information about designing and operating a toll facility available?
- 170.122 When can a Tribe use TTP funds for airport facilities?

##### *Recreation, Tourism and Trails*

- 170.123 Can a Tribe use Federal funds for its recreation, tourism, and trails program?
- 170.124 How can a Tribe obtain funds?

- 170.125 What types of activities can a recreation, tourism, and trails program include?

- 170.126 Can roads be built in roadless and wild areas?

##### *TTP Safety*

- 170.127 What are the TTP Safety Funds?
- 170.128 What activities are eligible for the TTP safety funds?
- 170.129 How will Tribes receive TTP–S funds?
- 170.130 How can Tribes obtain non-TTP funds for highway safety projects?

##### *Transit Facilities*

- 170.131 How do Tribes identify transit needs?
- 170.132 What Federal funds are available for a Tribe's transit program?
- 170.133 May a Tribe or BIA use TTP funds as matching funds?
- 170.134 What transit facilities and activities are eligible for TTP funding?

##### *TTP Coordinating Committee*

- 170.135 What is the TTP Coordinating Committee?
- 170.136 What are the TTP Coordinating Committee's responsibilities?
- 170.137 How does the TTP Coordinating Committee conduct business?

##### *Tribal Technical Assistance Centers*

- 170.138 What are Tribal Technical Assistance Centers?
- Appendix A to Subpart B—Allowable Uses of TTP funds
- Appendix B to Subpart B—Sources of Tribal Transportation Training and Education Opportunities

#### **Subpart C—Tribal Transportation Program Funding**

- 170.200 How do BIA and FHWA determine the TTP funding amount?
- 170.201 What is the statutory distribution formula for Tribal shares?
- 170.202 How do BIA and FHWA determine and distribute the Tribal supplemental program funds?
- 170.203 How are Tribal transportation planning funds provided to Tribes?
- 170.204 What restrictions apply to TTP funds provided to Tribes?
- 170.205 What is the timeframe for distributing TTP funds?

##### *Formula Data Appeals*

- 170.226 How can a Tribe appeal its share calculation?

##### *Flexible Financing*

- 170.227 Can Tribes use flexible financing for TTP projects?
- 170.228 Can a Tribe use TTP funds to leverage other funds or pay back loans?
- 170.229 Can a Tribe apply for loans or credit from a State infrastructure bank?
- 170.230 How long must a project financed through flexible financing remain on a TTP?

##### *TTP Data Reporting*

- 170.240 What TTP project and activity data must Tribes annually submit to the Secretaries?



## Subpart D—Planning, Design, and Construction of Tribal Transportation Program Facilities

### *Transportation Planning*

- 170.400 What is the purpose of transportation planning?
- 170.401 What are BIA's and FHWA's roles in transportation planning?
- 170.402 What is the Tribal role in transportation planning?
- 170.403 What TTP funds can be used for transportation planning?
- 170.404 Can Tribes use transportation planning funds for other activities?
- 170.405 How must Tribes use planning funds?
- 170.406–170.408 [Reserved].
- 170.409 What is the purpose of long-range transportation planning?
- 170.410 How does a long-range transportation plan relate to the NTTFI?
- 170.411 What should a long-range transportation plan include?
- 170.412 How is the Tribal TTP long-range transportation plan developed and approved?
- 170.413 What is the public's role in developing the long-range transportation plan?
- 170.414 How is the Tribal long-range transportation plan used and updated?
- 170.415 What are pre-project planning and project identification studies?
- 170.420 What is the Tribal priority list?

### *Transportation Improvement Programs*

- 170.421 What is the Tribal Transportation Improvement Program (TTIP)?
- 170.422 How does the public participate in developing the TTIP?
- 170.423 How are annual updates or amendments to the TTIP conducted?
- 170.424 What is the TTP Transportation Improvement Program (TTPTIP)?

### *Public Hearings*

- 170.435 When is a public hearing required?
- 170.436 How are public hearings for TTP planning and projects funded?
- 170.437 If there is no hearing, how must BIA, FHWA, or a Tribe inform the public?
- 170.438 How must BIA, FHWA, or a Tribe inform the public when a hearing is held?
- 170.439 How is a public hearing conducted?
- 170.440 How can the public learn the results of a public hearing?
- 170.441 Can a decision resulting from a hearing be appealed?

### *National Tribal Transportation Facility Inventory*

- 170.442 What is the National Tribal Transportation Facility Inventory?
- 170.443 What is required to successfully include a proposed transportation facility in the NTTFI?
- 170.444 How is the NTTFI updated?
- 170.445 Reserved.
- 170.446 What minimum attachments are required for an NTTFI submission?
- 170.447 How are the allowable lengths of access roads in the NTTFI determined?

### *Environmental and Archeological Requirements*

- 170.450 What archeological and environmental requirements must the TTP meet?
- 170.451 Can TTP funds be used for archeological and environmental compliance?
- 170.452 When can TTP funds be used for archeological and environmental activities?
- 170.453 Do the Categorical Exclusions under the National Environmental Policy Act (NEPA) and the regulations at 23 CFR 771 apply to TTP activities?

### *Design*

- 170.454 What design standards are used in the TTP?
- 170.455 What other factors must influence project design?
- 170.456 How can a Tribe request an exception from the design standards?
- 170.457 Can a Tribe appeal a denial?

### *Review and Approval of Plans, Specifications and Estimates*

- 170.460 What must a project package include?
- 170.461 May a Tribe approve plans, specifications, and estimates?
- 170.463 What if a design deficiency is identified?

### *Construction and Construction Monitoring*

- 170.470 Which construction standards must Tribes use?
- 170.471 How are projects administered?
- 170.472 What construction records must Tribes and BIA keep?
- 170.473 When is a project complete?
- 170.474 Who conducts the project closeout?

### *Management Systems*

- 170.502 Are nationwide management systems required for the TTP?

### *Tribal Transportation Facility Bridges*

- 170.510 What funds are available to address bridge activities?
- 170.511 What activities are eligible for Tribal Transportation Facility Bridge funds?
- 170.512 How will Tribal Transportation Facility Bridge funds be made available to the Tribes?
- 170.513 When and how are bridge inspections performed?
- 170.514 Who reviews bridge inspection reports?

Appendix A to Subpart D—Cultural Resource and Environmental Requirements for the TTP

Appendix B to Subpart D—Design Standards for the TTP

## Subpart E—Service Delivery for Tribal Transportation Program

### *Funding Process*

- 170.600 What must BIA include in the notice of funds availability?
- 170.602 If a Tribe incurs unforeseen construction costs, can it get additional funds?

### *Miscellaneous Provisions*

- 170.605 May BIA or FHWA use force-account methods in the TTP?
- 170.606 How do legislation and procurement requirements affect the TTP?
- 170.607 Can a Tribe use its allocation of TTP funds for contract support costs?
- 170.608 Can a Tribe pay contract support costs from DOI or BIA appropriations?
- 170.609 Can a Tribe receive additional TTP funds for start-up activities?

### *Contracts and Agreements*

- 170.610 Which TTP functions may a Tribe assume?
  - 170.611 What special provisions apply to ISDEAA contracts and agreements?
  - 170.612 Can non-contractible functions and activities be included in contracts or agreements?
  - 170.613 What funds are used to pay for non-contractible functions and activities?
  - 170.614 Can a Tribe receive funds before BIA publishes the final notice of funding availability?
  - 170.615 Can a Tribe receive advance payments for non-construction activities under the TTP?
  - 170.616 How are payments made to Tribes if additional funds are available?
  - 170.617 May a Tribe include a contingency in its proposal budget?
  - 170.618 Can a Tribe keep savings resulting from project administration?
  - 170.619 Do Tribal preference and Indian preference apply to TTP funding?
  - 170.620 How do ISDEAA's Indian preference provisions apply?
  - 170.621 What if a Tribe doesn't perform work under a contract or agreement?
  - 170.622 What TTP functions, services, and activities are subject to the self-governance construction regulations?
  - 170.623 How are TTP projects and activities included in a self-governance agreement?
  - 170.624 Is technical assistance available?
  - 170.625 What regulations apply to waivers?
  - 170.626 How does a Tribe request a waiver of a Department of Transportation regulation?
  - 170.627 Can non-TTP funds be provided to a Tribe through an FHWA Program Agreement, BIA TTP Agreement, or other appropriate agreement?
- Appendix to Subpart E—List of Program Functions that Cannot be Subcontracted

## Subpart F—Program Oversight and Accountability

- 170.700 What is the TTP national business plan?
- 170.701 May a direct service Tribe and BIA Region sign a Memorandum of Understanding?
- 170.702 What activities may the Secretaries review and monitor?
- 170.703 What program reviews do the Secretaries conduct?
- 170.704 What happens when the review process identifies areas for improvement?

**Subpart G—Maintenance**

- 170.800 What funds are available for maintenance activities?
- 170.801 Can TTP funds designated on an FHWA-approved TTIP for maintenance be used to improve TTP transportation facilities?
- 170.802 Can a Tribe perform road maintenance?
- 170.803 To what standards must a Tribal transportation facility be maintained?
- 170.804 Who should be contacted if a Tribal transportation facility is not being maintained to TTP standards due to insufficient funding?
- 170.805 What maintenance activities are eligible for TTP funding?
- Appendix to Subpart G—List of Eligible Maintenance Activities under the Tribal Transportation Program

**Subpart H—Miscellaneous Provisions***Reporting Requirements and Indian Preference*

- 170.910 What information on the TTP or projects must BIA or FHWA provide?
- 170.911 Are Indians entitled to employment and training preferences?
- 170.912 Does Indian employment preference apply to Federal-aid Highway Projects?
- 170.913 Do Tribal-specific employment rights and contract preference laws apply?
- 170.914 What is the difference between Tribal preference and Indian preference?
- 170.915 May Tribal employment taxes or fees be included in a TTP project budget?
- 170.916 May tribes impose taxes or fees on those performing TTP services?
- 170.917 Can tribes receive direct payment of Tribal employment taxes or fees?
- 170.918 What applies to the Secretaries' collection of data under the TTP?

*Tribal Transportation Departments*

- 170.930 What is a Tribal transportation department?
- 170.931 Can Tribes use TTP funds to pay Tribal transportation department operating costs?
- 170.932 Are there other funding sources for Tribal transportation departments?
- 170.933 Can Tribes regulate oversize or overweight vehicles?

*Resolving Disputes*

- 170.934 Are alternative dispute resolution procedures available?
- 170.935 How does a direct service Tribe begin the alternative dispute resolution process?

*Other Miscellaneous Provisions*

- 170.941 May Tribes become involved in transportation research?
- 170.942 Can a Tribe use Federal funds for transportation services for quality-of-life improvement programs?

**Authority:** Pub. L. 112–141, Pub. L. 114–94; 5 U.S.C. 2; 23 U.S.C. 201, 202; 25 U.S.C. 2, 9.

**Subpart A—Policies, Applicability, and Definitions****§ 170.1 What does this part do?**

This part provides rules and references to the statutory funding formula for the Department of the Interior (DOI), in cooperation with the Department of Transportation (DOT), to implement the Tribal Transportation Program (TTP). Included in this part are references to other title 23 and title 25 transportation programs administered by the Secretary of the Interior (Secretary) and the Secretary of Transportation (together, the “Secretaries”) and implemented by Tribes and Consortiums in accordance with the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA), as amended, FHWA program agreements, and other appropriate agreements.

**§ 170.2 What policies govern the TTP?**

(a) The Secretaries' policy for the TTP is to:

- (1) Provide a uniform and consistent set of rules;
- (2) Foster knowledge of the programs by providing information about them and the opportunities that they create;
- (3) Facilitate Tribal planning, conduct, and administration of the programs;
- (4) Encourage inclusion of these programs under self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements;
- (5) Make available all contractible non-inherently Federal administrative functions under self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements; and
- (6) Carry out policies, procedures, and practices in consultation with Indian Tribes to ensure the letter, spirit, and goals of Federal transportation programs are fully implemented.

(b) Where this part differs from provisions in the ISDEAA, this part should advance the policy of increasing Tribal autonomy and discretion in program operation.

(c) This part is designed to enable Indian Tribes to participate in all contractible activities of the TTP. The Secretaries will afford Indian Tribes the flexibility, information, and discretion to design transportation programs under self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements to meet the needs of their communities consistent with this part.

(d) Programs, functions, services, and activities, regardless of how they are

administered, are an exercise of Indian Tribes' self-determination and self-governance.

(1) The Tribe is responsible for managing the day-to-day operation of its contracted Federal programs, functions, services, and activities.

(2) The Tribe accepts responsibility and accountability to the beneficiaries under self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements for:

- (i) Use of the funds; and
- (ii) Satisfactory performance of all activities funded under the contract or agreement.

(3) The Secretary will continue to discharge the trust responsibilities to protect and conserve the trust resources of Tribes and the trust resources of individual Indians.

(e) The Secretary should interpret Federal laws and regulations to facilitate including programs covered by this part in the government-to-government agreements authorized under ISDEAA.

(f) The administrative functions referenced in paragraph (a)(5) of this section are contractible without regard to the organizational level within the DOI that carries out these functions. Including TTP administrative functions under self-determination contracts, self-governance agreements, program agreements or other appropriate agreements, does not limit or reduce the funding for any program or service serving any other Tribe.

(g) The Secretaries are not required to reduce funding for a Tribe under these programs to make funds available to another Tribe.

(h) This part must be liberally construed for the benefit of Tribes and to implement the Federal policy of self-determination and self-governance.

(i) Any ambiguities in this part must be construed in favor of the Tribes to facilitate and enable the transfer of programs authorized by 23 U.S.C. 201 and 202 and title 25 of the U.S.C.

**§ 170.3 When do other requirements apply to the TTP?**

TTP policies, guidance, and directives apply, to the extent permitted by law, only if they are consistent with this part and 25 CFR parts 900 and 1000. See 25 CFR 900.5 for when a Tribe must comply with other unpublished requirements.

**§ 170.4 How does this part affect existing Tribal rights?**

This part does not:

- (a) Affect Tribes' sovereign immunity from suit;

(b) Terminate or reduce the trust responsibility of the United States to Tribes or individual Indians;

(c) Require a Tribe to assume a program relating to the TTP; or

(d) Impede awards by other agencies of the United States or a State to Tribes to administer programs under any other law.

#### § 170.5 What definitions apply to this part?

*Access road* means a public highway or road that provides access to Tribal land and appears on the National Tribal Transportation Facility Inventory (NTTFI).

*Agreement* means a self-determination contract, self-governance agreement, Program Agreement or other appropriate agreement authorized under 23 U.S.C. 202(a)(2), developed in accordance with 23 U.S.C. 202(b)(6) and (b)(7) as well as 23 U.S.C. 207, to fund and manage the programs, functions, services and activities transferred to a Tribe.

*Appeal* means a request by a Tribe or consortium for an administrative review of an adverse agency decision.

*Asset management* as defined in 23 U.S.C. 101(a)(2) means a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based upon quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the lifecycle of the assets at minimum practicable cost.

*BIA Force Account* means the performance of work done by BIA employees.

*BIA Road System* means the Bureau of Indian Affairs Road System under the NTTFI and includes only those existing and proposed facilities for which the BIA has or plans to obtain legal right-of-way.

*BIA System Inventory* means Bureau of Indian Affairs System Inventory under the NTTFI that includes the BIA Road System, Tribally owned public roads, and facilities not owned by an Indian Tribal government or the BIA in the States of Oklahoma and Alaska that were used to generate road mileage for computation of the funding formula in the Indian Reservation Roads Program prior to October 1, 2004.

*Consortium* means an organization or association of Tribes that is authorized by those Tribes to negotiate and execute an Agreement to receive funding, manage, and carry out the program functions, services, and activities associated with the Tribal

Transportation Program on behalf its member Tribes.

*Construction*, as defined in 23 U.S.C. 101(a)(4), means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a Tribal transportation facility, as defined in 23 U.S.C. 101(a)(31). The term includes—

(1) Preliminary engineering, engineering, and design-related services directly relating to the construction of a Tribal transportation facility project, including engineering, design, project development and management, construction project management and inspection, surveying, mapping (including the establishment of temporary and permanent geodetic control under specifications of the National Oceanic and Atmospheric Administration), and architectural-related services;

(2) Reconstruction, resurfacing, restoration, rehabilitation, and preservation;

(3) Acquisition of rights-of-way;

(4) Relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(5) Elimination of hazards of railway-highway grade crossings;

(6) Elimination of roadside hazards;

(7) Improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and

(8) Capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.

*Construction contract* means a fixed price or cost reimbursement self-determination contract for a construction project or an eligible TTP funded road maintenance project, except that such term does not include any contract—

(1) That is limited to providing planning services and construction management services (or a combination of such services);

(2) For the housing improvement program or roads maintenance program of the BIA administered by the Secretary; or

(3) For the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.

*Contract* means a self-determination contract as defined in section 4(j) of the

ISDEAA or a procurement document issued under Federal or Tribal procurement acquisition regulations.

*Days* means calendar days, except where the last day of any time period specified in this part falls on a Saturday, Sunday, or a Federal holiday, the period will carry over to the next business day unless otherwise prohibited by law.

*Design* means services related to preparing drawings, specifications, estimates, and other design submissions specified in a contract or agreement, as well as services during the bidding/negotiating, construction, and operational phases of the project.

*Financial constraint or Fiscal constraint* means that a plan (metropolitan transportation plan, TTIP, or STIP) includes financial information demonstrating that projects can be implemented using committed, available, or reasonably available revenue sources, with reasonable assurance that the federally supported transportation system is adequately operated and maintained. (See 23 U.S.C. 134 and 135.) Documentation must be developed that demonstrates that there is a balance between the expected revenue sources for the transportation investments and the estimated costs of the projects and programs described in the planning documents.

(1) For the TTIP and the STIP, financial constraint/fiscal constraint applies to each program year.

(2) Projects in air quality nonattainment and maintenance areas can be included in the first two years of the TTIP and STIP only if funds are “available” or “committed.” See 23 CFR 450.104.

*Governmental subdivision of a Tribe* means a unit of a Tribe which is authorized to participate in a TTP activity on behalf of the Tribe.

*Indian* means a person who is a member of a Tribe or as otherwise defined in 25 U.S.C. 450b.

*Maintenance* means the preservation of the Tribal transportation facilities, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the facility (see 23 U.S.C. 101(13)).

*National Bridge and Tunnel Inventory (or NBTI)* means the database of structural and appraisal data collected to fulfill the requirements of the National Bridge and Tunnel Inspection Standards, as defined in 23 U.S.C. 144. Each State and BIA must maintain an inventory of all bridges and tunnels that are subject to the NBTI standards and provide this data to the FHWA.

*National Tribal Transportation Facility Inventory (or NTTFI)* means at

a minimum, transportation facilities that are eligible for assistance under the Tribal transportation program that an Indian Tribe has requested, including facilities that meet at least one of the following criteria:

(1) Were included in the Bureau of Indian Affairs system inventory prior to October 1, 2004.

(2) Are owned by an Indian Tribal government ("owned" means having the authority to finance, build, operate, or maintain the facility (see 23 U.S.C. 101(a)(20)).

(3) Are owned by the Bureau of Indian Affairs ("owned" means having the authority to finance, build, operate, or maintain the facility (See 23 U.S.C. 101(a)(20)).

(4) Were constructed or reconstructed with funds from the Highway Trust Fund under the Indian reservation roads program since 1983.

(5) Are public roads or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities (including communities in former Indian reservations in the State of Oklahoma) in which the majority of residents are American Indians or Alaska Natives.

(6) Are public roads within or providing access to either:

(i) An Indian reservation or Tribal trust land or restricted Tribal land that is not subject to fee title alienation without the approval of the Federal Government; or

(ii) Indian or Alaska Native villages, groups, or communities whose residents include Indians and Alaska Natives whom the Secretary has determined are eligible for services generally available to Indians under Federal laws applicable to Indians.

(7) Are primary access routes requested by Tribal governments for inclusion in the NTTFI, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal terminals, such as airports, harbors, or boat landings.

Note: The Secretaries are not precluded from including additional eligible transportation facilities into the NTTFI if such additional facilities are included in a uniform and consistent manner.

*Population adjustment factor* means a special portion of the former Indian Reservation Roads (IRR) Program distribution formula that was calculated annually and provided for broader participation in the IRR Program.

*Preventive Maintenance* means the planned strategy of cost effective treatments to an existing roadway system and its appurtenances that preserve the system, impede future deterioration, and maintain or improve the functional condition of the system without increasing structural capacity. Eligible activities should address the aging, oxidation, surface deterioration, and normal wear and tear of the facility caused by day-to-day performance and environmental conditions. In addition, the treatments should extend the service life of the roadway asset or facility to at least achieve the design life of the facility.

*Primary access route* means a route that is the shortest practicable route connecting two points.

*Program* means any program, function, service, activity, or portion thereof.

*Program Agreement* means an agreement between the Tribe and Assistant Secretary—Indian Affairs or the Administrator of the Federal Highway Administration, or their respective designees, that transfer all but the inherently Federal program functions, services and activities of the Tribal Transportation Program to the Tribe. The provisions of 23 U.S.C. 202 (b)(7)(E) apply only to those program agreements entered into by the Administrator of the Federal Highway Administration.

*Project planning* means project-related activities that precede the design phase of a transportation project. Examples of these activities are: Collecting data on traffic, accidents, or functional, safety or structural deficiencies; corridor studies; conceptual studies, environmental studies; geotechnical studies; archaeological studies; project scoping; public hearings; location analysis; preparing applications for permits and clearances; and meetings with facility owners and transportation officials.

*Proposed road or facility* means any road or facility, including a primary access route, that will serve public transportation needs, meets the eligibility requirements of the TTP, and does not currently exist.

*Public authority* as defined in 23 U.S.C. 101(a)(20) 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.

*Real property* means any interest in land together with the improvements, structures, fixtures and appurtenances.

*Regionally significant project* means a project (other than projects that may be grouped in the STIP/TTIP under 23 CFR 450) that:

(1) Is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves); and

(2) Would normally be included in the modeling of a metropolitan area's transportation network, including, as a minimum, all principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel.

*Rehabilitation* means the work required to restore the structural integrity of transportation facilities as well as work necessary to correct safety defects.

*Relative need distribution factor* means a mathematical formula used for distributing construction funds under the former IRR Program.

*Relocation* means the adjustment of transportation facilities and utilities required by a highway project. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on the new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It also means constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

*Relocation services* means payment and assistance authorized by the Uniform Relocation and Real Property Acquisitions Policy Act, 42 U.S.C. 4601 *et seq.*, as amended.

*Rest area* means an area or site established and maintained within or adjacent to the highway right-of-way or under public supervision or control for the convenience of the traveling public.

*Seasonal transportation route* means a non-recreational transportation route in the NTTFI such as snowmobile trails, ice roads, and overland winter roads that provide access to Indian communities or villages and may not be open for year-round use.

*Secretaries* means the Secretary of the Interior and the Secretary of

Transportation or designees authorized to act on their behalf.

*Secretary* means the Secretary of the Interior or a designee authorized to act on the Secretary's behalf.

*Secretary of Transportation* means the Secretary of Transportation or a designee authorized to act on behalf of the Secretary of Transportation.

*State Transportation Department* as defined in 23 U.S.C. 101 (a)(28) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.

*Statewide Transportation Improvement Program or STIP* means a financially constrained, multi-year list of projects developed under 23 U.S.C. 134 and 135, and 49 U.S.C. 5303–5305. The Secretary of Transportation reviews and approves the STIP for each State.

*Strip map* means a graphic representation of a section of road or other transportation facility being added to or modified in the NTTFI. Each strip map clearly: identifies the facility's location with respect to State, county, Tribal, and congressional boundaries; defines the overall dimensions of the facility (including latitude and longitude); includes a north arrow, scale, designation of road sections, traffic counter locations, and other nearby transportation facilities; and includes a table that provides the facility's data information needed for the NTTFI.

*Transit* means services, equipment, and functions associated with the public movement of people served within a community or network of communities provided by a Tribe or other public authority using Federal funds.

*Transportation planning* means developing land use, economic development, traffic demand, public safety, health and social strategies to meet transportation current and future needs.

*Tribal road system* means the Tribally owned roads under the NTTFI. For the purposes of fund distribution as defined in 23 U.S.C. 202(b), the Tribal road system includes only those existing and proposed facilities that are approved and included in the NTTFI as of fiscal year 2012.

*Tribal transit program* means the planning, administration, acquisition, and operation and maintenance of a system associated with the public movement of people served within a community or network of communities on or near Tribal lands.

*Tribal Transportation Program (or TTP)* means a program established in Section 1119 of Moving Ahead for Progress in the 21st Century (MAP–21),

Pub. L. 112–141 (July 6, 2012), and codified in 23 U.S.C. 201 and 202 to address transportation needs of Tribes. This program was continued under Fixing America's Surface Transportation Act (FAST Act), Pub. L. 114–94 (Dec. 4, 2015).

*Tribal transportation facility* means a public highway, road, bridge, trail, transit system, or other approved facility that is located on or provides access to Tribal land and appears on the NTTFI described in 23 U.S.C. 202(b)(1).

*Tribe or Indian Tribe* means any Tribe, nation, band, pueblo, rancheria, colony, or community, including any Alaska Native village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act, that is federally recognized by the U.S. government for special programs and services provided by the Secretary to Indians because of their status as Indians.

*TTP* means Tribal Transportation Improvement Program. It is a multi-year list of proposed transportation projects developed by a Tribe from the Tribal priority list or the long-range transportation plan.

*TTP Eligible Transportation Facility* means any of the following:

- (1) Road systems and related road appurtenances such as signs, traffic signals, pavement striping, trail markers, guardrails, etc;
- (2) Highway bridges and drainage structures;
- (3) Boardwalks and Board roads;
- (4) Adjacent parking areas;
- (5) Maintenance yards;
- (6) Operations and maintenance of transit programs and facilities;
- (7) System public pedestrian walkways, paths, bike and other trails;
- (8) Motorized vehicle trails;
- (9) Public access roads to heliports and airports;
- (10) Seasonal transportation routes;
- (11) BIA and Tribal post-secondary school roads and parking lots built with TTP funds;
- (12) Public ferry boats and boat ramps; and
- (13) Additional facilities as approved by BIA and FHWA.

*TTP formula funds* means the pool of funds made available to Tribes under 23 U.S.C. 202(b)(3).

*TTP funds* means the funds authorized under 23 U.S.C. 201 and 202.

*TTP planning funds* means funds referenced in 23 U.S.C. 202(c)(1).

*TTP Program Management and Oversight (PM&O) funds* means those funds authorized by 23 U.S.C. 202(a)(6) to pay the cost of carrying out inherently Federal program management and oversight, and project-

related administrative expenses activities.

*TTP System* means all of the facilities eligible for inclusion in the NTTFI.

*TTPTIP* means Tribal Transportation Program Transportation Improvement Program. It is a financially constrained prioritized list of transportation projects and activities eligible for TTP funding covering a period of four years that is developed by BIA and FHWA based on each Tribe's submission of their TTIP or Tribal priority list. It is required for projects and activities to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. chapter 53. The Secretary of Transportation reviews and approves the TTPTIP and distributes copies to each State for inclusion in their respective STIPs without further action.

#### § 170.6 Acronyms.

AASHTO—American Association of State Highway and Transportation Officials.  
 ADR—Alternate dispute resolution  
 ANCSA—Alaska Native Claims Settlement Act  
 BIA—Bureau of Indian Affairs, Department of the Interior.  
 BIADOT—Bureau of Indian Affairs, Indian Services—Division of Transportation—Central Office.  
 CFR—Code of Federal Regulations.  
 DOI—Department of the Interior.  
 DOT—Department of Transportation.  
 FHWA—Federal Highway Administration, Department of Transportation.  
 FTA—Federal Transit Administration, Department of Transportation.  
 ISDEAA—Indian Self-Determination and Education Assistance Act of 1975, Public Law 93–638, as amended.  
 LRTP—Long-range transportation plan.  
 MUTCD—Manual of Uniform Traffic Safety Devices  
 NBTI—National Bridge and Tunnel Inventory.  
 NEPA—National Environmental Policy Act  
 NTTFI—National Tribal Transportation Facility Inventory.  
 PM&O—Program management and oversight.  
 PS&E—Plans, specifications and estimates  
 STIP—Statewide Transportation Improvement Program.  
 TTAC—Tribal Technical Assistance Center  
 TTIP—Tribal Transportation Improvement Program.  
 TTP—Tribal Transportation Program.  
 TTP–S—TTP—Safety  
 TTPTIP—Tribal Transportation Program Transportation Improvement Program.  
 U.S.C.—United States Code

**§ 170.7 Information collection.**

The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. *et seq.* and assigned control number 1076–0161. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Comments and suggestions on the burden estimate or any other aspect of the information collection should be sent to the Information Collection Clearance Officer, Bureau of Indian Affairs, 1849 C Street NW., Washington, DC 20240.

**Subpart B—Tribal Transportation Program Policy and Eligibility***Consultation, Collaboration, Coordination***§ 170.100 What do the terms “consultation,” “collaboration,” and “coordination” mean?**

(a) *Consultation* means government-to-government communication, carried out in accordance with applicable Executive Orders, in a timely manner by all parties about a proposed or contemplated decision. The Departments’ Consultation Policies and Plans can be found at <http://www.indianaffairs.gov/WhoWeAre/AS-IA/Consultation/Templates/index.htm> (DOI) or <http://www.fhwa.dot.gov/tribal/news/consultation.htm> (DOT)

(b) *Collaboration* means that all parties involved in carrying out planning and project development work together in a timely manner to achieve a common goal or objective.

(c) *Coordination* means that each party:

- (1) Shares and compares in a timely manner its transportation plans, programs, projects, and schedules with the related plans, programs, projects, and schedules of the other parties; and
- (2) Adjusts its plans, programs, projects, and schedules to optimize the efficient and consistent delivery of transportation projects and services.

**§ 170.101 What is the TTP consultation and coordination policy?**

(a) The TTP’s government-to-government consultation and coordination policy is to foster and improve communication, cooperation, and coordination among Tribal, Federal, State, and local governments and other transportation organizations when undertaking the following, similar, or related activities:

(1) Identifying data-driven safety needs for improving both vehicle and pedestrian safety;

(2) Developing State, metropolitan, regional, TTP, and TTIPs that impact Tribal lands, communities, and members;

(3) Developing short and long-range transportation plans;

(4) Developing TTP transportation projects;

(5) Developing environmental mitigation measures necessary to protect and/or enhance Tribal lands and the environment, and counteract the impacts of the projects;

(6) Developing plans or projects to carry out the Tribal Transportation Facility Bridge Program identified in 23 U.S.C. 202(d);

(7) Developing plans or projects for disaster and emergency relief response and the repair of eligible damaged TTP transportation facilities;

(8) Assisting in the development of State and Tribal agreements related to the TTP;

(9) Developing and improving transit systems serving Tribal lands and communities;

(10) Assisting in the submission of discretionary grant applications for State and Federal funding for TTP transportation facilities; and

(11) Developing plans and projects for the safety funding identified in 23 U.S.C. 202(e).

(b) Tribal, State and Federal Government agencies may enter into intergovernmental Memoranda of Agreement to streamline and facilitate consultation, collaboration, and coordination.

(c) DOI and DOT operate within a government-to-government relationship with Tribes. As a critical element of this relationship, these agencies assess the impact of Federal transportation policies, plans, projects, and programs on Tribal rights and interests to ensure that these rights and concerns are appropriately considered.

**§ 170.102 What goals and principles guide program implementation?**

When undertaking transportation activities affecting Tribes, the Secretaries should, to the maximum extent permitted by law:

(a) Establish regular and meaningful consultation and collaboration with affected Tribal governments, including facilitating the direct involvement of Tribal governments in short- and long-range Federal transportation planning efforts;

(b) Promote the rights of Tribal governments to govern their own internal affairs;

(c) Promote the rights of Tribal governments to receive direct transportation services from the Federal Government or to enter into agreements to directly operate any Tribally related transportation programs serving Tribal members;

(d) Ensure the continuation of the trust responsibility of the United States to Tribes and Indian individuals;

(e) Reduce the imposition of unfunded mandates upon Tribal governments;

(f) Encourage flexibility, innovation and implementation of contracting mechanisms used for delivery of the TTP to the greatest extent authorized by Congress by providing the protections afforded by the ISDEAA to Tribes carrying out eligible activities of the TTP;

(g) Reduce, streamline, and eliminate unnecessarily restrictive transportation policies, guidelines, or procedures;

(h) Ensure that Tribal rights and interests are appropriately considered during program development;

(i) Ensure that the TTP is implemented consistent with Tribal sovereignty and the government-to-government relationship; and

(j) Consult with, and solicit the participation of, Tribes in the development of the annual BIA budget proposals.

**§ 170.103 Is consultation with Tribal governments required before obligating TTP funds for direct service activities?**

Yes. Consultation with Tribal governments is required before obligating TTP funds for direct service activities. Before obligating TTP funds on any project for direct service activities, the Secretary must:

(a) Consult with the affected Tribe to determine Tribal preferences concerning the program, project, or activity; and

(b) Provide information under § 170.600 within 30 days of the notice of availability of funds.

**§ 170.104 Are funds available for consultation, collaboration, and coordination activities?**

Yes. Funds are available for consultation, collaboration, and coordination activities. To fund consultation, collaboration, and coordination of TTP activities, Tribes may use:

(a) The Tribes’ TTP allocations;

(b) Tribal Priority Allocation funds;

(c) Administration for Native Americans funds;

(d) Economic Development Administration funds;

(e) United States Department of Agriculture Rural Development funds;

- (f) Community Development Block Grant funds;
- (g) Indian Housing Block Grant funds;
- (h) Indian Health Service Tribal Management Grant funds;
- (i) General funds of the Tribal government; and
- (j) Any other funds available for the purpose of consultation, collaboration, and coordination activities.

**§ 170.105 When must State governments consult with Tribes?**

As identified in 23 U.S.C. 134 and 135, States will develop their STIP in consultation with Tribes in the area where the project is located. This includes providing for a process that coordinates transportation planning efforts carried out by the State with similar efforts carried out by Tribes. Regulations governing STIPs can be found at 23 CFR part 450.

**§ 170.106 Should planning organizations and local governments consult with Tribes when planning for transportation projects?**

Yes. When planning for transportation projects, planning organizations and local governments should consult with Tribes in the area where the project is located.

**§ 170.107 Should Tribes and BIA consult with planning organizations and local governments in developing projects?**

Yes. Tribes and BIA should consult with planning organizations and local governments in developing projects.

(a) All regionally significant TTP projects must be:

- (1) Developed in cooperation with State and metropolitan planning organizations; and
- (2) Included in a FHWA-approved TTP/TIP for inclusion in State and metropolitan plans.

(b) BIA and Tribes are encouraged to consult with States, metropolitan and regional planning organizations, and local and municipal governments on transportation matters of common concern.

**§ 170.108 How do the Secretaries prevent discrimination or adverse impacts?**

The Secretaries ensure that non-discrimination and environmental justice principles are integral TTP program elements. The Secretaries consult with Tribes early in the program development process to identify potential discrimination and to recommend corrective actions to avoid disproportionately high and adverse effects on Tribes and Indian populations.

**§ 170.109 How can State and local governments prevent discrimination or adverse impacts?**

(a) Under 23 U.S.C. 134 and 135, and 23 CFR part 450, State and local government officials shall consult and work with Tribes in the development of programs to:

- (1) Identify potential discrimination; and
  - (2) Recommend corrective actions to avoid disproportionately high and adverse effects on Tribes and Indian populations.
- (b) Examples of adverse effects include, but are not limited to:
- (1) Impeding access to Tribal communities or activities;
  - (2) Creating excessive access to culturally or religiously sensitive areas;
  - (3) Negatively affecting natural resources, trust resources, Tribal businesses, religious, and cultural sites;
  - (4) Harming indigenous plants and animals; and
  - (5) Impairing the ability of Tribal members to engage in commercial, cultural, and religious activities.

**§ 170.110 What if discrimination or adverse impacts occur?**

If discrimination or adverse impacts occur, a Tribe should take the following steps in the order listed:

- (a) Take reasonable steps to resolve the problem directly with the State or local government involved; and
- (b) Contact BIA, FHWA, or the Federal Transit Authority (FTA), as appropriate, to report the problem and seek assistance in resolving the problem.

*Eligible Uses of TTP Funds*

**§ 170.111 What activities may be carried out using TTP funds?**

TTP funds will be used to pay the cost of items identified in 23 U.S.C. 202(a)(1). A more detailed list of eligible activities is available in the appendix A to this subpart. Each of the items identified in this appendix must be interpreted in a manner that permits, rather than prohibits, a proposed use of funds.

**§ 170.112 What activities are not eligible for TTP funding?**

TTP funds cannot be used for any of the following:

- (a) Structures and erosion protection unrelated to transportation and roadways;
- (b) General or Tribal planning not involving transportation;
- (c) Landscaping and irrigation systems not involving transportation programs and projects;
- (d) Work or activities that are not listed on an FHWA-approved TTP/TIP;

(e) Condemnation of land for recreational trails;

(f) Salaries and/or other incidental costs of any Federal employee or contractor not performing Federal TTP stewardship and oversight, work identified in the appendix to subpart E, or project-related activities identified on an approved TTP; or

(g) Direct and/or incidental costs associated with the Federal Government's acquisition of goods, services, or construction unrelated to the program.

**§ 170.113 How can a Tribe determine whether a new use of funds is allowable?**

(a) A Tribe that proposes new uses of TTP funds must ask BIA or FHWA in writing whether the proposed use is eligible under Federal law.

(1) In cases involving eligibility questions that refer to 25 U.S.C., BIA will determine whether the new proposed use of TTP funds is allowable and provide a written response to the requesting Tribe within 45 days of receiving the written inquiry. Tribes may appeal a denial of a proposed use by BIA under 25 CFR part 2. The address is: Department of the Interior, BIA, Division of Transportation, 1849 C Street NW., MS 4513 MIB, Washington, DC 20240.

(2) In cases involving eligibility questions that refer to the TTP or 23 U.S.C., BIA will refer an inquiry to FHWA for decision. FHWA must provide a written response to the requesting Tribe within 45 days of receiving the written inquiry from the Tribe. Tribes may appeal denials of a proposed use by the FHWA to: FHWA, 1200 New Jersey Ave. SE., Washington, DC 20590.

(b) To the extent practical, the deciding agency must consult with the TTP Coordinating Committee before denying a request.

(c) BIA and FHWA will:

- (1) Send copies of all eligibility determinations to the TTP Coordinating Committee and BIA Regional offices;
- (2) Coordinate all responses and if the requested agency fails to issue a decision to the requesting Tribe within the required time, the proposed use will be deemed to be allowable for that specific project; and
- (3) Promptly make any final determination available on agency Web sites.

*Use of TTP and Cultural Site or Area Entry Roads*

**§ 170.114 What restrictions apply to the use of a Tribal transportation facility?**

(a) All Tribal transportation facilities listed in the approved NTTFI must be



open and available for public use as required by 23 U.S.C. 101(a)(31). However, the public authority having jurisdiction over these roads or the Secretary, in consultation with a Tribe and applicable private landowners, may restrict road use or close roads temporarily when:

(1) Required for public health and safety or as provided in § 170.116.

(2) Conducting engineering and traffic analysis to determine maximum speed limits, maximum vehicular size, and weight limits, and identify needed traffic control devices; and

(3) Erecting, maintaining, and enforcing compliance with signs and pavement markings.

(b) Consultation is not required whenever the conditions in paragraph (a) of this section involve immediate safety or life-threatening situations.

(c) A Tribal transportation facility owned by a Tribe or BIA may be permanently closed only when the Tribal government and the Secretary agree. Once this agreement is reached, BIA must remove the facility from the NTTFI and it will be ineligible for expenditure of any TTP funds.

**§ 170.115 What is a cultural site or area entry road?**

(a) A cultural site or area entry road is a public road that provides access to sites for cultural purposes as defined by Tribal traditions, which may include, for example:

- (1) Sacred and medicinal sites;
- (2) Gathering medicines or materials such as grasses for basket weaving; and
- (3) Other traditional activities, including, but not limited to, subsistence hunting, fishing and gathering.

(b) A Tribal government may unilaterally designate a Tribal road as a cultural site or area entry road. A cultural site or area entry road designation is an entirely voluntary and internal decision made by the Tribe to help it and other public authorities manage, protect, and preserve access to locations that have cultural significance.

(c) In order for a Tribal government to designate a non-tribal road as a cultural site or area entry road, it must enter into an agreement with the public authority having jurisdiction over the road.

(d) Cultural site or area entry roads may be included in the NTTFI if they meet the definition of a TTP facility.

**§ 170.116 Can a Tribe close a cultural site or area entry road?**

(a) A Tribe with jurisdiction over a cultural site or area entry road can close it. The Tribe can carry this out:

(1) During periods when the Tribe or Tribal members are involved in cultural activities; and

(2) In order to protect the health and safety of the Tribal members or the general public.

(b) Cultural site or area entry roads designated through an agreement with a public authority may only be closed according to the provisions of the agreement. See § 170.115(c).

*Seasonal Transportation Routes*

**§ 170.117 Can TTP funds be used on seasonal transportation routes?**

Yes. A Tribe may use TTP funds on seasonal transportation routes that are included in the NTTFI.

(a) Information regarding the standards for seasonal transportation routes are found in § 170.454. A Tribe can also develop or adopt standards that are equal to or exceed these standards.

(b) To help ensure the safety of the traveling public, construction of a seasonal transportation route requires a right-of-way, easement, or use permit.

*TTP Housing Site or Area Entry Roads*

**§ 170.118 What terms apply to TTP housing site or area entry roads?**

(a) *TTP housing site or area entry road* means a public road on the TTP System that provides access to a housing cluster.

(b) *TTP housing street* means a public road on the TTP System that is located within a housing cluster.

(c) *Housing cluster* means three or more existing or proposed housing units.

**§ 170.119 Are housing site or area entry roads and housing streets eligible for TTP funding?**

Yes. TTP housing site or area entry roads and housing streets on public rights-of-way are eligible for construction, reconstruction, and rehabilitation funding under the TTP. Tribes, following the transportation planning process as required in subpart D, may include housing site or area entry roads and housing street projects on their TTIP.

*Toll, Ferry, and Airport Facilities*

**§ 170.120 How can Tribes use Federal highway funds for toll and ferry facilities?**

(a) A Tribe can use Federal-aid highway funds, including TTP funds, to study, design, construct, and operate toll highways, bridges, and tunnels, as well as ferry boats and ferry terminal facilities. The following table shows how a Tribe can initiate construction of these facilities.

To initiate construction of a . . .	A Tribe must . . .
(1) Toll highway, bridge, or tunnel.	(i) Meet and follow the requirements in 23 U.S.C. 129; and (ii) If TTP funds are used, enter into an Agreement as defined in § 170.5.
(2) Ferry boat or ferry terminal.	Meet and follow the requirements in 23 U.S.C. 129(c).

(b) A Tribe can use TTP funds to fund 100 percent of the conversion or construction of a toll facility.

(c) If a Tribe obtains non-TTP Federal funding for the conversion or construction of a toll facility, the Tribe may use TTP funds to satisfy any matching fund requirements.

**§ 170.121 Where is information about designing and operating a toll facility available?**

Information on designing and operating a toll highway, bridge or tunnel is available from the International Bridge, Tunnel and Turnpike Association. The Association publishes a variety of reports, statistics, and analyses. The Web site is located at <http://www.ibtta.org>. Information is also available from FHWA.

**§ 170.122 When can a Tribe use TTP funds for airport facilities?**

(a) A Tribe can use TTP funds for construction of airport and heliport access roads, if the access roads are open to the public.

(b) A Tribe cannot use TTP funds to construct, improve, or maintain airport or heliport facilities.

*Recreation, Tourism, and Trails*

**§ 170.123 Can a Tribe use Federal funds for its recreation, tourism, and trails program?**

Yes. A Tribe, Consortium, or the BIA may use TTP funds for recreation, tourism, and trails programs if the programs are included in the TTP/TIP. Additionally, the following Federal programs may be possible sources of Federal funding for recreation, tourism, and trails projects and activities:

(a) Federal Lands Access Program (23 U.S.C. 204);

(b) National Highway Performance Program (23 U.S.C. 119);

(c) Transportation Alternatives (23 U.S.C. 213);

(d) Surface Transportation Program (23 U.S.C. 133);

(e) Other funding from other Federal departments; and

(f) Other funding that Congress may authorize and appropriate.

**§ 170.124 How can a Tribe obtain funds?**

(a) To receive funding for programs that serve recreation, tourism, and trails goals, a Tribe should:

- (1) Identify a program meeting the eligibility guidelines for the funds and have it ready for development; and
- (2) Have a viable project ready for improvement or construction, including necessary permits.

(b) Tribes seeking to obtain funding from a State under the programs identified in § 170.123(b) through (f) should contact the State directly to determine eligibility, contracting opportunities, funding mechanisms, and project administration requirements. These funds would be made available as provided by § 170.627 of this part.

(c) In order to expend any Federal transportation funds, a Tribe must ensure that the eligible project/program is listed on an FHWA-approved TIP or STIP.

**§ 170.125 What types of activities can a recreation, tourism, and trails program include?**

(a) The following are examples of activities that Tribes and Consortia may include in a recreation, tourism, and trails program:

- (1) Transportation planning for tourism and recreation travel;
- (2) Adjacent public vehicle parking areas;
- (3) Development of tourist information and interpretative signs;
- (4) Provision for non-motorized trail activities including pedestrians and bicycles;
- (5) Provision for motorized trail activities including all-terrain vehicles, motorcycles, snowmobiles, etc.;
- (6) Construction improvements that enhance and promote safe travel on trails;
- (7) Safety and educational activities;
- (8) Maintenance and restoration of existing recreational trails;
- (9) Development and rehabilitation of trailside and trailhead facilities and trail linkage for recreational trails;
- (10) Purchase and lease of recreational trail construction and maintenance equipment;
- (11) Safety considerations for trail intersections;
- (12) Landscaping and scenic enhancement (see 23 U.S.C. 319);
- (13) Bicycle transportation and pedestrian walkways (see 23 U.S.C. 217); and
- (14) Trail access roads.

(b) The items listed in paragraph (a) of this section are not the only activities that are eligible for recreation, tourism, and trails funding. The funding criteria may vary with the specific requirements of the programs.

(c) Tribes may use TTP funds for any activity that is eligible for Federal funding under any provision of title 23 of the U.S.C.

**§ 170.126 Can roads be built in roadless and wild areas?**

Under 25 CFR part 265, no roads can be built in an area designated as a roadless and wild area.

*TTP Safety***§ 170.127 What are the TTP Safety Funds?**

(a) Funds, identified as TTP Safety (TTP-S) funds, are made available for a Tribe's highway safety activities through a TTP set-aside established in 23 U.S.C. 202(e). TTP-S funds are allocated based on identification and analysis of highway safety issues and opportunities on Tribal lands. A TTP-S call for projects will be made annually through a Notice of Funding Opportunity published in the **Federal Register**.

(b) Tribes may also use their TTP-S funds made available through 23 U.S.C. 202(b) for highway safety activities as well as seek grant and program funding from appropriate State and local agencies and private grant organizations.

(c) A project that uses TTP-S funding or TTP funds made available under 23 U.S.C. 202(b) must be identified on a FHWA-approved TTPTIP before any funds are expended.

**§ 170.128 What activities are eligible for TTP-S funds?**

(a) TTP-S funds made available under 23 U.S.C. 202(e) may be used for projects and activities that improve safety in one or more of the following categories:

- (1) Safety Plans and Planning activities; and
  - (2) Other eligible activities as described in 23 U.S.C. 148(a)(4)
- (b) Eligible activities for each of the categories listed in paragraph (a) of this section will be included in the annual Notice of Funding Opportunity. An eligibility determination for other proposed activities must be requested from BIA or FHWA under § 170.113.

**§ 170.129 How will Tribes receive TTP-S funds?**

TTP-S funds made available to Tribes may be included in the Tribe's self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements.

**§ 170.130 How can Tribes obtain non-TTP funds for highway safety projects?**

FHWA, the National Highway Traffic Safety Administration, BIA, the U.S. Department of Health and Human Services and other Federal agencies may

have funding available for Tribes to address safety projects and activities. Please see the respective agency/department Web sites for further information or ask BIA or FHWA for assistance. If funding from these agencies does become available, Tribes may work with BIA or FHWA to include those funds through an ISDEAA contract or agreement, or other appropriate agreement for these projects. If the funding is title 23 funding that is originally made available to a State, the Tribe will need to work with the State to develop an agreement for the funding and work through the process identified in § 170.627 of this part.

*Transit Facilities***§ 170.131 How do Tribes identify transit needs?**

Tribes identify transit needs during the Tribal transportation planning process (see subpart D of this part). Transit projects using TTP funds must be included in the FHWA-approved TTPTIP.

**§ 170.132 What Federal funds are available for a Tribe's transit program?**

Title 23 U.S.C. authorizes use of TTP funds for transit facilities as defined in this part. There are many additional sources of Federal funds for Tribal transit programs, including the Federal programs listed in this section. Note that each program has its own terms and conditions of assistance. For further information on these programs and their use for transit, contact the FTA Regional Transit Assistance Program at [www.nationalrtap.org](http://www.nationalrtap.org). Section 170.627 of this part identifies how these funds, if provided to the Tribe from a State or county, can be made available.

(a) *Department of Transportation*. Formula Grants for Public Transportation on Indian Reservations under 49 U.S.C. 5311, Welfare-to-Work, Tribal Transportation Program, transportation and community and systems preservation, Federal transit capital improvement grants, public transportation for non-urbanized areas, capital assistance for elderly and disabilities transportation, education, and Even Start.

(b) *Department of Agriculture*. Community facilities loans; rural development loans; business and industrial loans; rural enterprise grants; commerce, public works and economic development grants; and economic adjustment assistance.

(c) *Department of Housing and Urban Development*. Community development block grants, supportive housing, Tribal

housing loan guarantees, resident opportunity and support services.

(d) *Department of Labor.* Indian employment and training, welfare-to-work grants.

(e) *Department of Health and Human Services.* Programs for Indian elders, community service block grants, job opportunities for low-income individuals, Head Start (capital or operating), administration for Indian programs, Medicaid, HIV Care Grants, Healthy Start, and the Indian Health Service.

**§ 170.133 May a Tribe or BIA use TTP funds as matching funds?**

TTP funds may be used to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program.

**§ 170.134 What transit facilities and activities are eligible for TTP funding?**

Transit facilities and activities eligible for TTP funding include, but are not limited to:

(a) Acquiring, constructing, operating, supervising or inspecting new, used or refurbished equipment, buildings, facilities, buses, vans, water craft, and other vehicles for use in public transportation;

(b) Transit-related intelligent transportation systems;

(c) Rehabilitating, remanufacturing, and overhauling a transit vehicle;

(d) Preventive maintenance;

(e) Leasing transit vehicles, equipment, buildings, and facilities for use in mass transportation;

(f) Third-party contracts for otherwise eligible transit facilities and activities;

(g) Public transportation improvements that enhance economic and community development, such as bus shelters in shopping centers, parking lots, pedestrian improvements, and support facilities that incorporate other community services;

(h) Passenger shelters, bus stop signs, and similar passenger amenities;

(i) Introduction of new public transportation technology;

(j) Provision of fixed route, demand response services, and non-fixed route paratransit transportation services;

(k) Radio and communication equipment to support Tribal transit programs;

(l) Transit; and

(m) Any additional activities authorized by 49 U.S.C. 5311.

*TTP Coordinating Committee*

**§ 170.135 What is the TTP Coordinating Committee?**

(a) Under this part, the Secretaries will establish a TTP Coordinating Committee that:

(1) Provides input and recommendations to BIA and FHWA in developing TTP regulations, policies and procedures; and

(2) Supplements government-to-government consultation by coordinating with and obtaining input from Tribes, BIA, and FHWA.

(b) The Committee consists of 24 Tribal regional representatives (two from each BIA Region) and two non-voting Federal representatives (FHWA and BIA).

(c) The Secretary must select the regional Tribal representatives from nominees officially submitted by the region's Tribes.

(1) To the extent possible, the Secretary must make the selection so that there is representation from a broad cross-section of large, medium, and small Tribes.

(2) Tribal nominees must be Tribal governmental officials or Tribal employees with authority to act for their Tribal government.

(d) For purposes of continuity, the Secretary will appoint the Tribal representatives to a three year term. The appointments will be carried out so that only one of a region's two representatives will be appointed in any one year. Should the Tribal appointment or employment of a committee representative terminate during his/her term, the representative must notify the Secretary of this change and his/her membership to the Committee will cease. Upon receipt of the notification, the Secretary will seek nominations from the region's Tribes to replace the representative for the remainder of the term.

(e) Should the need arise, the Secretary will replace representatives.

**§ 170.136 What are the TTP Coordinating Committee's responsibilities?**

(a) Committee responsibilities are to provide input and recommendations to BIA and FHWA during the development or revision of:

(1) BIA/FHWA TTP Stewardship Plan;

(2) TTP policy and procedures;

(3) TTP eligible activities determination;

(4) TTP transit policy;

(5) TTP regulations;

(6) TTP management systems policy and procedures; and

(7) National Tribal transportation needs.

(b) The Committee may establish work groups to carry out its responsibilities.

(c) The Committee also reviews and provides recommendations on TTP national concerns (including the

implementation of this part) brought to its attention.

(d) Committee members are responsible for disseminating TTP Coordinating Committee information and activities to Tribal leadership and transportation officials within their respective BIA Regions.

**§ 170.137 How does the TTP Coordinating Committee conduct business?**

The Committee holds at least two meetings a year. In order to maximize participation by the Tribal public, the Committee shall submit to the Secretary its proposed meeting dates and locations for each fiscal year no later than October 1st. Subject to approval by the Secretary, additional Committee meetings may be called with the consent of one-third of the Committee members, or by BIA or FHWA. The Committee conducts business at its meetings as follows:

(a) A quorum consists of representation from eight BIA Regions.

(b) The Committee will operate by consensus or majority vote, as determined by the Committee in its protocols.

(c) Any Committee member can submit an agenda item to the Chair.

(d) The Committee will work through a committee-approved annual work plan and budget.

(e) Annually, the Committee must elect from among the Committee membership a Chair, a Vice-Chair, and other officers. These officers will be responsible for preparing for and conducting Committee meetings and summarizing meeting results. These officers will also have other duties that the Committee may prescribe.

(f) The Committee must keep the Secretary and the Tribes informed through an annual accomplishment report provided within 90 days after the end of each fiscal year.

(g) The Committee's budget will be funded through the TTP management and oversight funds, not to exceed \$150,000 annually.

*Tribal Technical Assistance Centers*

**§ 170.138 What are Tribal Technical Assistance Centers?**

Tribal Technical Assistance Centers (TTAC), which are also referred to as Tribal Technical Assistance Program Centers are authorized under 23 U.S.C. 504(b)(3). The centers assist Tribal governments and other TTP participants in extending their technical capabilities by providing them greater access to transportation technology, training, and research opportunities. Complete information about the centers and the

services they offer is available on at <http://ltap.org/about/ttap.php>.

#### Appendix A to Subpart B—Allowable Uses of TTP funds

TTP funds must be used to pay the cost of those items identified in 23 U.S.C. 202(a)(1), including:

(a) TTP funds can be used for the following planning and design activities:

(1) Planning and design of Tribal Transportation Facilities.

(2) Transportation planning activities, including planning for tourism and recreational travel.

(3) Development, establishment, and implementation of Tribal transportation management systems such as safety, bridge, pavement, and congestion management.

(4) Tribal transportation plans and transportation improvement programs (TIPS).

(5) Coordinated technology implementation program (CTIP) projects.

(6) Traffic engineering and studies.

(7) Identification, implementation, and evaluation of data-driven safety needs.

(8) Tribal transportation standards.

(9) Preliminary engineering studies.

(10) Interagency program/project formulation, coordination and review.

(11) Environmental studies and archeological investigations directly related to transportation programs and projects.

(12) Costs associated with obtaining permits and/or complying with Tribal, Federal, State, and local environmental, archeological and natural resources regulations and standards.

(13) Development of natural habitat and wetland conservation and mitigation plans, including plans authorized under the Water Resources Development Act of 1990, 104 Stat. 4604 (Water Resources Development Act).

(14) Architectural and landscape engineering services related to transportation programs.

(15) Engineering design related to transportation programs, including permitting activities.

(16) Inspection of bridges and structures.

(17) Tribal Transportation Assistance Centers (TTACs).

(18) Safety planning, programming, studies and activities.

(19) Tribal employment rights ordinance (TERO) fees.

(20) Purchase or lease of advanced technological devices used for transportation planning and design activities such as global positioning units, portable weigh-in-motion systems, hand-held data collection units, related hardware and software, etc.

(21) Planning, design and coordination for Innovative Readiness Training projects.

(22) Transportation planning and project development activities associated with border crossings on or affecting Tribal lands.

(23) Public meetings and public involvement activities associated with transportation projects and planning.

(24) Leasing or rental of equipment used in transportation planning or design programs.

(25) Transportation-related technology transfer activities and programs.

(26) Educational activities related to bicycle safety.

(27) Planning and design of mitigation impacts to environmental resources caused by a transportation project, including, but not limited to, wildlife, habitat, ecosystems, historic properties, and wetlands.

(28) Evaluation of community impacts such as land use, mobility, access, social, safety, psychological, displacement, economic, and aesthetic impacts.

(29) Acquisition of land and interests in land required for right-of-way, including control of access thereto from adjoining lands, the cost of appraisals, cost of surveys, cost of examination and abstract of title, the cost of certificate of title, advertising costs, and any fees incidental to such acquisition.

(30) Cost associated with relocation activities including financial assistance for displaced businesses or persons and other activities as authorized by law.

(31) On-the-job education including classroom instruction and pre-apprentice training activities related to transportation planning and design.

(32) Other eligible activities as approved by FHWA.

(33) Any additional activities identified by TTP Coordinating Committee guidance and approved by the appropriate Secretaries (see § 170.137).

(34) Indirect general and administrative costs; and

(35) Other eligible activities described in this part.

(b) TTP funds can be used for the following construction and improvement activities:

(1) Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements for Tribal transportation facilities.

(2) Construction or improvement of Tribal transportation facilities necessary to accommodate other transportation modes.

(3) Construction of toll roads, highway bridges and tunnels, and toll and non-toll ferry boats and terminal facilities, and approaches thereto (except when on the Interstate System) to the extent permitted under 23 U.S.C. 129.

(4) Construction of projects for the elimination of hazards at railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings.

(5) Installation of protective devices at railway-highway crossings.

(6) Transit facilities, whether publicly or privately owned, that serve Indian reservations and other communities or that provide access to or are located within an Indian reservation or community (see §§ 170.131 through 170.134 for additional information).

(7) Engineered pavement overlays that add to the structural value and design life or increase the skid resistance of the pavement.

(8) Tribally-owned, post-secondary vocational school transportation facilities.

(9) Road sealing.

(10) The placement of a double bituminous surface and chip seals during the construction of an approved project (as the

non-final course) or that form the final surface of low volume roads.

(11) Seismic retrofit, replacement, rehabilitation, and painting of road bridges.

(12) Application of calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions on road bridges, and approaches thereto and other elevated structures.

(13) Installation of scour countermeasures for road bridges and other elevated structures.

(14) Special pedestrian facilities built in lieu of streets or roads, where standard street or road construction is not feasible.

(15) Standard regulatory, warning, guide, and other official traffic signs, including dual language signs, which comply with the MUTCD that are part of transportation projects. TTP funds may also be used on interpretive signs (signs intended for viewing only by pedestrians, bicyclists, and occupants of vehicles parked out of the flow of traffic) that are culturally relevant (native language, symbols, etc.) that are a part of transportation projects.

(16) Traffic barriers and bridge rails.

(17) Engineered spot safety improvements.

(18) Planning and development of rest areas, recreational trails, parking areas, sanitary facilities, water facilities, and other facilities that accommodate the traveling public.

(19) Public approach roads and interchange ramps that meet the definition of a Tribal Transportation Facility.

(20) Construction of roadway lighting and traffic signals.

(21) Adjustment or relocation of utilities directly related to roadway work, not required to be paid for by local utility companies.

(22) Conduits crossing under the roadway to accommodate utilities that are part of future development plans.

(23) Restoration of borrow and gravel pits created by projects funded from the TTP.

(24) Force account and day labor work, including materials and equipment rental, being performed in accordance with approved plans and specifications.

(25) Experimental features where there is a planned monitoring and evaluation schedule.

(26) Capital and operating costs for traffic monitoring, management, and control facilities and programs.

(27) Safely accommodating the passage of vehicular and pedestrian traffic through construction zones.

(28) Construction engineering including contract/project administration, inspection, and testing.

(29) Construction of temporary and permanent erosion control, including landscaping and seeding of cuts and embankments.

(30) Landscape and roadside development features.

(31) Marine facilities and terminals as intermodal linkages.

(32) Construction of visitor information centers, kiosks, and related items.

(33) Other appropriate public road facilities such as visitor centers as

determined by the Secretary of Transportation.

(34) Facilities adjacent to roadways to separate pedestrians and bicyclists from vehicular traffic for operational safety purposes, or special trails on separate rights-of-way.

(35) Construction of pedestrian walkways and bicycle transportation facilities, such as a new or improved lane, path, or shoulder for use by bicyclists and a traffic control device, shelter, or parking facility for bicycles.

(36) Facilities adjacent to roadways to separate modes of traffic for safety purposes.

(37) Acquisition of scenic easements and scenic or historic sites provided they are part of an approved project or projects.

(38) Debt service on bonds or other debt financing instruments issued to finance TTP construction and project support activities.

(39) Any project to encourage the use of carpools and vanpools, including provision of carpooling opportunities to the elderly and individuals with disabilities, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use for preferential parking for carpools.

(40) Fringe and corridor parking facilities including access roads, buildings, structures, equipment improvements, and interests in land.

(41) Adjacent public parking areas.

(42) Costs associated with obtaining permits and/or complying with Tribal, Federal, State, and local environmental, archeological, and natural resources regulations and standards on TTP projects.

(43) Seasonal transportation routes, including snowmobile trails, ice roads, overland winter roads, and trail markings. (See § 170.117.)

(44) Tribal fees such as employment taxes (TERO), assessments, licensing fees, permits, and other regulatory fees.

(45) On-the-job education including classroom instruction and pre-apprentice training activities related to TTP construction projects such as equipment operations, surveying, construction monitoring, testing, inspection and project management.

(46) Installation of advance technological devices on TTP transportation facilities such as permanent weigh-in-motion systems, informational signs, intelligent transportation system hardware, etc.

(47) Cultural and environmental resource monitoring, management, and mitigation for transportation related activities

(48) Mitigation activities required by Tribal, State, or Federal regulatory agencies and 42 U.S.C. 4321, *et seq.*, the National Environmental Policy Act (NEPA).

(49) Purchasing, leasing or renting of construction or maintenance equipment. All equipment purchase request submittals must be accompanied by written cost analysis and approved by FHWA or BIA. When purchasing construction or maintenance equipment, a Tribe must:

(i) Construction—Develop a lease/purchase cost analysis that identifies the overall benefit of purchasing the piece of equipment

versus leasing. This analysis must be submitted to BIA or FHWA for approval per § 170.113. If approved, the funding must be identified on a FHWA-approved TTP in order to be expended in accordance with 23 U.S.C. 202(b)(4)(B).

(ii) Maintenance—The equipment costs are considered part of the funding identified in 23 U.S.C. 202(a)(8) and must be identified on a FHWA-approved TTP in accordance with 23 U.S.C. 202(b)(4)(B) in order to be expended.

(50) Coordination and construction materials for innovative readiness training projects operated by entities such as the Department of Defense (DOD), the American Red Cross, the Federal Emergency Management Agency (FEMA), other cooperating Federal agencies, States and their political subdivisions, Tribal governments, or other appropriate non-governmental organizations.

(51) Emergency repairs on Tribal Transportation Facilities.

(52) Public meetings and public involvement activities.

(53) Construction of roads on dams and levees.

(54) Transportation alternative activities as defined in 23 U.S.C. 101(a).

(55) Modification of public sidewalks adjacent to or within Tribal transportation facilities.

(56) Highway and transit safety infrastructure improvements and hazard eliminations.

(57) Transportation control measures such as employer-based transportation management plans, including incentives, shared-ride services, employer sponsored programs to permit flexible work schedules and other activities, other than clause (xvi) listed in section 108(f)(1)(A) of the Clean Air Act, (42 U.S.C. 7408(f)(1)(A)).

(58) Environmental restoration and pollution abatement activities in order to construct a transportation project or to mitigate impacts caused by a transportation project.

(59) Trail development and related activities as identified in §§ 170.123 through 170.126.

(60) Development of scenic overlooks and information centers.

(61) Natural habitat and wetlands mitigation efforts related to TTP projects, including:

(i) Participation in natural habitat and wetland mitigation banks, including banks authorized under the Water Resources Development Act, and

(ii) Contributions to Tribal, statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetland, including efforts authorized under the Water Resources Development Act.

(62) Mitigation of damage to wildlife, habitat and ecosystems caused as a result of a transportation project.

(63) Construction of permanent fixed or moveable structures for snow or sand control.

(64) Cultural access roads (see § 170.115).

(65) Other eligible items as approved by the Federal Highway Administration (FHWA).

(66) Any additional activities proposed by a Tribe or the TTP Coordinating Committee

and approved by the appropriate Secretaries (see §§ 170.113 and 170.136).

(67) Other eligible activities identified in this part (c) TTP funds can be used for maintenance activities as defined in subpart G of this regulation.

(d) Each of the items identified in this appendix must be interpreted in a manner that permits, rather than prohibits, a proposed use of funds.

## Appendix B to Subpart B—Sources of Tribal Transportation Training and Education Opportunities

The following is a list of some of the many governmental sources for Tribal transportation training and education opportunities. There may be other non-governmental, Tribal, or private sources not listed here.

(1) National Highway Institute training courses and fellowships

(2) State and local technical assistance center workshops

(3) Tribal technical assistance centers (TTAC) workshops

(4) FHWA and FTA Research Fellowships

(5) Dwight David Eisenhower Transportation Fellowship (23 U.S.C. 504)

(6) Intergovernmental personnel agreement assignments

(7) BIA transportation cooperative education program

(8) BIA force account operations

(9) Federal Transit Administration workshops

(10) State Departments of Transportation

(11) Federal-aid highway construction and technology training including skill improvement programs under 23 U.S.C. 140(b) and (c)

(12) Other funding sources identified in § 170.150 (Transit)

(13) Department of Labor work force development

(14) Indian Employment, Training, and Related Services Demonstration Act, Public Law 102-477

(15) Garrett Morgan Scholarship (FHWA)

(16) NTRC—National Transit Resource Center

(17) CTER—Council for Tribal Employment Rights

(18) BIA Indian Highway Safety Program

(19) FHWA/STIPDG (Summer Transportation Internship Program for Diverse Groups) and NSTISS (National Summer Transportation Institute for Secondary Students) Student Internship Programs

(20) Environmental Protection Agency (EPA)

(21) Department of Commerce (DOC)

(22) Department of Housing and Urban Development Community Planning and Development

(23) Training program for bridge and tunnel inspectors

(24) Transportation Research Board (TRB)

### Subpart C—Tribal Transportation Program Funding

#### § 170.200 How do BIA and FHWA determine the TTP funding amount?

23 U.S.C. 202(b)(3)(A) provides the basis for the funding formula and its transition into use. The annual TTP funding amount available for distribution is determined as follows:

(a) The following set-asides are applied to the Tribal transportation program before the determination of final Tribal shares:

- (1) Tribal transportation planning (23 U.S.C. 202(c));
- (2) Tribal transportation facility bridges (23 U.S.C. 202(d));
- (3) Tribal safety (23 U.S.C. 202(e));
- (4) Administrative expenses (23 U.S.C. 202(a)(6)); and
- (5) Tribal supplemental program (23 U.S.C. 202(b)(3)(C)).

(b) After deducting the set asides identified in paragraph (a) of this section, on October 1 of each fiscal year, the Secretaries will distribute the remainder authorized to be appropriated for the TTP among Indian Tribes as follows:

- (1) For fiscal year 2016 and thereafter:
  - (i) For each Indian Tribe, 20 percent of the total relative need distribution factor and population adjustment factor as determined by the Tribal Transportation Allocation Methodology (see 25 CFR 170 dated July 19, 2004)) for the fiscal year 2011 funding amount made available to that Indian Tribe; and
  - (ii) The remainder using Tribal shares as described in § 170.201 and Tribal supplemental funding as described in § 170.202.
- (2) [Reserved].

#### § 170.201 What is the statutory distribution formula for Tribal shares?

(a) Tribal shares are determined by using the NTTFI as calculated for fiscal year 2012, and the most recent data on American Indian and Alaska Native population within each Indian Tribe's American Indian/Alaska Native Reservation or Statistical Area, as computed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*), in the following manner:

(1) 27 percent in the ratio that the total eligible road mileage in each Tribe bears to the total eligible road mileage of all American Indians and Alaskan Natives. For the purposes of this calculation, eligible road mileage will be computed using only facilities included in the inventory described below:

- (i) Were included in the BIA System Inventory prior to October 1, 2004;
- (ii) Are owned by an Indian Tribal government;

(iii) Are owned by the Bureau of Indian Affairs.

(2) 39 percent in the ratio that the total population in each Tribe bears to the total population of all American Indians and Alaskan Natives; and

(3) 34 percent will be initially divided equally among each BIA Region.

(b) The share of funds will be distributed to each Indian Tribe within the BIA Region in the ratio that the average total relative need distribution factors and population adjustment factors from fiscal years 2005 through 2011 for a Tribe bears to the average total of relative need distribution factors and population adjustment factors for fiscal years 2005 through 2011 in that region.

#### § 170.202 How do BIA and FHWA determine and distribute the Tribal supplemental program funds?

(a) The total amount of funding made available for the Tribal supplemental program is determined as follows:

(1) If the amount made available for the TTP is less than or equal to \$275,000,000, the Tribal supplemental funding amount will equal 30 percent of such amount.

(2) If the amount made available for the TTP exceeds \$275,000,000, the Tribal supplemental funding will equal:

- (i) \$82,500,000; plus
- (ii) 12.5 percent of the amount made available for the Tribal transportation program in excess of \$275,000,000.

(b) The Tribal supplemental program funds will be distributed as follows:

(1) Initially, the Tribal supplemental program funding determined in paragraph (a) of this section will be designated among the BIA Regions in proportion to the regional total of Tribal shares based on the cumulative Tribal shares of all Indian Tribes within the region under § 170.201.

(2) After paragraph (b)(1) of this section is completed, the Tribal supplemental program funding designated for each region will be distributed among the Tribes within the region as follows:

- (i) The Secretaries will determine which Tribes would be entitled under § 170.200 to receive in a fiscal year less funding than they would receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in 25 CFR part 170, subpart C (in effect as of July 5, 2012); and
- (ii) The combined amount that such Indian Tribes would be entitled to receive in fiscal year 2011 pursuant to such relative need distribution factor and population adjustment factor in excess of the amount that they would be

entitled to receive in the fiscal year under § 170.200.

(c) Subject to paragraph (d) of this section, the Secretaries will distribute a combined amount to each Tribe that meets the criteria described in paragraph (b)(2)(i) of this section a share of funding in proportion to the share of the combined amount determined under paragraph (b)(2)(ii) of this section attributable to such Indian Tribe.

(d) A Tribe may not receive under paragraph (b)(2) of this section and based on its Tribal share under § 170.200 a combined amount that exceeds the amount that such Indian Tribe would be entitled to receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in 25 CFR part 170, subpart C.

(e) If the amount made available for a region under paragraph (b)(1) of this section exceeds the amount distributed among Indian Tribes within that region under paragraph (b)(2) of this section, The Secretaries will distribute the remainder of such region's funding under paragraph (b)(1) of this section among all Tribes in that region in proportion to the combined amount that each such Tribe received under § 170.200 and paragraphs (b), (c), and (d) of this section.

#### § 170.203 How are Tribal transportation planning funds provided to Tribes?

Tribal transportation planning funds described in § 170.200(a)(1) are calculated pro rata to each Tribe's final percentage as determined under §§ 170.200 through 170.202. Upon request of a Tribal government and approval by the BIA Regional Office or FHWA, these funds are made available to the Tribes under applicable BIA and FHWA contracting procedures.

#### § 170.204 What restrictions apply to TTP funds provided to Tribes?

All TTP funds provided to Tribes can be expended only on eligible projects and activities identified in § 170.111 and included in an FHWA-approved TIP per 23 U.S.C. 202(b)(4)(B).

#### § 170.205 What is the timeframe for distributing TTP funds?

Not later than 30 days after the date on which funds are made available to the Secretary under this paragraph, the funds shall be distributed to, and made available for immediate use by, eligible Indian Tribes, in accordance with the formula for distribution of funds under the TTP. (See 23 U.S.C. 202(b)(4)(A).)

*Formula Data Appeals***§ 170.226 How can a Tribe appeal its share calculation?**

(a) In calculating Tribal shares, BIA and FHWA use population data (which may be appealed) and specific prior-year data (which may not be appealed). Share calculations are based upon the requirements of 23 U.S.C. 202(b)(3)(B).

(b) Any appeal of a Tribe's population figure must be directed to Department of Housing and Urban Development, Indian Housing Office of Native American Programs. The population data used is the most recent data on American Indian and Alaska Native population within each Indian Tribe's American Indian/Alaska Native Reservation or Statistical Area. This data is computed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

(c) Appeal processes regarding inventory submissions are found at § 170.444(c), design standards at § 170.457, and new uses of funds at § 170.113.

*Flexible Financing***§ 170.227 Can Tribes use flexible financing for TTP projects?**

Yes. Tribes may use flexible financing in the same manner as States to finance TTP transportation projects, unless otherwise prohibited by law.

(a) Tribes may issue bonds or enter into other debt-financing instruments under 23 U.S.C. 122 with the expectation of payment of TTP funds to satisfy the instruments.

(b) Under 23 U.S.C. 603, the Secretary of Transportation may enter into an agreement for secured loans or lines of credit for TTP projects meeting the requirements contained in 23 U.S.C. 602. The secured loans or lines of credit must be paid from tolls, user fees, payments owing to the obligor under a public-private partnership or other dedicated revenue sources.

(c) Tribes may use TTP funds as collateral for loans or bonds to finance TTP projects. Upon the request of a Tribe, a BIA region or FHWA will provide necessary documentation to banks and other financial institutions.

**§ 170.228 Can a Tribe use TTP funds to leverage other funds or to pay back loans?**

(a) A Tribe can use TTP funds to leverage other funds.

(b) A Tribe can use TTP funds to pay back loans or other finance instruments (including those provided through an agreement with another Tribe) that were used for a project that:

(1) The Tribe paid for in advance of the current year using non-TTP funds;

(2) Was included in FHWA-approved TTPTIP; and

(3) Was included in the NTTFI at the time of construction.

**§ 170.229 Can a Tribe apply for loans or credit from a State infrastructure bank?**

Yes. A Tribe can apply for loans or credit from a State infrastructure bank. Upon the request of a Tribe, BIA region or FHWA will provide necessary documentation to a State infrastructure bank to facilitate obtaining loans and other forms of credit for a TTP project.

**§ 170.230 How long must a project financed through flexible financing remain on a TTPTIP?**

Tribes must identify each TTP project financed through flexible financing along with the repayment amount on their annual TTPTIP until the flexible financing instrument has been satisfied.

*TTP Data Reporting***§ 170.240 What TTP project and activity data must be submitted annually to the Secretaries?**

(a) In accordance with 23 U.S.C. 201(c)(6)(C), no later than 90 days after the last day of each fiscal year, any entity carrying out a project under the TTP under 23 U.S.C. 202 shall submit to the Secretaries, based on obligations and expenditures under the TTP during the preceding fiscal year, the following data:

(1) The names of projects and activities carried out by the entity under the TTP during the preceding fiscal year.

(2) A description of the projects and activities identified under paragraph (1) of this section;

(3) The current status of the projects and activities identified under paragraph (1) of this section; and

(4) An estimate of the number of jobs created and the number of jobs retained by the projects and activities identified under paragraph (1) of this section.

(b) FHWA and BIA shall provide an electronic portal to assist Tribes in submitting the data needed to fulfill the requirements of 23 U.S.C. 201(c)(6)(C).

**Subpart D—Planning, Design, and Construction of Tribal Transportation Program Facilities***Transportation Planning***§ 170.400 What is the purpose of transportation planning?**

The purpose of transportation planning is to address current and future transportation, land use, economic development, traffic demand, public safety, health, and social needs.

**§ 170.401 What are BIA's and FHWA's roles in transportation planning?**

Except as provided in § 170.402, the functions and activities that BIA and/or FHWA must perform for the TTP transportation planning are:

(a) Reviewing, and approving the TTPTIP as well as providing technical assistance to the Tribes during the development of their TTIP or Priority List:

(b) Oversight of the NTTFI;

(c) Performing quality assurance and validation of NTTFI data updates as needed;

(d) Coordinating with States and their political subdivisions and appropriate planning authorities on regionally significant TTP projects;

(e) Providing technical assistance to Tribal governments;

(f) Developing TTP budgets;

(g) Facilitating public involvement;

(h) Participating in transportation planning and other transportation-related meetings;

(i) Performing quality assurance and validation related to performing traffic studies;

(j) Performing preliminary project planning or project identification studies;

(k) Conducting special transportation studies;

(l) Developing short- and long-range transportation plans;

(m) Mapping;

(n) Developing and maintaining management systems;

(o) Performing transportation planning for operational and maintenance facilities; and

(p) Researching rights-of-way documents for project planning.

**§ 170.402 What is the Tribal role in transportation planning?**

(a) All Tribes must prepare a TTIP or Tribal priority list.

(b) Tribes operating with a Program Agreement or BIA self-determination contract, TTP agreement, or self-governance agreement may assume any of the following planning functions:

(1) Coordinating with States and their political subdivisions, and appropriate planning authorities on regionally significant TTP projects;

(2) Preparing NTTFI data updates and ensuring that the data is entered into the NTTFI;

(3) Facilitating public involvement;

(4) Performing traffic studies;

(5) Developing short- and long-range transportation plans;

(6) Mapping;

(7) Developing and maintaining Tribal management systems;

(8) Participating in transportation planning and other transportation related meetings;



(9) Performing transportation planning for operational and maintenance facilities;

(10) Developing TTP budgets including transportation planning cost estimates;

(11) Conducting special transportation studies, as appropriate;

(12) Researching rights-of-way documents for project planning; and

(13) Performing preliminary project planning or project identification studies.

**§ 170.403 What TTP funds can be used for transportation planning?**

Funds as defined in 23 U.S.C. 202(c) are allocated to an Indian Tribal government to carry out transportation planning. Tribes may also identify transportation planning as a priority use for their TTP Tribal share formula funds. In both cases, the fund source and use must be clearly identified on a FHWA-approved TTP TIP.

**§ 170.404 Can Tribes use transportation planning funds for other activities?**

Yes. After completion of a Tribe's annual planning activities, unexpended planning funds made available under 23 U.S.C. 202(c) may be used on eligible projects or activities provided that they are identified on a FHWA-approved TTP TIP.

**§ 170.405 How must Tribes use planning funds?**

TTP funds as defined in 23 U.S.C. 202(c) are available to a Tribal government to support Tribal transportation planning and associated activities, including:

(a) Attending transportation planning meetings;

(b) Pursuing other sources of funds; and

(c) Developing the Tribal priority list, TTIP, LRTP, or any of the transportation planning functions and activities listed in § 170.402.

**§§ 170.406–170.408 [Reserved].**

**§ 170.409 What is the purpose of long-range transportation planning?**

(a) The purpose of long-range transportation planning is to clearly demonstrate a Tribe's transportation needs and to develop strategies to meet these needs. These strategies should address future land use, economic development, traffic demand, public safety, and health and social needs. The planning process should result in a LRTP.

(b) The time horizon for a LRTP should be 20 years to match State transportation planning horizons.

**§ 170.410 How does a long-range transportation plan relate to the NTTFI?**

A LRTP is developed using a uniform process that identifies the transportation needs and priorities of a Tribe. The NTTFI (see § 170.442) is derived from transportation facilities identified through an LRTP. It is also a means for identifying projects and activities for the TTP.

**§ 170.411 What should a long-range transportation plan include?**

A LRTP should include:

(a) An evaluation of a full range of transportation modes and connections between modes such as highway, rail, air, and water, to meet transportation needs;

(b) Trip generation studies, including determination of traffic generators due to land use;

(c) Social and economic development planning to identify transportation improvements or needs to accommodate existing and proposed land use in a safe and economical fashion;

(d) Measures that address health and safety concerns relating to transportation improvements;

(e) A review of the existing and proposed transportation system to identify the relationships between transportation and the environment;

(f) Cultural preservation planning to identify important issues and develop a transportation plan that is sensitive to Tribal cultural preservation;

(g) Scenic byway and tourism plans;

(h) Measures that address energy conservation considerations;

(i) A prioritized list of short- and long-term transportation needs; and

(j) An analysis of funding alternatives to implement plan recommendations.

**§ 170.412 How is the Tribal TTP long-range transportation plan developed and approved?**

(a) The Tribal TTP long-range transportation plan is developed by either:

(1) A Tribe working through a self-determination contract, self-governance agreement, Program Agreement; and other appropriate agreement; or

(2) BIA or FHWA upon request of, and in consultation with, a Tribe. The Tribe and BIA or FHWA need to agree on the methodology and elements included in development of the TTP long-range transportation plan along with time frames before work begins. The development of a long-range transportation plan on behalf of a Tribe will be funded from the Tribe's share of the TTP funds.

(b) During the development of the TTP long-range transportation plan, the

Tribe and BIA or FHWA will jointly conduct a midpoint review.

(c) The public reviews a draft TTP long-range transportation plan as required by § 170.413. The plan is further refined to address any issues identified during the public review process. The Tribe then approves the TTP long-range transportation plan.

**§ 170.413 What is the public's role in developing the long-range transportation plan?**

BIA, FHWA, or the Tribe must solicit public involvement. If there are no Tribal policies regarding public involvement, a Tribe must use the procedures in this section. Public involvement begins at the same time long-range transportation planning begins and covers the range of users, from stakeholders and private citizens to major public and private entities. Public involvement must include either meetings or notices, or both.

(a) For public meetings, BIA, FHWA or the Tribe must:

(1) Advertise each public meeting in local and Tribal public newspapers at least 15 days before the meeting date. In the absence of local and Tribal public newspapers, BIA, FHWA, or the Tribe may post notices under locally acceptable practices;

(2) Provide at the meeting copies of the draft LRTP;

(3) Provide information on funding and the planning process; and

(4) Provide the public the opportunity to comment, either orally or in writing.

(b) For public notices, BIA, FHWA, or the Tribe must:

(1) Publish a notice in the local and Tribal public newspapers when the draft LRTP is complete. In the absence of local and Tribal public newspapers, BIA, FHWA, or the Tribe may post notices under locally acceptable practices; and

(2) State in the notice that the LRTP is available for review, where a copy can be obtained, whom to contact for questions, where comments may be submitted, and the deadline for submitting comments (normally 30 days).

**§ 170.414 How is the Tribal long-range transportation plan used and updated?**

The Tribal government uses its TTP long-range transportation plan to develop transportation projects as documented in a Tribal priority list or TTIP and to identify and justify the Tribe's updates to the NTTFI. To be consistent with State, Metropolitan Planning Organization (MPO) and Regional Planning Organization (RPO) planning practices, the TTP long-range

transportation plan must be reviewed annually and updated at least every five years.

**§ 170.415 What are pre-project planning and project identification studies?**

(a) Pre-project planning and project identification studies are part of overall transportation planning and include the activities conducted before final project approval on the TTPTIP. These processes provide the information necessary to financially constrain and program a project on the four-year TTPTIP but are not the final determination that projects will be designed and built. These activities include:

- (1) Preliminary project cost estimates;
- (2) Certification of public involvement;
- (3) Consultation and coordination with States and/or MPO's for regionally significant projects;
- (4) Preliminary needs assessments; and
- (5) Preliminary environmental and archeological reviews.

(b) BIA and/or FHWA, upon request of the Tribe, will work cooperatively with Tribal, State, regional, and metropolitan transportation planning organizations concerning the leveraging of funds from non-TTP sources and identification of other funding sources to expedite the planning, design, and construction of projects on the TTPTIP.

**§ 170.420 What is the Tribal priority list?**

The Tribal priority list is a list of all transportation projects that the Tribe wants funded. The list:

- (a) Is not financially constrained; and
- (b) Is provided to BIA or FHWA by official Tribal action, unless the Tribal government submits a TTIP.

*Tribal Transportation Improvement Programs*

**§ 170.421 What is the Tribal Transportation Improvement Program (TTIP)?**

- (a) The TTIP:
  - (1) Is developed from and must be consistent with the Tribe's Tribal priority list or LRTP;
  - (2) Is financially constrained for all identified funding sources;
  - (3) Must identify (year by year) all TTP funded projects and activities that are expected to be carried out over the next four years as well as the projected costs and all other funding sources that are expected to be used on those projects. Although 23 U.S.C. 134(j)(1)(D) indicates a TIP must be updated once every four years, Tribes are encouraged to update the TTIP annually to best represent the plans of the Tribe;
  - (4) Must identify all projects and activities that are funded through other

Federal, State, county, and municipal transportation funds and are carried out by the Tribe in accordance with 23 U.S.C. 202(a)(9);

- (5) Must include public involvement;
- (6) Is reviewed and updated as necessary by the Tribal government;
- (7) Can be changed only by the Tribal government; and
- (8) After approval by the Tribal government, must be forwarded to BIA or FHWA by Tribal resolution or authorized governmental action certifying public involvement has occurred and requesting approval.

(b) A copy of the FHWA-approved TTIP is returned to the Tribe and BIA. Although the FHWA-approved TTIP authorizes the Tribe to expend TTP funds for the projects and/or activities shown, it does not waive or modify other Federal, local, or financial statutory or regulatory requirements associated with the projects or activities.

**§ 170.422 How does the public participate in developing the TTIP?**

Public involvement is required in the development of the TTIP.

(a) The Tribe must publish a notice in local and/or Tribal newspapers when the draft TTIP is complete. In the absence of local public newspapers, the Tribe or BIA may post notices under locally acceptable practices. The notice must indicate where a copy can be obtained, a contact person for questions, where comments may be submitted, and the deadline for submitting comments. A copy of the notice will be made available to BIA or FHWA upon request.

(b) The Tribe may hold public meetings at which the public may comment orally or in writing.

(c) The Tribe, the State transportation department, or MPO may conduct public involvement activities.

**§ 170.423 How are annual updates or amendments to the TTIP conducted?**

- (a) The TTIP annual update allows:
  - (1) Changes to schedules and funding amounts for identified projects and activities; and
  - (2) The addition of transportation projects and activities planned for the next four years.
- (b) During the first quarter of a fiscal year, Tribes will be notified of the opportunity to update their TTIP. This notification will contain information on where the Tribes can access their estimated TTP funding amounts for that fiscal year, and will include a copy of their previously approved TTIP, as well as instructions for submitting the annual update.
- (c) The Tribe must then review any new transportation planning

information and priority lists, update their TTIP using the procedures in § 170.421, and forward the documentation to their respective BIA Regional Office or to FHWA.

(d) If forwarded to:
 

- (1) A BIA Regional Office—The Office will review all submitted information with the Tribe and provide a written response (concurring, denying, or requesting additional information) within 45 days. If the BIA regional office concurs in the TTIP, it is then forwarded to FHWA for final approval.

(2) FHWA—FHWA will review all submitted information with the Tribe and provide a written response (approving, denying, or requesting additional information) within 45 days.

Once a proposed TTIP update is approved by FHWA, it will be included in that year's overall TTPTIP.

(e) The Tribe may amend their approved TTIP at any time using the procedures in § 170.421 and paragraph (d) of this section in order to add a new project or activity within the current fiscal year that they intend to expend TTP funds on.

**§ 170.424 What is the TTP Transportation Improvement Program (TTPTIP)?**

(a) Each year, FHWA will compile the approved TTIPs for all of the Tribes into one document called the TTPTIP. This document will identify all expected projects and activities over a four-year period and will be organized by fiscal year, State, and Tribe.

(b) FHWA and BIA will post the approved TTPTIP on their respective Web sites. A subset of the TTPTIP that identifies only design and construction activities will annually be provided to the pertinent FHWA Division office for further transmittal to each State Transportation Office/Department for inclusion in the STIP without further action per 23 U.S.C. 201(c)(4).

*Public Hearings*

**§ 170.435 When is a public hearing required?**

The Tribe, or BIA or FHWA after consultation with the appropriate Tribe and other involved agencies, determines whether or not a public hearing is needed for a TTPTIP, a LRTP, or a project. A public hearing must be held if a project:

- (a) Is for the construction of a new route or facility;
- (b) Would significantly change the layout or function of connecting or related roads or streets;
- (c) Would cause a substantial adverse effect on adjacent property; or
- (d) Is controversial or expected to be controversial in nature.

**§ 170.436 How are public hearings for TTP planning and projects funded?**

Public hearings for a TTP or a Tribe's LRTP are funded using the Tribe's funds as described in § 170.403.

**§ 170.437 If there is no hearing, how must BIA, FHWA, or a Tribe inform the public?**

(a) When no public hearing for a TTP project is scheduled, the BIA, FHWA, or a Tribe must give adequate notice to the public before project activities are scheduled to begin. The notice should include:

- (1) Project location;
- (2) Type of improvement planned;
- (3) Dates and schedule for work;
- (4) Name and address where more information is available; and
- (5) Provisions for requesting a hearing.

(b) If the work is not to be performed by the Tribe, BIA will send a copy of the notice to the affected Tribe.

**§ 170.438 How must BIA, FHWA, or a Tribe inform the public of when a hearing is held?**

(a) When BIA, FHWA, or a Tribe holds a hearing under this part, it must notify the public of the hearing by publishing a notice with information about the project, how to attend the hearing, and where copies of documents can be obtained or viewed.

(b) BIA or the Tribe must publish the notice by:

(1) Posting the notice and publishing it in a newspaper of general circulation at least 30 days before the public hearing; and,

(2) Sending a courtesy copy of the notice to each affected Tribe and BIA Regional Office.

(c) A second notice for a hearing is optional.

**§ 170.439 How is a public hearing conducted?**

(a) *Presiding official.* A Tribal (tribal council) or Federal (FHWA or BIA) official will be appointed to preside over the public hearing. The presiding official must encourage a free and open discussion of the issues.

(b) *Record of hearing.* The presiding official is responsible for compiling the official record of the hearing. A record of a hearing is a summary of oral testimony and all written statements submitted at the hearing. Additional written comments made or provided at the hearing, or within five working days of the hearing, will be made a part of the record.

(c) *Hearing process.* (1) The presiding official explains the purpose of the hearing and provides an agenda;

(2) The presiding official solicits public comments from the audience on

the merits of TTP projects and activities; and

(3) The presiding official informs the hearing audience of the appropriate procedures for a proposed TTP project or activity that may include, but are not limited to:

- (i) Project development activities;
- (ii) Rights-of-way acquisition;
- (iii) Environmental and archeological clearance;
- (iv) Relocation of utilities and relocation services;
- (v) Authorized payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. 4601 *et seq.*, as amended;
- (vi) Draft transportation plan; and
- (vii) The scope of the project and its effect on traffic during and after construction.

(d) *Availability of information.*

Appropriate maps, plats, project plans, and specifications will be available at the hearing for public review.

Appropriate officials must be present to answer questions.

(e) *Opportunity for comment.*

Comments are received as follows:

- (1) Oral statements at the hearing;
- (2) Written statements submitted at the hearing; and
- (3) Written statements sent to the address noted in the hearing notice within five working days following the public hearing.

**§ 170.440 How can the public learn the results of a public hearing?**

Within 20 working days after the public hearing, the presiding official will issue and post at the hearing site a statement that:

- (a) Summarizes the results of the hearing;
- (b) Explains any needed further action;
- (c) Explains how the public may request a copy; and
- (d) Outlines appeal procedures.

**§ 170.441 Can a decision resulting from a hearing be appealed?**

Yes. A decision resulting from the public hearing may be appealed under 25 CFR part 2.

***National Tribal Transportation Facility Inventory*****§ 170.442 What is the National Tribal Transportation Facility Inventory?**

(a) The National Tribal Transportation Facility Inventory (NTTFI), is defined under § 170.5 of this part.

(b) BIA, FHWA, or Tribes can also use the NTTFI to assist in transportation and project planning, justify expenditures, identify transportation needs, maintain existing TTP facilities, and develop management systems.

(c) The Secretaries may include additional transportation facilities in the NTTFI if the additional facilities are included in a uniform and consistent manner nationally.

(d) As required by 23 U.S.C. 144, all bridges in the NTTFI will be inspected and recorded in the national bridge inventory administered by the Secretary of Transportation.

(e) In accordance with 23 U.S.C. 202(b)(1)(A–B) and the principles of program stewardship and oversight, the Secretaries have the authority to maintain the NTTFI and shall ensure the eligibility of the facilities and the accuracy of the data included in the NTTFI.

**§ 170.443 What is required to successfully include a proposed transportation facility in the NTTFI?**

(a) A proposed transportation facility is any transportation facility, including a highway bridge, that will serve public transportation needs, meets the eligibility requirements of the TTP, and does not currently exist. It must meet the eligibility requirements of the TTP and be open to the public when constructed. In order to have a proposed facility placed on the NTTFI, a Tribe must submit all of the following to the BIA/DOT/FHWA Quality Assurance Team for consideration:

(1) A Tribal resolution or other official action identifying support for the facility and its placement on the NTTFI.

(2) A copy of the Tribe's LRTP containing:

(i) A description of the current land use and identification of land ownership within the proposed road's corridor (including what public easements may be required);

(ii) A description of need and outcomes for the facility including a description of the project's termini; and

(iii) The sources of funding to be used for construction.

(3) If the landowner is a public authority other than the Tribe or BIA, documentation from the public authority that the proposed road has been identified in their LRTP, STIP approved by FHWA, or other published transportation planning documents.

(4) Documentation clearly identifying that easements or rights-of-way have been acquired or a clear written statement of willingness to provide a right-of-way from each landowner along the route.

(5) Certification that a public involvement process has been carried out for the proposed road.

(6) A synopsis discussing the project's anticipated environmental impacts as well as the engineering and construction challenges.

(7) Documentation that the project can meet financial or fiscal constraint requirements including financial information demonstrating that the project can be implemented using existing or reasonably available funding sources, and that the project route can be adequately maintained after construction. (See 23 U.S.C. 134 and 135.)

(8) Documentation identifying the entity responsible for maintenance of the facility after construction is completed.

(b) For those proposed roads that currently exist in the NTTFI, the requirements identified above as paragraphs (a)(1) through (a)(8) of this section, must be completed and submitted for approval to BIA and FHWA within November 7, 2017, in order to remain on the inventory.

#### **§ 170.444 How is the NTTFI updated?**

(a) Submitting data into the NTTFI for a new facility is carried out on an annual basis as follows:

(1) BIA Regional Offices provide each Tribe within its region with a copy of the Tribe's own NTTFI data during the first quarter of each fiscal year.

(2) Tribes review the provided data and are responsible for entering all changes/updates into the database. This work must be completed by March 15. The submissions must include, at a minimum, all required minimum attachments (see § 170.446) and authorizing resolutions or similar official authorizations.

(3) The BIA Regional Office reviews each Tribe's submission. If any errors or omissions are identified, the BIA Regional Office will return the submittals along with a request for corrections to the Tribe no later than May 15. If no errors or omissions are found, the BIA Regional Office validates the data and forwards it to BIADOT for review and approval.

(4) The Tribe must correct any errors or omissions in the data entries or return the corrected submittals back to the BIA Regional Office by June 15.

(5) Each BIA Regional Office must validate its regional data by July 15.

(6) BIADOT approves the current inventory year submissions from BIA Regional Offices by September 30 or returns the submissions to the BIA Regional Office if additional work is required.

(7) New facility data submitted outside of the above referenced dates are not guaranteed for inclusion in the official inventory identified in this subsection.

(b) Updating the data on a facility currently listed in the NTTFI is carried out as follows:

(1) At any time, a Tribe may submit a request to the BIA Region asking for the NTTFI data of an existing facility to be updated. The request must include the Tribe's updated data and background information on how and why the data was obtained. At the request of a Tribe, FHWA may assist BIA and the Tribe in updating the NTTFI data as required under this part.

(2) The BIA Region must review the submitted data and respond to the Tribe within 30 days of its receipt.

(i) If approved, the BIA Region validates the data and forwards it to BIADOT for review and approval.

(ii) If not approved, the BIA Region returns the submittals to the Tribe along with a detailed written explanation and supporting documentation of the reasons for the disapproval. The Tribe must correct the data entries and return the corrected submittals back to the BIA Region.

(3) BIADOT approves the current inventory year submittals from BIA Regional Offices or returns the submittals to the BIA Regional Office if additional work is required.

(c) A Tribe may appeal the rejection of submitted data on a new or existing facility included in the NTTFI by filing a written notice of appeal to the Director, Bureau of Indian Affairs, with a copy to the BIA Regional Director.

(d) To be included in the annual NTTFI update used for administrative and reporting purposes for any given fiscal year, submittals for new facilities and updates for existing facilities must be officially accepted by BIA and FHWA by September 30th of that year.

#### **§ 170.445 [Reserved].**

#### **§ 170.446 What minimum attachments are required for an NTTFI submission?**

The minimum attachments required for a facility to be added into the NTTFI include the following.

(a) A long-range transportation plan.

(b) A Tribal resolution or official authorization that refers to all route numbers, names, locations, lengths, construction needs, and ownerships.

(c) A Strip map. See § 170.5.

(d) Average Daily Traffic (ADT) documentation.

(e) A typical or representative section photo or bridge profile photo.

(f) Incidental cost verification.

(g) Acknowledgement of Public Authority responsibility.

(h) For proposed roads, see § 170.443 for additional required attachments.

Please see the TTP Coding Guide for additional information on the NTTFI minimum attachments.

#### **§ 170.447 How are the allowable lengths of access roads in the NTTFI determined?**

The allowable length of an access road in the NTTFI is determined as follows:

(a) If the road section intersects or abuts a federally recognized Tribal boundary, then the length of the access road is the distance from the boundary extending to the intersection of an equal or greater functional classification but no more than 15 miles.

(b) If the road section does not intersect or abut a federally recognized Tribal boundary, the following applies:

(1) If the road section intersects or abuts an Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 *et seq.*) village corporation transportation service area, then the length of the access road is the distance from the ANCSA village corporation transportation service area extending to the intersection of an equal or greater functional classification but no more than 15 miles.

(2) If the road section is located outside of an ANCSA village corporation and located within a developed Alaska Native Village with a population more than 50% Alaska Native/American Indian, then the length of the access road is defined as the distance beginning five miles outside of the developed area of the Alaska Native Village extending to the intersection of an equal or greater functional classification but no more than 15 miles.

(3) If the road section intersects or abuts a Tribally owned trust or fee parcel located outside of an incorporated municipal boundary, then the length of the access road is defined as the distance beginning five miles outside of the Tribally owned trust or fee parcel boundary extending to the intersection of an equal or greater functional classification but no more than 15 miles.

(4) If the road section intersects or abuts a Tribally owned trust or fee parcel located inside of an incorporated municipal boundary, then the length of the access road is defined as the distance from the Tribally owned trust or fee parcel boundary extending to the intersection of an equal or greater functional classification but no more than 15 miles.

### *Environmental and Archeological Requirements*

#### **§ 170.450 What archeological and environmental requirements must the TTP meet?**

All BIA, FHWA, and Tribal work for the TTP must comply with cultural resource and environmental requirements under applicable Federal laws and regulations. A list of applicable laws and regulations is shown in appendix A to this subpart and is also available in the official Tribal Transportation Program Guide.

#### **§ 170.451 Can TTP funds be used for archeological and environmental compliance?**

Yes. For approved TTP projects, TTP funds can be used for environmental and archeological work consistent with § 170.450 and applicable Tribal laws for:

- (a) Road and bridge rights-of-way;
- (b) Borrow pits and aggregate pits and water sources associated with TTP activities staging areas;
- (c) Limited mitigation outside of the construction limits as necessary to address the direct impacts of the construction activity as determined in the environmental analysis and after consultation with all affected Tribes and appropriate Secretaries; and
- (d) Construction easements.

#### **§ 170.452 When can TTP funds be used for archeological and environmental activities?**

TTP funds can be used on a project's archeological and environmental activities only after the TTP facility is included in the Tribe's LRTP and the NTTFI, and the project identified on an FHWA-approved TTP TIP.

#### **§ 170.453 Do the Categorical Exclusions under the National Environmental Policy Act (NEPA) and the regulations at 23 CFR 771 apply to TTP activities?**

Yes. Regardless of whether BIA or FHWA is responsible for the oversight of a Tribe's TTP activities, the Categorical Exclusions under NEPA at 23 CFR 771.117 governing the use of funds made available through title 23 shall apply to all qualifying TTP projects involving the construction or maintenance of roads.

### *Design*

#### **§ 170.454 What design standards are used in the TTP?**

(a) Depending on the nature of the project, Tribes must use appropriate design standards approved by FHWA. Appendix B to this subpart as well as the official Tribal Transportation Program Guide list the applicable design standards that can be used.

(b) All other design standards not listed in (a) must receive approval from FHWA.

#### **§ 170.455 What other factors must influence project design?**

The appropriate design standards must be applied to each construction project consistent with a minimum 20-year design life for highway projects and 75-year design life for highway bridges. The design of TTP projects must take into consideration:

- (a) The existing and planned future use of the facility in a manner that is conducive to safety, durability, and economy of maintenance;
- (b) The particular needs of each locality, and the environmental, scenic, historic, aesthetic, community, and other cultural values and mobility needs in a cost effective manner; and
- (c) Access and accommodation for other modes of transportation.

#### **§ 170.456 How can a Tribe request an exception from the design standards?**

(a) A Tribe can request an exception from the required design standards from FHWA. The engineer of record (the State licensed civil engineer whose name and professional stamp appear on the PS&E or who is responsible for the overall project design) must submit written documentation with appropriate supporting data, sketches, details, and justification based on engineering analysis.

(b) FHWA can approve a project design that does not conform to the minimum criteria only after giving due consideration to all project conditions, such as:

- (1) Maximum service and safety benefits for the dollar invested;
- (2) Compatibility with adjacent features; and
- (3) Probable time before reconstruction of the project due to changed conditions or transportation demands.

(c) FHWA has 30 days from receiving the request to approve or decline the exception.

#### **§ 170.457 Can a Tribe appeal a denial?**

Yes. Tribes may appeal the denial of a design exception to: FHWA Office of Federal Lands Highway, 1200 New Jersey Ave. SE., HFL-1, Washington, DC 20590. If FHWA denies a design exception, the Tribe may appeal the decision Office of the FHWA Administrator, 1200 New Jersey Ave. SE., HOA-1, Washington, DC 20590.

### *Review and Approval of Plans, Specifications and Estimates*

#### **§ 170.460 What must a project package include?**

The project package must include the following documentation, approved by the appropriate Public Authority, before the start of construction:

- (a) Plans, specifications, and estimates;
- (b) A Tribal resolution or other authorized document supporting the project;
- (c) Certification of compliance with the requirements of 25 CFR part 169, as well as any additional public taking documentation clearances, if applicable.
- (d) Required environmental, archeological, and cultural clearances; and
- (e) Identification of design exceptions if used in the plans.

#### **§ 170.461 May a Tribe approve plans, specifications, and estimates?**

An Indian Tribal government may approve plans, specifications and estimates and commence road and bridge construction with funds made available from the TTP through a self-determination contract, self-governance agreement, Program Agreement or other appropriate agreement, developed in accordance with 23 U.S.C. 202(b)(6) & (b)(7), if the Indian Tribal government:

- (a) Provides assurances in the contract or agreement that the construction will meet or exceed applicable health and safety standards;
- (b) Obtains advance review of the plans and specifications from a State-licensed civil engineer that has certified that the plans and specifications meet or exceed the applicable health and safety standards;
- (c) Provides a copy of the certification under paragraph (a) of this section to the Deputy Assistant Secretary for Tribal Government Affairs, Department of Transportation, or the Assistant Secretary—Indian Affairs, DOI, as appropriate; and
- (d) Provides a copy of all project documentation identified in § 170.460 to BIA or FHWA before the start of construction.

#### **§ 170.463 What if a design deficiency is identified?**

If the Secretaries identify a design deficiency that may jeopardize public health and safety if the facility is completed, they must:

- (a) Immediately notify the Tribe of the design deficiency and request that the Tribe promptly resolve the deficiency under the standards in § 170.454; and
- (b) For a BIA-prepared PS&E package, promptly resolve the deficiency under

the standards in § 170.454 and notify the Tribe of the required design changes.

#### *Construction and Construction Monitoring*

#### **§ 170.470 Which construction standards must Tribes use?**

- (a) Tribes must either:
- (1) Use the approved standards referred to in § 170.454; or
  - (2) Request approval for any other road and highway bridge construction standards that are consistent with or exceed the standards referred to in § 170.454.
- (b) For designing and building eligible intermodal projects funded by the TTP, Tribes must use either:
- (1) Nationally recognized standards for comparable projects; or

(2) Tribally adopted standards that meet or exceed nationally recognized standards for comparable projects.

#### **§ 170.471 How are projects administered?**

- (a) When a Tribe carries out a TTP project, the project will be administered in accordance with a self-determination contract, self-governance agreement, Program Agreement or other appropriate agreement and this regulation.
- (b) If BIA or FHWA discovers a problem during an on-site monitoring visit, BIA or FHWA must promptly notify the Tribe and, if asked, provide technical assistance.
- (c) Only the State-licensed professional engineer of record whose name and professional stamp appear on the PS&E or who is responsible for the

overall project design may change a TTP project's PS&E during construction.

- (1) The original approving agency must review each substantial change. The approving agency is the Federal, Tribal, State, or local entity with PS&E approval authority over the project.
- (2) The approving agency must consult with the affected Tribe and the entity having maintenance responsibility.
- (3) A change that exceeds the limits of available funding may be made only with the approving agency's consent.

#### **§ 170.472 What construction records must Tribes and BIA keep?**

The following table shows which TTP construction records BIA and Tribes must keep and the requirements for access.

Record keeper	Records that must be kept	Access requirements
(a) Tribe .....	All records required by ISDEAA and 25 CFR 900.130–131 or 25 CFR 1000.243 and 1000.249, as appropriate.	BIA and FHWA are allowed access to Tribal TTP construction and approved project specifications as required under 25 CFR 900.130, 900.131, 25 CFR 1000.243 and 1000.249, or the Program Agreement as appropriate.
(b) BIA .....	Completed daily reports of construction activities appropriate to the type of construction it is performing.	Upon reasonable advance request by a Tribe, BIA must provide reasonable access to records.

#### **§ 170.473 When is a project complete?**

A project is considered substantially complete when all work is completed and accepted (except for minor tasks yet to be completed (punch list)) and the project is open to traffic. The project is completed only after all the requirements of this section are met.

- (a) At the end of a construction project, the public authority, agency, or organization responsible for the project must make a final inspection. The inspection determines whether the project has been completed in reasonable conformity with the PS&E.

(1) Appropriate officials from the Tribe, BIA, responsible public authority, and FHWA should participate in the inspection, as well as contractors and maintenance personnel.

(2) All project information must be made available during final inspection and used to develop the TTP construction project closeout report. Some examples of project information are: Daily diaries, weekly progress reports, subcontracts, subcontract expenditures, salaries, equipment expenditures, as-built drawings, etc.

(b) After the final inspection, the facility owner makes final acceptance of

the project. At this point, the Tribe or BIA must complete a project closeout and final accounting of all TTP construction project expenditures under § 170.474.

- (c) If applicable, all documents required by 25 CFR part 169 must be completed.

#### **§ 170.474 Who conducts the project closeout?**

The following table shows who must conduct the TTP construction project closeout and develop the report.

If the project was completed by . . .	then . . .	and the closeout report must . . .
(a) BIA .....	The region engineer or designee is responsible for closing out the project and preparing the report.	(1) Summarize the construction project records to ensure compliance requirements have been met; (2) Review the bid item quantities and expenditures to ensure reasonable conformance with the PS&E and modifications; (3) Be completed within 120 calendar days of the date of acceptance of the TTP construction project; and (4) Be provided to the affected Tribes and the Secretaries.
(b) A Tribe .....	Agreements negotiated under ISDEAA, or other appropriate agreements specify who is responsible for closeout and preparing the report.	(1) Meet the requirements of ISDEAA; (2) Comply with 25 CFR 900.130(d) and 131(b)(10) and 25 CFR 1000.249, or the Program Agreement, as applicable; (3) Be completed within 120 calendar days of the date of acceptance of the project; and (4) Be provided to all parties specified in the agreements.

*Management Systems***§ 170.502 Are nationwide management systems required for the TTP?**

(a) To the extent appropriate, the Secretaries, in consultation with Tribes, will implement safety, bridge, pavement, and congestion management systems for the Federal and Tribal facilities included in the NTTFI.

(b) A Tribe may develop its own Tribal management system based on the nationwide management system requirements in 23 CFR part 973. The Tribe may use either TTP formula funds or transportation planning funds defined in 23 U.S.C. 202(c) for this purpose. The Tribal system must be consistent with Federal management systems.

*Tribal Transportation Facility Bridges***§ 170.510 What funds are available for Tribal Transportation Facility Bridge activities?**

Funds are made available in 23 U.S.C. 202(d) for improving deficient bridges eligible for the TTP.

**§ 170.511 What activities are eligible for Tribal Transportation Facility Bridge funds?**

(a) The activities that are eligible for 23 U.S.C. 202(d) funding are:

(1) Carrying out any planning, design, engineering, preconstruction, construction, and inspection of a bridge project to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing composition; or

(2) Implementing any countermeasure for deficient Tribal transportation facility bridges, including multiple-pipe culverts.

(b) Further information regarding the use and availability of these funds can be found at 23 CFR part 661.

**§ 170.512 How will Tribal Transportation Facility Bridge funds be made available to the Tribes?**

Funds made available to Tribes under 23 U.S.C. 202(d) may be included in the Tribe's self-determination contracts, self-governance agreements, Program Agreements, and other appropriate agreements.

**§ 170.513 When and how are bridge inspections performed?**

(a) All bridges identified on the NTTFI must be inspected under 23 U.S.C. 144.

(b) Employees performing inspections as required by § 170.513(a) must:

(1) Notify affected Tribes and State and local governments that an inspection will occur;

(2) Offer Tribal and State and local governments the opportunity to accompany the inspectors; and

(3) Otherwise coordinate with Tribal and State and local governments.

(c) The person responsible for the bridge inspection team must meet the qualifications for bridge inspectors as defined in 23 U.S.C. 144.

**§ 170.514 Who reviews bridge inspection reports?**

The person responsible for the bridge inspection team must send a copy of the inspection report to BIA/DOT. BIA/DOT:

(a) Reviews the report for quality assurance and works with FHWA to ensure the requirements of 23 U.S.C. 144 are carried out; and

(b) Furnishes a copy of the report to the BIA Regional Office, which will forward the copy to the affected Tribe.

**Appendix A to Subpart D—Cultural Resource and Environmental Requirements for the TTP**

All BIA, FHWA, and Tribal work for the TTP must comply with cultural resource and environmental requirements under applicable Federal laws and regulations, including, but not limited to:

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, commonly referred to as 4(f).
5. 25 U.S.C. 3001–3013, 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 regulations.
19. Applicable Tribal/State laws.
20. Other applicable Federal laws and regulations.

**Appendix B to Subpart D—Design Standards for the TTP**

Depending on the nature of the project, Tribes must use the latest edition of the following design standards, as applicable. Additional standards may also apply. In addition, Tribes may develop design standards that meet or exceed the standards listed in this appendix. To the extent that any provisions of these standards are inconsistent with ISDEAA, these provisions do not apply.

1. AASHTO Policy on Geometric Design of Highways and Streets.
2. AASHTO A Guide for Transportation Landscape and Environmental Design.
3. AASHTO Roadside Design Guide.
4. AASHTO Guide for Selecting, Locating and Designing Traffic Barriers.
5. AASHTO Standard Specifications for Highway Bridges.
6. AASHTO Guidelines of Geometric Design of Very Low-Volume Local Roads (ADT less than or equal to 400).
7. FHWA Federal Lands Highway, Project Development and Design Manual.
8. FHWA Flexibility in Highway Design.
9. FHWA Roadside Improvements for Local Road and Streets.
10. FHWA Improving Guardrail Installations and Local Roads and Streets.
11. 23 CFR part 625, Design Standards for Highways.
12. 23 CFR part 630, Preconstruction Procedures.
13. 23 CFR part 633, Required Contract Provisions.
14. 23 CFR part 635, Construction and Maintenance.
15. 23 CFR part 645, Utilities.
16. 23 CFR part 646, Railroads.
17. 23 U.S.C. 106, PS&E.
18. 23 U.S.C. 109, Standards.
19. DOT Metric Conversion Plan, October 31, 1991.
20. MUTCD Manual of Uniform Traffic Safety Devices.
21. Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects.
22. FHWA-approved State standards.
23. FHWA-approved Tribal design standards.

**Subpart E—Service Delivery for Tribal Transportation Program***Funding Process***§ 170.600 What must BIA include in the notice of funds availability?**

(a) Upon receiving the total or partial fiscal year of TTP funding from FHWA:

(1) BIA will send a notice of funds availability to each BIA Regional Office and FHWA that includes the TTP Tribal share funding available to each Tribe within each region; and

(2) BIA and FHWA will forward the information to the Tribes along with an offer of technical assistance.

(b) BIA and FHWA will distribute Tribal share funds to eligible Tribes upon execution of all required agreements or contracts between BIA/



FHWA and the Tribe. This distribution must occur:

(1) Within 30 days after funds are made available to the Secretary under this paragraph; and

(2) Upon execution of all required agreements or contracts between BIA/FHWA and the Tribe.

(c) Funds made available under this section must only be expended on projects and activities identified in an FHWA-approved TTIP. The TTPTIP (see § 170.424) is available on the BIA Transportation and FHWA Web sites.

**§ 170.602 If a Tribe incurs unforeseen construction costs, can it get additional funds?**

The TTP is a Tribal shares program based upon a statutory funding formula. Therefore, no additional TTP funding beyond each Tribe's share is available for unforeseen construction costs. However, a Tribe may reprogram their TTP Tribal shares from other projects or activities identified on their FHWA-approved TTIP to cover unforeseen costs. In addition, if a Tribe is operating under a self-determination contract, it may request that additional dollars from its TTP Tribal share funds be made available for that project under 25 CFR 900.130(e).

*Miscellaneous Provisions*

**§ 170.605 May BIA or FHWA use force-account methods in the TTP?**

When requested by a Tribe, BIA or FHWA may use force-account methods in carrying out the eligible work of the TTP. Applicable Federal acquisition laws and regulations apply to BIA and FHWA when carrying out force-account activities on behalf of a Tribe.

**§ 170.606 How do legislation and procurement requirements affect the TTP?**

Other legislation and procurement requirements apply to the TTP as shown in the following table:

Legislation, regulation or other requirement	Applies to Tribes under self-determination contracts	Applies to Tribes under self-governance agreements	Applies to Tribes under BIA or FHWA program agreements	Applies to activities performed by the Secretary
Buy Indian Act .....	No .....	No .....	No .....	Yes.
Buy American Act .....	No .....	No .....	No .....	Yes.
Federal Acquisition Regulation (FAR) .....	No(a) .....	No .....	No .....	Yes.
Federal Tort Claims Act .....	Yes .....	Yes .....	Yes .....	Yes.
Davis-Bacon Act .....	Yes(b) .....	Yes(b) .....	Yes(b) .....	Yes.

(a) Unless agreed to by the Tribe or Tribal organization under ISDEAA, 25 U.S.C. 450j(a), and 25 CFR 900.115.

(b) Does not apply when Tribe performs work with its own employees.

**§ 170.607 Can a Tribe use its allocation of TTP funds for contract support costs?**

Yes. Contract support costs are an eligible item out of a Tribe's TTP allocation and must be included in a Tribe's project construction budget.

**§ 170.608 Can a Tribe pay contract support costs from DOI or BIA appropriations?**

No. Contract support costs for TTP construction projects cannot be paid out of DOI or BIA appropriations.

**§ 170.609 Can a Tribe receive additional TTP funds for start-up activities?**

No. Additional TTP funding for start-up activities is not available.

*Contracts and Agreements*

**§ 170.610 Which TTP functions may a Tribe assume?**

A Tribe may assume all TTP functions and activities that are otherwise contractible and non-inherently Federal under self-determination contracts, self-governance agreements, Program Agreements; and other appropriate agreements. The appendix to this subpart contains the list of program functions that cannot be subcontracted. Administrative support functions are an eligible use of TTP funding.

**§ 170.611 What special provisions apply to ISDEAA contracts and agreements?**

(a) *Multi-year contracts and agreements.* The Secretary can enter into a multi-year TTP self-determination

contract and self-governance agreement with a Tribe under sections 105(c)(1)(A) and (2) of ISDEAA. The amount of the contracts or agreements is subject to the availability of appropriations.

(b) *Consortia.* Under title I and title IV of ISDEAA, Tribes and multi-tribal organizations are eligible to assume TTPs under consortium contracts or agreements. For an explanation of self-determination contracts, refer to title I, 25 U.S.C. 450f. For an explanation of self-governance agreements, see title IV, 25 U.S.C. 450b(l) and 458b(b)(2).

(c) *Advance payments.* The Secretary and the Tribe must negotiate a schedule of advance payments as part of the terms of a self-determination contract under 25 CFR 900.132.

(d) *Design and construction contracts.* The Secretary can enter into a design/construct TTP self-determination contract that includes both the design and construction of one or more TTP projects. The Secretary may make advance payments to a Tribe:

(1) Under a self-determination design/construct contract for construction activities based on progress, need, and the payment schedule negotiated under 25 CFR 900.132; and

(2) Under a self-governance agreement in the form of annual or semiannual installments as indicated in the agreement.

**§ 170.612 Can non-contractible functions and activities be included in contracts or agreements?**

Non-contractible TTP functions and activities cannot be included in self-determination contracts, self-governance agreements, Program Agreements, or other agreements. The appendix to this subpart contains a list of TTP functions and activities that cannot be contracted.

**§ 170.613 What funds are used to pay for non-contractible functions and activities?**

(a) The administrative expenses funding identified in 23 U.S.C. 202(a)(6) are used by the BIA and FHWA transportation personnel when performing non-contractible functions and activities, including:

(1) Program management and oversight; and

(2) Project-related administration activities.

(b) If a Tribe enters into a Program Agreement with FHWA under 23 U.S.C. 202(b)(7), the program agreement may include such additional amounts as the Secretary of Transportation determines would equal the amount that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project.

**§ 170.614 Can a Tribe receive funds before BIA publishes the final notice of funding availability?**

A Tribe can receive funds before BIA publishes the final notice of funding availability required by § 170.600(a) when partial year funding is made available to the TTP through continuing resolutions or other Congressional actions.

**§ 170.615 Can a Tribe receive advance payments for non-construction activities under the TTP?**

Yes. A Tribe must receive advance payments for non-construction activities under 25 U.S.C. 450I for self-determination contracts on a quarterly, semiannual, lump-sum, or other basis proposed by a Tribe and authorized by law.

**§ 170.616 How are payments made to Tribes if additional funds are available?**

After an Agreement between BIA or FHWA and the Tribe is executed, any additional funds will be made available to Tribes under the terms of the executed Agreement.

**§ 170.617 May a Tribe include a contingency in its proposal budget?**

(a) A Tribe with a self-determination contract may include a contingency amount in its proposed budget under 25 CFR 900.127(e)(8).

(b) A Tribe with a self-governance agreement may include a project-specific line item for contingencies if the Tribe does not include its full TTP funding allocation in the agreement.

(c) The amounts in both paragraphs (a) and (b) of this section must be within

the Tribal share made available or within the negotiated ISDEAA contract or agreement.

**§ 170.618 Can a Tribe keep savings resulting from project administration?**

All funds made available to a Tribe through the 23 U.S.C. 202(b) are considered “tribal” and are available to the Tribe until expended. However, they must be expended on projects and activities referenced on an FHWA-approved TTPTIP.

**§ 170.619 Do Tribal preference and Indian preference apply to TTP funding?**

Tribal preference and Indian preference apply to TTP funding as shown in the following table:

If . . .	Then . . .
(a) A contract serves a single Tribe .....	Section 7(c) under Title 1 of ISDEAA allows Tribal employment or contract preference laws, including Tribe local preference laws, to govern.
(b) A contract serves more than one Tribe .....	Section 7(b) under Title 1 of ISDEAA applies.
(c) A self-governance agreement exists under Title IV of ISDEAA .....	25 CFR 1000.406 applies.
(d) A Program Agreement .....	The language of the Program Agreement applies.

**§ 170.620 How do ISDEAA's Indian preference provisions apply?**

This section applies when the Secretary or a Tribe enters into a cooperative, reimbursable, or other agreement with a State or local government for a TTP construction project. The Tribe and the parties may choose to incorporate the provisions of section 7(b) of ISDEAA in the agreement.

**§ 170.621 What if a Tribe doesn't perform work under a contract or agreement?**

If a Tribe fails to substantially perform work under a contract or agreement:

(a) For self-determination contracts, the Secretary must use the monitoring and enforcement procedures in 25 CFR 900.131(a) and (b) and ISDEAA, part 900 subpart L (appeals);

(b) For self-governance agreements, the Secretary must use the monitoring and enforcement procedures in 25 CFR part 1000, subpart K; or

(c) For FHWA or BIA TTP Agreements, the Secretaries will use the procedures identified in the Agreements.

**§ 170.622 What TTP functions, services, and activities are subject to the self-governance construction regulations?**

All TTP design and construction projects and activities, whether included separately or under a program in the agreement, are subject to the regulations in 25 CFR part 1000, subpart K, including applicable exceptions.

**§ 170.623 How are TTP projects and activities included in a self-governance agreement?**

To include a TTP project or activity in a self-governance agreement, the following information is required:

(a) All work must be included in the FHWA-approved TTPTIP; and

(b) All other information required under 25 CFR part 1000, subpart K.

**§ 170.624 Is technical assistance available?**

Yes. Technical assistance is available from BIA, the Office of Self-Governance, and FHWA for Tribes with questions about contracting the TTP or TTP projects.

**§ 170.625 What regulations apply to waivers?**

The following regulations apply to waivers:

(a) For self-determination contracts, 25 CFR 900.140 through 900.148;

(b) For self-governance agreements, 25 CFR 1000.220 through 1000.232; and

(c) For direct service, 25 CFR 1.2.

**§ 170.626 How does a Tribe request a waiver of a Department of Transportation regulation?**

A Tribe can request a waiver of a Department of Transportation regulation as shown in the following table:

If the Tribe's contract or agreement is with . . .	and . . .	then the Tribe must . . .
(a) The Secretary .....	the contract is a self-determination contract.	follow the procedures in ISDEAA, Title I, and 25 CFR 900.140 through 900.148.
(b) The Secretary .....	the agreement is a Tribal self-governance agreement.	follow the procedures in 25 CFR 1000.220 through 1000.232.
(c) The Secretary of Transportation .....		make the request to the Secretary of Transportation at: 1200 New Jersey Ave. SE., HFL-1, Washington, DC 20590.

**§ 170.627 Can non-TTP funds be provided to a Tribe through an FHWA Program Agreement, BIA TTP Agreement or other appropriate agreement?**

In addition to all funds made available under chapter 2 of title 23, the cooperation of States, counties, and other local subdivisions may be accepted in construction and improvement of a Tribal transportation facility. In accordance with 23 U.S.C. 202(a)(9), any funds received from a State, county, or local subdivision may be credited by the Secretaries to appropriations available for the TTP. Subject to an agreement among the Tribe, BIA or FHWA, and the State, county, or local subdivision that addresses the purpose and intent of the funds such funds may be provided to the Tribe through an a self-determination contract, self-governance agreement, Program Agreement or other appropriate agreement developed in accordance with 23 U.S.C. 202(b)(6) & (b)(7).

**Appendix to Subpart E—List of Program Functions That Cannot Be Subcontracted**

Per § 170.612, program functions cannot be included in self-determination contracts, self-governance agreements, Program Agreements, or other agreements. Program functions include all of the following:

- (a) TTP project-related pre-contracting activities:
  - (1) Notifying Tribes of available funding including the right of first refusal; and
  - (2) Providing technical assistance.
- (b) TTP project-related contracting activities:
  - (1) Providing technical assistance;
  - (2) Reviewing all scopes of work under 25 CFR 900.122;
  - (3) Evaluating proposals and making declination decisions, if warranted;
  - (4) Performing declination activities;
  - (5) Negotiating and entering into contracts or agreements with State, Tribal, and local governments and other Federal agencies;
  - (6) Processing progress payments or contract payments;
  - (7) Approving contract modifications;
  - (8) Processing claims and disputes with Tribal governments; and
  - (9) Closing out contracts or agreements.
- (c) Planning activities:
  - (1) Reviewing and approving TTPTIPs developed by Tribes or other contractors; and
  - (2) Reviewing and approving TTP LRTPs developed by Tribes or other contractors.
- (d) Environmental and historical preservation activities:
  - (1) Reviewing and approving all items required for environmental compliance; and
  - (2) Reviewing and approving all items required for archaeological compliance.
- (e) Processing rights-of-way:
  - (1) Reviewing rights-of-way applications and certifications;
  - (2) Approving rights-of-way documents;

- (3) Processing grants and acquisition of rights-of-way requests for Tribal trust and allotted lands under 25 CFR part 169;
- (4) Responding to information requests;
- (5) Reviewing and approving documents attesting that a project was constructed entirely within a right-of-way granted by BIA; and
- (6) Performing custodial functions related to storing rights-of-way documents.
- (f) Conducting project development and design under 25 CFR 900.131:
  - (1) Participating in the plan-in-hand reviews on behalf of BIA as facility owner;
  - (2) Reviewing and/or approving PS&E for health and safety assurance on behalf of BIA as facility owner;
  - (3) Reviewing PS&E to assure compliance with NEPA as well as all other applicable Federal laws; and
  - (4) Reviewing PS&E to assure compliance with or exceeding Federal standards for TTP design and construction.
- (g) Construction:
  - (1) Making application for clean air/clean water permits as facility owner;
  - (2) Ensuring that all required State/tribal/Federal permits are obtained;
  - (3) Performing quality assurance activities;
  - (4) Conducting value engineering activities as facility owner;
  - (5) Negotiating with contractors on behalf of the Federal Government;
  - (6) Approving contract modifications/change orders;
  - (7) Conducting periodic site visits;
  - (8) Performing all Federal Government-required project-related activities contained in the contract documents and required by 25 CFR parts 900 and 1000;
  - (9) Conducting activities to assure compliance with safety plans as a jurisdictional responsibility hazardous materials, traffic control, OSHA, etc.;
  - (10) Participating in final inspection and acceptance of project documents or as-built drawings on behalf of BIA as facility owner; and
  - (11) Reviewing project closeout activities and reports.
- (h) Other activities:
  - (1) Performing other non-contractible required TTP project activities contained in this part, ISDEAA and part 1000; and
  - (2) Other title 23 non-project-related management activities.
    - (i) BIADOT program management:
      - (1) Developing budget on needs for the TTP;
      - (2) Developing legislative proposals;
      - (3) Coordinating legislative activities;
      - (4) Developing and issuing regulations;
      - (5) Developing and issuing TTP planning, design, and construction standards;
      - (6) Developing/revising interagency agreements;
      - (7) Developing and approving TTP stewardship agreements in conjunction with FHWA;
      - (8) Developing annual TTP obligation and TTP accomplishments reports;
      - (9) Developing reports on TTP project expenditures and performance measures for the Government Performance and Results Act (GPRA);
      - (10) Responding to/maintaining data for congressional inquiries;

- (11) Developing and maintaining the funding formula and its database;
- (12) Allocating TTP and other transportation funding;
- (13) Providing technical assistance to Tribes/Consortiums/tribal organizations/agencies/regions;
- (14) Providing national program leadership for other Federal transportation related programs including: Transportation Alternatives Program, Tribal Transportation Assistance Program, Recreational Travel and Tourism, Transit Programs, ERFO Program, and Presidential initiatives;
- (15) Participating in and supporting Tribal transportation association meetings;
- (16) Coordinating with and monitoring Indian Local Technical Assistance Program centers;
- (17) Planning, coordinating, and conducting BIA/tribal training;
- (18) Developing information management systems to support consistency in data format, use, etc., with the Secretary of Transportation for the TTP;
- (19) Participating in special transportation related workgroups, special projects, task forces and meetings as requested by Tribes;
- (20) Participating in national, regional, and local transportation organizations;
- (21) Participating in and supporting FHWA Coordinated Technology Implementation program;
- (22) Participating in national and regional TTP meetings;
- (23) Consulting with Tribes on non-project related TTP issues;
- (24) Participating in TTP, process, and product reviews;
- (25) Developing and approving national indefinite quantity service contracts;
- (26) Assisting and supporting the TTP Coordinating Committee;
- (27) Processing TTP bridge program projects and other discretionary funding applications or proposals from Tribes;
- (28) Coordinating with FHWA;
- (29) Performing stewardship of the TTP;
- (30) Performing oversight of the TTP and its funded activities;
- (31) Performing any other non-contractible TTP activity included in this part; and
- (32) Determining eligibility of new uses of TTP funds.
- (j) BIADOT Planning:
  - (1) Maintaining the official TTP inventory;
  - (2) Reviewing LRTPs;
  - (3) Reviewing and approving TTPTIPs;
  - (4) Maintaining nationwide inventory of TTP strip and atlas maps;
  - (5) Coordinating with Tribal/State/regional/local governments;
  - (6) Developing and issuing procedures for management systems;
  - (7) Distributing approved TTPTIPs to BIA regions;
  - (8) Coordinating with other Federal agencies as applicable;
  - (9) Coordinating and processing the funding and repair of damaged tribal roads with FHWA;
  - (10) Calculating and distributing TTP transportation planning funds to BIA regions;
  - (11) Reprogramming unused TTP transportation planning funds at the end of the fiscal year;

(12) Monitoring the nationwide obligation of TTP transportation planning funds;

(13) Providing technical assistance and training to BIA regions and Tribes;

(14) Approving atlas maps;

(15) Reviewing TTP inventory information for quality assurance; and

(16) Advising BIA regions and Tribes of transportation funding opportunities.

(k) BIADOT engineering;

(1) Participating in the development of design/construction standards with FHWA;

(2) Developing and approving design/construction/maintenance standards;

(3) Conducting TTP/product reviews; and

(4) Developing and issuing technical criteria for management systems.

(l) BIADOT responsibilities for bridges:

(1) Maintaining the National Bridge Inventory information/database for BIA bridges;

(2) Conducting quality assurance of the bridge inspection program;

(3) Reviewing and processing TTP Bridge Program applications;

(4) Participating in second level review of TTP bridge PS&E; and

(5) Developing criteria for bridge management systems.

(m) BIADOT responsibilities to perform other non-contractible required TTP activities contained in this part.

(n) BIA regional offices program management:

(1) Designating TTP System roads;

(2) Notifying Tribes of available funding;

(3) Developing STIPs;

(4) Providing FHWA-approved TTPs to Tribes;

(5) Providing technical assistance to Tribes/Consortiums/tribal organizations/agencies;

(6) Funding common services as provided as part of the region/agency/BIA Division of Transportation TTP costs;

(7) Processing and investigating non-project related tort claims;

(8) Preparing budgets for BIA regional and agency TTP activities;

(9) Developing/revising interagency agreements;

(10) Developing control schedules/transportation improvement programs;

(11) Developing regional TTP stewardship agreements;

(12) Developing quarterly/annual TTP obligation and program accomplishments reports;

(13) Developing reports on TTP project expenditures and performance measures for Government Performance and Results Act (GPRA);

(14) Responding to/maintaining data for congressional inquiries;

(15) Participating in Indian transportation association meetings;

(16) Participating in Indian Local Technical Assistance Program (LTAP) meetings and workshops;

(17) Participating in BIA/tribal training development highway safety, work zone safety, etc.;

(18) Participating in special workgroups, task forces, and meetings as requested by Tribes and BIA region/agency personnel;

(19) Participating in national, regional, or local transportation organizations meetings and workshops;

(20) Reviewing Coordinated Technology Implementation Program project proposals;

(21) Consulting with Tribal governments on non-project related program issues;

(22) Funding costs for common services as provided as part of BIA TTP region/agency/contracting support costs;

(23) Reviewing TTP atlas maps;

(24) Processing Freedom of Information Act (FOIA) requests;

(25) Monitoring the obligation and expenditure of all TTP funds allocated to the BIA Region;

(26) Performing activities related to the application for ERFO funds, administration, and oversight of the funds; and

(27) Participating in TTP, process, and product reviews.

(o) BIA regional offices' planning:

(1) Coordinating with Tribal/State/regional/local government;

(2) Coordinating and processing the funding and repair of damaged Tribal Transportation Facility roads with Tribes;

(3) Reviewing and approving TTP inventory data;

(4) Maintaining, reviewing, and approving the management systems databases;

(5) Reviewing and approving STIPs; and

(6) Performing Federal responsibilities identified in the TTP Transportation Planning Procedures and Guidelines manual.

(p) BIA regional offices' engineering:

(1) Approving Tribal standards for TTP use;

(2) Developing and implementing new engineering techniques in the TTP; and

(3) Providing technical assistance.

(q) BIA regional offices' responsibilities for bridges:

(1) Reviewing and processing TTP Bridge Program applications;

(2) Reviewing and processing TTP bridge inspection reports and information; and

(3) Ensuring the safe use of roads and bridges.

(r) BIA regional offices' other responsibilities for performing other non-contractible required TTP activities contained in this part.

## **Subpart F—Program Oversight and Accountability**

### **§ 170.700 What is the TTP national business plan?**

The TTP national business plan delineates the respective roles and responsibilities of BIA and FHWA in the administration of the TTP and the process used for fulfilling those roles and responsibilities.

### **§ 170.701 May a direct service Tribe and BIA Region sign a Memorandum of Understanding?**

Yes. A direct service Tribe and BIA Region may sign a Memorandum of Understanding (MOU). A TTP Tribal/BIA Region MOU is a document that a direct service Tribe and BIA may enter into to help define the roles,

responsibilities and consultation process between the BIA regional office and the Indian Tribal government. It describes how the TTP will be carried out by BIA on the Tribe's behalf.

### **§ 170.702 What activities may the Secretaries review and monitor?**

The Secretaries review and monitor the performance of all TTP activities.

### **§ 170.703 What program reviews do the Secretaries conduct?**

(a) In accordance with title 23, the national business plan, 2 CFR part 200, and the Program Agreement or other appropriate agreements, BIADOT and FHWA shall conduct formal program reviews of BIA Regional Offices or Tribes to examine program procedures and identify improvements. For a BIA Regional Office review, the regional Tribes will be notified of these formal program reviews. Tribes may send representatives to these meetings at their own expense.

(b) The review will provide recommendations to improve the program, processes and controls of management, planning, design, construction, financial and administration activities.

(c) After the review, the review team shall:

(1) Make a brief oral report of findings and recommendations to the Tribal leadership or BIA Regional Director; and

(2) Within 60 days, provide a written report of its findings and recommendations to the Tribe, BIA, all participants, and affected Tribal governments and organizations.

### **§ 170.704 What happens when the review process identifies areas for improvement?**

When the review process identifies areas for improvement:

(a) The Tribe or regional office must develop a corrective action plan within 60 days;

(b) BIADOT and FHWA review and approve the plan;

(c) FHWA may provide technical assistance during the development and implementation of the plan; and

(d) The reviewed Tribe or BIA regional office implements the plan and reports either annually or biennially to BIADOT and FHWA on implementation.

## **Subpart G—Maintenance**

### **§ 170.800 What funds are available for maintenance activities?**

(a) Under 23 U.S.C. 202(a)(8), a Tribe can use TTP funding for maintenance, within the following limits, whichever is greater:

(1) 25 percent of its TTP funds; or

(2) \$500,000.

(b) These funds can only be used to maintain the public facilities included in the NTTFI.

(c) Road sealing activities are not subject to this limitation.

(d) BIA retains primary responsibility, including annual funding request responsibility, for BIA road maintenance programs on Indian reservations.

(e) The Secretary shall ensure that funding made available under the TTP for maintenance of Tribal transportation facilities for each fiscal year is supplementary to, and not in lieu of, any obligation of funds by the BIA for road maintenance programs on Indian reservations.

**§ 170.801 Can TTP funds designated on an FHWA-approved TTIP for maintenance be used to improve TTP transportation facilities?**

No. The funds identified for maintenance on a FHWA-approved TTIP cannot be used to improve roads or other TTP transportation facilities to a higher road classification, standard or capacity.

**§ 170.802 Can a Tribe perform road maintenance?**

Yes. A Tribe may enter into self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements to perform Tribal transportation facility maintenance.

**§ 170.803 To what standards must a Tribal transportation facility be maintained?**

Subject to availability of funding, Tribal transportation facilities must be maintained under either:

(a) A standard accepted by BIA or FHWA (as identified in the official Tribal Transportation Program guide on either the BIA transportation Web site at <http://www.bia.gov/WhoWeAre/BIA/OIS/Transportation/index.htm> or the Federal Lands Highway—Tribal Transportation Program Web site at <http://flh.fhwa.dot.gov/programs/ttp/guide/>), or

(b) Another Tribal, Federal, State, or local government maintenance standard negotiated in an ISDEAA road maintenance self-determination contract or self-governance agreement.

**§ 170.804 Who should be contacted if a Tribal transportation facility is not being maintained to TTP standards due to insufficient funding?**

The Tribe may notify BIA or FHWA if the Tribe believes that a facility on the NTTFI is not being adequately maintained to the standards identified in § 170.803. If BIA or FHWA

determines that a Tribal transportation facility is not being maintained, it will:

(a) Notify the facility owner;

(b) Provide a draft copy of the report to the affected Tribe for comment before forwarding it to Secretary of Transportation; and

(c) Report these findings to the appropriate office within FHWA.

**§ 170.805 What maintenance activities are eligible for TTP funding?**

TTP maintenance funding support a wide variety of activities necessary to maintain facilities identified in the NTTFI. A list of eligible activities is shown in the appendix to this part.

**Appendix to Subpart G—List of Eligible Maintenance Activities Under the Tribal Transportation Program**

The following maintenance activities are eligible for funding under the TTP. The list is not all-inclusive.

1. Cleaning and repairing ditches and culverts.
2. Stabilizing, removing, and controlling slides, drift sand, mud, ice, snow, and other impediments.
3. Adding additional culverts to prevent roadway and adjoining property damage.
4. Repairing, replacing or installing traffic control devices, guardrails and other features necessary to control traffic and protect the road and the traveling public.
5. Removing roadway hazards.
6. Repairing or developing stable road embankments.
7. Repairing parking facilities and appurtenances such as striping, lights, curbs, etc.
8. Repairing transit facilities and appurtenances such as bus shelters, striping, sidewalks, etc.
9. Training maintenance personnel.
10. Administering the BIA transportation facility maintenance program.
11. Performing environmental/archeological mitigation associated with transportation facility maintenance.
12. Leasing, renting, or purchasing of maintenance equipment.
13. Paying utilities cost for roadway lighting and traffic signals.
14. Purchasing maintenance materials.
15. Developing, implementing, and maintaining a BIA Transportation Facility Maintenance Management System (TFMMS).
16. Performing pavement maintenance such as pot hole patching, crack sealing, chip sealing, surface rejuvenation, and thin overlays (less than 1 inch).
17. Performing erosion control.
18. Controlling roadway dust.
19. Re-graveling roads.
20. Controlling vegetation through mowing, noxious weed control, trimming, etc.
21. Making bridge repairs.
22. Paying the cost of closing transportation facilities due to safety or other concerns.
23. Maintaining airport runways, heliport pads, and their public access roads.

24. Maintaining and operating BIA public ferry boats.

25. Making highway alignment changes for safety reasons. These changes require prior notice to the Secretary.

26. Making temporary highway alignment or relocation changes for emergency reasons.

27. Maintaining other TTP intermodal transportation facilities provided that there is a properly executed agreement with the owning public authority within available funding.

**Subpart H—Miscellaneous Provisions**

*Reporting Requirements and Indian Preference*

**§ 170.910 What information on the TTP or projects must BIA or FHWA provide?**

All available public information regarding the TTP can be found on the BIA transportation Web site at <http://www.bia.gov/WhoWeAre/BIA/OIS/Transportation/index.htm> or the Federal Lands Highway—Tribal Transportation Program Web site at <http://flh.fhwa.dot.gov/programs/ttp/>. If a Tribe would like additional information that is not available on the Web sites, the Tribe should contact FHWA or BIA directly. FHWA and BIA will then provide direction or assistance based upon the Tribe's specific request.

**§ 170.911 Are Indians entitled to employment and training preferences?**

(a) Federal law gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under the TTP.

(b) Under 25 U.S.C. 450e(b), 23 U.S.C. 140(d), 25 U.S.C. 47, and 23 U.S.C. 202(a)(3), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts and sub-grants for all work performed under the TTP.

**§ 170.912 Does Indian employment preference apply to Federal-aid Highway Projects?**

(a) Tribal, State, and local governments may provide an Indian employment preference for Indians living on or near a reservation on projects and contracts that meet the definition of a Tribal transportation facility. (See 23 U.S.C. 101(a)(12) and 140(d), and 23 CFR 635.117(d).)

(b) Tribes may target recruiting efforts toward Indians living on or near Indian reservations, Tribal lands, Alaska Native villages, pueblos, and Indian communities.

(c) Tribes and Tribal employment rights offices should work cooperatively with State and local governments to develop contract provisions promoting employment opportunities for Indians

on eligible federally funded transportation projects. Tribal, State, and local representatives should confer to establish Indian employment goals for these projects.

**§ 170.913 Do Tribal-specific employment rights and contract preference laws apply?**

Yes. When a Tribe or consortium administers a TTP or project intended to benefit that Tribe or a Tribe within the consortium, the benefitting Tribe's employment rights and contracting preference laws apply. (See § 170.619 and 25 U.S.C. 450e(c))

**§ 170.914 What is the difference between Tribal preference and Indian preference?**

Indian preference is a hiring preference for Indians in general. Tribal preference is a preference adopted by a Tribal government that may or may not include a preference for Indians in general, Indians of a particular Tribe, Indians in a particular region, or any combination thereof.

**§ 170.915 May Tribal employment taxes or fees be included in a TTP project budget?**

Yes. The cost of Tribal employment taxes or fees may be included in the budget for a TTP project.

**§ 170.916 May Tribes impose taxes or fees on those performing TTP services?**

Yes. Tribes, as sovereign nations, may impose taxes and fees for TTP activities. When a Tribe administers TTPs or projects under ISDEAA, its Tribal employment and contracting preference laws, including taxes and fees, apply.

**§ 170.917 Can Tribes receive direct payment of Tribal employment taxes or fees?**

This section applies to non-tribally administered TTP projects. Tribes can request that BIA pay Tribal employment taxes or fees directly to them under a voucher or other written payment instrument, based on a negotiated payment schedule. Tribes may consider requesting direct payment of Tribal employment taxes or fees from other transportation departments in lieu of receiving their payment from the contractor.

**§ 170.918 What applies to the Secretaries' collection of data under the TTP?**

(a) Under 23 U.S.C. 201(c)(6)(A), the Secretaries will collect and report data necessary to implement the TTP in accordance with ISDEAA, including, but not limited to:

- (1) Inventory and condition information on Tribal transportation facilities; and
- (2) Bridge inspection and inventory information on any Federal bridge open to the public.

(b) In addition, under 23 U.S.C. 201(c)(6)(C), any entity that carries out a project under the TTP is required to provide the data identified in § 170.240.

*Tribal Transportation Departments*

**§ 170.930 What is a Tribal transportation department?**

A Tribal transportation department is a department, commission, board, or official of any Tribal government charged by its laws with the responsibility for transportation-related responsibilities, including but not limited to, administration, planning, maintenance, and construction activities. Tribal governments, as sovereign nations, have inherent authority to establish their own transportation departments under their own Tribal laws. Tribes may staff and organize transportation departments in any manner that best suits their needs. Tribes can receive technical assistance from TTACs, BIA regional road engineers, FHWA, or AASHTO to establish a Tribal transportation department.

**§ 170.931 Can Tribes use TTP funds to pay Tribal transportation department operating costs?**

Yes. Tribes can use TTP funds to pay the cost of planning, administration, and performance of approved TTP activities (see § 170.116). Tribes can also use BIA road maintenance funds to pay the cost of planning, administration, and performance of maintenance activities under this part.

**§ 170.932 Are there other funding sources for Tribal transportation departments?**

There are many sources of funds that may help support a Tribal transportation department. The following are some examples of additional funding sources:

- (a) Tribal general funds;
- (b) Tribal Priority Allocation;
- (c) Tribal permits and license fees;
- (d) Tribal fuel tax;
- (e) Federal, State, private, and local transportation grants assistance;
- (f) Tribal Employment Rights Ordinance fees (TERO); and
- (g) Capacity building grants from Administration for Native Americans and other organizations.

**§ 170.933 Can Tribes regulate oversize or overweight vehicles?**

Yes. Tribal governments can regulate travel on roads under their jurisdiction and establish a permitting process to regulate the travel of oversize or overweight vehicles, under applicable Federal law. BIA may, with the consent of the affected Tribe, establish a

permitting process to regulate the travel of oversize or overweight vehicles on the BIA road system.

*Resolving Disputes*

**§ 170.934 Are alternative dispute resolution procedures available?**

(a) Federal agencies should use mediation, conciliation, arbitration, and other techniques to resolve disputes brought by TTP beneficiaries. The goal of these alternative dispute resolution (ADR) procedures is to provide an inexpensive and expeditious forum to resolve disputes. Federal agencies should resolve disputes at the lowest possible staff level and in a consensual manner whenever possible.

(b) Except as required in 25 CFR part 900 and part 1000, Tribes operating under a self-determination contract or self-governance agreement are entitled to use dispute resolution techniques prescribed in:

- (1) The ADR Act, 5 U.S.C. 571–583;
- (2) The Contract Disputes Act, 41 U.S.C. 601–613; and

(3) The ISDEAA and the implementing regulations (including for non-construction the mediation and alternative dispute resolution options listed in 25 U.S.C. 4501 (model contract section (b)(12)).

(4) Tribes operating under a Program Agreement with FHWA are entitled to use dispute resolution techniques prescribed in 25 CFR 170.934 and Article II, Section 4 of the Agreement.

**§ 170.935 How does a direct service Tribe begin the alternative dispute resolution process?**

(a) To begin the ADR process, a direct service Tribe must write to the BIA Regional Director, or the Chief of BIA Division of Transportation. The letter must:

- (1) Ask to begin one of the ADR procedures in the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571–583 (ADR Act); and
- (2) Explain the factual and legal basis for the dispute.

(b) ADR proceedings will be governed by procedures in the ADR Act and the implementing regulations.

*Other Miscellaneous Provisions*

**§ 170.941 May Tribes become involved in transportation research?**

Yes. Tribes may:

(a) Participate in Transportation Research Board meetings, committees, and workshops sponsored by the National Science Foundation;

(b) Participate in and coordinate the development of Tribal and TTP transportation research needs;

(c) Submit transportation research proposals to States, FHWA, AASHTO, and FTA;

(d) Prepare and include transportation research proposals in their TTPTIPS;

(e) Access Transportation Research Information System Network (TRISNET) database; and

(f) Participate in transportation research activities under Intergovernmental Personnel Act agreements.

**§ 170.942 Can a Tribe use Federal funds for transportation services for quality-of-life programs?**

(a) A Tribe can use TTP funds:

(1) To coordinate transportation-related activities to help provide access to jobs and make education, training, childcare, healthcare, and other services more accessible to Tribal members; and

(2) As the matching share for other Federal, State, and local mobility programs.

(b) To the extent authorized by law, additional grants and program funds are available for the purposes in paragraph

(a)(1) of this section from other programs administered by the Departments of Transportation, Health and Human Services, and Labor.

(c) Tribes should also apply for Federal and State public transportation and personal mobility program grants and funds.

Dated: October 7, 2016.

**Lawrence S. Roberts,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

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