



NPRM COMMENT REVIEW PROGRESS REPORT

Final work as of 03-28-03

Report run on: April 3, 2003 9:57 AM

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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.001 Public Comment	Pg. 57, C(c)2	Policy	419	1	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments The committee does not believe it is necessary to define the common law term "jurisdiction" in this regulation.								
Federal Comments								
Tribal Comments Agreed								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.002	Pg. 58, C(a)1	Policy	15	2	YES	Reject Comment	AGREE	AGREE

Public Comment 170.2 What is the purpose and scope of this part?The language in the answer to the purpose and scope of this part refers to a uniform and consistent rules and funding formula for the Department of Interior in implementing the IRR Program. Disagrees. Language needs to be incorporated to assert the Indian Self-Determination and Education Assistance Act. Although there are languages inserted in (b) regarding ISDEAA; the purpose and scope of this part needs to be clearly identified.Language that reflect all tribe regarding the re-authorization of TEA 21 also needs to be consistent under authority, purpose and scope of this part.

Workgroup Text Change insert "the" in "Department of 'the' Interior"

Workgroup Comments Tribes may participate in the IRR program without entering into ISDEAA contracts or agreements.

Federal Comments

Tribal Comments Agreed



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.003	Pg. 59, D2	Policy	3	7	YES	Workgroup Disagree	NO ACTION	DISAGREE

170.3(d) What is the Federal Government's IRR policy? Comment: Revise paragraph (d) by striking the term "should" and inserting in lieu thereof the term "shall" so that the paragraph reads: "The Secretary shall interpret Federal laws and regulations in a manner that facilitates including programs covered by this part in the government-to-government agreements authorized under the IDSEAA." Discretionary wording of NPRM 170.3(d) carries little weight and is not consistent with final sentences of paragraph (e)(2).170.3(e)(2) Liberal Interpretation of Regulations.

Public Comment Comment: Move the second and third sentences of paragraph (e)(2) which begin "This part must be liberally construed for the benefit of Indian tribes . . ."to a new paragraph (f). It is not appropriate to place it after the first sentence of paragraph (e)(2) which concerns a separate matter on the reduction of funding.

Workgroup Text Change Change (e)(2) to (f). Need to look again at "should" or "shall".

Workgroup Comments further review necessary regarding "should" or "shall". Look to see what the full committee sent to the Secretary in the original rulemaking.

Federal Comments

Tribal Comments Accept with modification. in the change to 170.3 (3) place a period "." prior to the inserted language.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.003	Pg. 58, C(c)1	Policy	15	3	YES	Accept with Modification	AGREE	AGREE
Public Comment	170.3 What is the Federal Government's Indian Reservation Roads Policy Change language to include tribes in development of policies, consistent to all federal rules and regulations.							
	Change to A6. "In consultation w/ Indian Tribes," after "implement policies, procedures, and practices".							
Workgroup Text Change	Make a global change to replace term "TEA-21" with "federal transportation programs authorized in Title 23, 25, and 49", unless TEA-21 is referenced in a historical manner. Refer to final rule writers.							
Workgroup Comments	Global change needed.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.003	Pg. 59, D1	Policy	1337	10	YES	Accept with Modification	AGREE	AGREE

Public Comment Page 51358 -Section 1703Comment: (c) (1) It is more appropriate to use "tribal government" instead of "tribal contractor" since this section is on policy and (c) is addressing self-determination and self-governance. (d) The first sentence is very unclear suggest changing to explain what is being facilitated. Sentence also seems incomplete.

Workgroup Text Change In paragraph (c)(1) change the word "tribal contractor" to "Indian Tribe or Tribal Organization". Change the question for 170.3 to read "What is the federal government's policy with respect to the IRR Program and BIA Road Maintenance?"

Workgroup Comments change to Indian tribe and tribal organization was done for consistency. Changed question because answer addresses policy for road maintenance also.

Federal Comments In re-write of 170.3 (a)(3) insert program regulations after IRR where appropriate.

Tribal Comments Accept with Federal Language Change 3-28



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.004	Pg. 59D1	Policy	3	8	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	170.4 Do other requirements apply to the IRR Program? Comment: Revise the NPRM provision to read as follows: "Only those IRR Program policy and guidance manuals and directives which are consistent with the regulations in this part and 25 C.F.R. Parts 900 and 1000 apply to the IRR Program when administered by the BIA. An Indian tribe or tribal organization is not required to abide by any unpublished requirements such as program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Indian tribe or tribal organization and the Secretary, otherwise required by law." See, 25 C.F.R. 900.5.							
Workgroup Text Change	Yes. Only those IRR Program policy and guidance manuals and directives which are consistent with the regulations in this part and 25 C.F.R. Parts 900 and 1000 apply to the IRR Program when administered by the BIA. An Indian tribe or tribal organization is not required to abide by any unpublished requirements such as program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Indian tribe or tribal organization and the Secretary, otherwise required by law.							
Workgroup Comments	consistent w/ policy, encourage self-det & self gov.; After "Secretary (add) unless otherwise required by law"; Policy encourage self-determination and self -governance.							
Federal Comments	Need to add "or" before "otherwise required by law." in last sentence. After "unpublished" add "(not published in the Federal Register)" Strikeout re-write added an "s" and an "and" to policy re-write, revised.							
Tribal Comments	Accept federal recommendation 3-28							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006 Public Comment	pg. 64, C(c)1	Technical Standards	418	3	YES	Referred to Policy	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments								
Referred from Policy-There is concern about term fee land and how it applies to lands in Oklahoma. Want Tech Standards to consider whether to delete the word "fee" from the question. Tech Standards' response is that the comment was to add "nonIndian, fee land and private land" to definitions. T/S responds that non-Indian and private land are not mentioned in the rule, so no definition required. "Fee land" term is in rule, but is a legal definition commonly available.								
Federal Comments								
Tribal Comments								
No action by workgroup indicated. Appears to be a no action comment.								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006	pg. 60, A3	Policy	1350	2	YES	Reject Comment	AGREE	NO ACTION

Public Comment In addition the definition for consultation (s170.6) found in the proposed rules, is more comprehensive than what is found in s450.104 Planning Definitions which the states and Metropolitan Planning Organizations are required to comply with. It would be helpful if the definition for consultation found in the two different rules were the same.

Workgroup Text Change

Workgroup Comments we kept the definition of "consultation" that was included in proposed rule. Look at comments under 170.100.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006	pg. 61, C(a)1	Policy	22	5	YES	Accept with Modification	AGREE	AGREE

Public Comment

Subpart A- USET supports the position that according to TEA-21 the Committee must reconvene to complete the regulation drafting process. The preamble of the proposed rule mentions this, but fails to realize the severity of this issue. In the past, administrations have advocated the constrained interpretations of statutory language in order to advance their own policy decisions even though their interpretation may be in direct conflict with the plain wording of the statute and its purpose. Statutory law requires that statutes are to be interpreted liberally with ambiguous provisions for the Indians' benefits. It is imperative the statutes are read for the benefit of Indian people and not to forward the political agendas of whatever administration is in power at the time. An example of this misinterpretation is found in Sec. 170.6 of the proposed rule where the department has imposed its own views of contractible PSFA's and inherent federal functions in the language. The federal view misrepresents the plain language of the Indian Self-Determination and Education Assistance Act (23 U.S.C. 202(d)(3) which clearly lays this out. USET endorses the definition of the term "program" which is defined as "any program, function, service, activity, or portion thereof" (25 CFR Part 1000).

Workgroup Text Change

Change definition of "program" to "program means any program, service, function, or activity, or portion thereof." This is the definition used in 25 CFR Part 1000.

Workgroup Comments

Made consistent with the definition in 25 CFR Part 1000.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006	pg. 61, A5	Policy	1369	30	YES	Accept with Modification	DISAGREE	DISAGREE

Public Comment

Issue Pg 51359 - Sec 170.6 What are definitions used in this part. Along the same scenario in our last comment page: Clarify and correct this deficiency and confusion: There is no language in this proposed rule or Pg 51368 Appendix A to Subpart B Allowable uses of IRR Program Funds that matches what is written on Pg 51346 third column in the writeup for; How will the IRR Management Systems be Implemented? A nationwide management system will be maintained and implemented by BIA Division of Transportation using IRR Program Management Funds. Questions for the answer to the question? Q. Is this a different BIA Requirement. Q. Is the B1A nationwide management system in place currently? Q. What is a nationwide management system? Q. Does this nationwide management system include NON IRR inventories? IRR Program Management Funds is not written in the Definitions and should be included. The Nationwide Management System is not written in the Definitions and should be included. Again, include language in the proposed rule that will allow for Tribe's/Band's to participate "at the Tribe/Band level" in this IRR Program Proposed Rule, that would at a minimum, allow them to complete their (must do's) requirements that are written for them to complete. Please answer our questions"

Change 170.515 by changing the term "funds" (when it is first used, after the word "BIA") to "uses", and change the term "systems" (where it is first used, after "management") to "funds".

Workgroup Text Change

Define "program management funds" as "IRR program management funds means those funds authorized by Congress in the annual appropriations acts to pay the cost of performing IRR program management activities."

Comment is accepted with modification and is covered by the addition of new paragraphs (A(34) and B(64)) that state "other eligible activities described in this part" in Appendix A, subpart B. Comment addressed by comment in CAT book at page 119, D4.

Workgroup Comments

Nationwide management system is adequately explained in 170.514.

Federal Comments

Add "and oversight" following "Program Management" in both places.

Accept with modification.

Accept Change 170.515

Tribal Comments

Accept Federal language change

Accept with modification. 3-28

Change the 2nd change to the following: "IRR Program Management Funds means those funds authorized by Congress to pay the cost of performing IRR program management activities."



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006	pg. 60, A1	Policy	41	2	YES	Accept with Modification	AGREE	AGREE
Public Comment	Page 51360, Subpart A, Section 170.6, definition of rehabilitation. Recommend clarifying the meaning of "major work" and "major safety defects" by including examples of what would and would not be considered "major".							
Workgroup Text Change	Definition of "Rehabilitation" -- delete word "major" throughout definition.							
Workgroup Comments	Because rehabilitation can include minor work or anything in between.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006	pg. 61, C1	Policy	3	9	YES	Accept Comment	AGREE	AGREE

Public Comment

170.6 Definitions. Comment: The NPRM definitions were not and are not consensus definitions. As such, the NPRM definitions should be carefully reviewed by the Committee when the NPRM is finalized.

Workgroup Text Change

Workgroup Comments The workgroup has reviewed all the definitions.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006	pg. 65, D1	Policy	29	7	YES	Reject Comment	AGREE	NO ACTION

Public Comment Under Section 170.6, "What are definitions used in this part?", add: "Non-Indians means people who are non-enrolled tribal members who live or work on and around Indian reservations. Add: Fee land means land whose title is not in trust land status, and is located on Indian reservations, subject to state authority and jurisdiction, and not tribal laws and regulations.

Workgroup Text Change

Workgroup Comments Reject because those definitions suggested by commentor are not correct.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006	pg. 64, C(c)3	Policy	368	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment :Section; 170.6 What are the definitions used in this part?Please include the definition and reference source for the term "government-to-government". Explain that the definition includes the various levels of government-to government relations i.e. tribal-federal, tribal-state, tribal-local, etc.

Workgroup Text Change

Workgroup Comments The Committee believes there are plenty of examples contained in subpart B and D of the rule that describe the term "government-to-government".

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006 Public Comment	pg. 64, C(c)2	Policy	28	3	YES	Reject Comment	AGREE	NO ACTION
Fee-simple landowners need to be included in the definition section of the proposed rules, and/or the Final Rules.								

Workgroup Text Change

Workgroup Comments Definition of term is not needed for the rule.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006	pg. 65, C(c)4	Policy	41	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51360, Subpart A, Section 170.6, definition of IRR transportation facilities. This definition includes boardwalks, pedestrian paths, and trails. Does this mean that these routes are to be included in the IRR inventory, since the IRR inventory is to include all transportation facilities eligible for IRR funding? Assuming this is the case, then the IRR Program needs to establish a method of classifying and assigning route numbers to these paths, trails and boardwalks. Recommend adding a definition for pedestrian paths, comparable to the definition for public road, that includes boardwalks and trails in the definition of pedestrian path. Presumably, not all footpaths should be identified as an IRR transportation facility. Therefore, the definition of a pedestrian path should contain some criteria prescribing what routes are eligible to be included in the IRR inventory.

Workgroup Text Change

Workgroup Comments Adequately addressed under the definition of "transportation facilities" already.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006	pg. 60, A2	Policy	16	6	YES	Accept with Modification	NO ACTION	DISAGREE

Public Comment

The term "Government Subdivision" mentioned within the proposed rule needs to be clearly and narrowly defined at section 170.6. a. What exactly is a "Government subdivision" of a tribe?

Workgroup Text Change

"federally recognized governmental subdivision of a tribe' means that unit of a federally recognized tribe, which is authorized to participate in the IRR activity on behalf of the tribe."

Workgroup Comments

The workgroup declined to define "government subdivision" but added a definition for "federally recognized governmental subdivision of a tribe".

Federal Comments

This definition was left out of the Strikeout version reviewed.

Tribal Comments

3-28 no change on tribal recommendation
Tribal caucus does not agree with the change.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006	pg. 62, C(a)3	Policy	1396	9	YES	Accept with Modification	AGREE	AGREE

Public Comment

Prime examples of the Departments' constrained reading of TEA-21 can be found in their definition of "program" at Sec. 170.6 of the NPRM (p. 51359-360) which appears to exclude non-contractible PFSA's, and in the departments' expansive view of inherently federal functions which are not capable of assumption by a tribe or tribal organization. With the exception of inherently federal functions, which by law may only be carried out by the Federal government, we agree with the Tribal Caucus and its reading of TEA-21 that: "Notwithstanding any other provision of law or any interagency agreement, program guideline, manual or policy directive, all funds made available under this title for Indian reservation roads and for highway bridges located on Indian reservation roads to pay for the costs of programs, services, functions, and activities, or portions thereof, ... shall be made available ... to the Indian tribal government for contracts and agreements ... in accordance with the Indian Self-Determination and Education Assistance Act." 23 U.S.C. 202(d)(3). The Federal view contorts the plain language of the statute under a reading the text will not bear. We endorse the Tribal Caucus definition of the term "program" which is defined as " any program, function, service activity, or a portion thereof" (similar to the Interior Department's use of the term in 25 C.F.R. Part 1000).

Workgroup Text Change

Workgroup Comments Changed definition of "program" already

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006	pg. 62, C(a)2	Policy	3	63		Accept Comment	AGREE	AGREE

Public Comment

A. General Issues -Subpart A(Plain words of the statute and canons of construction)(page 51336) Comment: We fully support the Tribal Caucus position that the plain words of TEA 21 must inform the participants to the Committee as they reconvene to complete the regulation drafting process. The preamble touches on this point at 67 Fed. Reg. 51336, but fails to capture the gravity of the Tribes' concerns. Far too often, federal agencies advocate constrained readings of statutory language to advance policy positions at odds with the plain words of the statute and its overall purpose. TEA-21 is no exception. Regarding the issues of the BIA's retention of the 6% funding; contractibility; advance funding; contract support costs as well as other non-consensus issues which we address below, both the Interior Department and Department of Transportation's narrow interpretations of TEA-21 yield results at odds with the plain language of the Act. When coupled with the long established canon of statutory construction which requires that statutes passed for the benefit of Indians are to be liberally construed with ambiguous provisions interpreted to the Indians' benefit, we find it difficult to accept the BIA's and DOT's apparent misreading or mis-application of select provisions of TEA-21.

Workgroup Text Change

Workgroup Comments no change requested. general comment in support of tribal position.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006	pg. 63, C(a)4	Policy	378	3	YES	Accept with Modification	AGREE	AGREE

Public Comment

Subpart A-General Provisions and Definitions :Fed. Reg. p. 51336 ;The Tohono O'odham Nation fully supports the Tribal Caucus position that the plain meaning and text of the Transportation Equity Act for the 21st Century ("TEA-21") must guide the Committee as they work toward a Final Rule. While the DOI and DOT certainly have administrative and oversight responsibilities with regard to the IRR Program, the plain meaning and, therefore, mandate of TEA-21 is that all IRR Program funds be made available to tribes in accordance with the ISDEAA. In this light, the Tohono O'odham Nation endorses the Tribal Caucus definition of the term "program" which is defined as "any program, function, service activity, or a portion thereof" (similar to the Interior Department's use of the term in 25 C.F.R. Part 1000). In contrast to the unnecessarily restrictive Federal Caucus text, this definition is essential to fully implement the TEA-21 by recognizing broad tribal ability to fully assume IRR-related responsibilities.

Workgroup Text Change

Workgroup Comments already changed definition to be consistent with 25 CFR Part 1000.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006	pg. 63, C(a)5	Technical Standards	3	10	YES	Referred to Policy	AGREE	AGREE

Public Comment

Page 51360 "IRR transportation planning funds." Comment: strike the parenthetical reading "(up to 2%)" from the definition as the reauthorization of TEA-21 may specify a different percentage or method to calculate transportation planning funds for tribes."program." Comment: strike the Federal Government's proposed definition of "program" and substitute the Tribal Caucus definition of this term: "Program means any program, service, function, or activity, or portion thereof." This definition is consistent with the BIA's definition of "program" under Title IV of the P.L. 93-638. See 25 C.F.R. 1000.2. The Departments should support uniform treatment of terms in both the existing Title I, IV and Title V regulations implementing P.L. 93-638. The IRR Program is one aspect of contractible and compactible programs operated by the BIA for the benefit of Indians. Further discussion of the non-consensus issues are found in Part III herein.

Workgroup Text Change

Delete " up to 2%" "IRR transportation planning funds means the funds made available for Indian reservation roads for each fiscal year under 23 U.S.C. 204(j) as may be allocated to such tribes for purposes of planning Indian reservation roads."

Workgroup Comments

Technical Standards Workgroup will develop a definition for "IRR transportation planning funds". We accepted changes proposed to definition of "program". Tech standards response: delete "up to 2%"

Federal Comments

Tribal Comments No action indicated by workgroup. Believe this is a recommendation for a global consistent change from the reference to 2% to 23 USC 204 (j) or some comparable change. Accept.



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Sec. 170.006	pg. 67, D3	Technical Standards	1337	11	YES	Referred to Policy	AGREE	AGREE

Public Comment

Page 51359-Section 170.6Comment- These definitions should be redone since many are not used in the Notice of Proposed Rulemaking. Also, many of the definitions are too long and become policy rather than definitions. Definitions should be clear and concise which is what many of these definitions are not. We have the following specific comments on these definitions: Act- This definition should be deleted from these definitions since it is not used throughout the proposed rule. Compact- The second sentence of this definition is difficult to understand and for a definition this is not needed so recommend deletion. Construction- This definition needs to be shortened since it is policy rather than a definition. This definition should be re-written to be for transportation facilities and not just highways by changing "highway" to "transportation facility" in the first sentence. Construction does not include all of the eight items listed in this definition. Items 1, 3 and 4 are project development activities. If this definition is kept as is, we recommend replacing "State" with "Tribal Government". Consultation- This item could be deleted from definitions because it is repeated verbatim in Sec. 170.100 (page 51361). Sec. 170.100 also defined the words collaboration and coordination that are not repeated in definitions. Construction contract- A construction contract is not a project. Items (1), (2) and (3) are inaccurate and unneeded. This definition needs to be rewritten, Contract- We use contracts other than PL 93-638 contracts in the IRR Program. This definition needs to be re-written. Design- Suggest deleting part of this definition - "as well as services provided by or for licensed design professionals during the bidding/negotiating, construction, and operational phases of the project" since this unneeded for a definition.

Add to definitoin of "Contract" and second sentence that says that "Contract also means a procurement document issued pursuant to Federal or tribal procurement acquisition regulations."

Add definition of "Indian Reservation Road" that is in Title 23: "Indian Reservation Road means a public road that is located within or provides access to an Indian reservatrion or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians."

Delete the definition of "Funding Year" because it is never used throughout the proposed rule.

Definition of "IRR transportation facilities" -- delete word "including" prior to "culverts".

Definition of "Maintenance" -- Same definition as in Title 23 and 170.800.

Definition of "Rehabilitation" -- replace word "bridge" with "transportation facility".

Definition of "Relocation" -- change first sentence to read "adjustment of transportation facilities and utilities".

Add a definition for "Relocation Services" -- "Relocation Services means payment and assistance authorized by the Uniform Relocation and Real Property Acquisitions Policy Act, 42 USC 4601 et seq., as amended."

We are retaining the definition of "rest area" because it is referenced in the proposed rule.

Workgroup Text Change



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Refer to Tech Standards a request for changing the question in 170.450 so that the question matches the answer. Tech Standards response: Insert "transportation" before "facilities" in the question at 170.450. Also, ask Tech Standards to define "proposed roads." Tech Standards response: There is no comment suggesting this change. However, the words "or improvement" should be deleted from 170,460 . There cannot be improvements in something that does not exist. Request Tech Standards to explain what term "proposed" encompasses in 170.460. Also add "and currently do not exist" after IRR Program in answer to 170.460. Does "proposed" include future additions to the inventory or is it talking about future roads to be built? Tech Standards response: proposed refers to future facilities to be built.

Workgroup Comments The remaining comments on definitions are either adequately addressed in other comments or rejected.

Federal Comments

Tribal Comments No action was noted, however, workgroup reps indicated that a change had been recommended. Agree.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006	pg. 67, D4	Policy	1369	28	YES	Reject Comment	AGREE	NO ACTION

ISSUE Pg 51359 - Sec 170.6 What are definitions used in this part. Comments We constantly find throughout the proposed rule, that word/words are; not defined, missing, not included with other, not explained, very weak and no explanations for them. They are pointed out as we find that word/words needs defining and included into the applicable Part(s)/Subpart(s)/Section(s). Example No proposed rule language period; to justify using the IRR Program fundings involved in this proposed rule, that would enable Tribe's/Band's to perform and carry out and (must do's) requirements of this proposed rule, i.e. like staffing personnel, office, IRR Transportation Planning Department, program supplies, etc., to include the OMB's that govern the uses of Federal Funds, let alone the PL 93-638 requirements and additional BIA requirements" A Tribe/Band would have to stretch the limits of a Audit finding, and the PL 93-638 requirements to provide what comments is provided by us in order spend monies on the above in this Section. There is no language in this proposed rule or Pg 51368 Appendix A to Subpart B Allowable uses of IRR Program Funds that matches what is written on Pg 51346 third column in the writeup for; How will the IRR Management Systems be Implemented? Suggestions Administrative Functions should be defined and included in the definitions and elsewhere as needed. Nothing is mentioned in the definitions for what IRR Program Funds entails and what the structure of a chart/diagram would like. This should be done and would eliminate allot of confusions amount the readers when it comes to the different Fundings within the Main IRR Program Funds. Along this same line, we have previously pointed out many Definitions and Meanings that should be included in this section and in others. i.e. IRR Project/Project(s), IRR. Program, 2% Transportation Planning, Transportation Planning, Project PI Program Planning, Planning in general"(cont comment #29)

Public Comment

Workgroup Text Change

Workgroup Comments Administrative Functions are listed in section 170.600-601. Eligibility for Staffing/Personnel funding and program supplies are addressed in 170.939.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006 Public Comment	pg. 64, C(a)6	Policy	3	65	YES	Accept with Modification	DISAGREE	AGREE
<hr/>								
Workgroup Text Change								
<hr/>								
Workgroup Comments	Change Program definition to tribal caucus definition. 170.6 Already addressed.							
<hr/>								
Federal Comments	Expand on definition of a housing cluster. Add geographic definition of a housing cluster (i.e. within close proximity of each other) Writers need insert in definitions 170.6, "tribal" between IRR and transportation planning. This is consistent with global change for tribal transportation planning.							
<hr/>								
Tribal Comments	Adding "(i.e. within close proximity of each other)" is acceptable 3-28							
<hr/>								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.006	pg. 65, D2	Technical Standards	27	11	YES	Referred to Policy	AGREE	AGREE

Public Comment :sec;170.6 Definitions -The definition for "IRR transportation planning funds" on page 51360 is clearly a reference specifically to 2 percent tribal transportation planning from 23 U.S.C. 204j. Since IRR transportation planning funds can come from construction funds as well as from the 2 percent funds, we recommend changing the term to be defined specifically to the 2 percent: delete IRR and insert 2 percent to become "2 percent tribal transportation planning funds"-NBI definition does not include Bridge. Recommend adding bridge to become: "...national bridge inventory...."-Rehabilitation is identified as a "bridge" term. "Rehabilitation is identified in :sec;170.142 in a reference for IRR housing access roads. Need to add transportation facilities. Recommend adding transportation facility to become: "...integrity of a bridge or transportation facility...."-Transportation Improvement Program (TIP) though this definition is correct it more commonly refers to the State TIP (STIP) a better term to define would be the IRR TIP. Many of our tribes are not associated with metropolitan areas so there isn't a consistency issue. Recommend ending sentence after project and adding For those locations that are within a metropolitan area, the TIP must be, to become: "...projects. For those locations that are within a metropolitan area, the TIP must be consistent with the metropolitan transportation plan."

Workgroup Text Change Delete "up to 2%" from definition for IRR transportation planning funds.

Workgroup Comments Tech Standards is handling the definition of "IRR transportation planning funds." Already addressed definition of NBI and rehabilitation. We deleted definition of "TIP". Tech Standards response is to delete "up to 2%" in definition.

Federal Comments

Tribal Comments No action indicated by workgroup. Believe this is a recommendation for a global consistent change from the reference to 2% to 23 USC 204 (j) or some comparable change. Accept.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.100	Pg. 71, D1	Policy	390	3		Reject Comment	AGREE	NO ACTION

Public Comment :Section; 170.100 The Terms and definitions for "Consultation, Cooperation, and Coordination" in 23 CFR 450.104 should be used for this NPRM. This will avoid unnecessary confusion and require Indian tribal governments to use the same terms and definitions as State DOTs and MPOs :Metropolitan Planning Organizations;. The term "collaboration" is not used in these rules and is not needed here if these three terms are used. The definition for "collaboration" in this NPRM is almost verbatim of the definition for "cooperation" in 23 :CFR; 450.104. Additional, inconsistent language would only lead to confusion.

Workgroup Text Change

Workgroup Comments Same as C(c)1 above, 100

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.100	Pg. 71, C(c)1 Same as pg69	Policy	1239	2		Reject Comment	AGREE	NO ACTION

Public Comment

170.100 Consultation means government-to-government communication in a timely manner by all parties about a proposed or contemplated decision in order to: (1) Secure meaningful tribal input and involvement in the decision making process; and (2) Advise the tribe of the final decision and provide an explanation. This definition conflicts with that used in 23 CFR 450A, Section 104, which is as follows: Consultation means that one party confers with another identified party and, prior to taking action(s), considers that party's views. Coordination means sharing and comparing by all parties in a timely manner of transportation plans, projects, and schedules of one agency to related plans, programs, projects and schedules of other agencies and adjustment of :plans;, programs, projects, and schedules of optimize the efficient and consistent delivery of transportation projects and services.

Workgroup Text Change

Workgroup Comments

Reject because felt that terms consultation, collaboration, and coordination as defined were stronger concepts.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.100	Pg. 71, D2	Policy	1239	3		Reject Comment	AGREE	NO ACTION

Public Comment

:continued from comment 2;This definition conflicts with that used in 23 CFR 450A, Section 104 which is as follows:Coordination means that comparison of the transportation plans, programs, and schedules of one agency with related plans, programs, and schedules of other agencies or entities with legal standing, and adjustment of plans, programs and schedules to achieve general consistency.These two examples of conflicts between definitions are offered to better demonstrate the need for all agencies (State, federal and tribal) to develop common definitions.

Workgroup Text Change

Workgroup Comments Same as C(c)1 above, 100

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.100	Pg. 72, D3	Policy	368	2		Reject Comment	AGREE	NO ACTION

Public Comment

:Section; 170.100 What does "construction, collaboration, and coordination" mean? It is understood that the definition of "consultation" used in this section clearly indicates the intent of incorporating tribal concerns into the rules for implementing the IRR Program. However, this term should also incorporate the concern that other governments be allowed equal opportunity for consultation in the IRR Program processes particularly with regard to development of the Tribal Long-Range Transportation Plan, development of the IRR Transportation Improvement Program, and implementation of regionally significant projects. Therefore, it is recommended that the term "consultation" in this Section be more generally defined and be revised as follows:"(a) Consultation means government-to-government communication in a timely manner by all parties about a proposed or contemplated decision in order to secure meaningful input and involvement in the decision-making process, and to advise all parties of the final decision and provide an explanation;"

Workgroup Text Change

Workgroup Comments Same as C(c)1 above, 100

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.100	Pg. 71, A2	Policy	1350	1		Reject Comment	AGREE	NO ACTION
Public Comment								
The proposed rule does not identify how best to consult with each tribe. Further clarification for the appropriate process would be helpful.								
Workgroup Text Change								
No change in text.								
Workgroup Comments								
Reviewed, no action required. Rule clarifies what consultation means in 170.100. Process will vary from state to state, and states need to consult 170.100 in developing a process.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.101	Pg. 72 C(c)1	Policy	35	16	YES	Accept Comment	AGREE	AGREE

Public Comment

:Sec;170.101 What is the IRR Program consultation and coordination policy? Comment: The list is not all inclusive and the answer should state this.

Workgroup Text Change

Workgroup Comments No change required. Adequately addressed in pg 72, D3.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.101	Pg. 72, D1	Policy	8	3		Reject Comment	AGREE	NO ACTION

Public Comment Though a minor point, our experience with :section; 170.101 (a) is that Tribal law enforcement authorities have neglected to report crashes to the state system, thus hindering diagnosis of corridors needed for improvement. Language needs to be added obligating collaboration/reporting of crash information to the state to foster necessary improvements.

Workgroup Text Change No change in text.

Workgroup Comments Forward to the management systems docket (FHWA-99-4968) to be considered by the FHWA.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.101	Pg. 72, D3	Policy	38	20	YES	Accept with Modification	AGREE	DISAGREE

Public Comment

:sec; 170.101. The list of activities is not an exhaustive list. We recommend acknowledging this by adding the following term after the word "when" and before the colon: "undertaking the following or other related activities."

Workgroup Text Change

After "when" add ";undertaking the following or similar or related activities"

Workgroup Comments

Text change.

Federal Comments

Federal Caucus agrees with Tribal Caucus change, Change to read: ";undertaking the following similar or related activities"

Tribal Comments

Tribal Caucus accepts with modification. Remove unneeded "or" from text change.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.101	Pg. 72, D2	Policy	15	4	YES	Accept with Modification	AGREE	AGREE
Public Comment 170.101 What is the IRR program consultation and Coordination Policy? This is not a complete list and recommend language changes or inserting language "not limited to"								
Workgroup Text Change								
Workgroup Comments No change required. Adequately addressed in pg 72, D3.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.103 Public Comment	Pg. 73, D1	Policy	1337	14	YES	Reject Comment	AGREE	NO ACTION
Page 51361-Section 170.103 Comment[(b) We recommend replacing !Promote! with !Support! to be more definite.								
Workgroup Text Change	No change necessary.							
Workgroup Comments	Term "promote" is more proactive.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.105	Pg. 74, C(a)1	Policy	3	12	YES	Reject Comment	AGREE	NO ACTION

Public Comment 170.105(b) Provision of technical assistance. Comment: This section should cross-reference the provisions of Title I and Title V regulations of P.L. 93-638 which require the Interior Department to provide technical assistance to a tribe interested in assuming a program, function, service or activity pursuant to P.L. 93-638 (e.g., 25 C.F.R. 900.7; 25 C.F.R. 900.120; 25 C.F.R. 900.122(b)(1); 25 C.F.R. Subparts C and D).

Workgroup Text Change No change necessary.

Workgroup Comments Covered in other sections of regulations.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.105	Pg. 74, D1	Policy	1337	15	YES	Reject Comment	AGREE	NO ACTION

Public Comment Page 51361-Section 170.105Comment: In the first sentence of the answer "to determine tribal preferences" is not applicable. We recommend changing this first sentence to- "Yes, before using IRR Program funds for any project, the Secretary must consult with any affected tribe or tribal organization to solicit tribal input to the greatest extent feasible concerning all aspect of the project or program." (a) We believe notifying a tribe of the allocation of funds for any phase of an IRR project is unnecessary and only adds unneeded administrative burden. Therefore, we recommend deleting "any phase of".

Workgroup Text Change No change necessary.

Workgroup Comments Look at consistent language for "IRR". With regard to 170.105, workgroup believes that language in proposed rule is consistent with P.L. 93-638.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.106	Pg. 74, D1	Policy	26	2	YES	Accept with Modification	AGREE	AGREE

Public Comment

Section 170.106 - What funds are available for consultation activities?Item (e), "Community Development Administration" does not refer to any agency or program of the federal government of which we are aware. In reviewing the other agencies listed in this section, we suggest that this particular item should read "USDA Rural Development funds. "Furthermore, we recommend under item (h) that you include reference to transportation planning funds available from the Federal Transit Administration (FTA) in addition to those available from FHWA.

Workgroup Text Change

Change (e) "USDA Rural Development funds" And include a reference under item (h) to FTA and FHWA.

Workgroup Comments

Accept because there was a change in the program name.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.107	Pg. 75, C(c)1	Policy	19	4	YES	Accept with Modification	DISAGREE	AGREE

Public Comment :sec; 170.107. This section should be deleted and replaced with a description of when and how tribes and Indian tribal governments, tribal organizations, and the Bureau of Indian Affairs (BIA) must consult with State DOTs during the development of the IRR Transportation Improvement Program (TIP). How and when the State DOTs consult with Indian tribal governments, Federal agencies, local governments, MPOs, public and private transportation providers, operators of major intermodal terminals, and multi-state businesses in developing the Statewide Transportation Improvement Program are already defined by 23 USC 134 and 135 and the regulations 23 CFR 450. The proposed rule incorrectly indicates that there must be a fully "coordinated" transportation planning process with the States and the Indian tribal governments. The regulations 23 CFR part 450 require a "consultation" process between the States and the Indian tribal governments. Additional, inconsistent language would only lead to confusion.

Workgroup Text Change Change to language of C2. Change que to strike out "and tribal organizations"See C1 above

Workgroup Comments Reject C(c)1 because it puts burden on tribes to consult, and burden has been placed on state to consult with tribes. Reject D1 for same reason.

Federal Comments Tribal organizations needs to be changed in the 1st sentence to tribes, and struck from the last sentence. Actually second to the last sentence.

Tribal Comments We prefer the Tribal Caucus recommendation. 3-28
Agree with modification, see D1



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.107	pg. 78, D1	Policy	1239	4	YES	Accept with Modification	AGREE	AGREE

Public Comment

170.107 and 170.108 refer to federal regulations requiring State, Metropolitan Planning Organizations (MPOs), Regional Planning Organizations (RPOs) and local governments to consult with tribal organizations and the BIA when planning transportation programs and projects. Similar requirements do not exist requiring tribal organizations to consult with the states, MPOs, RPOs or local governments. Language requiring similar action by tribal organizations would be helpful to the overall planning effort and would assure consideration of tribal interests by all adjacent governments and agencies. At the very least, language should be included that requires the BIA, on behalf of their respective tribal organizations, to consult with the State, MPOs, RPOs, and local governments during the development of Long Range Transportation Plans and Indian Transportation Improvement Programs.

Workgroup Text Change

Workgroup Comments Addressed in text for comment for Section 108 on pg. 76, C(a)1.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.107	Pg. 75, C1	Policy	368	4	YES	Accept with Modification	DISAGREE	AGREE

Public Comment :Section; 170.107 When must State governments consult with tribes and tribal organizations?This Section is not consistent with the language used in 23 USC 134 and 23 USC 135 (d), (e) and (f), and 23 CFR Part 450.208, 450.210, 450.214, and 450 216.The term "tribal organizations" is not included in the specific language and should be deleted from this Section.

Workgroup Text Change Change que to strike out "and tribal organizations"

Workgroup Comments Change is consistent with the law.

Federal Comments Tribal organizations needs to be changed in the 1st sentence to tribes, and struck from the last sentence.

Tribal Comments We prefer the Tribal Caucus recommendation. 3-28
Agree with modification, see D1



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.107	Pg. 75, C2	Policy	368	5	YES	Accept with Modification	DISAGREE	AGREE

Public Comment :Section; 170.107 When must State governments consult with tribes and tribal organizations? Revision is needed to correctly describe the requirements for State Governments to coordinate, cooperate, and consult with tribal governments. Clarification should be incorporated into this Section which reflects that:1. States are to consider the concerns of and coordinate with tribal governments when carrying out the Statewide Transportation Planning Process; and,2. States are to consult and cooperate with tribal governments and the Secretary of the Interior when developing the Statewide Long-Range Transportation Plan; and,3. States are to consult and cooperate with tribal governments and the Secretary of the Interior when developing the Statewide Transportation Improvement Program.Such clarification would confirm acknowledgement of mutual understanding of the existing USDOT-FHWA regulation language and processes.

Workgroup Text Change Change to language of C2. Change que to strike out "and tribal organizations"See C1 above

Workgroup Comments Reject C(c)1 because it puts burden on tribes to consult, and burden has been placed on state to consult with tribes. Reject D1 for same reason.

Federal Comments Tribal organizations needs to be changed in the 1st sentence to tribes, and struck from the last sentence.

Tribal Comments We prefer the Tribal Caucus recommendation. 3-28 Agree with modification, see D1



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.107	Pg. 76, D1	Policy	5	2	YES	Accept with Modification	DISAGREE	DISAGREE

Public Comment :Sec;170.107 When must State governments consult with tribes and CDOT recommends changing the proposed language in this section by first addressing the "fully coordinated transportation planning process" requirement in 23 CFR 450.210 and then specifically addressing the long-range transportation plan and STIP :23 USC 135; as follows:FHWA Docket No. FHWA-2002-12229To the extent possible, each State, in cooperation with participating organizations, such as MPOs, and Indian tribal governments, shall provide for a fully coordinated process for plans, such as the state transportation plan and prioritizes for transportation projects, such as the STIP. With respect to each area of the state under the jurisdiction of an Indian tribal government, the long-range transportation plan and the STIP shall be developed in consultation with the tribal governments.

Workgroup Text Change Change to language of C2. Change que to strike out "and tribal organizations"See C1 above

Workgroup Comments Reject C(c)1 because it puts burden on tribes to consult, and burden has been placed on state to consult with tribes. Reject D1 for same reason.

Federal Comments Tribal organizations needs to be changed in the 1st sentence to tribes, and struck from the last sentence.

Tribal Comments We prefer the Tribal Caucus recommendation. 3-28
Agree with modification, however recommend additional modification. Do not change question. Insert into the answer prior to tribal organization "tribes and"



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.108	Pg. 76 C(a)1	Policy	19	5	YES	Accept with Modification	AGREE	DISAGREE

Public Comment :sec; 170.108. This section should be deleted and replaced with a description of when and how Indian tribal governments must consult with MPOs in developing the IRR TIP. How and when the MPOs consult with Indian tribal governments in developing the TIP is already defined by 23 USC 134 and 135 and the regulations 23 CFR part 450. Additional, inconsistent language would lead to confusion at best and delay in advancing needed projects at worst.

Workgroup Text Change Add "Indian tribes" after "municipal governments".

Workgroup Comments Addressed in text for comment on pg. 76, C(a)1.

Federal Comments Workgroup included new 108(a) and is agreed to.
Federal Caucus disagrees with Tribal Caucus comments for modification to 108.

3-28 this didn't make it into original merged document for federal consideration.

Tribal caucus accepts with modification

Tribal Comments Delete from "yes through the end of b)transportation improvement programs." on the final paragraph. delete "also" after 'consult' insert "on regionally significant transportation matters" delete the "s" from 'states' after 'state' delete" metropolitan organizations, rural planning organizations," and insert after 'state' "and" delete everything after ' local governments'



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.108	Pg. 76, D1	Policy	5	3	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec;170.108 Should planning organizations and local governments consult with tribal governments when conducting planning for transportation projects?CDOT recommends changing the proposed language in this section to address when tribal governments should consult with MPOs, rural planning organizations, and local governments as these proposed rules pertain to the IRR Program. CDOT also recommends the proposed rules contain a definition for the term "rural planning organizations".

Workgroup Text Change

Workgroup Comments Addressed in text for comment on pg. 76, C(a)1.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.108 Comment	pg. 78, D1	Policy	123	4	YES	Accept with Modification	AGREE	AGREE

Workgroup Text Change

Workgroup Comments Addressed in text for comment on pg. 76, C(a)1.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.110	Pg. 77, A1	Policy	1337	16	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51362-Section 170.110 Comment: (b)(2) Creating excessive access is not adverse, The author of this example must have had something in mind so we recommend this be clarified and changed accordingly.

Workgroup Text Change

Workgroup Comments The rule as drafted reflects tribal and Secretarial concern to protect cultural and religious sites, along with natural resources. The rule provides one example of an adverse effect.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.110	pg. 77, C(a)1	Policy	19	6	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:sec; 170.110 and :sec; 170.111. These subsections should be deleted. The State DOTs and MPOs must comply with the Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794 which ensures that no person shall, on the grounds of race, color, sex, national origin, or physical handicap, be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination under any program receiving Federal assistance from the United States Department of Transportation. The State and MPO must also comply with NEPA to protect natural resources in implementing its transportation programs. This rule is unnecessary since other rules and laws are already enacted to prevent discrimination and protect natural resources of Indian tribal governments. Additional, inconsistent language would only lead to confusion.

Workgroup Text Change

Workgroup Comments

This provision is only intended to be informational and only addresses activities between governments and not individuals.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.111	pg. 77, C(a)1	Policy	19	6	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:sec; 170.110 and :sec; 170.111. These subsections should be deleted. The State DOTs and MPOs must comply with the Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794 which ensures that no person shall, on the grounds of race, color, sex, national origin, or physical handicap, be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination under any program receiving Federal assistance from the United States Department of Transportation. The State and MPO must also comply with NEPA to protect natural resources in implementing its transportation programs. This rule is unnecessary since other rules and laws are already enacted to prevent discrimination and protect natural resources of Indian tribal governments. Additional, inconsistent language would only lead to confusion.

Workgroup Text Change

Workgroup Comments Comment is outside the scope of this rulemaking.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.112	Pg. 77, D1	Policy	5	5	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:Sec;170.112 How can tribes and state and government agencies enhance consultation, collaboration, and coordination? CDOT recommends changing the proposed language as follows: "Tribes and state and federal Government agencies may enter into intergovernmental Memoranda of Agreement (MOA) to streamline and facilitate consultation, collaboration cooperation, and coordination as defined in 23 CR 450.104." This would provide consistency between the proposed IRR Program rules and existing rules pertaining to transportation planning and programming activities.

Workgroup Text Change

Workgroup Comments We reviewed the comment, and reject because the workgroup feels that terms consultation, collaboration and coordination, as defined in this rule, are stronger concepts.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.112	Pg. 77, D2	Policy	390	6	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:Section; 170.112 The term "collaboration" should be replaced with "cooperation" and the following should be added to the end of the sentence: "as defined in 23 CFR 450.104". The definition of "collaboration" in this NPRM is almost verbatim to the definition of "cooperation" in 23 CFR 450.104. In addition, MDOT feels that Indian tribal governments, State DOTs and MPOs :Metropolitan Planning Organizations; should use the same terms and definitions in the planning process and eliminate the potential for confusion.

Workgroup Text Change

Workgroup Comments We reviewed the comment, and reject because the workgroup feels that terms consultation, collaboration and coordination, as defined in this rule, are stronger concepts.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.114 Public Comment	pg. 80, D6	Policy	1337	18	YES	Accept Comment	AGREE	AGREE
Page 51362-Sec. 170.114 Comment: Insert Program between "IRR" and "funds" in the Question and in the first sentence of the Answer.								
Workgroup Text Change	add "program" after IRR in que; changed heading to state "Eligible Uses of IRR Program Funds".							
Workgroup Comments	need to check on equipment prohibition							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.114	pg. 80, D5	Policy	422	4	YES	Accept with Modification	NO ACTION	AGREE

Public Comment

I do not support :sec;170.114 as proposed and the list included in Appendix A to Subpart B dealing with allowable uses of IRR funding. The list of allowable uses in Appendix A does not include "indirect cost" in relation to non-construction administrative functions. Also, the list does not identify "equipment purchases" in connection with administering the IRR program. These items should be included in the list of allowable uses in the final regulation.

Workgroup Text Change

Add "or in this part" to the end of 170.115(f).

Already addressed issue related to "indirect costs".

Workgroup Comments

Added "or in this part" to make sure we are including those equipment purchases that are allowable under this part.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.114	pg. 79, D4	Policy	38	21	YES	Accept with Modification	AGREE	AGREE

Public Comment

:sec; 170.114. This provision refers to Appendix A of Subpart B regarding the allowable uses of IRR funding. The list in Appendix A does not include "indirect costs" in relation to non-construction administrative functions. The final regulation should include this as an allowable.

Workgroup Text Change

add to appendix A(a)&(b) "indirect general and administrative costs," as defined in 23 CFR Part 140.

Workgroup Comments

indirect costs are meant to be an eligible activity

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.114	pg. 79, D3	Policy	1231	38	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:Sec;170.114 What activities may be funded with IRR funds? This provision references "prior" guidance, but not subsequent guidance. We recommend either striking the word "prior" or modifying the provision so it reads "prior or subsequent".

Workgroup Text Change

Workgroup Comments Rejected because subsequent guidance is authorized in section 170.114 in Appendix A of Subpart B.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.114	pg. 79, D2	Policy	1232	37	YES	Accept with Modification	AGREE	AGREE

Public Comment

Subheading above proposed section 170.114. This subheading currently reads "Eligibility for IRR Funding." Because this subsection deals with what may be funded and not who may administer such funding, we recommend changing the subheading to "Eligible Uses of IRR Funding."

Workgroup Text Change change subheading to state "Eligible uses of IRR Program funds"

Workgroup Comments makes intent of provision more clear

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.114	pg. 78, D1	Policy	3	13	YES	Accept with Modification	AGREE	AGREE

170.114 What activities may be funded with IRR funds? Comment: Add the phrase "subsequent or prior unpublished" in the introduction to this section so the proviso reads: "Notwithstanding any subsequent or prior unpublished guidance, IRR funds may be used If the Interior Department were to issue a "guidance," subsequent to the promulgation of final regulations altering eligible activities which may be financed with IRR funds, such guidance could violate the requirements of 25 C.F.R. 900.5 which provides: Except as specifically provided in the :Self-Determination; Act, or as specified in subpart J : an Indian tribe or tribal organization is not required to abide by any unpublished requirements such as program guidelines, manuals, or policy directives of the Secretary : Interior;, unless otherwise agreed to by the Indian tribe or tribal organization and the Secretary, or otherwise required by law. The development of IRR program policies and procedures by the IRR Program Coordinating Committee under section 170.173(a)(2), must be harmonized with the requirements of 25 C.F.R. 900.126 which permits an Indian tribe or tribal organization to develop tribal construction procedures, standards and methods so long as such standards are "consistent with or exceed applicable Federal standards." In such instances, the Tribal standards "shall" be accepted by the Secretary of the Interior. Id. The NPRM should reflect this. See, e.g. NPRM, 170.464; 170.472; and 170.514 (51387, 51390) (tribes may propose road and bridge design and construction standards and management systems which are consistent with or exceed applicable Federal standards).

Public Comment

Workgroup Text Change

Global word change is needed throughout the rule by adding "program" after "IRR."

Workgroup Comments

Rejected request to add term "subsequent" because have authorized subsequent guidance in paragraph (c) of Appendix A to Subpart B. Comment in second paragraph has already been addressed in other parts of the rule (170.4).

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.115	pg. 81, D2	Policy	40	12	YES	Accept with Modification	NO ACTION	AGREE
Public Comment	Recommend following addition to allowable uses of IRR Program Funds; USC Title 23, 144, Page 106. Allows bridges to replace low-water crossings regardless of length.							
Workgroup Text Change	add to appendix A (b) "replacement of low-water crossings regardless of length" as an eligible activity							
Workgroup Comments	really referencing section 114. allowing as an eligible activity is consistent with 23 USC 144.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.115	pg. 80, C(c)1	Policy	38	22	YES	Accept with Modification	DISAGREE	AGREE

Public Comment :sec; 170.115 The proposed text states that cyclical maintenance activities are not eligible uses for IRR program funds. We believe tribes should be given greater flexibility to allocate IRR program funds for certain maintenance activities in order to protect their investment in existing roads and to make more efficient use of roads construction dollars.

Workgroup Text Change delete "repairing bridge joints"; and change "cyclical" to "routine"; delete "including patching or marking pavement"

Workgroup Comments

Federal Comments Need to add "such as" after "Routine maintenance work;" in (a).

Tribal Comments Tribal Caucus is OK with Federal recommendation 3-28



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.115	pg. 80, A1	Policy	415	4	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec; 170.115 What activities are not eligible for IRR Program funding? Comments: This item must be explained in detail as many tribes and regions currently use IRR funds to purchase equipment for the planning, design, and construction of IRR facilities.

Workgroup Text Change

Workgroup Comments Adequately addressed in committee's other revisions.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.115	pg. 81, D1	Policy	3	14	YES	Accept with Modification	AGREE	AGREE

Public Comment 170.115 What activities are not eligible for IRR Program funding? Comment: While tribes may agree with the NPRM provision that IRR funds should not be used to develop trails as provided in 23 U.S.C. 206(g), the TEA-21 prohibition applies to states and not Indian tribes which are not included in TEA-21's definition of "state." We recommend that a provision be added to the NPRM which states that: "Unless expressly referenced in the IRR Program regulations, TEA-21 provisions, otherwise applicable to states, do not apply to Indian tribes assuming IRR programs, functions, services and activities under P.L. 93-68."

Workgroup Text Change new text: (g) The condemnation of land for recreational trails.

Workgroup Comments strike current language of (g) and insert language prohibiting the condemnation of land for recreational trails.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 82, B1	Policy	35	2	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment B. Eligibility - Subpart B:Comment: We disagree with the assumption that the IRR coordinating committee would have such expertise or authority under Title 23. It also appears that the tribal caucus would rather take the money and run than to make sure that the proposed use is "legal" first then where does that leave the program's integrity? The recourse taken by FHWA for illegal uses of IRR funds is to withhold funds the following year and surely the tribes and BIA do not want this right? This is a near sighted approach to solving a simple problem that rarely comes up in the IRR program. We recommend to leave the section as currently written in :sec; 170.116 by keeping everyone "legal".

Workgroup Text Change For text change see comment/rationale for comment reference pg 81, A1;

Workgroup Comments Addressed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 85, C(c)3	Policy	1233	15	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

170.116 How can a tribe determine whether a new proposed use of IRR funds is allowable?Comment: We object to the requirement that a tribe that proposes a new use of IRR program funds must submit a request to both the BIA and FHWA. We support the Tribal Caucus's rationale and proposed regulatory text found on page 51336 of the NPRM and recommend that the Administration's proposed text be deleted.The Administration's proposal in 170.116 is contrary to other Administration efforts to streamline Federal regulations and permit non-Federal entities to administer programs from multiple agencies without numerous and often contradictory regulatory requirements. See, e.g., OMB implementation of the Federal Financial Assistance Management Improvement Act of 1999, 67 Fed. Reg. 52544 (Aug. 12, 2002) and our further discussion of this non-consensus issue in Part III herein.

Workgroup Text Change For text change see comment/rationale for comment reference pg 81, A1;

Workgroup Comments Supports tribal view. Workgroup made all the revisions it could agree on.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 86, C(c)5	Policy	422	5	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

I do not support :sec;170.116 as proposed. This section describes the process for determining if a proposed new use of IRR funds is allowable. By allowing some determinations to be made by the Federal Highway Administration (FHWA) and others made by the Bureau of Indian Affairs (BIA) could lead to inconsistent decisions between both agencies. Secondly, the existing appeals process under the ISDEAA does not in itself apply to the FHWA. This could create a "black hole" for determinations made by the FHWA, which may leave tribes with no recourse to reverse the determination. And third, this section poses a negative impact on Indian tribes with respect to redesign and reallocation authority available under the ISDEAA. The final regulation should reflect that the Secretary of Interior makes these determinations.

Workgroup Text Change

For text change see comment/rationale for comment reference pg 81, A1;

Workgroup Comments

Workgroup made all revisions that agreed on regarding this issue. already addressed in another comment.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 87, C(c)7	Policy	1337	19		Reject Comment	AGREE	NO ACTION

Public Comment Page 51362-Sec. 170.116 Comment: We suggest deleting Section 170.116 since a significant amount of time and effort has been committed to developing a list of eligible program activities and these are in Subpart B. How can a proposed use be such if it is already authorized by 25 United States Code? Also, how can a proposed use be such if it is in 23 United States Code?

Workgroup Text Change

Workgroup Comments No change required. The workgroup feels a list is needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 85, C(c)1	Policy	416	7	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

Subpart B - USET supports the Tribal view on the eligible uses of IRR funds (See 67 Fed Reg. At 51336-51337). The FHWA should not have veto power over tribally-assumed IRR programs. USET agrees that the BIA's express statutory authority to approve projects independent of the FHWA also affords the BIA the ability to determine whether a proposed project is permissible. While USET feels the BIA does have this ability, we also believe that strict time-lines (45 days) must be enforced on the amount of time the BIA has to respond to a tribe regarding a proposed project. In the past tribes have waited for indefinite amounts of time which places additional burdens on tribes trying to provide adequate transportation programs. The Tribal view also makes clear that an Indian tribes' ability to redesign IRR Programs and reallocate funds is authorized under P.L. 93-638 and should not be diminished by the final rule. No provision of federal law requires Tribes to obtain the approval of the FHWA in advance of reprogramming or reallocating IRR Program funds when done consistent with P.L. 93-638.

Workgroup Text Change For text change see comment/rationale for comment reference pg 81, A1;

Workgroup Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 82, C(a)1	Policy	1231	5	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

B. Eligibility - Subpart B The standard for reviewing and processing an Indian tribe's proposed use of IRR funds must be consistent with both TEA-2 1 and the ISDEAA, including the authority of Indian tribes to redesign and reallocation federal programs and funding administered through self-determination contracts and self-governance agreements. As described below, the tribal proposal (NPRM pages 5 1336-337) is consistent with both TEA-21 and the ISDEAA, and the federal proposal (proposed section 170.116) is not. Thus, we support the Tribal Caucus proposed regulatory text included in the preamble to the proposed rule. The federal proposal would create unnecessary and burdensome requirements and create in FHWA extra-statutory authority, all contrary to the ISDEAA. The federal proposal would grant the FHWA essentially a veto that could be exercised at whim over an Indian tribe's redesign and reallocation authority in its administration of the IRR program under a self-determination contract or self-governance agreement, even though the FHWA is not a party to such an agreement. Moreover, the BIA has the authority under TEA-2 1 to approve IRR Projects assumed by Indian tribes under self-determination contracts and self-governance agreements independent of the FHWA, notwithstanding the general policy statements contained in 49 U.S.C. :sec; 101(b). The BIA's express statutory authority to approve projects independent of FHWA carries with it the ability to determine whether a proposed use of funds for a project is permissible.

Workgroup Text Change

For text change see comment/rationale for comment reference pg 81, A1;

Workgroup agreed with recommendation to include paragraph (f) of the tribal caucus view does not belong in this question and answer at 170.116.

Workgroup Comments

Commentor supports the tribal view regarding this matter, which is a disagreement item.
The remaining comments have been addressed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 88, C(c)10	Policy	354	1	YES	Accept Comment	AGREE	AGREE

Public Comment I would like to recommend the BIA Education Schools be inserted as a qualifying entity for funding under the Indian Reservation Roads specifically for (1) paving of school campus streets and parking areas, (2) paving of access roads to schools, and (3) bus routes. Also, to be inserted into the formula and calculations of the overall funding criteria.

Workgroup Text Change

Workgroup Comments No change required. Adequately covered by Appendix A

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 83, C(a)2	Policy	38	3	YES	Accept with Modification	DISAGREE	AGREE

B. Eligibility-Subpart B On the issue regarding what federal entity issues a determination on the eligibility of IRR program funds for a proposed new use by a tribe administering such funds pursuant to an ISDEAA agreement, we agree with the tribal view-that the Bureau of Indian Affairs (BIA), not the Federal Highway Administration (FHWA), holds that responsibility. When an Indian tribe assumes IRR program activities under an ISDEAA, that agreement is an intergovernmental agreement with the United States executed by the Secretary of Department of the Interior (DOI). Pursuant to 23 U.S.C. :sec; 203, the Secretary of the DOI (and, thus, BIA) has express authorization to approve projects. The federal view would require a tribe to seek approval for a proposed new use with two distinct federal entities, whose response would depend upon the subject matter of the inquiry. The procedure suggested by the federal government is a recipe for inaction and inconsistency and could be a significant problems for small tribes. By assigning BIA to respond to inquiries regarding the ISDEAA or maintenance and FHWA to cover issues regarding the IRR program, the procedure fails to account for "cross-cutting" proposed uses that may involve each of the respective programs or for those uses that may not clearly fall into either camp. With two federal entities responsible for reviewing proposed uses, consistency and fairness in issuing determinations may be lost. This procedure is out of step with Congress' intent in TEA-21 to improve the effectiveness and efficiency of transportation program service delivery by authorizing tribes to administer the IRR program under the ISDEAA.

Public Comment

Workgroup Text Change For text change see comment/rationale for comment reference pg 81, A1;

Workgroup Comments See other revisions already made by the Workgroup.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 82, C1	Policy	41	4	YES	Accept with Modification	AGREE	AGREE

Public Comment

Page 51362, Subpart B, Section 170.116(b). Recommend adopting the Tribal Caucus' position requiring a response time of 45 days instead of 60 days. Eligibility inquiries should not need the 60-day period advocated by the Federal Caucus.

Workgroup Text Change

changed 60 days to 45 days;
For text change see comment/rationale for comment reference pg 81, A1;

Workgroup Comments

addressed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 88, D2	Policy	41	3	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	Page 51362, Subpart B, Section 170.116(a). Recommend inserting a table showing the exact addresses where inquiries should be sent within the BIA and FHWA, so that there are no internal delays in routing the inquiry to the correct offices.							
Workgroup Text Change	Insert "Federal Highway Administration, 400 7th Street, Southwest, HFL-1, Washington, D.C. 20590" and "Department of Interior, Bureau of Indian Affairs, Division of Transportation, 1849 C Street, Northwest, Mailstop 4058-MIB, Washington, D.C. 20240". For text change see comment/rationale for comment reference pg 81, A1;							
Workgroup Comments								
Federal Comments	This reference is made for appeals. This needs to be clarified that written request and denials must both be submitted to the address (BIADOT).							
Tribal Comments	Tribal Caucus accepts federal language change 3-28							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 88, D3	Policy	35	18	YES	Accept with Modification	AGREE	AGREE

Public Comment :Sec; 170.116 How can a tribe determine whether a new proposed use of IRR funds is allowable? Comment: under subparagraph (b) where it states: "FHWA must approve the proposed use if it listed as an eligible item in title 23 of the United States..." Has a typo error shown in bold. The word should be "it is".

Workgroup Text Change change (b) and add correct language "it is";
For text change see comment/rationale for comment reference pg 81, A1;

Workgroup Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 84, C(a)3	Policy	1233	67	YES	Accept with Modification	AGREE	AGREE

Eligibility - Subpart B (page 51336)(proposed Sec. 170.116)Comment: We endorse the Tribal Caucus proposed regulatory text included in the preamble to the proposed rule. # NPRM pages 51336-51337. We find the Federal Caucus's regulatory language at Sec. 170.116 (page 51362) to be unnecessary, burdensome and contrary to P.L. 93-63 8. The FHWA should not have a veto over a tribally assumed IRR program. The BIA, under TEA-21, has the authority to approve IRR projects assumed by tribes under a self determination contract or self-governance agreement, notwithstanding general policy statements in 49 U.S.C. 101(b). We agree that the BIA's express statutory authority to approve projects independent of FHWA carries with it the ability to determine whether a proposed use of funds for a project is permissible. The Tribally drafted regulatory text ("How can an Indian tribe determine whether a new proposed use of IRR funds is allowable?") (page 51336, col. 2) allows adequate flexibility for the BIA (to consult with FHWA if warranted), while at the same time imposing a strict time line of 45 days for the BIA to respond to the requesting tribe lines (45 days) on when written responses must be provided by the BIA to a requesting tribe. The final provision of the Tribal Caucus's proposal makes clear that an Indian tribe's ability to redesign IRR programs and reallocate funds, as authorized under P.L. 93-638 is not altered nor diminished by the Part 170 regulations. See, 25 U.S.C. 450j(j), 450j 1(o), 458cc(b). We view the Federal Caucus's proposed regulatory text as unworkable. No provision of federal law requires tribes to obtain the approval of the FHWA in advance of reprogramming or reallocating IRR Program funds when done in a manner consistent with P.L. 93-638.

Public Comment

Workgroup Text Change For text change see comment/rationale for comment reference pg 81, A1;

Workgroup Comments Endorsed tribal caucus view. See previous revisions made to this section by workgroup.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 87, C(c)9	Policy	383	1	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment Section 170.116 (Page 51354) - Eligibility for IRR Funding Eliminate increase involvement and authority of HAW in the IRR program to determine the eligibility of activities for IRR funding. Recommend the Tribal Caucus' point of view be adopted from page 51336, B. Eligibility-Subpart B.

Workgroup Text Change For text change see comment/rationale for comment reference pg 81, A1;

Workgroup Comments Endorse tribal view. The federal representative from FHWA was not agreeable to eliminating or decreasing FHWA's role.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116 Public Comment	pg. 88, D4	Policy	21	4	YES	Accept with Modification	DISAGREE	AGREE
	170.146 Recommend adding to the answer: "However, a tribel under P. L. 93-638 may use IRR funds to provide for the local match."							
Workgroup Text Change	Sec. 170.146; Accept comment w/ mod."Tribes may use up to 100% of IRR Program funds contained in a Self-Determination contract or Self-Governance agreement as the local match."							
Workgroup Comments	The requested change was made to 146 and not 116. This was an error in the comment determination.							
Federal Comments	Refer to 170.146.							
Tribal Comments	Tribal Caucus understands that the Federal Caucus does not appose the workgroup change. 3-28 Note change is to section 170.146 not 116.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 85, C(c)2	Policy	1388	2	YES	Workgroup Disagree	NO ACTION	NO ACTION

Section :section;170.116, How can a tribe determine whether a new proposed use of IRR funds is allowable?The Quinault Indian Nation does not agree with the Federal view published as Part A, which proposes that a new use of IRR program funds must be submitted to both the Bureau of Indian Affairs and the Federal Highway Administration.The Quinault Indian Nation does agree with the Tribal view, located on page 51336 of the Federal Register, Part B. Eligibility- Subpart B. The Tribal Caucus views the submitting of new proposals for new uses of IRR program funds to both the BIA and FHWA as problematic. The Quinault Indian Nation believes that situations could arise whereby both agencies (BIA and FHWA) could issue inconsistent decisions. Inconsistent decisions could delay tribal construction projects, and eventually backlog projects as well. Additionally, the Quinault Indian Nation would like to see the BIA be held more accountable for transportation project decisions. A submittal required by the FHWA and the BIA, sacrifices accountability and project completion to these agencies and their decisions. By recognizing the BIA, as the appropriate agency to submit new proposals of new use of IRR program funds, the Quinault Indian Nation holds the BIA fully accountable for the completion of planning and construction project completion since they are the only agency responsible for ensuring that these transportation project decisions are made and completed. Like tribes, who enter into self-governance contracts and agreements, are responsible and held accountable so would the BIA held responsible and accountable. This would, the Quinault Indian Nation believes, would force the BIA to work more closely and productively for the tribes in the United States.

Public Comment

Workgroup Text Change For text change see comment/rationale for comment reference pg 81, A1;

Workgroup Comments Endorses tribal caucus view. See revisions made by the workgroup to this section related to another comment.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 86, C(c)4	Policy	34	3	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment Key Areas of Disagreement Eligibility - Subpart B - New proposed use of IRR Program funds. If a new proposed use of IRR funds requires FHWA approval, thus keeping them directly involved in the administration of the funds, then why must funds go through the BIA at all rather than directly from the FHWA to tribes? The Washoe Tribe received FY 2000 IRR Program funds in FY2001 from the BIA WRO after an unexplained 18-month delay. Shortly after the funds were received, a dispute arose over their use to purchase the technology necessary to conduct the IRR Inventory. A written inquiry as to the use of funds was sent to the BIA WRO in mid-November 2001. Several verbal inquiries were made thereafter, with no answer from BIA WRO. So, a written inquiry was sent to BIA DOT in Washington, DC in February 2002; followed by a second letter in March 2002. Then, later in March, a letter was sent to FHWA. Finally, we received an ambiguous reply from the FHWA in April 2002. There has never been a definitive answer from either the BIA or the FHWA as to the particular use of funds. This process took 6 months - so much for a 45-day response time from the BIA, not to mention what it cost in tribal and federal manpower to pursue it. For lack of timely response the request should have been deemed allowable in mid-January 2002. The federal failure to respond to our numerous inquiries resulted in a 6 month project delay and forced the Tribe to seek a contract extension.

Workgroup Text Change For text change see comment/rationale for comment reference pg 81, A1;

Workgroup Comments Endorses tribal view. made all revisions workgroup could agree on.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 87, C(c)6	Policy	1337	3	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment Page 51335-III. Key Area of Disagreement Eligibility-Subpart B Comment: How many new uses of Federal transportation program funds can we develop? The Negotiated Rulemaking Committee worked on this rulemaking for over two years. In so doing they developed Appendix A to Subpart B titled "Allowable Uses of IRR Program Funds". This should be sufficient to address the use of JRR Program funds. Is the Committee trying to be creative in allowing IRR Program funds to be used for something other than transportation improvements? We find this Section unneeded.

Workgroup Text Change For text change see comment/rationale for comment reference pg 81, A1;

Workgroup Comments A process is needed to provide maximum eligibility to tribes.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 82, C2	Policy	21	3		Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

170.116 We prefer the tribal view proposed in the preamble. How can an Indian Tribe determine whether a new proposed use of IRR funds is allowable? (a) An Indian tribe that proposes new uses of IRR funds may submit a written inquiry to BIA concerning whether the proposed use is eligible under Titles 23 and 25 of the United States Code, and other applicable provisions of federal law. The requesting Indian tribe must also provide a copy to its inquiry to FHWA. (b) BIA must provide the requesting Indian tribe, with a response in writing, within 45 days of receipt of the written inquiry. BIA must approve the proposed use unless it can identify a specific statutory prohibition to the proposed use related to transportation. To the extent practicable, BIA will consult with FHWA and the IRR Program Coordinating Committee in addressing the inquiry. (c) If BIA fails to issue a timely written response to the eligibility inquiry, the proposed use will be deemed to be allowable until guidance has been issued by the Coordination committee. (d) BIA will refer all eligibility decisions to the Coordinating Committee for consideration for guidance updates. (e) Denials of a proposed use may be appealed by the tribe under 25 CFT part 2. (f) Nothing in this section shall be interpreted as modifying or diminishing an Indian tribe's authority to redesign programs and reallocate funds under Public Law 93-638, as amended, and applicable regulations.

Workgroup Text Change For text change see comment/rationale for comment reference pg 81, A1;

Workgroup Comments Concurs with tribal view.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 88, D1	Policy	1370	15	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment Rule - Page 51362 states: :section; 170.116 "How can a tribe determine whether a new proposed use of IRR funds is allowable." Comment: The Tribes request the deletion of the proposed federal caucus text and the insertion of the proposed tribal caucus text. Having to get the approval from two separate federal agencies places an unnecessary burden upon the Shoshone-Bannock Tribes.

Workgroup Text Change For text change see comment/rationale for comment reference pg 81, A1;

Workgroup Comments FHWA was not willing to eliminate or decrease its authority.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.116	pg. 81, A1	Policy	1369	21	YES	Workgroup Disagree	NO ACTION	AGREE

Public Comment

ISSUE > Pg 51336 Key Areas of DisagreementB. Eligibility - Subpart BThe issue is whether BIA or FHWA make the determination on a new proposed use of IRR Program funds.CommentsWe accept the Tribal Caucus View>for the reason of not having to learn the Hierarchy of the FHWA and then have to deal with both Federal Agencies versus the way it's historically been. Tribe's/Band's deals mainly with the BIA.And would like comment on the Federal View, (a) How can a Tribe determine whether a New Proposed use of IRR Funds is Allowable. See (e) Tribes may appeal denials of a proposed use pursuant to 25 CFR Part 2. Q. Do Tribe's/Band's USC 25 CFR Part 2 to appeal an FHWA decision? Suggestions Clarity Issue as nowhere in the Federal View does it identify how Tribe's/Band's can appeal an FHWA decision.Have the NEG REG Committee clarify and define how Tribe's/Band's appeal and FHWA decisions. Answer our question.

Revise the question and answer at 170.116 to state:

"How can a tribe determine whether a new proposed use of IRR funds is allowable?

(a) An Indian tribe that proposes new uses of IRR funds may submit a written inquiry to BIA concerning whether the proposed use is eligible under Titles 23 and 25 of the United States Code, and other applicable provisions of federal law. The requesting Indian tribe must also provide a copy of its inquiry to the FHWA.

(b) The BIA will determine whether a new proposed use of IRR funds is allowable when the new proposed use refers to self-determination and self-governance contracting and road maintenance or if it is authorized under title 25 of the United States Code and is related to transportation. The BIA must provide a written response to the requesting tribe within 45 days of receipt of the written inquiry. Tribes may appeal denials of a proposed use by the BIA pursuant to Title 25 Code of Federal Regulations Part 2.

(c) The FHWA will determine whether a new proposed use of IRR funds is allowable when the new proposed use involves eligibility questions that refer to the IRR Program and are not covered by paragraph (b). The FHWA must approve the new proposed use if the proposed use is listed as an eligible item in Title 23 of the United States Code. The FHWA must provide a written response to the requesting tribe within 45 days of receipt of the written inquiry. Tribes may appeal denials of a proposed use by the FHWA to the Secretary of Transportation.

(d) To the extent practicable and before denying the request, BIA or FHWA must consult with the IRR Program Coordinating Committee. The BIA and FHWA will send copies of all eligibility determinations to the IRR Program Coordinating Committee and BIA regional offices.

Workgroup Text Change

(e) If either the BIA or FHWA fails to issue the requesting tribe a timely response to the eligibility inquiry, the proposed use will be deemed to be allowable for that request. "

Workgroup Comments

Comment supports Tribal Caucus view. Federal Caucus and BIA agreed to change 170.116(a) so that a the timeline for a written response is lowered to 45 days. The federal representative from FHWA informed the workgroup that the Secretary of Transportation was not agreeable to allowing the Secretary of the Interior to be the sole decision maker regarding allowable new proposed uses.



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Federal Comments

Tribal Comments Based on additional information from the workgroup, the only disagreement item was the deletion of FHWA from process. Should have been an accept with mod. Tribal Caucus agrees with accept with modification.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.120	pg. 89, C(b)1	Policy	1388	7	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Section :section;170.120, What restrictions apply to the use of an Indian Reservation Road (IRR)?Section :section;170.120(a) describes under what conditions road closures and restrictions would occur on IRR designated roads. The Quinault Indian Nation supports road closures and restrictions for public safety concerns, fire prevention and suppression, fish or game protection, low load capacity bridges, and prevention of damage to unstable roadbeds. The Quinault Indian Nation supports a position of temporary road closures and restrictions that includes these previous reasons, and the following additional reason- tribally designated cultural activities. The Quinault Indian Nation views tribally designated cultural activities as a justifiable reason to temporarily close or restrict a road access. The Quinault Indian Nation defines tribally designated cultural activities as those activities that each, individual tribemust assert and prove in writing to the BIA when closing or restricting access to that IRR designated road.

Workgroup Text Change

Workgroup Comments Rejected this is addressed for public safety and as part of 170.125.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.120	pg. 89, D2	Policy	28	4	YES	Accept with Modification	AGREE	AGREE

Public Comment In regard to Subpart B, Indian Reservation Roads Program Policy & Eligibility, use of IRR and cultural access roads, Section 170.120. In this section, the word "generally" needs to be struck from the following statement:... "IRRs must generally be open and available to public use." (The existing rule requires that IRRs must be left open and available to public use.

Workgroup Text Change delete "generally"

Workgroup Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.120	pg. 89, D3	Policy	35	19	YES	Reject Comment	AGREE	NO ACTION

Public Comment :Sec; 170.120 What restrictions apply to the use of an Indian Reservation Road (IRR)? Comment: What about other uses such as adjacent access or utility crossings under a permit process? It is recommend that the following subparagraph be added:(d) regulate other activities through a permitting process consistent with 23 CFR and applicable tribal policy and regulations.

Workgroup Text Change

Workgroup Comments Previously covered

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.120	pg. 89, D1	Policy	1337	21	YES	Accept with Modification	AGREE	AGREE

Public Comment

Page 513363-Sec. 170.120 Comment: We recommend deleting the word "generally" in the first sentence of the Answer. The activities in (b) and (c) are not restrictions so we recommend these be deleted.

Workgroup Text Change delete word "generally"

Workgroup Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.121	pg. 90, C(b)1	Policy	1388	6	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Section :section;170.121, What is a cultural access road?Section :section;170.121 lists the purposes that a cultural access road provides cultural site access for. The Quinault Indian Nation supports sacred and medicinal sites, gathering medicines or materials such as grasses for basket weaving, or other traditional activities including, but not limited to, subsistence hunting, fishing, and gathering as valid and justifiable purposes that a cultural access road provides access for. The Quinault Indian Nation supports a position that includes this list of cultural purposes with the following additional cultural purpose (a fourth category)- cemetery and burial sites. The Quinault Indian Nation views cemetery and burial sites as an essential aspect of traditional belief and cultural activity.

Workgroup Text Change

Workgroup Comments Covered. This list is for illustration purposes only, and is not intended to be exhaustive.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.121	pg. 90, C(c)1	Policy	1352	2	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.121 Tribes in NM are very concerned with federal requirements that indicate when federal funds are used on tribal lands the roadway is subject to public access. Tribes are of the opinion that the land under the provided R/W belongs to the Tribe and because of their Sovereign status, the tribe should be able to regulate public access. Tribes in NM are finding that as counties, cities and developments are increasing due to growth increase trespass, crime and encroachment are serious problems. The Tribes in NM are also :concerned; with interference in cultural/traditional activities that are sacred to the tribes. Tribes have limited jurisdiction over non-Indians. Section 170.121 discusses designation of "cultural access road". Some tribes in NM and other states have major state roads :and; interstate roads :that; run through or very near their communities. The rule should provide for Tribe, state and Feds to develop agreements of by-pass/realignment of roads to avoid conflicts.

Workgroup Text Change

Workgroup Comments Tribes have authority to control access per 170.120 and 170.125.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.121	pg. 90, D1	Policy	1337	22	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51363-Sec. 170.121 Comment (c) Sites for subsistence hunting and fishing are not cultural sites. Therefore, since (a) and (b) adequately address cultural purposes, we recommend deleting (c) since it is not appropriate.

Workgroup Text Change

Workgroup Comments Covered in first part of the section.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.123 Public Comment	pg. 91, d1	Policy	1337	23	YES	Accept with Modification	AGREE	AGREE
Page 51363-Sec. 170.123 Comment: Delete "Road" after "IRR" in the Answer part of this section.								
Workgroup Text Change	Delete "Road" after "IRR"							
Workgroup Comments								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.125	pg. 92, D1	Policy	29	9	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Strike in its entirety, Section 170.125, "Can a Tribe Close a Cultural Access Road?" In the alternative, add the words at an additional subsection, with the letter "C," "Except a tribe or any other public authorities may not close a cultural access road to public access when a non-Indian fee landowner's real property is served by the designated cultural access road or roads." Sites with significant cultural aspects can be protected with less intrusion on public use rights by fence-type enclosures or some other means involving less federal funding expense.

Workgroup Text Change

Workgroup Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.125	pg. 92, D2	Policy	418	4	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Under section 170.125, "Can a Tribe Close a Cultural Access Road?", omit the two conditions, (a) and (b) and replace the two sub-sections with one sub-section as follows: "(a) No."

Workgroup Text Change

Workgroup Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.125	pg. 91, C(c)1	Policy	417	4	YES	Accept with Modification	DISAGREE	AGREE

Public Comment Tribal ability to close a road: The old Rule (25 CFR 170.8) read: "Sec. 170.8 Use of roads. (a) Free public use is required on roads eligible for construction and maintenance with Federal funds under this part." Roads did not have to be actually funded, they need only be eligible for funding to be classified as public roads. Eligible is the key word in this section. In the new rule we ask that all of Section 170.125 be stricken, or the minimum include language that would include input from non-Indian and fee land interest that are dependent on the roads. As it stands now the new rule gives tribes the sole ability to define a road as a "cultural access" road - and thereby receive jurisdiction to close the road to the public. The bottom line is that if a private property (fee land owner) is served by a cultural access road eligible for public funding, that property owner can not be restricted from access in any way. It's a public road "Shawano County Concerned Property Taxpayers Association (SCCPTA) was formed because of an Indian Reservation boundary dispute. Our members purchased or inherited their fee land without the knowledge that they may in fact be on a reservation. (The dispute is now in Federal Court). At this point, 150 years after the treaty period, to take rights and privileges away from feel and owners would be wrong and it would further exacerbate the tensions that have developed on or near reservations in recent years.

Workgroup Text Change See rewrite of 170.120.

Workgroup Comments changes made in reference to another comment. In sec. 120. pg. 89, D1 and D2.

Federal Comments Federal caucus disagrees with the Workgroup's review of this section. Reference: "jurisdiction".
Yes, a tribe can temporarily close a tribal cultural access road

Tribal Comments Tribal Caucus disagrees with the Federal language comments.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.130 Public Comment	pg. 93, D1	Policy	38	24		Reject Comment	AGREE	NO ACTION
:sec; 170.130. We recommend adding "navigable waterways" to the list of seasonal transportation routes within the IRR inventory.								

Workgroup Text Change

Workgroup Comments Use of navigable waterways are addressed in other areas.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.130 Public Comment	pg. 94, D2 170.130 What are seasonal transportation routes? Include language "cultural, traditional and farming survival access routes"	Policy	15	8	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments	Cultural, traditional roads are best addressed in other parts of this rule.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.135	pg. 94, D1	Policy	15	9	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.135 Can IRR Program funds be used to build seasonal transportation routes? Include language; Indian tribes and other local public authorities shall designate a roads as a seasonal transportation route for purpose of cultural access that provides access sites as desfined by individual tribal transitions which jay inclue, for example: Sacred and medicanal sites;b gathering medicines or materials; other traditional activities including but not limited to hunting fishing and gathering.

Workgroup Text Change

Workgroup Comments Covered in other parts of the rule. 170.122.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.135	pg. 94, C(c)1	Funding	415	7	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Seasonal Transportation Routes::Sec; 170.135 Can IRR Program funds be used to build seasonal transportation routes?Comment: How will this be controlled in the inventory and subsequent distribution of funds under the proposed formula? This could become a perpetual funding issue where these type routes would be generating funds every year. Where does one draw the line? It seems; more appropriate to limit this to one year of funding under IRR construction funds and there after road maintenance or other sources be used.The term "ice roads" is interpreted as winter roads built across frozen rivers and lakes. It is questionable if the expenditure of IRR funds is justified for roads that melt away with the spring thaws year after year. Huge amounts of funds could be expended that, in the end, "go down the river or to the bottom of the lakes each year." The feasibility of continuous expenditure of highway trust funds for this purpose is highly questionable.

Workgroup Text Change

Workgroup Comments

Funding formula response: The commenter is requesting that seasonal routes be funded once and drop out of the Cost to Construct portion of the formula. The workgroup considers seasonal routes as eligible activities, in addition the CTC will be taken up under the guidance of the IRR Coordinating Committee.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.137	pg. 95, C(c)1	Policy	15	10	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.137 Are there standards for seasonal transportation routes? Language incorporated to state tribes shall develop standards for seasonal transportation routes.

Workgroup Text Change

Workgroup Comments

Tribes have the option to adopt federal or state standards or develop their own standards. Can and not "Shall" .

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.137	pg. 95, D2	Policy	1231	40	YES	Accept with Modification	DISAGREE	AGREE

Public Comment

:Sec;170.137 Are there standards for seasonal transportation routes? The comma after the word "yes" should be a period, and the remainder of the provision should be a separate sentence.

Workgroup Text Change

Yes. There are state, federal and industry standards, in addition, a tribe can develop and/or adopt standards, which are equal to, or exceed, state, Federal, or national standards.

Workgroup Comments

See text change above.

Federal Comments

Use Tech. Standards Def.

Tribal Comments

3-28 Tribal Caucus understands that the Federal Caucus generally agrees.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.137	pg. 95 D1	Policy	3	16	YES	Accept with Modification	DISAGREE	AGREE

Public Comment

170.137 Are there standards for seasonal transportation routes? Comment: The answer to the question "Are there standards for seasonal transportation routes" is incomplete and unclear in its present form. It is possible that text has been omitted from this provision. No citation is provided for relevant Federal standards for seasonal transportation routes. The answer is simply "yes" followed by "in addition, a tribe can develop" standards which meet or exceed state, Federal or national standards. If tribal standards are "in addition" to something, some effort should be made to discuss what seasonal transportation route standards are and where they can be found. Tribes should have the opportunity to examine and question whether the other standards actually apply to the IRR Program.

Workgroup Text Change

Yes. There are state, federal and industry standards, in addition, a tribe can develop and/or adopt standards, which are equal to, or exceed, state, Federal, or national standards.

Workgroup Comments

Industry standards do exist, in addition state and Federal standards exist. Text change above.

Federal Comments

Use Tech. Standards Def.

Tribal Comments

3-28 Tribal Caucus understands that the Federal Caucus generally agrees.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.138 Public Comment	pg. 95, D1 Page 51363-Sec. 170.138 Comment: Insert "Program" between "IRR" and "funds".	Policy	1337	24	YES	Accept with Modification	AGREE	AGREE
Workgroup Text Change	add "program"							
Workgroup Comments								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.138	P 96 - Cc1	Technical Standards	1340	1		Reject Comment	AGREE	NO ACTION

Public Comment

Under Subpart B, Subsection 170.130 through 170.138, the Pueblo of Zuni is not in favor of any and all language contained in this subsection. There are too many unknowns. Certainly, the Pueblo of Zuni will not benefit from this.

Workgroup Text Change No text change.

Workgroup Comments Review initial 130-136 with policy. Our sections (137 and 138) we do not agree with removal of section.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.140 Public Comment	pg. 96, A1	Policy	1337	25	YES	Accept with Modification	DISAGREE	AGREE
Page 51363-Sec. 170.140 Comment: Housing cluster needs to be defined Indian community should also be defined.								
Workgroup Text Change	A housing cluster consists of three or more existing or proposed housing units.							
Workgroup Comments	A definition was developed for "housing cluster" but not "Indian community" in 170.6.							
Federal Comments	Need to expand definition of a housing cluster to include a geographical definition of the housing cluster.							
Tribal Comments	3-28 Agreed to in prior comment to definitions 170.6							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.142	pg. 67, D3	Technical Standards	1337	11	YES	Referred to Policy	AGREE	AGREE

Page 51359-Section 170.6Comment- These definitions should be redone since many are not used in the Notice of Proposed Rulemaking. Also, many of the definitions are too long and become policy rather than definitions. Definitions should be clear and concise which is what many of these definitions are not. We have the following specific comments on these definitions: Act- This definition should be deleted from these definitions since it is not used throughout the proposed rule. Compact- The second sentence of this definition is difficult to understand and for a definition this is not needed so recommend deletion. Construction- This definition needs to be shortened since it is policy rather than a definition. This definition should be re-written to be for transportation facilities and not just highways by changing "highway" to "transportation facility" in the first sentence. Construction does not include all of the eight items listed in this definition. Items 1, 3 and 4 are project development activities. If this definition is kept as is, we recommend replacing "State" with "Tribal Government". Consultation- This item could be deleted from definitions because it is repeated verbatim in Sec. 170.100 (page 51361). Sec. 170.100 also defined the words collaboration and coordination that are not repeated in definitions. Construction contract- A construction contract is not a project. Items (1), (2) and (3) are inaccurate and unneeded. This definition needs to be rewritten, Contract- We use contracts other than PL 93-638 contracts in the IRR Program. This definition needs to be re-written. Design- Suggest deleting part of this definition - "as well as services provided by or for licensed design professionals during the bidding/negotiating, construction, and operational phases of the project" since this unneeded for a definition.

Public Comment

Workgroup Text Change Insert "on public right-of-ways" after "housing streets".

Workgroup Comments To make consistent with the definition of "housing cluster."

Federal Comments

Tribal Comments There was no indication of action by the workgroup. Tribal Caucus agrees with text change recommendation.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.143	pg. 96, D2	Policy	3	17	YES	Reject Comment	AGREE	NO ACTION

Public Comment 170.143 How are IRR housing access roads and housing street projects funded? Comment: Revise the last sentence of NPRM 170.143 to read: "... IRR funds are available to construct IRR housing access roads and housing street projects after the projects are on the FHWA-approved IRR TIP. Tribes may expend IRR funds on pre-project planning activities, identified in 170.409 before project approval on the IRR TIP" The intent of the revision is to reflect the fact that costs associated with pre-construction activities, which lead up to the addition of IRR housing access roads and housing street projects to the Tribal TIP, are an allowable expenditure of IRR funds before such projects are included in the IRR TIP.

Workgroup Text Change TS - Change to show proposed " " changes

Workgroup Comments existing language is adequate.
TS - Clarification

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.143	pg. 96	Policy	1337	26	YES	Accept with Modification	AGREE	AGREE
Public Comment	Page 51363-Sec. 170.143 Comment Insert "Program" between "IRR" and "funds" in the second sentence of the Answer.							
Workgroup Text Change	will make change throughout rule. Refer to final rule writers.							
Workgroup Comments	refer to final rule writers.							
Federal Comments								
Tribal Comments	Global change							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.144 Public Comment	pg. 97, D1	Policy	1337	27	YES	Accept with Modification	AGREE	AGREE
Public Comment Page 51363-Sec. 170.144 Comment: Insert "Program" between "IRR" and "funds" in the Question part and in the first sentence of the Answer.								
Workgroup Text Change text change insert "Program" between IRR and Funds wherever they occur.								
Workgroup Comments global change								
Federal Comments								
Tribal Comments Global Change								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.146	pg. 97, A1	Policy	35	21	YES	Accept Comment	AGREE	AGREE

Public Comment

:Sec; 170.146 What is the Federal share of a toll highway, bridge or tunnel project? Comment: Can a tribe under a Self Determination contract use up to 100% of IRR funds as the match?

Workgroup Text Change

Workgroup Comments previously addressed on pg. 88, D4.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.146	pg. 97, D1	Policy	38	25	YES	Accept with Modification	DISAGREE	AGREE

Public Comment :sec; 170.146. The answer identifies 80% as the maximum of the federal share of a highway, bridge or road project. Yet, a tribe operating the program pursuant to an ISDEAA agreement may use 100% federal funds as the local match. This should be clarified in the regulations by adding the following sentence: "However, a tribe operating the program under the ISDEAA may use 100% of IRR funds to provide for the local match."

Workgroup Text Change same as in 116, pg. 88, D4

Workgroup Comments

Federal Comments Question needs clarification, expanded to cover matching under ISDEAA.

Tribal Comments 3-28 tribal caucus disagrees with federal comment



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.150	pg. 98, D1	Policy	1337	28	YES	Accept with Modification	AGREE	AGREE

Public Comment

Page 51363-Sec. 170.150 Comment: Saying "Tribes may access funding" implies funding is available. We suggest making this change - "Yes, the following Federal programs for recreation, tourism, and trails are possible sources of Federal funding."

Workgroup Text Change

change to "Yes, the following Federal programs for recreations, tourism, and trails are possible sources of Federal funding."

Workgroup Comments

improves language

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.150	pg. 98, D2	Policy	3	18	YES	Accept with Modification	AGREE	AGREE
Public Comment	170.150 Are Federal funds available for a tribe's recreation, tourism, and trails programs? Comment: Add a new paragraph (h) " Such other funding as Congress may authorize and appropriate."							
Workgroup Text Change	add a section (h) to say "Such other funding as Congress may authorize and appropriate."							
Workgroup Comments	adds another funding source							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.151	pg. 99, A1	Policy	41	5	YES	Reject Comment	AGREE	NO ACTION

Public Comment Page 51364, Subpart B, Section 170.151(a)(1). Cross-reference this requirement to this applicable regulation that prescribes what is required in a project scope description. Page 51364, Subpart B, Section 170.151(a)(2). Cross-reference this requirement to a regulation or table that describes what permits are necessary under what circumstances.

Workgroup Text Change no change

Workgroup Comments this is an advisory regulation only and is not intended to be comprehensive.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.151	pg. 99, D2	Policy	27	17	YES	Accept with Modification	AGREE	AGREE

Public Comment

:sec;170.151 The answer states "tribes must have a current TIP in place". Recommend striking "must" and adding "tribal" to become "...tribes are encouraged to have a current tribal TIP...." In addition, there is a typo in (a)-need a space between that and tribes.

Workgroup Text Change

Workgroup Comments Already addressed in comment for pg. 99 C(c)1

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.151	pg. 99, C(c)1	Policy	27	16	YES	Accept with Modification	AGREE	AGREE

Public Comment :sec;170.151 The answer states "tribes must have a current TIP in place". We believe this is an incorrect answer. The requirement for a TIP would depend on the statutes, regulations, and policies of the funding source. A tribal TIP would be a good idea, but certainly not mandatory. It maybe that the State has the project identified on their STIP rather than the Tribe.

Workgroup Text Change Delete introductory paragraph beginning with "In order to . . ." and ending with ". .. in place".

Workgroup Comments Delete introductory paragraph. An IRR TIP is not required.

Federal Comments Fed. Caucus does not believe that the Q fits with the A.

Tribal Comments 3-28



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.151	pg. 99, D1	Policy	38	26	YES	Accept with Modification	AGREE	AGREE

Public Comment

:sec; 170.151. This provision is not accurate as drafted. In seeking access to non-federal funds for recreation, tourism and trails programs, tribes are not necessarily required to have a current TIP in place. The requirement for a TIP depends on the statutes, regulations and policies of the funding source. We suggest that this provision be modified as follows: "In order to use non-IRR federal funds for their recreation, tourism and trails programs, tribes :strike "must"; are encouraged to have a current tribal TIP . . ."

Workgroup Text Change

Workgroup Comments Already addressed in comment for pg. 99 C(c)1

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.153	pg. 100, C(c)1	Policy	415	8	YES	Reject Comment	AGREE	NO ACTION

Public Comment Recreation, Tourism, Trails::Sec; 170.153 What types of activities may tribes perform under a recreation, tourism, and trails program? Comment: subparagraph (a)(8)&(10) are in direct conflict with Title 23 and 170.115 with respect to maintenance and equipment purchase using IRR Construction funds does it not?

Workgroup Text Change

Workgroup Comments Comment is rejected because the committee does not believe that section 170.153 is in conflict with Title 23 and section 170.115.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.154	pg. 100, D1	Policy	1337	29	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51364-Sec. 170.154 Comment: We recommend deleting this section since this subject is already addressed in 25 CFR Part 265. We do not need duplication.

Workgroup Text Change

Workgroup Comments section is informational only.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.155	pg. 101, A1	Policy	388	27	YES	Accept with Modification	AGREE	AGREE

Public Comment

:sec; 170.155. In subparagraph (a), highway safety programs and IRR programs should be separated into two subparagraphs to be consistent with the remaining list of federal programs under which funds may be available for a tribe's highway safety programs.

Workgroup Text Change

separate into 2 paragraphs: (a) IRR program funds; and a new (b) Highway safety program funds under 23 USC 402. Redesignate other sections.

Workgroup Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.155	pg. 101, D2	Policy	3	19	YES	Accept with Modification	AGREE	AGREE
Public Comment	170.155 What Federal funds are available for tribe's highway safety activities? Comment: Add a new paragraph (f) "Such other funding as Congress may authorize and appropriate."							
Workgroup Text Change	add new (f) "such other funding as Congress may authorize and appropriate"							
Workgroup Comments								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.155	pg. 101, D3	Policy	27	18	YES	Accept with Modification	AGREE	AGREE

Public Comment

:sec;170.155 The answer (a) sounds like one program. Recommend changing to two answers: "(a) IRR funds; (b) Highway safety program 23 U.S.C. 402;".

Workgroup Text Change

separate into 2 paragraphs: (a) IRR program funds; and a new (b) Highway safety program funds under 23 USC 402. Redesignate other sections

Workgroup Comments

Addressed in pg 101. A1. as above.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.155	pg. 101, D1	Policy	26	3	YES	Accept with Modification	AGREE	AGREE
Public Comment	Section 170.155 - What Federal funds are available for a tribe's highway safety activities? We believe there is a mistaken listing for item (e) of this section, and that items (d) and (e) refer to the same program. Therefore, our recommendation is that item (d) read "Alcohol-impaired driver countermeasures under 23 U.S.C. 410."							
Workgroup Text Change	the reference for (e) should be in (d). Move "under 23 USC 410" to (d).							
Workgroup Comments	Mistake is a typo							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.156	pg. 102, D1	Policy	3	20	YES	Accept with Modification	AGREE	AGREE
Public Comment	170.156 How can tribes obtain funds to perform highway safety projects? Comment: We recommend the addition of a new paragraph (c) "Congress may authorize other methods by which tribes may obtain funds for highway safety projects."							
Workgroup Text Change	add new 170.155 (f) "such other funding as Congress may authorize and appropriate"							
Workgroup Comments	already added to section 155							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.158	pg. 102, C(c)1	Policy	35	25	YES	Reject Comment	AGREE	NO ACTION

Public Comment :Sec; 170.158 What types of activities are eligible as highway safety projects? Comment: It is quite apparent that many of the activities listed are the responsibility of the BIA Safety Program and the Justice Department so why would any tribe want to use limited IRR dollars, primarily used to improve road and economic conditions, for these type of activities? What may happen is these other responsible parties will stop providing funds now that it is being allowed here. It is recommend that IRR funds be used only to supplement other safety or Justice Department funds on a 20% matching basis for these type activities.

Workgroup Text Change no change

Workgroup Comments tribes have discretion in how to prioratize the use of IRR funds to address safety concerns.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.159	pg. 103, A1	Policy	26	4	YES	Accept with Modification	AGREE	AGREE

Public Comment

Section 170.159 - Are other funds available for a tribe's highway safety efforts? We feel the response to this question ("Yes, tribes should seek grant and program funding for highway safety activities from appropriate Federal, state and local agencies and private grant organizations") is too vague with regard to the possible use of IRR or other funds for these same activities. If the intent of this section is to direct tribes first to non-IRR sources of highway safety funding, then the rule should be clear on that point.

Workgroup Text Change

replace "should" with "may"

Workgroup Comments

don't want to direct tribes, but just inform them of options

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.159	pg. 103, C(C)2	Funding	421	73	YES	Workgroup Disagree	AGREE	NO ACTION

Public Comment

Section 170.155-170.159 (Page 51354) Remove the eligibility for emergency projects for IRRHPP because other sources of funds are available, i.e., ERFO/FEMA.

Workgroup Text Change

Workgroup Comments Funding formula response: The workgroup considers this to be the same comment as C(c)1. This was a workgroup disagreement item.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.159	pg. 103, C(c)1	Funding	1237	3	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

Indian Reservation Roads High Priority Projects (IRRHPP) funding (Section 170.155-170.159) was originally intended to benefit smaller tribes. Population and number of road miles are not the underlying criteria for HPP funding. Criteria such as safety, improving access for employment, commerce, education, and housing would appear to support projects on the Yurok Indian Reservation. This funding should be reserved for needs that are not met by the allocations calculated from the construction funding formula, or by other funding sources.

Workgroup Text Change

Funding Workgroup Response: The commenter is requesting that HPP should be reserved for transportation needs not covered by the Relative Need Distribution Factor. The commenter does not want the IRRHPP to be used for emergency and disaster projects and is concerned that the ERFO and FEMA were removed from the original Tribal Caucus agreement by the Federal Government.

Workgroup Comments

The workgroup has modified and reinserted application to and reimbursement for ERFO and FEMA back into the proposed rule for consideration by the full committee as an additional Q and As at 170.257. The workgroup considers the eligibility for emergencies within the HPP was a key factor in the negotiation. The comment is a workgroup disagreement item.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.160	pg. 104, C(c)1	Policy	15	11	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.160 Can IRR Program funds be used for construction of runways, airports, and heliports? Disagree. The purpose should be defined due to the remote and rural locations of communities in need of emergency transportation services for health related.

Workgroup Text Change

Workgroup Comments is not an eligible activity

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.160	pg. 104, D1	Policy	35	26	YES	Reject Comment	AGREE	NO ACTION

Public Comment :Sec; 170.160 Can IRR Program funds be used for construction of runways, airports, and heliports? Comment: the phrase "which provide service to Indian reservations" should be taken out as it implies that IRR funds can be used for such facilities off the reservation which is not the case or is it?

Workgroup Text Change no change

Workgroup Comments language is adequate because there may instances where the closest airport is just off the reservation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.161	pg. 104, C(c)1	Policy	35	27	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:Sec; 170.161 Can IRR Program funds be used for construction of airport and heliport access roads? Comment: this must be limited to those type of facilities that are on the reservation that directly service eligible Indian tribes.

Workgroup Text Change no change

Workgroup Comments IRRs are for public roads

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.167	pg. 105, D1	Policy	26	5	YES	Reject Comment	AGREE	NO ACTION

Public Comment Section 170.167 - what Federal funds are available for a tribe's transit program? The information contact in this section, which directs readers of the rule to our organization, is incorrect. The final sentence of the first paragraph ("For further information on these programs...") should be corrected to something along the lines of "For further information on these programs and their use for tribal transit programs, or for other federally sponsored technical assistance to support tribes in the development of their tribal transit programs, contact the FTA Rural Transit Assistance Program's 'Information Station' at 1-800-527-8279, or http://www.ctaa.org/ntrc/is_nativeamerican.asp."

Workgroup Text Change no change

Workgroup Comments information is adequate.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.168	pg. 106, D1	Policy	26	6	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Section 170.168 - May tribes or tribal organizations use IRR funds as matching funds for other transit grants or programs? We support the statement in this section, but feel its applicability would be further clarified by appending the following sentence to the end of this paragraph, "To the extent allowed under Federal law, IRR funds may be deemed to have lost their Federal character when used by a tribe or tribal organization for matching other federal grant and contract funds."

Workgroup Text Change

Workgroup Comments Comment has already been addressed by other comments relating to the rule.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.169 Public Comment	pg. 106, B1	Policy	40	5		Reject Comment	AGREE	NO ACTION
:pg.; 51365/66 Transit-Recommend approval of following under 170.169, (a) (small B) (c) (d) (g) (h) (j) (k).								
Workgroup Text Change								
Workgroup Comments Items i, e, f, and l are authorized uses in Chapter 53 of Title 49.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.169	pg. 107, D1	Policy	26	7	YES	Reject Comment	AGREE	NO ACTION

Public Comment Section 170.169 - What transit facilities and related activities that support tribal transit programs are eligible for IRR funding? In the interest of making the IRR program as reasonably comparable to state-managed federal-aid transportation programs as possible, we feel item (j) should be revised to reflect the level of flexibility long enjoyed by states, so this item would read, "Provision of fixed route, demand response services, and non-fixed route paratransit transportation services to enhance access for persons with disabilities, excluding operating costs in urbanized areas as designated by the Census Bureau;"

Workgroup Text Change

Workgroup Comments operating costs are not part of the capital transit project definition

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.169	pg. 106, C(c)1	Policy	415	12	YES	Reject Comment	AGREE	NO ACTION

Transit Facilities::Sec; 170.169 What transit facilities and related activities that support tribal transit programs are eligible for IRR funding?
 Comment: The ineligible uses should also be stated as in other parts of this proposed rule. Such as using buses bought with IRR funds are not to be used for special routes to and from casinos or for political events, or special tours that are for profit or unrelated to providing transportation for the needy for health or job related reasons, etc. Further more, several eligible items on the list are questionable and need to be clearly defined or the IRR Program will end up performing maintenance with IRR Construction funds. Subparagraph (f) is unclear as to what this constitutes. The rule responds to this Question that entails a whole realm of items that are transit program related. These include rehabilitating, re-manufacturing and overhauling a transit vehicle. Such functions are operational expenses and IRR construction program funds should not be used for these purposes. Limitations should be placed on allowable items and activities, or to state that these are allowable under the FTA funded programs.

Public Comment

Workgroup Text Change no change with regards to comment. But change que.

Workgroup Comments Congress authorized the uses

Federal Comments

Tribal Comments No change needed



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.170	pg. 107, D1	Policy	26	8	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Section 170.170 - May BIA use IRR funds as matching funds for other transit grants or programs?As with Sec. 170.168 above, we fully support this statement, but feel its applicability would be further clarified by appending the following sentence to the end of this paragraph, "To the extent allowed under Federal law, IRR funds may be deemed to have lost their Federal character when used by a tribe or tribal organization for matching other Federal grant and contract funds."

Workgroup Text Change

Workgroup Comments The question is already adequately addressed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.171	pg. 107, A1	Policy	1352	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment 170.171 Tribes in NM have been notified formally and by other means of the DOI BIA IRR NPRM. A few tribes or those with the resources have assign staff versed in the transportation arena to respond to the NPRM. There is a concern that as the final rule is completed that some of the concerns by tribes will not be clarified or included. Will the final rule allow future adjustments and/or amendments as problems surface during the actual implementation of the rule? By what means will amendments be made? Section 170.171 establishes a program coordinating committee that :seems; to speak to this issue, however how will the committee's recommendation to make changes to the rule be made?

Workgroup Text Change no change

Workgroup Comments 173 covers the comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.171	pg. 108, B1	Policy	1362	2		Accept Comment	AGREE	AGREE

Section 170.171 (Page 51362-363) - What is the IRR Program Coordinating Committee? The establishment of this committee is absolutely essential to maintain a balanced, effective, well coordinated and accurate program. Recommend that this coordinating committee be established as soon as practical.-Consistent with the government-to-government relationship the United States has with tribes and with the Federal policy of promoting tribal self-determination, the Secretaries established an IRR Program Coordinating Committee. The Committee provides input and recommendations to BIA and FHWA in developing policies and procedures for the IRR Program. The IRR Program Coordinating Committee supplements government-to-government consultation by coordinating with and obtaining input from tribes, BIA personnel, and FHWA personell.-

Public Comment The Committee also reviews IRR program national concerns (including the implementation of these regulations) brought to the attention of the Committee and provides recommendations.-An example of the need for this committee is displayed later in this NPRM in Sections 170.456 and 170.457, when Roadway Functional Classifications are inaccurately defined on Pages 51386-51387.

Workgroup Text Change

Workgroup Comments no change required

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.171	pg. 108, C(c)1	Policy	1378	3	YES	Reject Comment	AGREE	NO ACTION

Public Comment Section 170.171 (Page 51362-363) - What is the IRR Program Coordinating Committee? A committee is essential to maintaining a balanced, effective, coordinated and accurate program; and we support the concept. However, we also support a committee make-up that represents the general configuration of tribes, as opposed to regional representation. We suggest that a committee of 12 should consist of 4 representatives from the categories of "small," "medium," and "large" tribes. To expand, the Coquille Tribe sees itself as a small tribe; and believes we would be represented best "small tribe" representative, with similar perspectives and experiences.

Workgroup Text Change no change

Workgroup Comments adequately covered in 172

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.171	pg. 108, C(c)2	Policy	15	12	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.171 What is the IRR Program Coordinating Committee Committee should have some policy making authority and utilize BIA as technical support personnel only. Any action enacted should be directed to FWHA.

Workgroup Text Change

Workgroup Comments committee is not an advisory committee to FHWA.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.172	pg. 109, A2	Policy	15	13	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.172 Who are members of the IRR Program Coordinating Committee How was the number of membership determined at 12. Larger tribes require additional membership.

Workgroup Text Change

Workgroup Comments committee membership described under 172 is adequate.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.172	pg. 109, C1	Policy	420	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.172 (a) Rather than 12 tribal members representing regions, why not 4 representatives of small, medium and large tribes? If the work of the committee is to present recommendations to BIA and FHWA (FLHO?) why are they also needed on the committee? DOT and DOI-SG :Department of Interior Self-Governance; could still be on the committee as they are also unfamiliar with the IRR program. If technical assistance is wanted, LTAP's could be made available. 170.172 (c) With representation by tribal elected officials, does this mean that when they are replaced at their individual tribe the other regional tribes have to automatically concur with the replacement. If not, will a new regional meeting take place to have a popular vote? Won't this increase unduly the Burden Hours and cost of this regulation implementation? Electing by popularity and not by qualifications will repeat the necessary learning curve of the Neg Reg committee. Is this time consuming with scenic travel the goal?

Workgroup Text Change

Workgroup Comments Secretary has discretion to choose replacement.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.172	pg. 109, C(c)1	Policy	1241	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.172, (a, b, c, d) This section needs more work; it does not address the election cycle of the individual tribes' votive process, and places them in the situation of either hiring employees to administer IRR program, or disrupting the IRR regional committee work while newly elected tribal members come "up to speed" with the process. Also places a funding burden on the participating tribes which may or may not be reimbursed.

Workgroup Text Change

Workgroup Comments rule already covers vacancies that may arise

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.172 Public Comment	pg. 109, A1	Policy	20	14		Reject Comment	AGREE	NO ACTION
Public Comment BIA and FHWA will send eligibility determination to IRR Program Coordinating Committee. Who is on the committee?								
Workgroup Text Change								
Workgroup Comments								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.172	pg. 109, D1	Policy	392	1	YES	Accept with Modification	AGREE	AGREE

Public Comment Section 170.172 Who are members of the IRR Program Committee? Change to: (a) The Committee consists of 12 tribal member representatives (one from each BIA Region) and four non-voting Federal Representatives (FHWA Governmental Affairs, Federal Lands Highway, BIA DOT and DOI-OSG).

Workgroup Text Change change 172(a) last parenthetical to revise "BIA, DOT" to "BIADOT"

Workgroup Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.173	pg. 110, A1	Policy	415	13	YES	Reject Comment	AGREE	NO ACTION

Public Comment

IRR Program Coordinating Committee?:Sec; 170.173 What are the responsibilities of the IRR Program Coordinating Committee? Comment: Under subparagraph (b) it is not clear as to what the "workgroups" would be doing or the makeup, size or qualification. Also what sort of authorities would the workgroups have? How will these workgroups be paid, by the funds in 170.176? One workgroup alone could bankrupt the Coordinating Committee's budget if there is no controls. Most importantly what qualifications must the committee members and workgroup members possess? Surely you don't want members that are unfamiliar with the IRR Program or do not have the qualifications to be giving recommendations on critical issues facing the program such as funding, policy, and changes to these regulations. What are the qualifications for members of the Committee? Transportation experience and/or transportation expertise related Qualifications for membership on this Committee have to be stated that are commensurate for the huge responsibilities of this prestigious group. A learning period cannot be part of the committee's agenda where hard decisions have to be made right from the start.

Workgroup Text Change

Workgroup Comments comment recommends limiting the discretion of the committee

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.173	pg. 111, C(c)1	Policy	15	14	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.173 What are the responsibilities of the IRR Program Coordinatng Committee Committee should have some authority to approve policies. BIA membership should be a techncial support individual/group.

Workgroup Text Change

Workgroup Comments see above rationale for another comment regarding similar matter.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.173	pg. 110, A2	Policy	3	21	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.173(a)(2) What are the responsibilities of the IRR Program Coordinating Committee? Comment: See above comment regarding 170.114 (page 51362) regarding tribal exemption from unpublished agency guidelines and manuals. We recommend that any IRR Program policies and procedures developed by the IRR Program Coordinating Committee and approved by the BIA and/or FHWA, which are not issued as regulations under the Administrative Procedure Act (APA), constitute "guidance" to Indian tribes and tribal organizations which contract or compact IRR programs, functions, services and activities under P.L. 93-638. See, e.g., 25 C.F.R. 900.6 and 25 C.F.R. 900.126. The final IRR rule should clarify the applicability to P.L. 93-638 tribes of IRR Program Coordinating Committee "policies" (applicable only if agreed to by the tribe and the Secretary in a P.L. 93-638 contract or agreement).

Workgroup Text Change

Workgroup Comments Change requested by commentor is not necessary because comment is already covered by law and 25 CFR 900.5.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.173	pg. 111, D2	Policy	420	2	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.173 ADD (d) The Committee will provide quarterly reports to all tribes of current issues and how to get their input. Comment: As shown by the large and varied responses to this regulation, it is readily apparent that the Neg Reg committee failed in this key responsibility to communicate and provide representation of their regions to their work effort. 170.173 ADD (e) The Committee will provide an annual report to all tribes and congressional staff of their accomplishments, detailed expenses, problems and target goals.

Workgroup Text Change

Workgroup Comments adequately covered in 177

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.173	pg. 112, D3	Policy	1241	2	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.173 add (e) The committee :shall; provide an annual report to all tribes and congressional staff advising of the committee's achievements, detailed expense reporting, problems and target goals for the next reporting period.

Workgroup Text Change

Workgroup Comments This adequately addressed in 170.177.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.173	pg. 111, D1	Funding	27	19	YES	Accept with Modification	DISAGREE	AGREE

Public Comment

:sec;170.173 Since the IRR Program Coordinating Committee is also identified as having a part to play in the TTAM we recommend adding the following to the list of responsibilities:-"New IRR Inventory data and form-Review simplified cost to construct methodology-Verifying formula calculations-Verify formula program and design-Verify bid tab methodology-Review broader cost elements, not just roads-Consider over-design issue-Consider inflationary impacts on 1 Million dollar cap for High Priority and Emergency Projects-HPP ranking system-Concept to discuss reporting emergency/disaster expenditures annually to Congress-Consider impact of including funded but non-constructed projects in the CTC calculation."

Workgroup Text Change

Funding workgroup response:
The commenter is requesting a change in the list of responsibilities. (New IRR Inventory data and form, verify formula calculations, etc.)

Workgroup Comments

The workgroup significantly modified the responsibilities of the IRR coordinating committee at 170. 274, 170.299, and new 170.277. The workgroup agrees with modification.

Federal Comments

Fed caucus cannot agree to changes made to 270.274 and 270.299.

Tribal Comments

3-28 The Tribal Caucus considers this a core issue of the funding negotiation.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.174	pg. 112, C(c)1	Policy	15	15	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.174 How often will The IRR Program Coordinating Committee meet? The Committee should meet quarterly and utilizing tribal administrative funds. Should not establish a new account solely for the purpose of the committee's duties and responsibilities.

Workgroup Text Change

Workgroup Comments micromanaging committee

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.176	pg. 112, C(c)1	Policy	376	13	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:Sec; 170.176 How will the IRR Program Coordinating Committee be funded? Comment: If this amount is exceeded what is the penalty? If the money is not all spent, then what happens to the balance? Where are the controls on the spending and what assurances do the tribes have that this amount will not be exceeded or the Secretary dipping into the construction dollars to supplement overspending or to support other non-IRR related initiatives by the Secretary?

Workgroup Text Change

Workgroup Comments there are already adequate controls on the use of federal funds in federal laws and regulations

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.176 Public Comment	pg. C(c)2	Policy	15	17	YES	Reject Comment	AGREE	NO ACTION
170.176 How will the IRR Program Coordinating Committee be funded? Per Diem only.								
Workgroup Text Change								
Workgroup Comments adequately covered in 175								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.178	pg. 113, C(c)1	Policy	420	4		Accept Comment	AGREE	AGREE

Public Comment

Comment: The LTAP's were envisions to provide technology transfer to public agencies (including tribes) and their contractors. TTAP's were envisioned to provide this effort to meet the needs of the tribes by using a circuit rider approach to go to the tribes and not to tell the tribes " Here we are (Symposiums, Expos, National Conferences), come pay us so we can give you our viewpoints." Their cooperative agreements indicated modest fees to defer incidental costs and not to recover all expenses in emphasizing partnerships to improve the IRR.

Workgroup Text Change

Workgroup Comments no change requested

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.178 Public Comment	pg. 114, D1 170.178 delete "program" after "LTAP". The P indicates it is a program.	Policy	420	3	YES	Accept with Modification	AGREE	AGREE
Workgroup Text Change	in 178 delete "program" after LTAP.							
Workgroup Comments								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.179	pg. 114, D1	Policy	35	31	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:Sec; 170.179 How does the Indian LTAP work? Comment: Replace the term "IRR Program Participants" with "IRR Program staff' throughout this subsection as these funds are also to provide technical assistance to BIA employees too is it not?

Workgroup Text Change

Workgroup Comments the term "participants" is a more appropriate term

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.180	pg. 114, C(c)1	Policy	26	9	YES	Reject Comment	AGREE	NO ACTION

Public Comment Section 170.180 - How is the Indian LTAP funded? We are surprised that this section does not answer the question of how these LTAP funds are allocated to specific LTAP centers, whether it's at BIA's discretion, if each center receives a formula-based allocation, or even a historical context of the general level of funding that LTAP centers receive for tribal local technical assistance.

Workgroup Text Change

Workgroup Comments adequately addressed in rule

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.185	pg. 115, C(c)1	Policy	41	6	YES	Accept with Modification	AGREE	AGREE

Public Comment

Page 51367, Subpart B, Section 170.185. An alternative means of contacting the LTAP is needed since the listed Internet address is not functional.

Workgroup Text Change give them the Internet address <www.fhwa.dot.gov>

Workgroup Comments

Federal Comments Need to check validity of web site addresses throughout.

Tribal Comments 3-28



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.189	pg. 116, D1	Policy	1370	16	YES	Reject Comment	AGREE	NO ACTION

Rule - Page 51367 states: :section; 170.189 "What does the Indian LTAP center advisory committee do? . . . (b) The advisory committee must meet at least twice a year. Tribal representatives may request IRR funding to cover the cost of participating in these committee meetings.

Public Comment

"Comment: The Tribes believe that the word "must" should be changed to "may" and at minimum the meeting requirement should be annually before end of fiscal year. The Tribes suggest that the Indian LTAP center program the costs for tribal representatives and be paid from Indian LTAP funds.

Workgroup Text Change

Workgroup Comments adequately addressed in section 189

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.225	P. 134-135, D2 Proposed Language	Funding	420	6	YES	Reject Comment	AGREE	NO ACTION
Public Comment	<p>170.225 Eliminate (a) 2 percent and replace with &/- 21 percent for base funding distribution, (c) (2) replace both 12.5 percent with 50 percent and 9 percent respectively. Comment: this will allow for the definition of relative need to reflect the actual need and not a dollar argument. The remaining &/- 20 percent will be using the tilted existing cost to construct formula to allow the large tribes to continue to get their majority share of this portion. The IRRHPP will then be realized as the real relative need. Relative need should mean the percentage of benefit for a small tribe equals the percentage benefit of a large or medium tribe. The benefit is the goal of the IRR program, which are transportation projects to improve the quality of life and not a money share. Stated differently if a transit project serves 60% of a small tribe then it would be prioritized before a transit project that serves only 30 percent of a medium size tribe. That is the relative concept. There are not enough dollars to meet all of the need. Therefore, the IRR program needs to join the spirit of 23 U.S.C., which is being met by state processes to fund prioritized competing projects on their merit.</p>							
Workgroup Text Change								
Workgroup Comments	<p>Commenter request changing 2% amount - the workgroup rejects as 2% is defined by statute. The second request recommends different formulas by category - The workgroup does not understand the commenters rationale and rejects as it would require a complete renegotiation of the formula. The third comment is that the program should be run off a national ranking system. This would also require a renegotiating of the formula - the committee rejects the recommendation.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.225	P. 134, C(c)1 Programmatic Concerns	Funding	381	1	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	Subpart C: Indian Reservation Roads Program Funding:sec; 170.225 How are IRR Program funds allocated? Comment: If IRR Program funds are allocated to Tribes and projects on the basis of "relative need", fail to see the need for a distinction between those funds which are at or below a #275 million authorization and those funds which are above that level. How are numbers (over #275 million & 121/2% & 121/2#=#25% derived? These takedowns drastically impact funding for a large tribe like Navajo Nation.Recommend: We strongly recommend that funding be based on relative need or project need as a percentage of total authorization.							
Workgroup Text Change	modify 170.225 (c)(1) by deleting "'-" symbol and replace with"minus"							
Workgroup Comments	This change will provide additional clarity to proposed regulation. The commenter requested changing "... funding be based on relative need or project need as a percentage of total authorization." This comment was rejected by the workgroup.							
Federal Comments	Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.							
Tribal Comments	PS Q and As will be drawn up that represent the concepts of the table. 225 will be simplified and separate Q and As will be provided to address the specifics. The TTAM Table will be deleted. 3-28 This was a core issue of the funding formula negotiatio							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.225	P. 134, C(c)2 Subparagraph (c)	Funding	41	11	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	<p>Page 51370, section 170.225(c). From the text of the proposed rule, it is unclear if the #275 million threshold applies before or after takedowns. The background information of the proposed rule (comments on page 51333 concerning the Population Adjustment Factor allocation) and the briefing given at the public education and information meeting, however, interpret the threshold as being applied to appropriate funds after takedowns. If this is the case, the #275 million threshold for the revised distribution factor is too high, and should be changed to #250 million in this section and elsewhere in the proposed rule. With a hypothetical gross funding level of #350 million, takedowns reduce actual funding eligible for distribution to less than the proposed #275 million threshold. The practical implication of this is that it will be five or more years before the special provision will be applied, and before small tribes will receive any relief from current distribution procedures. A better approach is to set a specific implementation date, independent of total appropriation amounts, for the new formula to take effect. A logical time for the new formula to be implemented (without the threshold restriction) is FY2004 when TEA21 reauthorization begins.</p>							
Workgroup Text Change	<p>Commenter is requesting clarification on the takedowns- Takedowns language in NPRM was not original language proposed by consensus of the full committee, recommend reverting to original language Reference D6 to 170.225.</p>							
Workgroup Comments	<p>The second request is to change the negotiated formula - the workgroup rejects this.</p> <p>The third request is on the implementation date, which the workgroup rejects.</p>							
Federal Comments	<p>Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.</p>							
Tribal Comments	<p>3-28 This was a core issue of the funding formula negotiation</p>							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.225	P. 136, D6 TTAM	Funding	15	18	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	170.225 How are IRR Program funds allocated? Recommend language change it appropriately identified TTAM as the funding allocation methodology. But the new language incorporated under (c)(2) that by adding "after takedowns" substantially alters the consensus formula depending on the interpretation of where the "increase" is calculated relative to where it is taken.							
Workgroup Text Change	delete in (c)(2) "after takedowns," and, adding to 170,225 (a) after program ", calculated on the full amount of the authorization"							
	Takedowns language in NPRM was not original language proposed by consensus of the full committee, recommend reverting to original language.							
Workgroup Comments	Workgroup accepts, refer to Exel file - takedowns.exe as part of the funding formula rationale { resident on the desktop}. Addition to (a) is based on response to 170.232 D1.							
Federal Comments	Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.							
Tribal Comments	3-28 This was a core issue of the funding formula negotiation							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.225	P. 133, C(a)1	Funding	35	34		Reject Comment	AGREE	NO ACTION

Public Comment :Sec; 170.225 How are IRR Program funds allocated? Comment: This methodology does NOT meet the intent of 23 USC 202(d)(D) and implies that up to 30% of the IRR funds are distributed in a tribal share fashion rather than based on true transportation need. This is not a social program although this formula is turning it into one.

Workgroup Text Change

Workgroup Comments No action required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.225	P 133, C(a)2	Funding	35	39		Reject Comment	AGREE	NO ACTION

Public Comment :Sec; 170.225 How are IRR Program funds allocated? Under subparagraph (1) & (2) of this subparagraph (c) refers to "Increased Funding" which is incorrect and misleading. The total available funding after take downs does not change but more funds are siphoned off for additional set asides from the available construction dollar amount for use by those smaller tribes with a base funding amount of less than \$1.0 million as described in the formula writeup for these set asides. How is this fair to all tribes and how does this meet the intent of 23 USC 202(d)(D) where it states "the relative needs of Indian tribes" and has the Secretary of Transportation identified those needs as required by the law? How can anyone develop a formula without such needs identified first?

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.225 Public Comment	P. 133, B1 Support for the Proposed Rule	Funding	40	9		Reject Comment	AGREE	NO ACTION
:pg.; 51370 Subpart C-IRR Program Funding 170.225 Recommend approval.								
Workgroup Text Change								
Workgroup Comments No response required.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.225	P. 132, A1	Funding	376	19		Reject Comment	AGREE	NO ACTION

Public Comment

:Sec; 170.225 How are IRR Program funds allocated? Under subparagraph (c) what was the basis for the #275 million figure and why is it so low a figure in relationship to how it is being used in the additional set asides for IRRHPP and PAF?

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.225 Public Comment	P. 134, D1 Proposed Language	Funding	1341	5	YES	Reject Comment	AGREE	NO ACTION
170.225 Elimination of 2% in favor of +/-21% for base funding distribution, (c) (2) replace both 12.5% with 50% and 9% respectively, Concur								
Workgroup Text Change								
Workgroup Comments Commenter request the changing the percentages to the 2%. The workgroup rejects because the 2% is in statute								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.225	P. 135-136, D5 2%	Funding	1337	33	YES	Accept with Modification	DISAGREE	AGREE

Page 51370-Section 170.225 Comment: (a) Continuing the 2% Transportation Program is a misstatement. The response in (a) to the question does not fully answer the question. Also, regulations do not allocate funds. We recommend the Answer part be changed to - "IRR Program funds are allocated according to the Tribal Transportation Allocation Methodology (TTAM) by: (a) Distributing the Indian Reservation Roads Planning funds authorized by 23 USC 204(j) as a percentage of each Tribe's TTAM allocation: (b) Creating a discretionary funding pool for IRR High Priority Projects (IRRHPP) that is 5% of the available construction funds; (c) Distributing the balance of the construction program funds using the Relative Need Distribution Factor that is 50% Cost-to-Construct & 30% Vehicle Miles Traveled & 20% Population, (d) Creating a special provision for additional authorization greater than \$275,000,000 that includes: (1) Increased funding is the Authorized funding minus FHWA takedowns minus Other Takedowns minus \$275,000,000; (2) Of this increased funding, 12.5% is added to the IRRHPP and 12.5% is added to the Population Adjustment Factor."

Public Comment

Workgroup Text Change Change the numbering for 170.225 from "(c)(3)" to "(d)"
Insert the words "for construction" after "funds"

Workgroup Comments Comments have been made to D3, P. 135, #1231, A2 P. 132, #376, and change 170.225 (c)(3) to 170.225 (d)

Federal Comments Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.

Tribal Comments 3-28 This was a core issue of the funding formula negotiation



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.225	P. 135, D3 language	2% Funding	1231	41	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	:Sec;170.225 How are IRR Program funds allocated? We recommend that in this provision, and throughout the final rule that the figure of "2%" be stricken and the TEA-21 statutory reference (23 U.S.C.:sec;204(j)) be used in lieu thereof to accommodate the possibility that the reauthorization legislation may use a different percentage figure.							
Workgroup Text Change	170.225 Delete "2%" and replace with "23 USC 204(j)"							
Workgroup Comments	Commenter recommends changing 2% . Workgroup accepts the recommendation and recommends the change to 204(j) of 23 USC Check for terminology consistency throughout the full regulation.							
Federal Comments	Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.							
Tribal Comments	3-28 This was a core issue of the funding formula negotiation							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.225	P. 132, A2 Subparagraph (c)(3)	Funding	376	21	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	:Sec; 170.225 How are IRR Program funds allocated? Under subparagraph (3) of this subparagraph (c), is misleading. It is best to just reference 170.270 here.							
Workgroup Text Change	170.225 (c)(3) add to the end of subpart "as defined in section 170.270."							
Workgroup Comments	Adds clarity, We have reviewed the proposed regulation language and recommend adding the reference to 170.270.							
Federal Comments	Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.							
Tribal Comments	3-28 This was a core issue of the funding formula negotiation							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.225	P. 135, D4 2% Planning	Funding	35	36	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	:Sec; 170.225 How are IRR Program funds allocated? The reference in subparagraph (a) of "the 2% Transportation Planning Program" is incorrect. There is no 2% planning program but a 2% set aside for tribal planning.							
Workgroup Text Change								
Workgroup Comments	Previously addressed by D3, Page 135.							
Federal Comments	Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.							
Tribal Comments	3-28 This was a core issue of the funding formula negotiation							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.226	P. 137, C(c)3 Formula Clarifications	Funding	394	13	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	The formula needs clarification, the increase in Authorization above #275 million should be used for calculating the "25 percent of the amount over #275 million", not the funding amount after takedowns.							
Workgroup Text Change								
Workgroup Comments	The commenter is asking for clarification. The workgroup believes this was addressed in the original TTAM. The changes that have been made address this comment. Changes are noted in the answer to C(c)2							
Federal Comments	Section 170.226 was deleted by FF workgroup and changes made in 170.225. Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.							
Tribal Comments	PS This flowchart will be updated with rewrite of 225 and as represented in the TTAM table. 3-28 This was a core issue of the funding formula negotiation							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.226	P. 138, D1 Proposed Language	Funding	15	19	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	<p>170.226 What is the process to allocate IRR Program funds?The diagram of IRR funding Formula was changed. The most significant change was the placement of the 2% Planning. The following changes in the chart are noted: 1) it deletes date for formula implementation; 2) Distribution?/Calculation? 2% planning from "Authorization" to after takedowns; 3) Identified separate FHWA Takedowns; 4) Dropped eRFO Program reimbursement; 6) distribution?/Calculation? Of 25% funding increase changed from "Authorization" to after Takedowns. These substantial changes to the consensus formula significantly change the calculation of increase for applying PAF and IRRHPP contributions,. It also may make IRRHPP an emergency only fund and may in the future restrict tribal access to ERFO funds. It was the intent of the tribal caucus that the greatest amount of 2% funds be made available to the tribes.stating "the amount of funding available at 2% tribal transportation planning is 2% should be clearly stated to reflect the amount without "after-takedowns"</p>							
Workgroup Text Change								
Workgroup Comments	<p>Comments to change and clarification to takedowns and diagram as compared to the original TTAM. Workgroup has addressed concerns with the changes made to C(c)2.</p>							
Federal Comments	<p>Section 170.226 was deleted by FF workgroup and changes made in 170.225. Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.</p>							
Tribal Comments	<p>3-28 This was a core issue of the funding formula negotiation</p>							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.226	P. 137, C(c)4	Funding	21	8	YES	Accept with Modification	DISAGREE	AGREE

Public Comment

170.226 The diagram of IRR Funding Formula was changed. The most significant change was the placement of the 2% Planning. Our Tribes recommendation is to use the chart represented from the original TTAM :Tribal Transportation Allocation Methodology;.

Workgroup Text Change

Workgroup Comments Diagram issue request to revert to original TTAM. Workgroup accepts with modification, change made at C(c)2

Federal Comments

Section 170.226 was deleted by FF workgroup and changes made in 170.225. Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.

Tribal Comments

3-28 This was a core issue of the funding formula negotiation



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.226	P. 137, C(c)5	Funding	27	23	YES	Accept with Modification	DISAGREE	AGREE

Public Comment

:sec;170.226 The diagram of IRR Funding Formula was changed. The most significant change was the placement of the 2 percent Planning. :Diagram representing original TTAM.;Our recommendation is to use the chart represented from the original TTAM. There is no justification for not applying 2 percent to the full amount of the authorization. The administration is still able to withhold their full administrative takedown. This is only a matter of determining the amount of 2 percent. It was the intent of the tribal caucus that the greatest amount of 2 percent funds be made available to the tribes. It is no different that stating that the amount of IRRBP funds is 13 million dollars, there is no "after takedowns" in that process. If the authorization if 275 million dollars the 2 percent is 5.5 million dollars. If it would be clearer to state "the amount of funding available to 2 percent tribal transportation planning is 2 percent of the amount of the authorization" then make that change. :Example of Takedowns table;

Workgroup Text Change

Workgroup Comments

Commenter is recommending reverting to the original TTAM Diagram. The workgroup accepts with modifcaiton. Changes made on C(c)2.

Federal Comments

Section 170.226 was deleted by FF workgroup and changes made in 170.225. Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.

Tribal Comments

3-28 This was a core issue of the funding formula negotiation



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.226	P. 137, C(c)2 Diagram Change	Funding	392	2	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	Section 170.226 What is the process to allocate IRR Program Funds? :Disagree; with the diagram this was changed from the original process that was submitted by the Funding Work Group and Tribal Caucus there is no policy on the takedown order so change back to original process submitted.							
	Add to 170.225							
	"(b) The following chart and diagram illustrate how IRR Program funds are allocated." This will require a renumbering of 225s answer. Reference accepted items from the funding formula workgroup file located on the desktop Subworkgroup drafting.doc							
Workgroup Text Change	Also, include new diagram and flowchart from the file.							
Workgroup Comments	Revert to original TTAM diagram. The workgroup agrees with modification, and provides a revised diagram, a new chart to indicate the flow of the takedowns. In addition, the deletion of Q and A 170.226 along with the renumbering of 170.225 and an additional item "(b)" to the answer.							
Federal Comments	Section 170.226 was deleted by FF workgroup and changes made in 170.225. Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.							
Tribal Comments	3-28 This was a core issue of the funding formula negotiation							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.226	P. 138, D3	Funding	35	41	YES	Accept with Modification	DISAGREE	AGREE

Public Comment :Sec; 170.226 What is the process to allocate IRR Program funds? Comment: The diagram is mislabeled as "IRR Funding Formula" which is not what is being shown. It is more of a diagram outlining the "IRR Funding Breakdown" which happens to also show the various parts of the proposed formula.

Workgroup Text Change

Workgroup Comments Comment regarding labeling of Diagram. Comment accepted by workgroup with modification. Change made at C(c)2

Federal Comments Section 170.226 was deleted by FF workgroup and changes made in 170.225. Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.

Tribal Comments 3-28 This was a core issue of the funding formula negotiation



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.226	P. 138, D4	Funding	1340	2		Reject Comment	AGREE	NO ACTION

Public Comment

Subpart C, Subsection 170.226 the diagram shows a total of 17.5% going into the High Priority Projects, clarification is needed to explain why the additional 5% of the funds is being removed from the construction program.

Workgroup Text Change

Workgroup Comments The subject is addressed in 170.247

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.226	P. 136, A1 General Comments to Diagram	Funding	16	5	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	Clarify where the 2% planning funds come from.a. Will the HPP and potentially the PAF effect the amount of funds available to tribes for transportation planning.b. The chart in section 170.226 is unclear in regards to whether the 2% planning funds are taken down before or after the HPP and PAF.							
Workgroup Text Change								
Workgroup Comments	The work product of the Neg-Reg Committee has been changed in NPRM. We request clarity on what caused the changes to the Neg-Reg work product. Request for clarification. The workgroup has addressed this with the changes to C(c)2. Regarding the 2%, refer to 23 USC 204(j).							
Federal Comments	Section 170.226 was deleted by FF workgroup and changes made in 170.225. Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.							
Tribal Comments	3-28 This was a core issue of the funding formula negotiation							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.226	P. 138, D2	Funding	1337	34	YES	Accept with Modification	DISAGREE	AGREE

Public Comment Page 51370-Section 170.226Comment: We recommend adding the word "Program" after IRR in the diagram and change the title of this diagram to "IRR Program Funding Distribution". We also recommend changing "Construction Program" to "Construction Funding" since funding is the subject being addressed in this diagram.

Workgroup Text Change

Workgroup Comments Changes to Diagram and insert Program between IRR Funding, under Construction Program, delete program and replace with Funding.
Workgroup accepts with modification, and made changes within C(c)2

Federal Comments Section 170.226 was deleted by FF workgroup and changes made in 170.225. Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.

Tribal Comments 3-28 This was a core issue of the funding formula negotiation



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.226	P. 136-137, C(c)1 Programmatic Concerns	Funding	1370	17	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	<p>Rule - Page 51370 states: :section; 170.226 "What is the process to allocate IRR Program funds?" Comment: Why was the proposed federal caucus text/graphics utilized in the Rule and the proposed tribal caucus text/methodology/graphics deleted? The Shoshone-Bannock Tribes disagree with the diversion of 5% & 12.5% of the scarce IRR funds or any funding increase to a High Priority Project Program pork barrel fund. The proposed rule fails to show how the Shoshone-Bannock Tribes will receive a fair distribution of this 17.5% of IRR program funds. Our program is grossly under funded with our existing IRR inventory of roads projected to take in excess of 200 years to improve to an adequate standard at current funding levels. To divert funding from known needs to a perceived need by the smaller tribes with little present or potential road inventory is unconscionable. The Tribes highly suggest that the Committee reach consensus on this important section of the proposed Rule. The Tribes recommend that the annual takedown be clarified to include: 1.) 2% transportation planning funding determined from the total annual authorized amount (i.e., 2% of #275 million), 2.) that the "annual administrative capacity" set-asides for transportation planning be continued, and 3.) FHWA & BIA Administrative take downs be taken out after, not before, other national take downs.</p>							
Workgroup Text Change								
Workgroup Comments	<p>1) recommendation to move takedown - Accepted with modification, changes made at C(c)2. 2) Annual Administrative Capacity Building - workgroup disagreement 3) Administrative takedowns is in statute - reject</p>							
Federal Comments	<p>Section 170.226 was deleted by FF workgroup and changes made in 170.225. Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.</p>							
Tribal Comments	<p>3-28 This was a core issue of the funding formula negotiation</p>							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.232	P. 139, D2	Funding	1241	6	YES	Accept with Modification	AGREE	AGREE
Public Comment	170.232, (170.234)??? Eliminate these and all sections with reference to 2% planning funds.							
Workgroup Text Change								
Workgroup Comments	handled by P. 135, D3							
Federal Comments	2% planning global change.							
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.232	P. 139, C(c)2	Funding	1373	5		Reject Comment	AGREE	NO ACTION

Public Comment

170.232 Two percent planning funds should not be allocated using the TTAM. This again gives an upper hand to the larger tribes and hurts the smaller tribes. The allocation to the Regions are fine but the 2% planning fund amounts (based on TTAM) on a tribal level are insufficient. Allow the tribes to apply for the funding from the regions or the agencies in the amounts they need and then have the regions or agency break it up (leave it as it is now). The amount a tribe would receive using TTAM will not be enough to even update a construction plan.

Workgroup Text Change

Workgroup Comments No request for change, no action required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.232	P. 139 - 140, D3	Funding	35	42	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec; 170.232 How does BIADOT allocate and distribute 2% Transportation Planning funds? The term "Tribal Transportation Planning funds" is a misnomer in that "up to 2%" of IRR construction fund are set aside for "tribal transportation planning activities". It is recommended that the word "Tribal" be stricken here. Also what is meant by "pro rata"? Again this first sentence is too wordy and will confuse the reader. It is recommend the wording be changed to: "2% Transportation Planning funds are distributed to the tribes and/or BIA regions in accordance with 170.270."

Workgroup Text Change

Insert at the end of the first sentence of the answer ",reference 170.270"

Workgroup Comments

handled by P. 135, D3 in both the question and anwer. The comment is accepted with modification. Consistency throughout the document must be verified in the handling of converting "2% ...planning" to a reference to 23 USC 204(j) planning.

Federal Comments

2% planning global change.

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.232	P. 139, D1 Proposed Language	Funding	1355	30	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	We suggest clarifying :sec; 170.232 by adding a sentence: "The amount of funding available to 2% tribal transportation planning is 2% of the amount of the total IRR authorization."							
Workgroup Text Change								
Workgroup Comments	2% Takedown issue Commenter is requesting clarification on the takedowns- Takedowns language in NPRM was not original language proposed by consensus of the full committee, recommend reverting to original language 170.225 and adding to 170,225 (a) after program ", calculated on the full amount of the authorization"							
Federal Comments	Takedown Issue. Federal Caucus is open to considering takedown of 2% from full authorization.							
Tribal Comments	3-28 Tribal Caucus accepts							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.232	P. 140, D4	Funding	15	21	YES	Accept with Modification	AGREE	AGREE

Public Comment 170.232 How does BIADOT allocate and distributes 2% Transportation Planning funds? Delete BIADOT. BIA administers the allocated amount according to the Relative Need Distribution Factor. BIADOT does not allocate these funds. Reinstate Consensus Committee "shall" be distributed to the Office of Self-Governance for Self-Governance tribes that negotiate 2% transportation planning in their.....

Workgroup Text Change Delete "DOT" from "BIADOT" in both question and answer

Workgroup Comments Clarification of where the action is taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.232	P. 139, C(c)1 Programmatic Concerns	Funding	1355	13	YES	Workgroup Disagree	NO ACTION	NO ACTION
Public Comment	<p>2% Tribal Transportation Planning. The Negotiated Rule-making Committee should revisit :sec; 170.232 dealing with the 2% Tribal Transportation Planning funds. The distribution method described in :sec; 170.232 is not equitable. This topic was not given serious consideration by the Committee because negotiating the funding formula for construction funds demanded all the effort of the funding formula workgroup. A method must be developed to distribute tribal transportation planning funds so that all tribes can participate in the program at some minimum level. The NPRM identifies many activities tribes are supposed to perform using their tribal transportation planning funds, yet distributing the 2% funds pro rata according to relative need formula results in some tribes generating only \$5 per year. We recommend a stepped method similar to the Population Adjustment Factor in the TTAM be developed. We also believe the costs of doing business and costs associated with geographic isolation must be taken into consideration when determining minimum amounts.</p>							
Workgroup Text Change								
Workgroup Comments	<p>Recommendation is to provide a formula for the distribution of Tribal Transportation Planning funds. The workgroup is unable to come to an agreement on how to address.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.235	P. 145, D1 Proposed Language	Funding	1337	36	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	Page 51370-Section 170.235 Comment: We recommend deleting this section since Section 170.225 addresses how IRR Program funds are allocated.							
Workgroup Text Change	Delete header :Tribal Transportation Allocation Methodology for IRR Construction"							
Workgroup Comments	Delete 170.235 question and answer.							
Workgroup Comments	Accept with Modifications to 225 (d) adding "for construction"							
Federal Comments	Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.							
Tribal Comments	3-28 This was a core issue of the funding formula negotiation							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.235	P. 145, D3	Funding	35	44	YES	Accept with Modification	DISAGREE	AGREE

Public Comment :Sec; 170.235 How does BIA allocate IRR construction program funds to the tribes?Comment: This appears to be a duplication of :sec; 170.225 and should be deleted. Otherwise, the term "IRR construction program" in the question is again a misnomer. There is only the IRR Program which provides "IRR Construction funds" for purposes of carrying out the intent of this program. Strike the word "program" from the question. Also this implies that there are no direct service tribes when in fact there are many. The wording "to the tribes" should be stricken or revised to read "to tribes and/or BIA regions?" to be consistent with 170.236. Paragraph (b) does not answer the question. Also, how can funds be distributed if you don't know ahead of time what the "take downs" are? There is no listing of what constitutes these "Other Takedowns" and how these impact the final construction amount"

Workgroup Text Change Delete header :Tribal Transportation Allocation Methodology for IRR Construction"
Delete 170.235 question and answer.

Workgroup Comments Accept with Modifications to 225 (d) adding "for construction"

Federal Comments Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.

Tribal Comments 3-28 This was a core issue of the funding formula negotiation



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.235 Public Comment	P. 145, D4	Funding	420	9	YES	Reject Comment	AGREE	NO ACTION
170.235 Replace "to" with "for" in the question. And replace "Relative Need Distribution Factor" with "cost to construct computation."								
Workgroup Text Change								
Workgroup Comments Previously addressed								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.235	P. 144-145, C(c)2	Funding	378	21	YES	Reject Comment	AGREE	NO ACTION

Public Comment

IRR Funding Formula; Subpart C, Section 170.235 While the Nation largely concurs with the consensus compromise on the IRR Funding Formula, we do recommend a modification to the calculation fo the High Priority Projects and Population Adjustment Factor.The 25% of an annual appropriation greater than #275 million is designed to address the chronic underfunding of the IRR Program. Should the Congress greatly increase the overall IRR appropriation, the justification and need for diverting large sums of money to the High Priority Projects and Population Adjustment Factor is reduced. For this reason, the Nation recommends that the 25% of an amount greater than #275 million calculation apply only to annual appropriations up to #400 million. Appropriations greater than #400 million would be exempt.The Nation believes this is a fair compromise and should be included in the proposed formula.

Workgroup Text Change

Workgroup Comments

Request is to cap the PAF. Comment is rejected as it require renegotiation of the formula.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.235 Public Comment	P. 144, B1 Support for the proposed rule :pg.; 51370 Tribal Allocation, 170.235, Recommend approval.	Funding	40	10		Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments No request, no action required.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.235	P. 145, D2	Funding	376	25	YES	Accept with Modification	DISAGREE	AGREE

Public Comment :Sec; 170.235 How does BIA allocate IRR construction program funds to the tribes? Comment: This appears to be a duplication of 170.225 and should be deleted. Otherwise, the term "IRR construction program" in the question is again a misnomer. There is only the IRR Program which provides "IRR Construction funds" for purposes of carrying out the intent of this program. Strike the work "program" from the question. Also this implies that there are no direct service tribes when in fact there are many. The wording "to the tribes" should be stricken or revised to read "to tribes and/or BIA regions?" to be consistent with 170.236.

Workgroup Text Change Delete header :Tribal Transportation Allocation Methodology for IRR Construction"
Delete 170.235 question and answer.

Workgroup Comments Accept with Modifications to 225 (d) adding "for construction"

Federal Comments Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial secretarial approval.

Tribal Comments 3-28 This was a core issue of the funding formula negotiation



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.235	P. 144, C(c)1	Funding	15	22	YES	Accept with Modification	DISAGREE	AGREE

Public Comment 170.235 How does BIA allocate IRR construction program funds to the tribes? BIADOT does not allocate these funds. Inconsistent to original language proposed by the Committee. Adding "after takedowns" substantially alters the consensus formula depending on the interpretation of where the "increase" is calculated relative to where it is taken.

Workgroup Text Change

Takedowns-Takedowns language in NPRM was not original language proposed by consensus of the full committee, recommend reverting to original language.

Workgroup Comments

Workgroup accepts, refer to Exel file - takedowns.exe as part of the funding formula rationale { resident on the desktop}.
170.235 was deleted and the takedown concern was addressed with modification to 170.225.

Federal Comments

Federal Caucus can not agree with rewrite of section 170.225 as provided by FF workgroup. The chart which was moved by the formula workgroup to section 170.225 also needs to be re-written. It is not consistent with initial Secretarial approval.
Takedown process does need to be defined more clearly using seperate Q&A's for each takedown.

Tribal Comments

3-28 This was a core issue of the funding formula negotiation



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.236	P. 148, D2	Policy	1388	5	YES	Reject Comment	AGREE	NO ACTION

Section :section;170.236, Does the Relative Need Distribution Factor allocate funding among the individual tribes, or only to the Regions? It is the Quinault Indian Nation's position that the Federal view found in Section :section;170.236 is too ambiguous and incomplete, and needs to be more specific while providing details, which will hold the Regions and the BIA more accountable for allocated funding. Section :section;170.236 merely states that IRR funds are allocated pro rata according to the tribes' relative need percentage from the Funding Formula. The Quinault Indian Nation is concerned that this does not adequately describe a process for how a tribe's relative need percentage is accounted for by the BIA. The Quinault Indian Nation would like to see in

Public Comment

the proposed rule a process and guidelines, which detail the BIA Region's accountability of each tribe's relative need percentage. The Quinault Indian Nation understands this accountability in terms of how each BIA Region keeps track of each tribe's yearly relative need percentage, and what happens when a tribe does not utilize its yearly relative need percentage. Section :section;170.236 then goes on to describe that re-programming of IRR construction funds will take place for those tribes who negotiated in advance self-governance agreements or contracts, or entered into stewardship agreements. The Quinault Indian Nation questions the use of the word "re-programmed" since it reflects the potentiality that additional administrative and overhead costs may be incurred by these tribes for simply entering into self-governance contracts or agreements, and stewardship agreements. The Quinault Indian Nation views this concept as unnecessary, financially limiting, and intrusive to the idea of self-governance. As a result, the Quinault Indian Nation would like the word "re-programmed" to be replaced with the word "allocated".

Workgroup Text Change

[Recommendation for Q&As regarding the tracking of funds by each Region. We recommend that this be addressed by Policy. Develop a Q&A that describes a uniform system for the Regional Offices to keep track of their funds. Second paragraph of comment has been previously addressed in other sections of 236 comments.]

Workgroup Comments

Policy has reviewed and recommends rejecting the comment because it is adequately addressed in 170.610 (b) and (d).

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.236	P. 146, A2	Funding	15	23		Reject Comment	AGREE	NO ACTION

Public Comment 170.236 Does the Relative Need Distribution Factor allocate funding among the individual tribes, or only to the Regions? There is no answer to the question published. It is assumed that if the Relative need factors is determine by tribes that allocation of funding occur among the Indian tribes.

Workgroup Text Change

Workgroup Comments The no request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.236	P. 147, C(c)1 Programmatic Concerns	Funding	35	48	YES	Accept Comment	DISAGREE	AGREE
Public Comment	:Sec; 170.236 Does the Relative Need Distribution Factor allocate funding among the individual tribes, or only to the Regions? The IRR construction funds do not get "reprogrammed" to the office of self governance. Only those tribes with self governance agreements have their share of the funds "transferred" to the office of self governance.							
Workgroup Text Change	Delete from the answer "reprogrammed" and replace with transferred"							
Workgroup Comments								
Federal Comments	The proper term is reprogrammed (when referring to funds provided to OSG for inculsion in AFA's)							
Tribal Comments	3-28 Tribal Caucus accepts technical change.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.236	P. 146, C(a)1 Statutory Conflicts	Funding	35	46	YES	Accept with Modification	AGREE	AGREE
Public Comment	:Sec; 170.236 Does the Relative Need Distribution Factor allocate funding among the individual tribes, or only to the Regions? Again the RNDF does not allocate funds to tribes under 23 USC 202(d)(2). Maybe in conformance with but not "under". The way this is written it implies that 202(d)(2) is the formula which is not the case. "As described in 170.270" would be more appropriate.							
Workgroup Text Change	Delete from the answer "under" and insert "in accordance with"							
Workgroup Comments	Accepting with modification							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.236	P. 146, A1 General Comment	Funding	35	47	YES	Accept with Modification	AGREE	AGREE
Public Comment	:Sec; 170.236 Does the Relative Need Distribution Factor allocate funding among the individual tribes, or only to the Regions? Again what is meant by "pro rata" here and why are you mixing words (i.e. "Funding Formula")? This implies that the RNDF is the formula when it is only one component is it not?							
Workgroup Text Change	Answer 236 Strike word "pro rata" Delete "from the funding formula" and replace with "in accordance with 170.270"							
Workgroup Comments	The comment has been accepted with modifications.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.236	P. 146, A3	Funding	376	26		Reject Comment	AGREE	NO ACTION

Public Comment :Sec; 170.236 Does the Relative Need Distribution Factor allocate funding among the individual tribes, or only to the Regions? Comment: This question is misleading in that it gives the reader the impression that only those portions of available funds are distributed under RNDF and the set asides are not. This is incorrect and not consistent with 170.256.

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.236	P. 148, D3	Funding	3	24	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.236 Does the Relative Need Distribution Factor allocate funding among the individual tribes, or only to the Regions? Comment: Cross reference NPRM 170.409 (51382) which acknowledges the ability of tribes to expend IRR funds for pre-project planning activities "before project approval on the IRR TIP." Add the following sentence to the end of NPRM 170.236: "IRR funds may, however, be expended by the tribe on pre-project planning activities before project approval on the IRR TIP as provided in 170.409."

Workgroup Text Change

Workgroup Comments Commenter request cross reference to 409. We don't see the need for the cross reference, it doesn't seem to apply.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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Sec. 170.236	P. 147, D1 Proposed Language	Funding	1337	37	YES	Accept with Modification	AGREE	AGREE
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Page 51370-Section 170.236 Comment: The Relative Need Distribution Factor does not allocate funding. The sentence structure is not correct. What is pro rata? It is not needed. What is the "Funding Formula"? Is this the TTAM? This needs to be clarified and changed, The last sentence of the Answer does not address allocation but rather expenditure It also should be clarified that for Direct Service and Self-Determination Tribes, the Regional Office can keep cuff accounts of the allocations so those tribes that need to save five or six years of allocations in order to advance a project can accomplish that goal. The Regional Office can track allocation buildups and overdraws so that the tribes in this situation are not precluded from fully participating in the program, Therefore, we recommend deleting this unneeded sentence. We recommend changing this Question and Answer as follows:Sec. 170.236 How is the Relative Need Distribution Factor used in allocating funding to individual tribes and to the BIA Regional Offices?The Relative Need Distribution Factor is used to calculate IRR Program funding for construction in accordance with 23 USC 202 (d) (2). The construction funds are allocated according to the tribes relative need percentage calculated using the Relative Need Distribution Factor. With the exception of the Self Governance Tribes who have negotiated an annual funding agreement for using IRR Program funds, the construction funds are distributed the BIA Regional Offices. The BIA Regional Office can keep an accounting of allocations so those tribes that need to save a number of years of allocations in order to advance project to construction can accomplish that goal. The construction funds for Self-Governance tribes, who have negotiated an agreement for IRR program activities, are provided to the Office of Self-Governance who will include these funds in the annual funding agreement for the appropriate tribes.

Public Comment

In the answer first sentence delete the word "allocates" and replace with"distributes"

Workgroup Text Change

Delete the question and replace with:
"How is the relative need distribution factor used in distributing funding to individual tribes and/or the BIA Regional offices?"

Workgroup Comments

The workgroup feels the changes clarify both the question and answer.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.236	P. 148, D4	Funding	35	49	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec; 170.236 Does the Relative Need Distribution Factor allocate funding among the individual tribes, or only to the Regions? It is recommended that the last sentence be revised to read: "Prior to a tribe or BIA Regions share of the IRR construction dollars is allowed to be expended on eligible projects and/or activities, the proposed projects and/or activities must be on an FHWA approved Transportation Improvement Program (TIP)."

Workgroup Text Change

Add in the answer of the last sentence, after tribe's "and/or Regional office's"
Change in the answer of the last sentence, delete "allocation" and insert "distibution"

Workgroup Comments

Modification is for consistency and clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.245	P. 152, A1 General Comments	Funding	1352	4		Reject Comment	AGREE	NO ACTION
Public Comment	170.245 The IRR high priority project program under section 170.245 indicates that 5% of IRR program construction funds are provided funds are provided for emergency or disasters; or for tribes where funding is insufficient to build their high priority project. In a large portion of the cases in NM (and other states) small tribes do not have sufficient funds to do even one project. The tribes as well as the regional agencies take turns to complete projects. How will this program supplement this current problem? Who will decide what portion goes to emergencies/disasters and what goes to insufficient and under funded Tribal projects? Will tribes be allowed to come back for multi-year funding under this section?							
Workgroup Text Change								
Workgroup Comments	No request, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.245	P. 152, C(c)1 Programmatic Concerns	Funding	35	51	YES	Workgroup Disagree	NO ACTION	NO ACTION
Public Comment	:Sec; 170.245 What is the IRR High Priority Project (IRRHPP) Program? Comment: Again the IRRHPP is not a program. Strike the word "Program" from the question and answer. Also the phrase "IRRHPP Program funds can be used in an emergency/disaster on any IRR system route" is inaccurate and inconsistent with the section on ERFO and the definition in 170.252 & 170.254. Is it not true that these funds can only be used to repair the damage caused by a disaster to "federally" owned roads or "transportation facilities" or those originally built with IRR funds?							
Workgroup Text Change								
Workgroup Comments	Request is to strike the word "Program" The workgroup does not agree on the change. Is a program only defined by statute?							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.245 Public Comment	P. 152, B1 Support of the Proposed Rule	Funding	15	28		Reject Comment	AGREE	NO ACTION
170.245 What is the IRR High Priority Project (IRRHPP) Program? Agree with language as it is stated.								
Workgroup Text Change								
Workgroup Comments No request, no action taken.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.245	P. 153, C(c)5	Funding	1340	3		Reject Comment	AGREE	NO ACTION

Public Comment

Subpart C, Subsection 170.245 IRR High Priority Project Program (IRRHPP), the Pueblo of Zuni is strongly opposed to this program and does not support subsequent subsections that makes reference to IRRHPP.

Workgroup Text Change

Workgroup Comments No action request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.245	P. 153, C(c)4	Funding	1373	2		Reject Comment	AGREE	NO ACTION

Public Comment

170.245 High Priority Project are not going to help out all of Indian Country. This set aside will benefit primarily two regions Alaska and Pacific Regions. The table used to determine points that rank projects is geared for these regions respectfully.

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.245	P. 152-153, C(c)2	Funding	1337	39		Workgroup Disagree	NO ACTION	NO ACTION
Public Comment	Page 51371-Sec. 170.245 Comment: We recommend this section be changed to "What are IRR High Priority Projects"? We recommend the Negotiated Rulemaking Committee prepare an Answer, The sections addressing IRRHPP only address emergency repair projects and do not address "High Priority Projects", Indian Tribal Governments can have HPP that are not emergency repairs.							
Workgroup Text Change								
Workgroup Comments	Request is to strike the word "Program" The workgroup does not agree on the change.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.245	P. 153, C(c)3	Funding	41	12	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51371, section 170.245. The IRRHPP funding pool should be divided into two distinct pools, one for emergency/disaster work described in section 170.246, and separate one for non-emergency projects of small tribes. Small tribes then should be eligible to fund one non-emergency project with a funding cap of no less than \$1.5 million during over a period of 15 to 25 years. Unless the IRRHPP funding pool is split into two separate pools, it is likely that non-emergency projects of a small tribe will never get funded.

Workgroup Text Change

Workgroup Comments request is to divide the IRRHPP into two distinct pools. This request would require a renegotiation of the funding formula.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.245	P. 153, D1 Proposed Language	Funding	392	3	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Section 170.245 What is the IRR High Priority Project Program? Remove/strike in addition, IRRHPP Program Funds can be used in an emergency/disaster on any IRR system route. There are other programs available to address emergencies/disasters.							
Workgroup Text Change								
Workgroup Comments	Request is to remove and strike, Rejected as it changes the intent of the committee and would require renegotiation							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.245	P. 153, D2	Policy	1373	1	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment 170.245 The phrase "governmental subdivision of a tribe" should be struck through. I feel this will allow corporations to get involved more than they should and the tribes will lose out. If the tribe wishes to turn over funds to a corporation it should do it once funds are awarded to the tribe or village.

Workgroup Text Change

Workgroup Comments Request is to stike governmental subdivisions of the tribe. Policy has reviewed. A definition was added in 170.6. The full committee must decide to strike or retain.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.245	P. 153-154, D3	Policy	1231	42	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

:Sec;170.245 What is the IRR High Priority Project (IRRHPP) Program? We recommend either clarification or deletion of the phrase "or governmental subdivision of a tribe that is authorized to administer its own IRR funding." The phrase is ambiguous and has not been defined. How does a governmental subdivision get "its own IRR funding" if not from the Tribe? Would the governmental subdivision be able to submit an application into the IRRHPP funding pool if the Tribe itself also has an application pending? Can a governmental subdivision of a tribe also tap into the emergency aspect of the program on top of and independent of the tribe? The intent of the IRRHPP program was to enable a tribe that does not receive a sufficient share of funding in a given year for a project of high priority to the tribe to have an opportunity to do so, and also to cap the total amount of IRRHPP funding available to a tribal community (either for emergency or high priority projects) to \$1,000,000 per project.

Workgroup Text Change

Workgroup Comments

Policy has reviewed. A definition was added in 170.6. The full committee must decide to strike or retain.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.246 Public Comment	P. 154, C(c)1 Programmatic Concerns	Funding	35	52	YES	Reject Comment	AGREE	NO ACTION

Workgroup Text Change

Workgroup Comments No specific request made, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.246	P. 154, D1 Proposed Language	Funding	1337	40	YES	Accept with Modification	AGREE	AGREE
Public Comment	Page51371-Sec. 170.246Comment: We recommend changing the Question part of this section to "What is an emergency/disaster?" The Question part as shown is very awkward and poorly structured.Comment: The Answer part of this section needs to be rewritten because an emergency or a disaster is not damage. Also part of the Answer has rambling wording that appears to have been included because it sounded good. An emergency is a sudden and unexpected situation requiring prompt action. A disaster is an event that causes great ruin or distress. We recommend the Answer part be changed to:An emergency or a disaster is an unexpected situation or an even: that causes significant damage to an IRR transportation facility or facilities identified as vital to a community. This damage renders this facility or facilities impassable or unusable. Damage resulting from a disaster is widespread. Examples of causes of natural disaster are floods, severe storms earthquakes, tornadoes, and landslides.							
Workgroup Text Change	Add in the answer after defined as "an event that causes"							
Workgroup Comments								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.246 Public Comment	P. 154, B1 Support for the Proposed Rule	Funding	15	29		Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments No request, no action taken.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.247	P. 156, D2	Funding	1337	41	YES	Accept with Modification	DISAGREE	AGREE

Public Comment

Page 51371, Sec. 170.247 Comment: We recommend changing this section to:Sec. 170.247 What funding is available for IRRHPP?The base funding for IRRHPP is 5% of available IRR construction funds as illustrated in Sec. 170.226. If the yearly IRR Program authorization experiences an increase, an additional amount will be provided to the IRRHPP funding level in accordance with 170.225 (c).Comment: We question the need for having IRR High Priority Projects.

Workgroup Text Change

Delete in the Q. "levels are" and replace with "is"

recommend changing question and answer. Workgroup considers the comment regarding removal of IRRHPP as a key negotiated factor of the funding formula and rejects.

Workgroup Comments

Takedowns language in NPRM was not original language proposed by consensus of the full committee, recommend reverting to original language. Workgroup accepts, refer to Exel file - takedowns.exe as part of the funding formula rationale { resident on the desktop}.

Federal Comments

Takedown issue.

Tribal Comments

PS Will be addressed with rewrite.
3-28 The Federal Caucus does not understand the intent of this section. The setaside is to the amount of funds available to construction. The Excel chart clarified that these amounts were not setaside prior to the administrative takedowns, but based on the total amount available prior to takedowns.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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Sec. 170.247	P. 155, C(a)1 Statutory Conflicts	Funding	35	53	YES	Workgroup Disagree	NO ACTION	NO ACTION
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Public Comment

:Sec; 170.247 What funding levels are available to the IRRHPP Program? Comment: Again the word "Program" should be stricken from the question and answer. Also what is the rationale on the cap being set at #275 million. This is far too low a figure and only favors the smaller tribes in the IRR Program. This does not meet the intent of the law. Where is the supporting data, studies, and analysis on the impacts to "all tribes" to justify this figure? It is not appropriate for the rule making committee to just pull numbers out of the air.

Workgroup Text Change

Workgroup Comments

Request is to strike "Program", the workgroup is unable to come to agreement.
The negotiations resulted in this \$275 million figure.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.247 Public Comment	P. 156, D1 Proposed Language 170.247 Replace 12.5% with 50%	Funding	1341	8	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments The change would require a renegotiation which would be very unlikely to be successful.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.247	P. 155, C(c)1 Programmatic Concerns	Funding	4	3	YES	Reject Comment	AGREE	NO ACTION
Public Comment	High Priority Projects :sec; 170.247 We support the High Priority Projects (HPP), however, the percentage of the set-aside at 5% is too low. We recommend that the percentage to HPP should be no less than 10% for any IRR program authorization level of #275 million or less annually. The HPP is the only mechanism available to implement projects for tribes who's IRR construction funding distribution is at a level too low to address their highest need project(s).							
Workgroup Text Change								
Workgroup Comments	Change setaside to 10%, the workgroup rejects as the percentage was a hard to negotiate value in the development of the rule.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.247	P. 155, A1 General Comments	Funding	15	30	YES	Accept Comment	DISAGREE	AGREE
Public Comment	170.247 What funding levels are available to the IRRHPP Program? The consensus formula included no dollar cap as implied by the Published NPRM. The base is 5% of all amounts available for construction after all takedowns no matter the appropriations. For authorizations above \$275 million, adding "after takedowns" substantially alters the consensus formula depending on the interpretation of where the "increase" is calculated relative to where it is taken. The share of increase supplements the IRRHPP base.							
Workgroup Text Change	delete in the answer "after takedowns" all three locations.							
Workgroup Comments	Takedowns - parked Takedowns language in NPRM was not original language proposed by consensus of the full committee, recommend reverting to original language. Workgroup accepts, refer to Exel file - takedowns.exe as part of the funding formula rationale { resident on the desktop}.							
Federal Comments	After Takedown refers to statutory requirements that are not subject to the formula and to any increases that are also subject to statutory takedowns.							
Tribal Comments	3-28 The Federal Caucus does not understand the intent of this section. The setaside is to the amount of funds available to construction. The Excel chart clarified that these amounts were not setaside prior to the administrative takedowns, but based on the total amount available prior to takedowns.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.248 Public Comment	P. 158. D3	Funding	1362	7	YES	Reject Comment	AGREE	NO ACTION
Section 170.248 (Page 51371) - Replace "#1,000,000" with "#5,000,000."								
Workgroup Text Change								
Workgroup Comments Change would require reopening the negotiation of the formula.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.248	P. 156, C1 Concerns with the Proposed Rule	Funding	16	7		Reject Comment	AGREE	NO ACTION
Public Comment	Ranking criteria for HPP Projects is unfavorable to large land based tribes, and needs further clarification. a. Certain criteria all but eliminate large land based tribes. i.e) i. Geographic isolation ii. Years since last IRR construction project completed							
Workgroup Text Change								
Workgroup Comments	No request, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.248	P. 157, D2	Policy	35	60	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

[Sec] 170.248 How will BIA and FHWA rank and fund IRRHPP project applications? Subparagraph (b)(2) should read after the word "tribes", "or governmental subdivision of a tribe as defined in [sec]170.245". '

Workgroup Text Change

Workgroup Comments

Subject has previously been referred to policy "governmental subdivisions of a tribe" So whatever action they take will impact this section also.

Policy has reviewed. A definition was added in 170.6. The full committee must decide to strike or retain.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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Sec. 170.248	P. 156-157, C(c)1 Programmatic Concerns	Funding	415	32	YES	Accept with Modification	AGREE	AGREE
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Public Comment

Sec. 170.248 How will BIA and FHWA rank and fund IRRHPP project applications? Comment: Should the rule first describe the application process first before discussion of ranking applications? This section implies that emergency/disaster projects take precedence over other high priority projects. Is this correct and is this wise to do? If these type projects follow the same ranking process as implied in 170.252, then why even have paragraph (a)? This only confuses the reader and process being described. Please define who the "Regional Engineer" is? This section refers to BIA and FHWA doing the ranking; what specific office within these two organizations are to perform this task? Is it BIADOT and FLH-IRR Program office of FHWA? What is the rationale behind limiting the total amount to #1.0 million and based on what study or analysis. Was a determination made on the overall impacts to "all tribes" done so that the committee had a full understanding of the impacts before establishing this cap? Otherwise how can the committee insure that this meets the intent of the law? The ranking matrix is misleading and may result in many projects having an equal score. Then how is BIA and FHWA to decide on what projects to be funded? Again this matrix favors those tribes who's normal funding level is below the #1.0 million cap.

in the answer (a) Insert "Roads" between "Regional" and "Engineer" in the last line.

add after Engineer "or the tribe if it has PS&E approval authority,"

Recommended reordering as follows:

Recommended reordering, includes already accepted and deleted Q and As

Subpart C--Indian Reservation Roads Program Funding

170.225 How are IRR Program funds allocated?

204(j) Transportation Planning Funds

170.232 How does BIADOT allocate and distribute 2% Transportation Planning funds?

Relative Need Distribution Factor

170.270 What is the Relative Need Distribution Factor?

170.236 How is the relative need distribution factor used in distributing funding to individual tribes and/or the BIA Regional offices?

170.271 What is the Cost-to-Construct component in the Relative Need Distribution Factor?

170.273 What is the BIA methodology of estimating construction costs for transportation facilities?

170.274 How may BIA and FHWA revise the method for calculating the Cost-to-Construct component of the Relative Need Distribution Factor?

170.275 What is the source of the construction cost used to generate the CTC?

170.272 What is the Cost-to-Construct for an individual tribe?

170.278 What is the VMT component of the Relative Need Distribution Factor and how is it calculated?

170.279 What IRR route segments are used to calculate VMT?

Workgroup
Comments
Text Change



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- 170.282 What is the Population component of the Relative Need Distribution Factor and how is it determined?
- 170.276 Do all IRR facilities identified in the IRR Inventory count in the Relative Need Distribution Factor at 100% of their CTC and VMT?

IRR High Priority Project (IRRHPP) Program

- 170.245 What is the IRR High Priority Project (IRRHPP) Program?
- 170.246 How is an emergency/disaster defined?
- 170.247 What funding is available to the IRRHPP Program?
- 170.249 Is there a limit on the amount of IRRHPP funding available for a project?
- 170.250 May an IRRHPP project be phased over several years?
- 170.251 How do tribes apply for IRRHPP?
- 170.252 What must an application for an IRRHPP include?
- 170.253 Are there any transportation activities for which IRRHPP funds cannot be used?
- 170.248 How will BIA and FHWA rank and fund IRRHPP project applications?
- 170.256 What is the timeline for the IRRHPP, other than emergency/disaster projects, for any given fiscal year?
- 170.256A How are unused IRRHPP funds in a given fiscal year redistributed?
- 170.255 What is the IRRHPP Funding Priority List (FPL)?
- 170.255A Is there an Annual IRRHPP Funded Projects Report (FPR)?
- 170.257 How does the award of an emergency/disaster project affect projects on the FPL?
- 170.257A Must the Tribe/BIA submit an ERFO or FEMA application for an IRRHPP-funded emergency/disaster project as appropriate?
- 170.257B Must the Tribe/BIA use ERFO or FEMA awards received for IRRHPP emergency/disaster projects to reimburse the IRRHPP program?

recommendation to define Regional Engineer, workgroup recommends defining Regional Engineer
Suggest that Qs and As are out of order. In addition, the workgroup has added language to address those tribes that have the authority to approve their own PS&Es. Workgroup agrees and the Q and As have been reordered.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.248	P. 158, D4	Funding	1337	42	YES	Accept with Modification	AGREE	AGREE

Public Comment

Page 51371-Sec. 170.248 Comment: There should be another section that explains what is needed in an IRRHPP funding application, (a) Delete "that are" in the first sentence. We recommend changing the second sentence to "Funding will be limited to estimated cost of repairing the damaged transportation facility or facilities and will not exceed #1,000,000. The BIA Regional Road Engineer will certify the cost estimate in approving the Plans, Specifications and Estimate for the IRRHPP."(b) (1) Who will document the safety hazards? What documentation will be needed? In our tribal transportation planning contracts we ask for information identifying high accident areas. We never get this information. (2) What supporting information will be needed in the application request? (4) What supporting information will be needed from the Tribes? (4) Insert "cost" between "project" and "matched" and insert "Program" between "IRR and "funds". (5) & (6) The criteria for these needs to be defined. (7) Delete the colon. Comment: We see this ranking process being very subjective and very difficult to implement fairly for all tribes.

Delete "that are" from answer (a) first sentence.

Delete answer (a) second sentence and replace with "Funding will be limited to estimated cost of repairing the damaged transportation facility or facilities and will not exceed \$1,000,000. The BIA Regional Road Engineer will certify the cost estimate in approving the Plans, Specifications, and Estimates for the IRRHPP."

Workgroup Text Change

Insert in the answer (4) "cost" between "project" and "matched" in the first line.
 Insert in the answer (4) "Program" between "IRR" and "funds" in the second line.
 Delete in (7) ":"

Workgroup Comments

Delete "that are" from the answer (a)
 Recommended language change to second sentence accepted - Accepted with modification to C(c)1.
 Recommendation to insert "cost" between "project" and "matched" accepted
 Recommendation to insert "program" between "IRR" and "funds"
 Recommendation to define the criteria for (5) and (6) - reject recommendation as it is addressed 171.252
 Recommendation is to delete the ":" in (7) - accept this is a typo correction

PARKED TO ADDRESS CERTIFYING BY REGIONAL ROADS ENGINEER, NEED SOMETHING FOR TRIBES WITH PS&E APPROVAL AUTHORITY Accepted with modification

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.248	P. 157, D1 Proposed Language	Funding	35	59	YES	Accept with Modification	AGREE	AGREE
Public Comment	:Sec; 170.248 How will BIA and FHWA rank and fund IRRHPP project applications? Change paragraph (b) to read: "BIADOT and the FLH IRR Program office will review, score, and rank all applications for IRRIHPP 's and fund those projects under an award list subject to funding availability and the following criteria: "Criteria (b)(1) implies that other safety concerns are not eligible. The proper process here should be to base the score on a safety study and not just "fatality and injury accidents". Criteria (b)(2) is unfair to all tribes since it further reduces the number of tribes who can qualify to a hand full. Then how can this formula justify the millions of dollars being made available for these smaller tribes who's needs (some of which have less than a mile of IRR road and no other need or want of transportation infrastructure) are far less than those larger ones? Also, who is to keep track of what tribe's projects were completed in the past and how far back do you check? Criteria (b)(3) again implies that someone has to keep track of those projects waiting to be funded. What assurance does the tribe have that this list does not get manipulated to favor one tribe over another? Criteria (b)(4) again implies but does not require for the tribe to show proof of joint funding. How is this to be done? Criteria (b)(6) &(7) is subjective and not measurable resulting in a flawed methodology in the ranking process.							
Workgroup Text Change	Change in answer (b) Delete "BIA...funds:" and replace with "BIADOT and the FLH IRR Program office will review, score, and rank all applications for IRRHPP and fund those projects under an award list subject to funding availability and following criteria:"							
Workgroup Comments	Recommendation to change answer to (b) Recommendation to change answer to (b)(1) the workgroup did not agree and there is no consensus to make the change.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.249	P. 158, A1 General Comments	Funding	1337	43	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Page 51371-Sec. 170.249 Comment: We recommend that the rationale for the #1,000,000 funding limit be explained. This may require another section.							
Workgroup Text Change								
Workgroup Comments	Commenter is asking for a Q&A explaining the cap of \$1,000,000. The workgroup determined that the \$1,000,000 was reached through the negotiation and that the requested Q & A would not provide a significant improvement to the rule.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.249	P. 158, C(c)1 Programmatic Concerns	Funding	415	35	YES	Accept with Modification	AGREE	AGREE
Public Comment	:Sec;170.249 Is there a limit on the amount of IRRHPP funding available for a project? Comment: Again based on what analysis and impacts to the tribes is the committee relying upon to come up with this #1.0 million cap? Also, the project must be on an approved IRR TIP before the funds can be provided per 170.252(f). What happens to unspent funds for an approved IRRHPP project? Does these funds return to the pool for use on other high priority projects?							
Workgroup Text Change	Unobligated funds are addressed in 170.256. Funds that are reserved but unspent for an IRRHPP are to be recovered and returned to the IRRHPP funding pool.							
Workgroup Comments	Transfer Answer to 170.256 new answer (g) "(g) Funds that are reserved but unspent for an IRRHPP are to be recovered and returned to the IRRHPP funding pool."							
Federal Comments								
Tribal Comments	Note: Change to be made at 170.256							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.249 Public Comment	P. 159, D1 Proposed Language 170.249 Replace "#1,000,000 with "#5,000,000 in any single year.	Funding	1241	10	YES	Reject Comment	AGREE	NO ACTION

Workgroup Text Change

Workgroup Comments commenter is requesting a change from \$1,000,000 to \$5,000,000. The workgroup came to the figure of \$1,000,000 through negotiation. A change would require renegotiation of the full formula.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.249	P. 159, C(c)2	Funding	15	31		Reject Comment	AGREE	NO ACTION

Public Comment

170.249 Is there a limit on the amount of IRRHPP funding available for a project? Disagree that there is a limit on the amount of IRRHPP funding per project which is 1,000,000. Is there then limits construction and or improvements as it relates to type, locations, length.

Workgroup Text Change

Workgroup Comments Commenter is asking for more than \$1,000,000. Comment rejected as it would require a renegotiation of the formula

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.250	P. 159, D1 Proposed Language	Funding	1337	44	YES	Accept with Modification	AGREE	AGREE
Public Comment	Page 51371-Sec. 170.250 Comment: We suggest there be a clarification on who will approve the PS&E. We recommend the BIA Regional Engineer review and approve the PS&E and recommend "the BIA Regional Engineer" be inserted between "approved" and "before" in the last sentence.							
Workgroup Text Change								
Workgroup Comments	Addressed in our response to A1 15-32.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.250	P. 159, C(c)1 Programmatic Concerns	Funding	7	11		Reject Comment	AGREE	NO ACTION
Public Comment	Section 170.250, it states. "May an IRRHPP project be phased over several years"? Answer is yes, IRRHPP projects may be placed over more than one year, provided the total amount of IRRHPP funds needed to complete the project does not exceed #1,000,000. Question: If small tribe is surrounded by a large tribe, will they qualify and is there a way the fair share distribution can be adjusted if this particular road is thirteen miles long and the fair share is only #1.6 million per year? Majority of this road is being used by the larger tribe traveling through the smaller reservation and is also a school bus route.							
Workgroup Text Change								
Workgroup Comments	No request for change, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.250	P. 159, A1 General Comments	Funding	15	32	YES	Accept with Modification	AGREE	AGREE
Public Comment	170.250 May a IRRHPP project be phased over several years? Who will be approving the plans, specifications, and estimates prior to implementation of construction activities.							
Workgroup Text Change	insert in the answer after "approved" - "in accordance with 170.481"							
Workgroup Comments	commenter is asking for request for information. The workgroup agrees to adding a reference to the tech standards section of the document. 170.481							
Federal Comments	Need to verify that this still references the right section (170.481) since re-writes done by TS workgroup.							
Tribal Comments	3-28							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.250 Public Comment	P 159-160, D2	Funding	1241	11	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments								
request for change in the funding amount from \$1 million to \$5 million would require a complete renegotiation of the funding formula.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.251	P. 160, C(c)1 Programmatic Concerns	Funding	41	14	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Page 51371, section 170.251. Large tribes either should not be eligible for IRRHPP funds, or they should first be required to use their own tribal allocation before seeking IRRHPP funds. Otherwise, large tribes could "game" the system by submitting their most competitive projects for IRRHPP funds, while using their own allocation for routine projects.							
Workgroup Text Change								
Workgroup Comments	The request is that either exclude the large tribes or that they be required to use their own IRR allocation first. The answer is addressed in 170.245							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.251	P. 160, A1 General Comments	Funding	15	33		Reject Comment	AGREE	NO ACTION
Public Comment	170.251 How do tribes apply for IRRHPP? The application for IRRHPP funds contains what specific documents in order for the Chief of BIADOT to consider a complete application package and does the Chief have the final authority to authorize approval?							
Workgroup Text Change								
Workgroup Comments	No action taken. The commenter is asking a question the answer is in 170.252							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.252 Public Comment	P. 160, A1 General Comments	Funding	41	15		Accept with Modification	AGREE	AGREE
Page 51371, section 170.252. Recommend FHWA prepare a guidebook with a sample application package.								

Workgroup Text Change

Workgroup Comments No request The commenter is recommending the development of a guidebook. The workgroup recommends that this be considered a function of the coordinating committee.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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Sec. 170.252	P. 161, D1 Proposed Language	Funding	1337	45	YES	Accept with Modification	AGREE	AGREE
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Public Comment

Page 51371-Sec. 170.252Comment: (a) This section needs to be expanded to clarify the scope of work, deliverables, budget, and schedule. There are two major phases for a project that are project development and construction. This needs to be expanded to address both phases along with limitations on funding for the needed activities in each phase. (b) The lack of detail and specifics outlined in this section makes it very possible that most applications will be for the full #1,000,000. It is an "all or nothing" situation"(c) We recommend that the word "or" be replaced with "and". Information addressing the ranking criteria should be included in the application since this is needed in evaluating the proposal.(e) Delete the redundant word "project" following "IRRHPP".

Workgroup Text Change

Workgroup Comments

commenter is requesting more specific details
The commenter request clarification of answer (b) - Accept with mod, addressed with prior comments. Break down added to budget breakdown on (a) and striking (f)

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.252	P. 160-161, C(c)1 Programmatic Concerns	Funding	35	62	YES	Accept with Modification	AGREE	AGREE
Public Comment	:Sec; 170.252 What must an application for an IRRHPP include? Comment: What about having all necessary clearances and right-of-way as part of the criteria? Also, under paragraph (b) the estimate should be the Engineer's estimate for construction dollars to be released and not an assumed amount of funds. Then what constitutes the "budget" in paragraph (a)? Who is to determine if the budget for the preliminary engineering is reasonable or the funds for actual construction too? Currently the way this section is written up, any region or tribe can abuse the IRR funds set aside for and IRRHPP and end up with the maximum amount even though the project could have been designed and built for far less. There needs to be better control here on the use of the funds both in preliminary engineering and construction. It is recommend to limit the preliminary engineering and project planning costs to between 4-6% of the estimated construction costs otherwise a tribe, for example, could conceivably spend the entire #1.0 million on just archeological and/or environmental clearance work and have no money left for design and construction. By limiting the preliminary engineering and project planning costs, the tribe can determine if the project is even feasible. This also will undoubtedly raises more questions/concerns with respect to those "emergency/disaster" type projects that the committee needs to address.							
Workgroup Text Change	insert into answer (a) after 'budget', insert "breakdown"							
Workgroup Comments	The commenter request clarification of answer (b) - The workgroup believes this question speaks to the requirements of the application and that the actually amount of the project will be addressed in the contract or compact negotiation. The workgroup also believes these concerns are covered to some extent under P.L. 93-638 and in 170.248. Workgroup agrees with modification.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.253	P. 161, D1 Proposed Language	Funding	35	63	YES	Accept with Modification	AGREE	AGREE
Public Comment	:Sec;170.253 Are there any transportation activities for which IRRHPP funds cannot be used? Comment: These funds are not to be used to supplement or otherwise used for routine maintenance activities or projects funded under Interior also.							
Workgroup Text Change	Delete in the answer "or" and "." after research. Insert after "transportation Planning" - ", ", after research insert " , routine maintenance activities or projects."							
Workgroup Comments	commenter request that road maintenance activities be included in the answer. Workgroup proposes a text change. to indicate that							
Federal Comments	Need to include and "and" before routine maintenance in answer.							
Tribal Comments	3-28 Tribal Caucus agrees							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.254 Public Comment	P. 162, D1 Proposed Language	Funding	35	64	YES	Accept with Modification	AGREE	AGREE
:Sec; 170.254 Who ranks the IRRHPP projects? Comment: This is already implied in 170.248. Recommend combining these two sections.								
Workgroup Text Change	Delete Q and A 170.254							
Workgroup Comments	Commenter request combining the two sections 254 and 248. The workgroup Thinks the form of who does it and then how is it done is how we have organized the document. The workgroup believes that document is less confusing to delete 170.254.							
Federal Comments	Covered in 248.							
Tribal Comments	3-28							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.254 Public Comment	P. 161, A1 General Comments	Funding	15	34		Reject Comment	AGREE	NO ACTION
170.254 Who ranks the IRRHPP projects? Does BIADOT recommend to FHWA, a proposed ranked IRRHPP project list?								
Workgroup Text Change								
Workgroup Comments In response to the commenter's question, the answer is no. It is answered in 170.248 (b). The workgroup is taking no action.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.254	P. 162, C(c)1 Programmatic Concerns	Funding	1396	28	YES	Reject Comment	AGREE	NO ACTION
Public Comment	High Priority Projects-Subpart C (p. 51370) (proposed sec. 170.245-.257)We believe that in order to better fund the IRR program in accordance with relative need, the IRRHPP funds should be provided to each individual BIA Region using TTAM. The tribes within the Region could then apply to the Region office for IRRHPP hnding. If the IRRHPP remains as proposed in the NPRM, we request that the ranking be accomplished by the BIADOT, the FHWA and the IRR Program Coordinating Committee (sec. 170.254).							
Workgroup Text Change								
Workgroup Comments	<p>Commenter is requesting that IRRHPP be funded at Regional level rather than National. The workgroup believes that this is a significant change from the intent of the negotiated formula and would require renegotiation the comment is rejected.</p> <p>The commenter is asking the IRR Program Coordinating Committee be involved in the ranking. The workgroup believes that this was discussed and rejected in the initial negotiations and that the Coordinating Committee is involved in appeals.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.255 Public Comment	P. 162, C(c)1 Programmatic Concerns	Funding	15	35	YES	Reject Comment	AGREE	NO ACTION

Workgroup Text Change

Workgroup Comments Commenter is requesting the list be changed from 1 year to 5 years. The workgroup rejects this comment as this was part of the extensive discussions in developing the IRRHPP when originally negotiated and would require renegotiation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.255	P. 162, D1 Proposed Language	Funding	35	65		Accept with Modification	AGREE	AGREE
Public Comment	:Sec; 170.255 What is the IRRHPP Award list? Comment: This is not consistent with 170.248 where emergency/disaster projects take precedence. Also, the write up does not specifically answer the question.							
Workgroup Text Change								
Workgroup Comments	Workgroup has determined that this is linked to comment to 170.255 A1 and will be addressed with the resolution to A1. Q and A rewritten.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.255 Public Comment	P. 162, A1 General Comments Page 51371, section 170.255. Isn't an award list published for emergency projects?	Funding	41	16	YES	Accept with Modification	AGREE	AGREE
	Delete current Q and A 170.255 and replace with the following: Sec. 170.255 What is the IRRHPP Funding Priority List (FPL)? The IRRHPP Funding Priority List (FPL) is the ranked IRRHPPs that have been approved based on available current year funding. The total number of projects on the FPL is financially constrained by the total amount of IRRHPP funds available at the beginning of the fiscal year. A project appearing on the FPL that is not funded in a given fiscal year shall retain its priority in subsequent fiscal years until funded. The FPL is generated by April 15 and made available to the Regions for distribution to the tribes Insert New Q and A after 170.255. 170.255A Is there an Annual IRRHPP Funded Projects Report (FPR)? Yes, BIADOT develops a year-end report of all projects funded with IRRHPP funds for each fiscal year. The FPR is generated by October 31st and made available to the Regions for distribution to the tribes.							
Workgroup Text Change								
Workgroup Comments	Recommendation to publish the list. The workgroup has accepted with modification Workgroup recommends a new Q and A to be inserted after 255							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.256	P. 163, C(c)2	Funding	1337	46	YES	Accept with Modification	DISAGREE	AGREE

Public Comment

Page 51371-Sec. 170.256Comment: The timeline is not realistic. We recommend moving the schedule back two months. The Regions would then have to obligate funds by July 15. Regions that cannot obligate their IRRHPP funds can then go through the August redistribution to save these funds to the next fiscal year.Comment: What is the proposed timeline for emergency/disaster projects? It appears the Committee wants two different schedules so then their needs to be another section for timelines for emergency/disaster projects.

Delete Q and A 170.256 and replace with:

Sec. 170.256 What is the timeline for the IRRHPP, other than emergency/disaster projects, for any given fiscal year?

The timeline is as follows:

- (a) BIADOT will accept applications through December 31 of each year. BIADOT notifies, in writing, all applicants and Regions of acceptance of complete applications within 30 days of receipt, Incomplete applications will be returned to the applicant within 30 days of receipt with an explanation of the deficiencies;
 - (b) During February and March BIADOT and FHWA rank all complete applications, in accordance with Appendix A to Subpart C;
 - (c) No later than April 15 BIADOT notifies, in writing, each applicant whether its project will be included on the FPL;
 - (d) BIADOT transfers funds to the respective Regions or the Office of Self-Governance for selected IRRHPP projects no earlier than May 1 and no later than May 15 with written notification to the tribes;
 - (e) Current year funds must be obligated by September 30; and
- See below.(g)IRRHPP Funds that are obligated but unexpended at the completion of the project are to be recovered and returned to the IRRHPP funding pool.

Insert new Q and A after 256

How are unused IRRHPP funds in a given fiscal year redistributed?

IRRHPP funds that are unused in any given year are to be redistributed by the Relative Need Distribution Factor in accordance with 170.270 between July 1 and July 15. Unused IRRHPP funds are defined as funds that are not committed to projects on the FPL or committed to any emergency/disaster project.

Workgroup Text Change

The commenter is requesting changing the timeline schedule back 2 months.
The workgroup believes there is a need to modify the schedule. Also, the Regions do not receive the IRRHPP funds.

Workgroup Comments

The workgroup accepts the comment with modification



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Federal need to correct (d) add "reprogram funds" after "or" and before "the office of self governance".
Comments

Tribal 3-28 Tribal Caucus agrees to technical correction.
Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.256	P. 164, D1 Proposed Language	Funding	35	66	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	:Sec; 170.256 What is the time line for the IRRHPP, other than emergency/disaster projects, for any given fiscal year? Comment: No where does this Subpart address the exception for "emergency/disaster projects" as the question implies. This set aside can only work if both high priority and disaster projects follow the same criteria, ranking, and time lines. Again there is a flaw in the methodology here.							
Workgroup Text Change								
Workgroup Comments	Commenter believes there is a flaw in the methodology. The workgroup believes the emergency/disasters are distinctively different from the ranked IRRHPP. Efforts of the workgroup in addressing other comments to 170.256 will hopefully address this commenter's concern.							
Federal Comments	need to correct (d) add "reprogram funds" after "or" and before "the office of self governance".							
Tribal Comments	3-28 Tribal Caucus agrees to technical correction.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.256	P. 164, D2	Funding	35	68	YES	Accept with Modification	DISAGREE	AGREE

Public Comment :Sec; 170.256 What is the time line for the IRRHPP, other than emergency/disaster projects, for any given fiscal year? Also, the question is unclear and does not match the answer. Recommend the following "What is the process and time frames required for submitting, approving, and funding eligible IRRHPPs and what happens to the balance of funds?"

Workgroup Text Change

Workgroup Comments Commenter is recommending new language. Assigned to sub-workgroup (Harold, Bruce, Jerry, Rick, Julie, and Jim)

Federal Comments need to correct (d) add "reprogram funds" after "or" and before "the office of self governance".

Tribal Comments 3-28 Tribal Caucus agrees to technical correction.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.256	P. 163, A1 General Comments	Funding	15	36	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	170.256 What is the timeline for the IRRHPP, other than emergency/disaster projects for any given fiscal year? When BIADOT redistributes unobligated funds, all affected tribes should be notified within a certain timeframe to respond.							
Workgroup Text Change	Insert new answer (g) "(g) IRRHPP Funds that are obligated but unspent are to be recovered and returned to the IRRHPP funding pool at the completion of the project."							
	Commenter is indicating that all affected tribes should be notified regarding the redistribution of unobligated funds. The workgroup believes that the redistribution already requires that tribes be notified. The workgroup is rejecting the request as it is already a precedural activity covered in Title 1 and IV of P.L. 93-638 .							
Workgroup Comments	Comment is not to this comment but to the following- comment referred from 170.249 C(c)1 to address the commenters concerns.							
Federal Comments	need to correct (d) add "reprogram funds" after "or" and before "the office of self governance".							
Tribal Comments	3-28 Tribal Caucus agrees to technical correction.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.256	P. 163-164, C(c)3	Funding	35	67		Accept with Modification	DISAGREE	AGREE

:Sec; 170.256 What is the time line for the IRRHPP, other than emergency/disaster projects, for any given fiscal year? Obviously the committee does not understand the August redistribution process here because there is no way that any region or tribe could possible expend any remaining funds when they are not even told until September 1 that unspent funds are coming down and how much. At this stage it's to late to try to reserve them to use in the next fiscal year since the regions have to report to FHWA their intent to spend all their available fund or a portion to be reserved by FHWA for the following fiscal year by 8/15. After this date any funds left unspent are not guaranteed to be returned back to the program, region, or tribe. These dates reflected in paragraphs (d), (e), and (f) are too close to the end of the fiscal year (September 30) to facilitate the obligation of funds especially for direct service tribes where the program is administered by the BIA. Procurement cut-off dates are imposed as early as August 30 and to expend the unobligated funds would be impossible in many instances. We suggest the dates be pushed back to April 15 for applicant awards notification, then regions must obligate those funds by July 15 and any remaining funds not obligated by this date are redistributed to each region under the formula by July 30. Then the regions have 15 day to determine if the funds can be spent or need to be reserved for the next fiscal year. Even this is cutting it close and may not work for all tribes. This is of course assuming the Committee continues to violate the law and leaves this set aside "IRRHPP" in the rule.

Public Comment

Workgroup Text Change

Workgroup Comments Changing timelines on A. Addressed by the workgroup with modification.

Federal Comments need to correct (d) add "reprogram funds" after "or" and before "the office of self governance".

Tribal Comments 3-28 Tribal Caucus agrees to technical correction.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.256	P. 164, C(c)4	Funding	41	17		Accept with Modification	DISAGREE	AGREE

Public Comment Page 51371, section 170.256. The listed timeline seems to be overly optimistic, especially the two-week period regions have to obligate IRRHPP funds. Page 51371, section 170.256(f). Un-obligated funds should be retained in the IRRHP for at least two years, since fund requirements for emergencies/disasters are likely to vary widely from year to year, and often may exceed the amount allocated to the IRRHPP

Workgroup Text Change

Workgroup Comments timeline addressed with a rewrite of Q and A to 256.

Federal Comments need to correct (d) add "reprogram funds" after "or" and before "the office of self governance".

Tribal Comments 3-28 Tribal Caucus agrees to technical correction.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.256	P. 163, C(c)1 Programmatic Concerns	Funding	381	2		Reject Comment	AGREE	NO ACTION
Public Comment	:sec; 170.256 What is the timeline for the IRRHPP, other than emergency/disaster projects, for any given fiscal year? Timeline will not be met unless all work is done, coordinated and agreed upon prior to March 1 application date. Obligation of Funds to a project cannot include letting of contracts, etc. but merely assigning funds to an approved project.							
Workgroup Text Change								
Workgroup Comments	Commenter is making a statement, so no action is required.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.257	P. 166, D2	Funding	1337	47	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51371-Sec. 170.257 Comment: We recommend deleting this section. The IRRHPP Award List is a list of projects that are funded. An award of funds will not affect another project already on the Award List but will affect other project applications that are not funded. This is very straightforward. This section is not needed. General Comment on the IRRHPP: If the sections on the IRRHPP are kept then we recommend further details be added. As presently written there is too much missing information to carry out these types of projects.

Workgroup Text Change

Workgroup Comments The workgroup believes the commenter did not understand the premise of the efforts of the Neg-Reg committee. The comment will be delt with the corrections to 257 comments to D1 and D2.

Federal Comments

Tribal Comments



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Sec. 170.257	P. 165-166, D1 Proposed Language	Funding	35	70	YES	Accept with Modification	AGREE	AGREE
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Public Comment

:Sec; 170.257 How does the award of an emergency/disaster project application affect projects on the IRRHPP award list? What is an "IRRHPP award list" and does this not imply that the project is to be funded that year if the project gets on this list as 170.248(b) is not clear on this? If so and the money runs out you will have very upset tribes on your hands. What is the difference between this list and the project ranking list? The writeup here is very poorly written and is confusing to the reader when mixing terms that are not clearly defined ahead of time. Who or how is the region or tribe informed of their project not making the "award list" and under what time frame? Also what if the tribe asks for the region to submit the application? Is this allowed and if not why? Again the main question on how the emergency/disaster projects affect the projects on the IRRHPP Award list is not addressed. Therefore, this section should be deleted or re-written so as not to confuse the IRRHPP process further.

Workgroup Text Change

Workgroup Comments The sub-workgroup when reviewing 256 also consider this issue.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.257	P. 165, A1 General Comments	Funding	7	12		Reject Comment	AGREE	NO ACTION
Public Comment	<p>Section 170.257. How does the award of an emergency/disaster project application affect projects on the IRRHPP award list? Answer, Emergency/disaster projects are funded from October 1 - August 31. Projects on the IRRHPP Award List are funded based upon order of rank until current year funds are allocated to IRRHPP projects. Projects not funded will retain order of rank and be placed at the top of the award list the following year, without resubmission of application. Projects that were not ranked high enough to be placed on the IRRHPP Award list must be resubmitted. Question: If a project was submitted to the state under Discretionary Funds and was ranked number two within the state and later the same year did not qualify, will this project qualify for IRR HPP? This particular road is 13.7 miles through blow sand area and in spots through clay materials. Area is very dry and in the middle of drought having difficulty keeping road surface from breaking and turning into very large soft spots with not solid bottom with heavy traffic flow. This road is a school bus route and becomes unsafe at times.</p>							
Workgroup Text Change								
Workgroup Comments	<p>Commenter is requesting and interpretation of how the rule applies. The workgroup is taking no action.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.257	P. 165, C(c)2	Funding	41	18	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51371, section 170.257. Projects that were not ranked high enough to be placed on the IRRHPP Award List should not have to be resubmitted in the following year unless the project application was incomplete or clearly deficient. Conversely, tribes should be invited to make a low ranked project more competitive by providing additional justification (without having to redo the entire application) before the following year's application deadline.

Workgroup Text Change

Workgroup Comments Commenter is recommending that projects do not have to be resubmitted. Workgroup believes this is covered by the issuance of the award list. Comment rejected.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.257	P. 165, C(c)1 Programmatic Concerns	Funding	35	69		Accept with Modification	DISAGREE	AGREE
Public Comment	:Sec; 170.257 How does the award of an emergency/disaster project application affect projects on the IRRHPP award list? The question is misleading and inconsistent with the rest of the IRRHPP subsection writeup. The answer does not even address the question. It is apparent from the previous writeup that emergency/disaster projects are funded on a first come first serve basis yet how is this to be achieved when all applications are to be subject to the ranking process and the matrix in Appendix A? This writeup implies a subjective process in determining what projects get funded. The dates indicated for funding emergency/disaster projects is not consistent with 170.256 and will not work as discussed in those comments.							
Workgroup Text Change	Delete Q and A 170.257 and replace with the following: Sec. 170.257 How does the award of an emergency/disaster project affect projects on the FPL? Emergency/disaster projects are funded from October 1 June 30th, see 270.256(d) and 270.2XX ("unused IRRHPP Q and A"). Projects on the FPL are funded based upon order of rank. Projects not funded will retain order of rank and be placed at the top of the FPL the following year, without resubmission of application. Projects that were not listed on the FPL must be resubmitted.							
Workgroup Comments	Commenter is making a statement, no request. Workgroup reviewed the Q and A and is correcting language in the Question and A. The workgroup is providing a rewritten Q and A.							
Federal Comments	Fed Caucus can not agree with additional Q&A's provided for insertion after 170.257.							
Tribal Comments	PS Disagreement item 3-28 Tribal Caucus believes this was a core issue of the funding formula negotiation.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.263	P. 172, C(c)6	Funding	1241	12	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.263 if the base funding of #100,000 (as proposed in 170.266 below) is rejected, then the distribution factor must be inverted to be more equitable to smaller tribes (determination of relative need).

Workgroup Text Change

Workgroup Comments The request would require reopening an already key negotiated formula.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.263 Public Comment	P. 172, C(c)5	Funding	420	12	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments The request would require reopening an already key negotiated formula.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.263	P. 172, C(c)4	Funding	1382	1		Reject Comment	AGREE	NO ACTION

Public Comment

The Population Adjustment Factor (PAF) appears to be an arbitrary method of directing highway Trust Funds away from the already under funded IRR Program to provide "at least some funding" to tribes participating in the IRR Program. The funds should be used to improve existing roads or build new roads. There is no truly defined method identified in the proposed rule for distributing the PAF funds and there is no specific guidance as to what the funds can be used for by the receiving tribes.

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.263	P. 172, D1 Proposed Language	Funding	1338	4	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Section 170.263 - Population Adjustment Factor (PAF) The Population Adjustment Factor appears to be another set-aside which favors smaller tribes and should therefore be deleted in its entirety.							
Workgroup Text Change								
Workgroup Comments	Request to delete PAF. This is rejected because it is a key negotiated section of the funding formula.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.263	P. 171-172, C(c)1 Programmatic Concerns	Funding	1337	48		Reject Comment	AGREE	NO ACTION
Public Comment	Page 51372-Sec. 170.263 Comment: We do not support the Population Adjustment Factor (PAF) because there is no rationale for this funding concept. How will the PAF provide for broader participation? This is merely speculative and a way of supporting this funding concept. The rationale needs to be explained because it is very misleading. From what has been provided we think the PAF is a method of getting funds to small tribes and is not meeting the requirements of 23 USC 202 (d) (D)(i). How were the population ranges determined? How were the Distribution Factors determined? How do we know if these factors are fair to all tribes? This needs to be explained in this section. This funding methodology is an entitlement approach to funding. This is not acceptable.							
Workgroup Text Change								
Workgroup Comments	No request, no action taken. Rational for the funding formula was provided in the preamble of TTAM.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.263	P. 170, A1 General Comments	Funding	15	37		Reject Comment	AGREE	NO ACTION
Public Comment	170.263 What is the PAF? Agree with the fact that the more the population, the more funding allocated. This diagram reflects this concept, then the ARC is in agreement. If there are other hidden deducting factors, it is not recommended. Comment: This same factor if implemented should be utilized to determine number of representatives to serve on the Coordinating Committee.							
Workgroup Text Change								
Workgroup Comments	Commenter agrees with using graduated population. No request no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.263	P. 172, C(c)3	Funding	1373	3		Reject Comment	AGREE	NO ACTION

Public Comment

170.263 Population Adjustment Factor (PAF) is set aside that takes money out of construction funds and gives it to the tribes directly. This is a toss up and really depends on the tribes but this takes more money out of construction projects.

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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Sec. 170.263	P. 171, C(a)1 Statutory Conflicts	Funding	35	72	YES	Reject Comment	AGREE	NO ACTION
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Public Comment

:Sec; 170.263 What is the PAF?What is the rational here and what scientific basis or study is this adjustment factor being used here? This clearly favors smaller tribes who do not have as great a "relative transportation need" as the larger tribes yet those funds that would otherwise go to meet the needs of the larger tribes would be syphoned off to support an undocumented or un-substantiated need of smaller tribes. This does not meet the intent of the Law under 23 U.S.C. 202(d)(D). This is NOT a "tribal shares" or entitlement program is it?

Workgroup Text Change

Workgroup Comments Commenter is recommending the elimination of the PAF. The workgroup considers this a key component of the negotiated funding formula, any change would require reopening the negotiation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.263	P. 172, C(c)2	Funding	1378	7		Reject Comment	AGREE	NO ACTION

Public Comment Section 170.263 (Page 51372)- Population Adjustment Factor Every tribe has on-going transportation needs, regardless of its population size. When formulas using population are used to rank projects and funding, the needs of smaller tribes become automatically discounted. "Base funding," as would be provided by the proposed "Capacity Building," helps to alleviate this bias.

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.263	P. 170-171, A3	Policy	35	73		Workgroup Disagree	NO ACTION	NO ACTION

Public Comment :Sec; 170.263 What is the PAF? Is a "federally recognized governmental subdivision of a tribe" defined in this rule or other law and what criteria must be met to qualify? It is unclear as to whether the federal government even has such a process to do this. Title 25 and other laws governing tribes only talks about "tribal governments" and nothing about subdivisions.

Workgroup Text Change

Definition of governmental subdivision. Previously referred to policy.

The use of the term federally recognized governmental subdivision of a tribe, was a key term in the negotiation.

Workgroup Comments

Term needs to be defined based on the intent of the tribal caucus at the time of the negotiation.

Policy has reviewed. A definition was added in 170.6. The full committee must decide to strike or retain.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.263	P. 171, C1 Concerns with Proposed Rule	Policy	1374	1		Workgroup Disagree	NO ACTION	NO ACTION
Public Comment	In Subpart C, Subsection 170.263 Population Adjustment Factor (PAF), language contained in this subsection "federally recognized governmental subdivision" needs further clarifications. After review of subsequent subsections that references the PAF, the Pueblo of Zuni is not supportive of this added adjustment factor to the proposed rule.							

Workgroup Text Change

Definition of governmental subdivision. Previously referred to policy.

The use of the term federally recognized governmental subdivision of a tribe, was a key term in the negotiation.

Workgroup Comments

Term needs to be defined based on the intent of the tribal caucus at the time of the negotiation.

Policy has reviewed. A definition was added in 170.6. The full committee must decide to strike or retain.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.263	P. 170, A2	Policy	381	3	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

:sec; 170.263 What is the Population Adjustment Factor? The population adjustment factor alone ignores the relative need requirement. PAF is designed to benefit the smaller population. What do we mean by a federally recognized governmental sub-division of a tribe that is authorized to administer its own IRR Funding? This implies that any group can qualify as federally recognized governmental sub-division and qualify for the funds.

Workgroup Text Change

Definition of governmental subdivision. Previously referred to policy.

The use of the term federally recognized governmental subdivision of a tribe, was a key term in the negotiation.

Workgroup Comments

Term needs to be defined based on the intent of the tribal caucus at the time of the negotiation.

Policy has reviewed. A definition was added in 170.6. The full committee must decide to strike or retain.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.264	P. 173, A1 General Comments	Funding	1337	49	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Page 51372-Section 170.264 Comment[The answer part of this section does not adequately answer the question. To say that the distribution factor is a multiplier is correct but we need to understand the rationale behind these factors and this needs to be explained in these regulations.							
Workgroup Text Change								
Workgroup Comments	The request is for a clearer rational. The workgroup believes the Q and As answer these questions. The workgroup does not have the luxury of time to address all questions asking for clarifications of the rationale used by the Neg-Reg committee in developing the factors of the funding formula. The workgroup recommends that the IRR Coordinating Committee be tasked to provide additional information regarding the development of the regulation and rationale for actions or decisions.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.264	P. 173, C(a)1 Statutory Conflicts	Funding	35	74		Reject Comment	AGREE	NO ACTION
Public Comment	:Sec; 170.264 What is the distribution factor? Comment: This section is misleading and uses inappropriate terminology to explain the PAF. The PAF does not "determine the relative PAF funding" but provides a distribution factor used to determine the MBA in the MBA equation of 170.266. Also, just because those tribes with a population greater than 10,000 has a PAF of (8) does not imply that those tribes will get a larger share of the available funds since the factor used in the denominator of the MBA equation is greater. Therefore, how does this meet the intent of the law and the obvious greater needs of the larger tribes?							
Workgroup Text Change								
Workgroup Comments	No request made, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.265	P. 173, C(a)1	Funding	35	75		Reject Comment	AGREE	NO ACTION

Public Comment

:Sec; 170.265 What funding levels are available for distribution based on the PAF? Comment: This base amount of #275 million is far to low and should be based on historical data or a study on the impacts to all tribes of such a factor should even be contemplated that clearly does not meet the intent of the law. If, for example, the IRR program received #1.0 billion per year in actual construction funds, after take downs, then the amount used in the MBA would be #725 million distributed at 12. 5% (or #90 million) to largely smaller tribes whose transportation need is very suspect not to mention their ability to expend such amounts. It is hard to believe that such a PAF methodology can be justified at being fair to all tribes when it is clearly being applied at the expense of the larger ones with the greatest need.

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.265	P. 174, D1 Proposed Language	Funding	1337	50	YES	Accept Comment	AGREE	AGREE
Public Comment	Page 51372-Section 170.265 Comment: What are funding levels? This is not explained in the Answer part of this section. We recommend changing the Question part to - "What funding is available for distribution using the PAF?"							
Workgroup Text Change	Delete q. 170.265 and replace with "What funding is available for distribution using the PAF?"							
Workgroup Comments	request is to reword the question.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.265	P. 174, D2	Funding	15	38		Accept Comment	DISAGREE	AGREE

Public Comment 170.265 What funding levels are available for distrubtion based on the PAF? Disagree with language. The phrase "after take-down" is not recommended. Again there is not indicators as to when and how the take-downs will occur. Whether the take-downs will occur at the principle total or otherwise.

Workgroup Text Change Delete in the answer ", after takedowns.

Workgroup Comments Takedown issue - Takedowns language in NPRM was not original language proposed by consensus of the full committee, recommend reverting to original language.
Workgroup accepts, refer to Exel file - takedowns.exe as part of the funding formula rationale { resident on the desktop}.

Federal Comments After Takedown refers to statutory requirments that are not subject to the formula and to any increases that are also subject to statutory takedowns.

Tribal Comments PS Addressed with corrections and rewrite for 225
3-28 Tribal Caucus disagrees with Federal interpretation of the intent. Reference earlier comments.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.266	P. 174, C2	Funding	1241	13	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.266 Rather than providing the illusion of satisfying needs for planning by use of a formula (which is inherently flawed), a base funding for all tribes, in the amount of #100,000 should be applied.

Workgroup Text Change

Workgroup Comments Request is to replace PAF with \$100,000 per tribe as minimum based allocation. This is a Key negotiated element of the funding formula, and would require reopening the negotiation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.266	P. 174, C1 Concerns with the Proposed Rule	Funding	1374	2		Reject Comment	AGREE	NO ACTION
Public Comment	Subsection 170.266 Minimum Base Allocation (MBA) indicates that additional funds will be distributed to tribes that meet the PAF criteria, along with the standard funding distribution process. Again, the Pueblo of Zuni is not in favor of this MBA, which is part of PAF's special distribution.							
Workgroup Text Change								
Workgroup Comments	No request, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.266	P. 174, D1 Proposed Language	Funding	35	76	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	:Sec; 170.266 What is the Minimum Base Allocation (MBA) Comment: The formula is not written correctly as described in :sec; 170.265. Since there is a fixed 12.5% factor involved and a minimum allocation amount of #275, the MBA formula/equation needs to reflect this.							
Workgroup Text Change								
Workgroup Comments	The commenter believes the answer is not correctly written. Workgroup accepts with mod, addressed with changes made to the Appendix B.							
Federal Comments	Federal Caucus can not agree with changes made to appendix B. Table needs to be re-worked.							
Tribal Comments	PS 3-28 Tribal Caucus believes the new rewrite clarified numerous comments regarding the Appendix B to Subpart C.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.267	P. 175, D1 Proposed Language	Funding	35	77	YES	Accept with Modification	AGREE	AGREE
Public Comment	:Sec; 170.267 What population data is used to determine the PAF? Comment: Just state that it is the population figures as described in :sec; 170.282.							
Workgroup Text Change	insert after "Factor" " as described in 170.282"							
Workgroup Comments	Request is to reference 170.282 comment is accepted with mod and reference.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.270	P. 180, D2	Funding	41	20	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

Page 51372, section 170.270. Vehicle Miles Traveled and Population have a high statistical relationship to each other, and give a strong bias in favor of large tribes. Other relevant factors, such as items a, b and f listed in Appendix A to Subpart C (page 51375), should be included in the relative need distribution factor, under the term "special need factor (SNF)". Therefore, the Relative Need Distribution Factor should be changed to become: "A = 0.40x(CTC/total C) & 0.25x(VMT/total VMT) & 0.15x(POP/total POP) & 0.20x(SNF/total SNF)". Without making a change along these lines, the distribution fact or currently described in section 170.270 bears little relationship to need, and should not be called the Relative Need Distribution Factor.

Workgroup Text Change

Workgroup Comments

Request 1 is to change the formula percentages. The workgroup rejects these as these were key factors in the negotiation of the formula and would require a renegotiation of the formula.
Request is that it should not be called the relative need distribution factor. Workgroup disagrees

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.270	P. 179, A2	Funding	1352	6	YES	Accept with Modification	AGREE	AGREE

Public Comment 170.270 Under the section on which roads are included in the cost to improve/construct calculations, only roads under construction need of 1 and 4 are included in the calculation. Under construction category need of 4 are roads that do not exist or proposed roads. The new rule should include definitions for what is a proposed road and criteria on what circumstances and conditions will be allowed to add the roads to the inventory. Will there; be a limit to how much proposed category roads will be added? Who will decide this? Without this criteria, large land base tribes will have an unfair edge over smaller tribes. These limits and criteria should be in consultation with all tribes.

Workgroup Text Change

Workgroup Comments Request definition of proposed roads and what criteria is required to add to the Inventory. Refer to section 450(b)
A proposed facility is defined as currently not in existence. Location in definitions. Accept with modification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.270	P. 179, C(c)2	Funding	4	8	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Relative Need Distribution Factor :sec; 170.270 The construction distribution is 50% CTC & 30% VMT & 20% Population. We believe the 30% VMT is too high and should be adjusted downward to no more than 15% and CTC should be increased to 65%.

Workgroup Text Change

Workgroup Comments requesting that VMT be lower and redo formula. The workgroup rejects this as this was a key factor in the negotiation of the fomrula would require a renegotiation of the formula.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.270	P. 178-179, A1 General Comments	Funding	1352	5	YES	Reject Comment	AGREE	NO ACTION
Public Comment	170.270 The relative need distribution factor formula has three main components in the formula including 50% for cost to construct; 30% vehicle miles traveled; and 20% population. The NPRM should clearly explain the rational used to assign the weight given to each of the three components under the new formula. The BIA DOT should provide this to all tribes with an explanation of its direct impact to each tribe.							
Workgroup Text Change								
Workgroup Comments	Request was for clarification in the NPRM. Comment rejected. Workgroup comment - the formula was a negotiated formula, the percentages were developed during that process based on identifiable need, usage, and other factors.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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Sec. 170.270	P. 179-180, D1 Proposed Language	Funding	415	52	YES	Workgroup Disagree	NO ACTION	NO ACTION
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Public Comment

Relative Need Distribution Factor: Comment: This is a misnomer. If your talking about a formula then use the correct term "formula"; not "factor". It is suggested to use "RNBDFD" for Relative Need Base Funding Distribution Formula since this is the base amount each region and/or tribe is to receive. This concept is supported by real transportation related data and sound rationale applied to the calculations. The relative need requirement is the basis for this formula. However, this is not a factor. :Sec;170.270 in the proposed rule states that this is a mathematical formula for distributing the IRR funds using three factors. Therefore, the correct title should be the "Relative Need Distribution Formula" and the correction should be applied throughout the text.

Workgroup Text Change

Workgroup Comments

Request 1 is for a name change to the Relative Need Distribution Factor to the Relative Need Base Funding Distribution Formula. The workgroup Workgroup disagreement on whether to change the name.
Request 2 is to change the definition of the formula, component A. Workgroup disagrees on making any change.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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Sec. 170.270	P. 179, C(c)1 Programmatic Concerns	Funding	1382	6	YES	Reject Comment	AGREE	NO ACTION
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Public Comment

The coefficients reflecting relative weight given to each formula factor appear to be arbitrary. Some justification for use of the factors is given on page 51332 of the Federal Register but the justification arguments are arbitrary in themselves. Shouldn't there be some better reasoning behind these factors? Millions of tax dollars will be allocated by a so-called equitable formula that uses weighing factors that have no documented reasoning behind them. We would suggest that the VMT factor should be higher because it is an actual measurement of road use and relatively easy to compute using two simple measurements such as road lengths and ADT. The so called Cost-to-Construct part of the formula is a very difficult item to compute because there are so many variables to consider and, although important, should be given less weight in the formula. We request reconsideration of the formula and the percentage identified for each factor.

Workgroup Text Change

Workgroup Comments requesting that VMT be higher and redo formula. The workgroup rejects this as this was a key factor in the negotiation of the fomrula would require a renegotiation of the formula.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.271	P. 181, D1 Proposed Language	Funding	1337	52	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Page 51372-Section 170.271 Comment: We recommend deleting "component" and "measures" and "estimated" and replace with "estimates". Section 170.271 and Section 170.272 should be combined.							
Workgroup Text Change								
Workgroup Comments	Request 1 clarification requested by commenter has been previously addressed in C(c)1 - with modification. Request 2 is to combine 271 and 272. Workgroup rejects, as there is no benefit identified.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.271	P. 180, C(c)1 Programmatic Concerns	Funding	415	54	YES	Accept with Modification	AGREE	AGREE
Public Comment	<p>:Sec;170.271 What is the Cost-to-Construct component in the Relative Need Distribution Factor? Comment: This will require each tribe to have and keep updated a Long Range Plan each year. Is this really necessary for computing this part of the formula? Also, if your talking about the (Total CTC) portion of the formula, then the explanation is not completely accurate since this component is a cumulative total of the eligible transportation projects, or in the case of roads, road sections identified in the IRR Inventory multiplied by the combined costs to improve the facility or section of road to an acceptable standard as outlined in Appendix C of this part expressed in terms of a dollars for all tribes and not a percentage. The writeup here needs to better explain this fact. Also, the question is not clear about this and needs to be clarified as to whether your talking about the (CTC) or (CTC ? Total C) component. It is the later component that is expressed in terms of a percentage.</p>							
Workgroup Text Change	<p>delete in first sentence of answer "measures" and insert "is" and insert "total" before estimated</p>							
Workgroup Comments	<p>Request 1 the Q and A needs to be rewritten for clarification is CTC for an individual tribe. Workgroup agrees to delete "measures" in first sentence and insert "is" and before estimated insert "total"</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.272	P. 181, D1 Proposed Language	Funding	1337	53	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Page 51372-Section 170.272 Comment: We recommend expanding the Answer part by changing it to- "The Cost-to-Construct for an individual tribe is the sum of all project costs from the tribe's IRR inventory needed to improve the transportation facility to current standards".							
Workgroup Text Change								
Workgroup Comments	Request is to add a clause on the end to improve transportation facility to current standards. Workgroup believes the recommendation doesn't add any value to the answer.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.272	P. 181, C(c)1 Programmatic Concerns	Funding	415	55	YES	Reject Comment	AGREE	NO ACTION
Public Comment	:Sec;170.272 What is the Cost-to-Construct for an individual tribe? Comment: Again this is the same cost to improve a transportation facility to an acceptable standard outlined in Appendix C for an individual tribe which is the (CTC) component of the formula. Both the question and answer needs to clarify this.							
Workgroup Text Change								
Workgroup Comments	Request is for clarification of the CTC component. Workgroup rejects based on no recommendation for language and deferring to 272, D1 which does have language recommendation.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.273 Public Comment	P. 181, A1 General Comments	Funding	1337	54		Reject Comment	AGREE	NO ACTION
Page 51372-Sec. 170.273 Comment: How long is this interim basis?								

Workgroup Text Change

Workgroup Comments Comment is a question is regarding the duration of "interim". No request, no action taken. The original answer was in the negotiated formula 170.274, but was modified in the published NPRM. Workgroup will consider changes to 274.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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Sec. 170.273	P. 182, D1 Proposed Language	Funding	35	82	YES	Reject Comment	AGREE	NO ACTION
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Public Comment :Sec; 170.273 What is the BIA methodology of estimating construction costs for transportation facilities? Comment: Both the question and answer are unclear with respect to :sec; 170.274. It is recommended that the following answer be used: "The current methodology to be used to determine an individual tribes costs to improve a transportation facility (as identified in the IRR Inventory) is the Simplified Approach to computing Cost-to-Construct as outlined in Appendix C of this subpart. Both the FHWA and BIADOT may propose, by rule, a new methodology for future re authorizations of the IRR Program in accordance with :sec; 170.274."

Workgroup Text Change

Workgroup Comments Request is to strike the current answer and replace with recommendation. Workgroup rejects as this refers to Cost to Improve from the old formula, not the negotiated funding formula, and this is an unnecessary change.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 101278 Comment	Funding Workgroup generated comment	Funding				Accept Comment		AGREE
Workgroup Text Change	Insert at the end of the Answer. "The Federal Aid Highway Construction Cost and Cost Indices do not apply to this methodology."							
Workgroup Comments	The Cost indices for both the interim and new methodology for calculating Cost to Construct is not to include the cost indices from FHWA. Workgroup generated comment based on review of Appendix C.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.274	P. 183, D1 Proposed language	Funding	1337	55	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Page 513372-Sec. 170.274 Comment: The structure of the second sentence is incorrect with the items (a) through (e) so we recommend it be changed to: The BIA and the FHWA will: Comment: What is shown in Item (c), (d) and (e) are not things that would be included in the revising the method for calculating the Cost-to-Construct component of the Relative Need Distribution Factor. Therefore, we recommend revising these to address what the Committee had in mind or deleting. As shown these are not appropriate. Item (e) is also not needed in this section since it is already included in Subparts A and B.							
Workgroup Text Change								
Workgroup Comments	Commenter recommendation is for language change. Workgroup addressed in 170.274 C(c)2							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.274 Public Comment	Workgroup generated comment	Funding				Accept Comment		AGREE
Workgroup Text Change	Insert into 170.274 After new language FY2005 "Excluding the Federal Aid Highway Constuction Cost and Cost Indices,"							
Workgroup Comments	Concern with use of cost indices identified while reviewing Appendix C. Workgroup generated comment and recommendation for correction.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.274	P. 184, D2	Funding	415	58	YES	Accept with Modification	DISAGREE	AGREE

Public Comment

[Sec]170.274 How may the BIA and FHWA revise the method for calculating the Cost-to-Construct component of the Relative Need Distribution Factor? If the committee is concerned about how to address the non-road transportation facilities, use a cost per square meter or square foot basis both in the methodology and in the IRR Inventory. Also, under subparagraph (e), costs of bridges should be included as project costs by the square meter or foot.

Insert additional bullets as project costs:

"Transportation Facility cost on a square foot cost"

"Bridge cost on a square foot cost"

Insert two new Qs and As

§170.277 What are the procedures to be used in collecting, submitting, and entering the cost to construct data?

BIA (including the regions) and FHWA, in partnership with the IRR coordinating committee, shall develop uniform procedures for collecting, submitting, and entering the cost to construct data into the IRR inventory for use in the distribution formula described in §170.225. The procedures shall include:

{m is bullets marker}

m Use of standard forms (hard copy and/or electronic);

m uniform method of determining appropriate costs per unit of measure and activity as described in §170.274 and appendix C of this Subpart C;

m certification of data;

m supporting documentation;

m quality assurance of data; and

m reporting requirements to regions and tribes.

m the corrective action to be taken if a tribe or region fails to submit its cost to construct data by the deadline established in 170.277a.

§170.277a When must the cost to construct data be submitted into BIADOT?

Workgroup Text Change

The cost to construct data must coincide with the updating process of the IRR inventory, so that the data can be used in the following year's formula distribution analysis.

request is to include a method for calculating the cost of non-road transportation facilities (per area cost), and bridges (per area cost). Accepted with modifications.



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**Workgroup
Comments**

**Federal
Comments**

**Tribal
Comments**



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.274	P. 182, C(c)1 Programmatic Concerns	Funding	415	57		Reject Comment	AGREE	NO ACTION
Public Comment	:Sec;170.274 How may the BIA and FHWA revise the method for calculating the Cost-to-Construct component of the Relative Need Distribution Factor? Comment: Does this not imply that the proposed formula has a whole is flawed and that changes are in the works? Why publish a formula that does not adequately address the intent of the law? Will the changes be published in the same manner as this rule "negotiated rule making process"?							
Workgroup Text Change								
	The commenter is questioning problems with the formula, as being flawed. No action requested, no action taken.							
Workgroup Comments	Workgroup comment - the old relative need formula data base and application of the cost to improve contained errors and omissions. As a modified version of calculating cost to improve is still being used in the interim, and the negotiated rulemaking committee did not have time to address all corrections, these things were tasked to BIA, FHWA, and the IRR Coordinating Committee to address.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.274	P. 182-183, C(c)2	Funding	1355	31	YES	Accept with Modification	DISAGREE	AGREE

Public Comment

:sec; 170.274 The original TTAM stated the following: The BIA and FHWA, in partnership with the IRR Program Coordinating Committee, shall revise the method for calculating the Construction Cost component of the Tribal Transportation Allocation Methodology by FY 2004. The BIA and FHWA shall incorporate the following elements in the new methodology: - Include costs for all eligible IRR projects, including transportation facilities that are not roads or bridges.- Take into account regional costs differences while maintaining the integrity of the system by, for example, using an average of local tribal costs, national tribal costs, and the state project costs from the tribe's local area to derive the underlying cost data from which estimates are generated.- Generate and report total costs by project and tribe.- Create templates that can be easily used at the tribal level,- Include as project costs:- Project Planning-Project Administration- Preliminary Engineering- Construction- Project Bid Items- Construction Engineering- Quality Control- Permits, fees and taxesKawerak urges that :sec; 170.274 be changed back to the original TTAM language. The Federal language in the NPRM dilutes the intent of the tribal caucus. The tribal caucus recognized that there were many issues yet to be resolved with the implementation of the TTAM. The method for calculating the TTAM, specifically the calculation of the Cost to Construct, needed additional evaluation and revision. There was no "may" or "will consider." This is work that must be done.

Delete Q & A 170.274 and replace with the following:

Sec. 170.274 How will the method for calculating the Construction Cost component of the Tribal Transportation Allocation Methodology be changed?

The BIA and FHWA, in partnership with the IRR Program Coordinating Committee, shall revise the method for calculating the Construction Cost component of the Tribal Transportation Allocation Methodology by FY 2005. The BIA and FHWA shall incorporate the following elements in the new methodology:

- (a) All costs for all eligible IRR transportation facility projects. These project costs include but are not limited to: Project planning, Project Administration, Preliminary Engineering (survey, design, NEPA, right-of-way, utility adjustments), Construction, Construction Engineering, etc. The cost to construct (or acquire) a transportation facility will be based on a cost per appropriate unit of measure in the IRR Inventory.
- (b) Regional costs differences while maintaining the integrity of the system by, for example, using an average of local tribal/BIA costs, national tribal costs, and the state project costs from the tribe's local area to derive the underlying cost data from which estimates are generated.

Workgroup Text Change

The IRR Inventory will indicate the total cost of each facility (e.g. route section, building, bridge, bus, etc.)

Workgroup Comments

Request is to convert back to original TTAM language. Workgroup agrees with modification, date change to "FY 2005" from "FY 2004". Workgroup recommends new Q@A to address timeline and uniform process for collecting and submitting cost to construct data after 170.275.

Federal Comments



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**Tribal
Comments**



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.274	P. 183, C(c)4	Funding	15	39	YES	Reject Comment	AGREE	NO ACTION

Public Comment 170.274 How many BIA and FHWA revise the method of calculating the cost for transportation facilities? This process doesn't recognize the development advisory committee established. The language should also include upon the IRR Program Coordinating Committee review. Furthermore, the language and authority should serve the interest of the committee's authority to approve and authority the BIA and FHWA.

Workgroup Text Change

Workgroup Comments Commenter recommendation is for language change. Workgroup addressed in 170.274 C(c)2

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.274	P. 183, C(c)3	Funding	41	21	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51372, section 170.274. This section should state an estimated date when, and/or under what circumstance, the interim methodology described in section 170.273 will be replaced, and should describe the process the committee plans to use to make the decision. Otherwise, there is little incentive to move from the status quo, and the "interim" method effectively could become permanent. All tribes should have some opportunity to evaluate the proposed methodology before it is finalized.

Workgroup Text Change

Workgroup Comments Commenter has a recommendation for a time limit. The workgroup addressed in rational for 174 C(c)2.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.275	P. 184-185, C(c)3	Funding	1355	11	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

Method for calculating cost to construct; :sec; 170.275. We believe this section should be revised so that only "local" tribal/BIA bid tabulations and state bid tabulations be used, not national IRR program bid tabs. Using national bid tab averages will just distort actual costs, contrary to the goal of developing accurate information. Using national bid tab data will arbitrarily benefit relatively low-cost regions at the expense of high-cost regions.

Workgroup Text Change

Workgroup Comments

The comment is to stike the National IRR Program bid tabs from the averaging process as it distorts the actual cost.
This is a workgroup disagreement item.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.275	P. 184, C(c)2	Funding	1337	56	YES	Accept with Modification	AGREE	AGREE

Public Comment Page 51373-Sec. 170.275 Comment: We recommend adding BIA bid tabs to this section since BIA bid tab data would be very appropriate. (C) National IRR Program bid tabulations implies a national average applied to all Regions. The data for (c) would be compiled from BIA Regional bid tabs or State bid tabs. We recommend deleting (c).

Workgroup Text Change Insert at the end of answer (a) "or local BIA bid tabulations"

Request is to add BIA bid tabs Workgroup recommends adding BIA to subpart (a)
Request to drop subpart c, National Tribal Bid Tabs.

Workgroup Comments Workgroup recommendation to insert new Q&A to address a procedure for collecting cost to improve data, and how it is to be entered into the IRR Inventory for driving the formula. And broader discussion on how the Q and A 275 works. Workgroup inserted new Q and A 170.277 addressed in response to a different comment.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.275	P. 184, C(c)1 Programmatic Concerns	Funding	35	84	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	:Sec; 170.275 What is the source of the construction cost used to generate the CTC? Comment: The question should also include the "Total CTC" component of the formula since the same cost figures are being used for both. It is inappropriate to be using National IRR Program bid tabulations or state bids since it does not necessarily a true reflection of cost at the regional, tribal, or reservation level. The true costs that should be used here are the regional and tribal IRR bid tabulations from the prior 3 years construction projects adjusted for inflation prior to use in this component of the formula. Also some of these other "state" sources may take time and money to collect and maintain which this program can ill afford. Who will be responsible for doing this and with what funds? It is recommend that the use of State bid tabs be used only when there are no tribal or BIA regional bid tabs available to represent the costs of a specific type of IRR facility.							
	Add new (e)							
Workgroup Text Change	(e) The National IRR program bid tab data will be collected and input into the cost to construct data base by BIADOT in consultation with the IRR Program Coordinating Committee.							
Workgroup Comments	Comment is to how to handle the National IRR program bid tab. Workgroup accepts with modification Comment is with problem of using National IRR program bid tab to average. Workgroup disagreement							
Federal Comments	The Fed Caucus proposes change to (e) as follows: (e) The National IRR program bid tab data will be olected and input in the cost to construct data base by BIADOT.							
Tribal Comments	3-28 Tribal Caucus accepts Federal language.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.276	P. 186, C(c)3	Funding	1377	23		Accept with Modification	AGREE	AGREE

Public Comment :sec;170.276 (c) The following was added to the original TTAM: "agrees to maintain the completed project under 23 U.S.C. 116";this requirement confuses eligibility for funding with requirements for maintenance of a constructed project. It doesn't belong" Delete- "...agrees to maintain the completed project under 23 U.S.C. 116."

Workgroup Text Change

Workgroup Comments Delete to delete maintenance 23 U.S.C. 116. Workgroup agrees and already acted upon in C(a)1

Federal Comments Note to committee: Fed Caucus can not agree to changes made to 170.277 (no record in the database addressing this change). Addition of 170.277a: reference needs to be made to the new Q&A's as generated by tech standards on road inventory if approved by full committee.

Tribal Comments 3-28 There were numerous comments on this issue and the question and answer were developed to address commenters' concerns. Tribal Caucus does not agree with Federal comment. For example letter 415 comment 69.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.276	P. 186, C(c)2	Funding	1394	2	YES	Reject Comment	AGREE	NO ACTION

Public Comment Facilities that are added to the IRR Inventory should not be funded at the same rate as existing facilities. Not limiting the rate at which the CTC is calculated for added facilities would cause a major reallocation of funds from some tribes. A guiding principle of TTAM was to avoid major percentage reductions of funds from particular tribes and still allow tribes to identify their true transportation needs.

Workgroup Text Change

Workgroup Comments Request to remove VMT from Q and A. Workgroup rejects and does not understand the commenters rationale for the request.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.276	P. 187, D2	Funding	35	85		Reject Comment	AGREE	NO ACTION

Public Comment

:Sec; 170.276 Do all IRR facilities identified in the IRR Inventory count in the Relative Need Distribution Factor at 100% of their CTC and VMT? Comment: Who would be responsible to insure that only the pro-rata share is being used and what is the "non-federal share"? How is this to be addressed in the IRR Inventory? It is unclear as to what the rationale or intent is here. Is the intent to apply another percentage or factor to the CTC & VMT for a specific transportation facility eligible for improvements that is also being funded by other sources of funds? What is the factor and how specifically is it to be applied? Doesn't the Inventory need to reflect this adjustment before the formula is run using the data and who is responsible to insure this happens? What happens if the other source of funding falls through. Will the tribe or region have to re-update the inventory to reflect this before the full application of VMT and CTC is used? This answer is too subjective as currently written and can easily be misinterpreted or misapplied. It is recommended that this section be stricken from the rule as it is near impossible to implement as the formula is currently written and will only complicate the distribution process even more than what is being proposed already.

Workgroup Text Change

The commenter is asking about who determines the local match. Workgroup clarification - this is already done by FHWA for the States with public lands.

The request is to strike this Q and A. Rejected by workgroup.

Workgroup Comments

The workgroup is parking this comment and is going to review the Q and A to determine if it can be written in a clearer manner. The workgroup has reviewed the Q and A and considers the commenters concerns addressed. and rejects the comment.

Federal Comments

Tribal Comments



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Sec. 170.276	P. 185-186, C(c)1 Programmatic Concerns	Funding	1337	57		Reject Comment	AGREE	NO ACTION
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Public Comment

Page 51373- Sec. 170.276 Comment: How is the non-Federal share determined? Who will determine the non-Federal share for each Region? How will this non-Federal share be shown in the IRR inventory? What is needed in this certification? We do not agree with the concept of including the cost-to-construct of all IRR. In our funding distribution formula. This methodology favors reservations close to urban areas. We have one reservation with an interstate highway going through it. Including the cost-to-construct of this highway in our funding picture increases that tribe's cost-to-construct but that tribe has a high need for improvements on the BIA road system that serves tribal people so it will never be able to use their IRR Program funds on improving this interstate highway. This methodology skews the real need for improvements on a reservation. The State is responsible for improving this interstate highway and receives Federal transportation funding for needed improvements. The same applies for State, county and municipal highways. Comment: Proposed roads are not addressed but should be since in one BIA Region the cost-to-improve is primarily generated from the proposed roads. If proposed roads are going to remain in the IRR inventory then they should be defined and explained in these proposed regulations. Comment: "(c) The state, municipality, county, or federal agency provides certification of inability to provide funding for the project and agrees to maintain the completed project under 23 U.S.C 116 (underlining added) Why would we require an agency to agree to maintain a completed project for which they are certifying that they are unable to fund improvements?"

Workgroup Text Change

Commenter is asking for clarification on numerous issues.

How is the non-federal share determined? The share is currently established by FHWA based on Federal and Public lands.

Request is to address how to handle proposed roads. Workgroup comment request is being addressed by another section of the NPRM comments. Reference 170.450 therefore comment is rejected.

Workgroup Comments

Based on the review of the comment, the workgroup believes there is no request being made, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.276	P. 186-187, D1 Proposed Language	Funding	15	40	YES	Reject Comment	AGREE	NO ACTION
Public Comment	170.276 Do all IRR facilities identified in the IRR Inventory count in the Relative Need Distribution Factor at 100% of their CTC and VMT? To be consistent the term shall should be reinserted with "must" be deleted. Parenthesis (c) deleted language and it indicates that the BIA may not be required to maintain facilities. This requires clarification. Otherwise, the language should include that the BIA participates and continues to maintain facilities.							
Workgroup Text Change								
Workgroup Comments	Request is to replace "must" with "shall" in. The workgroup believes the word must was used as Federal plain english protocol. T The commenter is also looking for clarification on the required maintenance in (c) The workgroup deleted the maintenance portion so the clarification has been provided.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.276	P. 185, C(a)2	Funding	1312	6	YES	Accept Comment	AGREE	AGREE

Public Comment

I agree with the Tribal Transportation Allocation Methodology identified in Subpart C so long as Oklahoma tribes are funded on an equal basis as other tribes across the country regardless of perceived ownership and the following maintenance caveat. I do not support the proposed :sec; 170.276(c). To require a state, county, or municipality to maintain a completed project in accordance with Title 23 U.S.C. :sec; 116 would constitute an un-fundedmandate. First, the requirement for maintenance in :sec; 116 is for all roads constructed with federal-aid funding under Chapter 1 of Title 23 U.S.C. Indian Reservation Roads are funded and constructed under Chapter 2 of Title 23 U.S.C. Secondly, the federal government does not provide any maintenance funding to a state, county, or municipality for Indian Reservation Roads. The maintenance requirement should be deleted from :sec; 170.276(c).

Workgroup Text Change

Workgroup Comments Workgroups agrees and responded to in C(a)1

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.276	P. 185, C(a)1 Statutory Conflicts	Funding	373	3	YES	Accept Comment	AGREE	AGREE
Public Comment	We agree with the Tribal Transportation Allocation Methodology identified in Subpart C with the exception of the following: Subpart C- IRR Program FundingWe do not support the proposed :sec;170.276(c). To require a state, county or municipality to maintain a completed project in accordance with Title 23 U.S.C. :sec;116 would constitute an un-funded mandate. First, the requirement for maintenance in :sec;116 is for all roads constructed with federal-aid funding under Chapter 1 of Title 23 U.S.C. This does not apply to Indian Reservation Roads, which are funded and constructed under Chapter 2 of Title 23 U.S.C. Secondly, the federal government does not provide any maintenance funding to a state, county or municipality for Indian Reservation Roads. The maintenance requirement should be deleted from :sec; 170.276(c).							
Workgroup Text Change	Delete in the answer (c) "and agrees to maintain the completed project under 23 U.S.C. 116"							
Workgroup Comments	commenter recommending deleting the maintance requirement in answer (c). Workgroup agrees.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.278	P. 187, B1 Support for the Proposed Rule	Funding	386	3		Reject Comment	AGREE	NO ACTION
Public Comment	170.278 What is the VMT component of the Relative Need Distribution Factor and how is it calculated? The Tribe supports the calculation using the sum of the length of IRR route segments in miles multiplied by the Average Daily Traffic (ADT) of the route segment. The Tribe has no preference on using the current ADT or the 20-year projected ADT as long as the ADT is applied consistently.							
Workgroup Text Change								
Workgroup Comments	No request, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.278	P. 188, D1 Proposed Language	Funding	15	41	YES	Reject Comment	AGREE	NO ACTION
Public Comment	170.278 What is the VMT component of the Relative Need Distribution Factor and How is it calculated? VTM is utilized as a measuring element of the IRR transportation system. Perhaps a language as such.							
Workgroup Text Change								
Workgroup Comments	Request is regarding VMT. Workgroup is unable to discern what the commenter is requesting.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.278	P. 187, C(c)1 Programmatic Concerns.	Funding	41	22		Reject Comment	AGREE	NO ACTION
Public Comment	Page 51373, section 170.278. At least for an interim period, there should be an alternative method for determining VMT for route segments that don't have an ADT for reasons beyond the Tribe's control.							
Workgroup Text Change								
Workgroup Comments	Commenter recommends an alternate method for determining VMT. Workgroup response - this is covered by defaults in Appendix C to Subpart C - no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.278	P. 188, C(c)3	Funding	1382	2	YES	Reject Comment	AGREE	NO ACTION

Public Comment

The method of calculating the VMT component of the Relative Need Distribution Factor by multiplying the Average Daily Traffic (ADT) by route segment lengths is not totally accurate unless the true ADT is used. The location, number and quality of traffic counts must be controlled for any route section. For example, if a traffic count is taken close to a high traffic generator (HTG) such as a shopping center or office complex and no other counts are taken away from the HTG at a point where traffic has somewhat dispersed, the resulting VMT would be in error if the single traffic count was multiplied by the route section length as defined by the existing BIA inventory format. Our suggestion is that the proposed rule should include strict guidelines as to how, when and where traffic counts should be taken so that a more accurate ADT can be acquired for each route section. Quality Assurance (QA) requirements should also be included in the proposed rule to assure that traffic counts are being conducted in an appropriate manner.

Workgroup Text Change

Request is to use strict guidelines in how traffic counts are to be taken. Workgroup notes the Appendix C to Subpart C covers this topic.

Workgroup Comments

Note: How and where traffic data is collected could have an impact on the VMT numbers. Workgroup considers this is a task for the IRR Coordinating Committee.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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Sec. 170.278	P. 187-188, C(c)2	Funding	415	61		Accept with Modification	AGREE	AGREE
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Public Comment

:Sec;170.278 What is the VMT component of the Relative Need Distribution Factor and how is it calculated? Comment: It is standard highway practice to use the 20 year projected ADT when computing the VMT component of this formula, as indicated in table I and 2 of Appendix C. Use of current ADT data is basically to project future traffic and system capacity needs as well as a baseline for future transportation needs. This is the whole concept of Long Range Transportation Planning is it not? In this respect the projected ADT would have to be explained here in detail.

Workgroup Text Change

insert "current" before "IRR" in the first line of the answer.

Workgroup Comments

Commenter is making a statement about standard use of VMT+20. Based on neg reg negotiation for the formula, VMT is considered a usage term of the existing facility while VMT+20 is used in determining the adequacy design standards and is used in the CTC . For clarification the workgroup recommends inserting "Current" before "IRR" in the first line of the answer.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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Sec. 170.279	P. 189, C(c)1 Programmatic Concerns	Funding	1394	4	YES	Reject Comment	AGREE	NO ACTION
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Public Comment
:Sec; 170.279 What IRR route segments are used to calculate VMT?All IRR route segments in the IRR Inventory are used to calculate VMT, but percentage factors are applied.Issue:No percentage factors should be applied. The Routes that are included in the IRR Inventory are used by and for tribal members and is an indication of relative need as noted in the preamble (51334) as a part of How Does the Relative Need Distribution Factor Comply with Congressional Intent? "Relative Need of Indian Tribes for Transportation Assistance. The Relative Need Distribution Factor and inventory system address the relative need of all tribes for transportation assistance by setting up a tribally-driven process for developing and maintaining the inventory data from which funding is calculated. It provides for a full accounting of tribal transportation needs. In the existing relative need formula cost to improve funding was generated only by BIA system routes, but all IRR roads designated as construction need 1 (CN1) and 4 (CN4) compute a need based on VMT. The Relative Need Distribution Fact or continues the practice of the existing formula using Population and VMT factors to allocate funds based on road use and population".Recommendation: :sec;170.279 What IRR route segments are used to calculate VMT? All IRR route segments in the IRR Inventory are used to calculate VMT.

Workgroup Text Change

Workgroup Comments Request is to delete percentage factors in application of the formula to the IRR Inventory. The workgroup rejects this as this was a key factor in the formula negotiation, any change of this nature would require a significant renegotiation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.279	P. 189, D1 Proposed Language	Funding	15	42	YES	Reject Comment	AGREE	NO ACTION
Public Comment	170.279 What IRR route segments are used to calculate VMT? Agree with the answer to the comma. Thereafter, the next phrase should be included in definition of the VTM factors in a diagram, which brings about other questions of what percentage is utilized and how is it factored.							
Workgroup Text Change								
Workgroup Comments	Request to include a definition of the UTM factors in the diagram. Workgroup doesn't understand the request and is rejecting because the request is unclear.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.279	P. 188, A1 General Comments	Technical Standards	1337	59	YES	Referred to Funding	AGREE	AGREE
Public Comment	Page 51373 170.279 Comment: Route segments should be defined so all involved in the IRR Program will know what these are. What the percentage factors? These need to be defined and their proposed use be explained in this section.							
	In both Q and A replace "segments" to "sections"							
Workgroup Text Change	Insert at the end of the answer "in accordance with 170.27							
	Request is that route segments be defined. Workgroup believes the rule does not speak to route segments and recommends changing the term "segments" to "sections", however we do believe this is being addressed by the work of the subworkgroup to develop a process. Parked (the workgroup needs to review if there is a definition of the Inventory and determine if it should be addressed.) This may be recommended to the coordinating committee.							
	Workgroup is referring definition evaluation to Tech and Standards but would like to coordinate with Technical and Standards on this and other terms. Tech standards response: made minor change to definition of inventoy by referring to "database." See revised 170.446. Delete definition of IRR Inventory from definitions sections since it is in 170.446.							
Workgroup Comments	Request 2, recommendation to define percentage factors. Recommend to accept with mod and add a cross reference to 170.276							
Federal Comments								
Tribal Comments	Workgroup indicates this was an accept with modification. Tribal Caucus agrees.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.279 Public Comment	P. 189, D2	Funding	27	26	YES	Accept with Modification	AGREE	AGREE
:sec;170.279 Recommend adding reference cite at end of answer "pursuant to :sec;170.276".								

Workgroup Text Change

Workgroup Comments Request is to add cross reference to 276. Workgroup addressed with Mod in A1

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.279	P. 189, C(c)2	Funding	415	63	YES	Reject Comment	AGREE	NO ACTION

Public Comment :Sec;170.279 What IRR route segments are used to calculate VMT? The proposed rule states that the average daily traffic (ADT) is applied in the factor. The ADT should be the projected ADT based on a 20 Year projection to be consistent with the application of ADTs in the Cost-to-Construct determination and long range transportation planning projections. The 20 Year projected ADT is standard throughout the highway industry and is consistently applied to designs standards, long range transportation planning, and needs analysis. See :Sec;170.429(a)and :Sec;170.466 for consistency. Again it is recommend that the 20 Year projected ADT be used in lieu of the current ADT proposed.

Workgroup Text Change

Workgroup Comments Request is to use ADT+20. Workgroup rejected in response to a previous commenter.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.282	P. 190, B1 Support for the Proposed Rule	Funding	386	4		Reject Comment	AGREE	NO ACTION
Public Comment	<p>170.282 What is the Population component of the Relative Need Distribution Factor and how is it determined? The Tribe endorses the use of population data of the American Indian and Alaska Native Service Population developed by the Department of Housing and Urban Development, pursuant to the Native American Housing Assistance and Self-Determination Act (NAHASDA). We feel the population data obtained pursuant to NAHASDA is a more uniform and verifiable source of data to be used as the population component of the Relative Need Distribution Factor. The Tribe will support the use of on- and near-reservation service area population from the most recently published BIA Labor Force Report on an interim basis not to exceed one (1) year beyond the date the Final Rule will be published in the Federal Register.</p>							
Workgroup Text Change								
Workgroup Comments	No request, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.282	P. 190, C(c)1	Funding	15	43		Accept with Modification	AGREE	AGREE

Public Comment 170.282 What is the Population component of the Relative Need Distribution Factor and how is it determined? Since the NAHASDA is not yet final, it is a good idea to not utilize this tool until it is final. It is assumed that the Nation will be reviewing this information and it is up to the tribes to determine its accuracy and potential benefits.

Workgroup Text Change

Workgroup Comments Request is addressing the interim problem. Workgroup addressed in A2.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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Sec. 170.282	P. 190-191, C(c)3	Funding	422	6		Reject Comment	AGREE	NO ACTION
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Public Comment I agree with the Tribal Transportation Allocation Methodology identified in Subpart C with the exception of the following: The population component in :sec;170.282 needs further clarification. Once the IRR program is modified to incorporate Indian population counts from the NAHASDA data set, the Indian population figures used must include all Indians. This includes those who are recognized as Indian and another race as identified in the 2000 Census. These Indians are on existing tribal rolls and should not be discounted in the final regulation. Otherwise, I would support the BIA Labor Force Report to be used as the official Indian population component.

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.282	P. 190, A2	Funding	1337	60	YES	Accept with Modification	AGREE	AGREE
Public Comment								
Page 51373-Sec. 170.282 Comment: How long is this interim basis?								
In the first sentence after after "define" "a portion of"								
Delete from answer the second sentence "On an ...Report"								
Workgroup Text Change In the third sentence insert after "data" "used is" and delete "of"								
Workgroup Text Change In final sentence delete ", will become ...census data" and insert "(25 U.S.C. 4101 et seq.)"								
Workgroup Comments Requester is asking what is the interim period. The workgroup believes the NAHASDA is complete and the question should be rewritten to indicate this interim process is no longer required. Workgroup request that the cite be checked.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.282	P. 191, C(c)4	Funding	365	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.282 What is the Population component of the Relative Need Distribution Factor and how is it determined? Comment: Due to the fact that not all Native Americans complete a census, the number of American Indian or Alaska Native people served should continue to be obtained by the BIA Labor Force Report or by Tribal self reporting of the its enrollment numbers. The Tribal enrollment numbers are the most accurate population count.

Workgroup Text Change

Workgroup Comments Requester is asking to use tribal enrollment. The workgroup considers this was a major negotiaion factor in the formula as negotiated and is therefore rejected as this would require reopening the negotiation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.282	P. 191, D1 Proposed Language	Funding	3	26	YES	Accept with Modification	AGREE	AGREE
Public Comment	170.282 What is the Population component of the Relative Need Distribution Factor and how is it determined? Comment: We recommend that the statutory citation to NAHASDA (25 U.S.C. 4101 et seq.) be added following the reference to that Act.							
Workgroup Text Change								
Workgroup Comments	Request is to add NAHASDA cite. Workgroup addressed in A2.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.282	P. 190, C(c)2	Funding	419	3	YES	Reject Comment	AGREE	NO ACTION

Public Comment

C. "Population" = total population for an individual tribe. The existing relative need formula needs to utilize the census 2000 count because it's the most recent, accurate crunch of all Indian Tribes.

Workgroup Text Change

Workgroup Comments Request is to change population different data. The workgroup considers this was a major negotiaion factor in the formula as negotiated and is therefore rejected as this would require reopening the negotiation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.282	P. 191, D2	Funding	35	88	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec; 170.282 What is the Population component of the Relative Need Distribution Factor and how is it determined? Comment: The population component is used to compute a "portion" of the transportation needs on the various Indian reservations.

Workgroup Text Change

Workgroup Comments Recommendation to add "portion" language. Workgroup accepted and acted on this in responding to A2.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.282	P. 190, A1 General Comments	Funding	40	11		Reject Comment	AGREE	NO ACTION
Public Comment	:pg.; 51373 Relative need formula-why use NAHASDA population count if the 2000 Census is to be used? Housing authorities do not have data on privately financed homes and trailer homes.							
Workgroup Text Change								
Workgroup Comments	Question on why using NAHASDA. No action requested, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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Sec. 170.285	P. 196-195, C(c)2	Funding	35	89		Reject Comment	AGREE	NO ACTION
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Public Comment

:Sec; 170.285 May a tribe challenge the Cost-to-Construct, Vehicle Miles Traveled, and Population data BIA users in the Relative Need Distribution Factor? Comment: What about the cost-to-construct, VMT, or population data of another tribe? How are all the tribes assured that the data used is accurate and that no one tribe or region is padding their numbers or inventory? Does this also mean that no one can challenge the data used in the set asides (i.e. IRRHPP and MBA)? Why would any tribe question the population component data as this is determined by another organization out of the BIA's control? What sort of data would the tribe have to contend what is being used in the formula? This could undermine the total Inventory and funding distribution process. This again implies that there are inadequate controls built into this rule and proposed formula to insure the integrity of the data. So where does that leave the program and tribes as a whole?

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.285	P. 195, C(c)1 Programmatic Concerns	Funding	15	44	YES	Reject Comment	AGREE	NO ACTION
Public Comment	170.285 May a tribe challenge the Cost to Construct, Vehicle Miles Traveled and Population data BIA uses in the Relative Need Distribution Factor? If a tribe is to challenge any of these factors why is it that the tribes must first look to the BIA Regional Director? The answer should reflect language that it a tribe is to challenge then it should challenge it to the IRR Committee.							
Workgroup Text Change								
Workgroup Comments	The requester is asking that factor appeals go to the IRR Committee. The workgroup believes the appeal process as provide in the proposed rule is correct for data appeals, and the request is rejected.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.285	P. 196, D1 Proposed Language	Funding	1337	61	YES	Accept Comment	AGREE	AGREE
Public Comment	Page 51373-Section 170.285 Comment: We recommend replacing "that it" be changed to "to" since "it" applies to the Regional Director, The tribes presently develop the population data used in our present funding distribution formula. The IRR Program personnel accept this population data for use in the funding distribution formula Why would a tribe challenge their own population data?							
Workgroup Text Change	In the first sentence of the answer, replace "that it" with "to"							
Workgroup Comments	Request is to replace "that it" with "to" The workgroup accepts.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.286	P. 196, C(c)1	Funding	15	45	YES	Reject Comment	AGREE	NO ACTION

Public Comment 170.286 When can a tribe submit a Relative Need Distribution Factor data correction request? Again, why must the Regional Director have exclusive authority to determine any correction. The BIA for the Navajo Regional Office appears not to have updated information or even a sharing of information ability. The language should reflect that the tribe shall submit data correction request to the IRR Committee.

Workgroup Text Change

Workgroup Comments Request is to change data appeal process. There is a workgroup disagreement and further study is needed. Referred to the subworkgroup for further evaluation. rejected

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.287	P. 197, C(c)2	Funding	415	66	YES	Reject Comment	AGREE	NO ACTION

Public Comment General Data Appeals::Sec;170.287 When must a data correction request be approved? Comment: It is inappropriate to place the Regional Director in a position of having to make a decision on data disagreements as this could be viewed as a conflict of interest, It is more appropriate for a third party such as BIA DOT or FHWA to make these sort of decisions in the same fashion as in design exceptions under Subpart D.

Workgroup Text Change

Workgroup Comments Request is that the appeal no go the Regional Director but to BIADOT of FHWA because there is a perceived conflict of interest. The workgroup believes there is the potential for a conflict of interest. There is a workgroup disagreement and further study is needed. Referred to the subworkgroup for further evaluation. Rejected

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.287	P. 197, D2	Funding	1368	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Section 170.287 pg. 51373 It's the Tribes' preference and recommendation that the final sentence read: "If the Regional Director does not respond in 30 days of receipt of the request, the request must be deemed approved."

Workgroup Text Change

Workgroup Comments The request is to change disapproved to approved. The workgroup rejects as changing to approved could potentially skew the data due to non-response.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.287 Public Comment	P. 197, D1 Proposed Language	Funding	1337	62	YES	Reject Comment	AGREE	NO ACTION
Page 51373-Section 170.287 Comment[We recommend replacing !relied upon! to !used! in the second sentence.								

Workgroup Text Change

Workgroup Comments Request is to replace "relied upon" with "used". Workgroup rejects because it believes it would not improve the language.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.287	P. 196-197, C(a)1 Statutory Conflicts	Funding	365	2	YES	Reject Comment	AGREE	NO ACTION
Public Comment	170.287 When must a data correction request be approved? Comment: This proposed change is opposite to the ISDEAA :Indian Self-Determination and Education Assistance Act; P.L. 93-638 which states "90 days after receipt of the proposal, approve the proposal and award the contract unless the Secretary provides written notification to the applicant that contains a specific finding that, or that is supported by a controlling legal authority?". The proposed rule would be opposite to the ISDEAA 93-638 law as it is written. "If the Regional Director does not approve the tribe's request within 30 days of receipt of the request, that request must be deemed disapproved". We do not agree with this proposed rule and feel it should follow the format of the ISDEAA P.L. 93-638 that the request is approved unless otherwise notified within 30 days by the Regional Director.							
Workgroup Text Change								
Workgroup Comments	Request is to use a 638 process to address data change request. Workgroup believes this outside the scope of the neg-reg committee and rejects the request.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.287	P. 197, C(c)1 Programmatic Concerns	Funding	15	46	YES	Reject Comment	AGREE	NO ACTION
Public Comment	170.287 When must a data correction request be approved? Again, why must the Regional Director have exclusive authority to determine any correction. The BIA for the Navajo Regional Office appears not to have updated information or even a sharing of information ability. The language should reflect that the tribe shall submit data correction request to the IRR Committee.							
Workgroup Text Change								
Workgroup Comments	Request is to have appeals go the IRR committee. The workgroup rejects as it believes the current appeal process as modified is correct.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.288 Public Comment	P. 197, A1 General Comments	Funding	1337	63	YES	Accept Comment	AGREE	AGREE
Page 513730 Sec. 170.288 Comment: What is operation of law? This should be explained.								
Workgroup Text Change	Delete in the answer under (a) "by operation of law" and replace with "by non-action of the Regional Director"							
Workgroup Comments	Request is to explain the operation of law. The workgroup agrees.							
Federal Comments	Needs grammatical correction (by by)							
Tribal Comments	3-28 Tribal Caucus agrees with Technical Correction.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.288	P. 198, C(c)2	Funding	415	67	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

General Data Appeals::Sec;170.288 How does a tribe appeal a disapproval from the Regional Director? Comment: What is meant by "disapproval by operation of law" in this writeup? This obviously is not conducive to the "government to government relationship this rule and the parties to this rule are to uphold. Also if such a decision ends up in a Board of Appeals, it could potentially take years to decide and what will the decision do to the program funding for the particular tribe? If the tribe wins does that mean they get credit for the number of years or months it took to get the changes made plus interest and other costs not to mention where those funds come from? Somewhere along the line a decision must be made and all parties must live with the decision for the good of the program.

Workgroup Text Change

Workgroup Comments

Request regards the language "disapproval by operation of law" The workgroup agrees with modification, this was addressed by action on A.1
Comment on recovery on appeals. No agreement of the workgroup that there was an actual request.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.288	P. 198, C(c)1 Programmatic Concerns	Funding	15	47	YES	Reject Comment	AGREE	NO ACTION
Public Comment	170.288 How does a tribe appeal a disapproval from the Regional Director? The process in which this policy is developed is never guaranteed. The Deputy Commissioner's Office response to any legal remedy takes longer that 30 days. There needs to be a provision for any disagreement to the tribe's appeal process be consistent. If an appeal is to be process, then it should deal directly with the policy committee.							
Workgroup Text Change								
Workgroup Comments	Request is to provide provisions for any disagreement for the line of the appeal process to be consistent. Workgroup rejects as it is outside the scope.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.290	P. 199, D1 Proposed Language	Funding	3	27	YES	Accept Comment	AGREE	AGREE
Public Comment	170.290 How is the IRR Inventory used in the Relative Need Distribution Factor? Comment: Correct the citation to the NPRM provision which defines "IRR Inventory" from 170.445 to 170.446.							
Workgroup Text Change	Delete in the answer "445" and replace with "446"							
Workgroup Comments	Request is to correct cite of 170.445 to 170.446							
Federal Comments	Change has not been made in FF handout.							
Tribal Comments	3-28							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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Sec. 170.290	P. 198, A1 General Comments	Funding	415	69	YES	Referred to Technical Sta	NO ACTION	AGREE
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Public Comment

:Sec;170.290 How is the IRR Inventory used in the Relative Need Distribution Factor? Comment: The inventory is not clearly defined here nor in 170.445 so that everyone understands what is required in the inventory update process. This rule needs to specify exactly all databases, factors, cost figures, etc. that affect their use in a distribution formula. The inventory does NOT identify the transportation need but rather the Long Range Transportation Plan and transportation planning process does as indicated in :Sec;170.291. The inventory only reflects the results of this planning process.

Workgroup Text Change

The commenter is requesting that the inventory rule specify data bases, standards, and other details. The workgroup agrees and recommends that this needs to be referred to the Tech and Standards group to address 170.446. Also note the reference to 445 is incorrect in the NPRM and is being corrected in the comment D1. Workgroup request coordination with Tech Standards on the resolution of issues associated with 446.

Workgroup Comments

The tech standards and funding workgroups believe that 446 is adequately addressed by changes already made by TS. Additional fixes are addressed in 170.299. TS may want to reference 170.299. accepted with mod.

Federal Comments

Tribal Comments

Workgroup indicated this was accept with mod. Tribal Caucus agrees.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.291	P. 199, D2	Funding	35	94	YES	Accept with Modification	DISAGREE	AGREE

Public Comment

[Sec] 170.291 How is the IRR inventory developed? Comment[The reference should be [sec] 170.427 - 430.

Workgroup Text Change

Workgroup Comments Comment was addressed by the changes in D1.

Federal Comments Federal Caucus cannot agree with addition of last sentence. This addressed in section170.299.

Tribal Comments PS
3-28 This was a key issue of the negotiation for the funding formula



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.291 Public Comment	P. 199, D1 Proposed Language	Funding	27	28		Accept with Modification	AGREE	AGREE
:sec;170.291 The reference cite ":sec;170.427" is a definition not a "process". Recommend removing word "process" from the answer.								
Workgroup Text Change	Delete in the answer "defined" and replace with "described" Add after section 170.427 "through 170.432"							
Workgroup Comments	Comment is valid. The cite is to a definition, and the citation needs to be expanded.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.291	P. 199, D3	Funding	1337	65	YES	Reject Comment	AGREE	NO ACTION

Public Comment Page 513373 Sec. 170.291 Comment: The Answer part is partially correct. The BIA has maintained the IRR inventory and continues to update it with data resulting from completed construction projects and traffic data obtained in the field. We suggest this section be moved to the IRR Inventory part of this NPRM.

Workgroup Text Change

Workgroup Comments Request is to move this Q and A to the Inventory portion of the NPRM. The workgroup believes this is a cross reference of the Cost to Construct to other pertinent sections of the document.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.292	P. 200-201, D2	Funding	1394	3	YES	Reject Comment	AGREE	NO ACTION

The projects that have been constructed to their design standard are eligible for inclusion in the IRR Inventory but are not included in the CTC portion of the formula for a period of 5 years after completion of the project. Recommendation: Combine Q&As #:sec; 170.292 and :sec; 170.276 as follows:#:sec; 170.292 Are all facilities included in the IRR Inventory used to calculate CTC?Yes but the rate at which the facility is computed will vary as follows:1. The CTC for any facility identified in the IRR Inventory that is eligible for funding for construction or reconstruction with Federal funds, other than IRR or Federal Lands Highways (FLH) funds, must be computed at the non-federal share requirement for matching funds. If, however, the facility falls into one or more of the following categories, then the CTC factors must be computed at 100%:(a) All transportation facilities approved and included in the IRR system for funding purposes prior to these regulations; or(b) Any facility that is not eligible for funding for construction or reconstruction with Federal funds, other than IRR or PLH funding; or(c) The state, municipality, county, or federal agency provides certification of inability to provide funding for the project and agrees to maintain the completed project under 23 U.S.C. 116.2. Projects that have been constructed to their design standard will be calculated at 0% in the CTC portion of the formula for a period of 5 years after completion of the project.3. Facilities added to the IRR Inventory that are used to calculate the CTC shall be added at an annual rate of no more than 2%. Eligible routes that were not included in the IRR system for funding purposes prior to these regulations may be exchanged for existing routes funded at 100%. Such routes will be exchanged on an equal mile basis.

Public Comment

Workgroup Text Change

Workgroup Comments Commenter is requesting a combining of sections 292 and 276 with recommended language for clarification. The workgroup believes this request would require renegotiation. The workgroup rejects the request

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.292	P. 200, C(c)1 Programmatic Concerns	Funding	415	70		Reject Comment	AGREE	NO ACTION
Public Comment	:Sec;170.292 Are all facilities included in the IRR Inventory used to calculate CTC? Comment: This makes no sense to only exclude the CTC from future funding calculations. If the facility is built to the design standard then all factors VMT, CTC, and population should be excluded for 5 years. Also what is the basis or rationale for the 5 year term knowing that based on the design standards, all facilities are to be designed and built for a 20 year term? Also how are those seasonal roads or trails addressed here?							
Workgroup Text Change								
Workgroup Comments	Strictly a comment, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.292	P. 200, D1 Proposed Language	Funding	1337	66	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Page 51373-Section 170.292 Comment: We recommend changing the Answer portion of this section to:No, transportation facilities constructed to their design standard are not eligible for funding for a period of 5 years after completion of the improvement.Comment: Proposed transportation facilities have not been addressed but this needs to be done. Our present road inventory includes proposed roads forever if these are never constructed. This is just a way of generating cost-to-improve in some BIA Regions.							
Workgroup Text Change								
Workgroup Comments	Request to change answer. The workgroup rejects as this would reopen renegotiation, and the workgroup believes the commenter does not understand the purpose of this section.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.294	P. 202, D1 Proposed Language	Funding	369	90	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	:Sec; 170.294 Is there a difference for funding purposes between the old BIA Roads Inventory and the IRR Inventory? Under paragraph (d) change the text to read as follows: "other eligible IRR facilities; and" to be consistent with Subpart B.							
Workgroup Text Change	Combine (d) and (e) to as follows: " (d) other eligible IRR facilities, including eligible non-road facilities."							
Workgroup Comments	Request is to change (d) to other eligible IRR facilities; and. The workgroup discussed the differences in the various terms. The workgroup accepts with modifications.							
Federal Comments	Federal Caucus recommends changing (e) to "other eligible IRR transportation facilities"							
Tribal Comments	3-28 Tribal Caucus accepts federal language.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.294	P. 201-202, C(c)3	Funding	415	71	YES	Workgroup Disagree	NO ACTION	NO ACTION

:Sec; 170.294 Is there a difference for funding purposes between the old BIA Roads Inventory and the IRR Inventory? This section does nothing to explain what the "old inventory" comprised of. Nor does it tell the reader how this old inventory is to be expanded and how it will affect the funding. Also it is unclear whether there is no limit on the number of miles or facilities that can be added to the inventory each year" If this is the case then there will be an arms race in the program that will overwhelm both the BIA DOT, BIA regions, and FHWA. It is strongly recommended that a 2% cap per year be placed on all inventory additions per year. This section provides for expanding the IRR Roads Inventory for funding purposes. The concept alone jeopardizes the obligations of Counties and State highway departments in maintaining their obligation to continue providing services to Indian reservation roads under their jurisdiction. These outside governmental entities could very well abandon their jurisdictional roads since the new IRR Inventory will now be used to justify transportation IRR needs to Congress and to generate funds. Under paragraph (c) the implications to the tribes is that if the tribe is going to be generating funds for other state, county, and local roads, then why would these other entities want to provide their share of meeting the transportation needs on the reservations when funds are being provided through this program for this purpose? This is a dangerous proposition which will pit the tribes against these other governmental entities leaving the BIA stuck in the middle with no solutions. The question arises as to the tremendous additional costs involved to expand the IRR Inventory. What provisions will be made to cover these expenses? Will there be additional set-asides to fund this undertaking? What standards will be applied to non-road facilities and other IRR eligible projects? Where in the rule are these standards defined?

Public Comment

Workgroup Text Change

Workgroup Comments Request a 2% cap on the inventory. This is a workgroup disagreement item.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.294	P. 201, C(c)1 Programmatic Concerns	Funding	1363	9	YES	Workgroup Disagree	DISAGREE	NO ACTION
Public Comment	<p>I agree with the Tribal Transportation Allocation Methodology identified in Subpart C with the exception of the following: I do not support the proposed :sec;170.294(c). The addition of "all IRR routes" in the inventory for funding purposes would create immediate disparity. Many BIA regions including those in Oklahoma have not been allowed include additional IRR or BIA routes to the inventory because of the 2 percent annual limitation factor. The manner in which :sec;170.294(c) is written, over 30,000 miles of IRR routes would be added at a rate of 100 percent to the cost-to-construct and vehicle miles traveled components of the formula, so long as they met the requirements of :sec;170.276(c). I disagree with this concept completely. Oklahoma tribes should be funded on an equal basis as other tribes across country, which includes fair and equitable treatment of the IRR inventory. Section 170.294(c) should be revised as follows: ". . .additional IRR routes at an annual growth rate of 2 percent per year at the BIA regional level."</p>							
Workgroup Text Change								
Workgroup Comments	<p>Commenter is requesting to add a clause at the end of (c) that requires a limit to the expansion of the inventory to 2%. This change would require a renegotiation of the funding formula. The workgroup is unable to agree</p>							
Federal Comments	<p>Federal Caucus recommends changing (e) to "other eligible IRR transportation facilities"</p>							
Tribal Comments	<p>3-28 Tribal Caucus accepts federal language.</p>							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.294	P. 201, C(c)2	Funding	1339	2	YES	Reject Comment	AGREE	NO ACTION

Public Comment Section 170.294 Delete state and county roads in inventory mileages for fund distributions. To add roads should require a real transportation needs analysis. This would mean nodes and links showing how the requested road addition serves a management need. For example resource, public safety, etc. Mileages should not be added without showing the benefits to the requesting tribe.

Workgroup Text Change

Workgroup Comments Request is to delete state and county roads in the inventory for fund distributions. The workgroup rejects the comments as this would require a renegotiation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.295	P. 203, C(c)3	Funding	415	73	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec; 170.295 Who is responsible for maintaining the National IRR Inventory Database? Comment: What is the difference between the IRR Inventory in 170.294 and the National IRR Inventory here? If it is the same then be consistent with terminology. It is inappropriate for the regional office to be responsible for certifying their updates to the IRR National inventory database since this would open the door for potential abuse and question the integrity of the data that is to be used from this inventory database to drive the distribution formula. Also this is not consistent with 170.296 (g). It is highly recommended that BIADOT and FHWA certify the updates and/or additions to insure the integrity of the system and have these two offices decide challenges to the database by a tribe.

Workgroup Text Change

Change the capitalization of in the Q and A to the following: "national IRR inventory database"

Workgroup Comments

Requesting clarification between the differences in the Inventory in 170.294 and this section. Workgroup concurs it can be confusing and is recommending a modification by changing the captialization.
Request is to have FHWA and BIADOT certify the Inventory data. Workgroup rejects as same question in C(c)2 this was a significant area of discussion in the Neg-Reg process.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.295	P. 202, C(c)1 Programmatic Concerns	Funding	15	48		Reject Comment	AGREE	NO ACTION
Public Comment	170.295 Who is responsible for maintaining the national IRR Inventory Database? BIA should be entrusted with maintaining and entering as provided by the tribes. Certifying any data is having BIA's approval rather than the BIA being entrusted.							
Workgroup Text Change								
Workgroup Comments	commenter is making a comment only, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.295	P. 202-203, C(c)2	Funding	381	4	YES	Reject Comment	AGREE	NO ACTION
Public Comment	:sec; 170.295 Who is responsible for maintaining the National IRR Inventory Database? It is recommended that the BIA Department of Transportation and Federal Highway Administration equally oversee and monitor the maintenance of the IRR Inventory Database.							
Workgroup Text Change								
Workgroup Comments	The recommendation is to have FHWA and BIADOT oversight and a more active role in the Inventory. This was a major concern of the workgroup, and it was agreed that the responsibility belongs at the Regions with QA by FHWA and BIADOT.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.295	P. 203, D2	Funding	415	74	YES	Reject Comment	AGREE	NO ACTION

Public Comment :Sec; 170.295 Who is responsible for maintaining the National IRR Inventory Database? Recommend the answer read as follows: "The BIA regional offices shall maintain and enter updates to their respective IRR Inventory and provide quality control checks on submissions by the tribes in their region. BIADOT and FHWA shall certify and approve all updates, additions and/or deletions to the National IRR database before the data is used in the distribution formula. The process of updating, maintaining, and approving the inventory database shall be in accordance with :Sec;170.295."

Workgroup Text Change

Workgroup Comments commenter is recommending changes to the negotiated Q and A. Workgroup rejects this.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.295	P. 203, D1 Proposed Language	Funding	1382	5		Reject Comment	AGREE	NO ACTION
Public Comment	This part states that the "BIA Regional Offices are responsible for maintaining, certifying, and entering the data for their Region's portion of the National IRR Inventory Database." We suggest that the BIA Regional Offices be appropriately staffed and equipped to provide Quality Assurance checks, including transportation plan and field checks, on the existing inventory and on any new inventory submitted by the tribes.							
Workgroup Text Change								
Workgroup Comments	commenter is making a comment and observation, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.296 Public Comment	P. 204, C(c)2	Funding	415	75		Reject Comment	DISAGREE	NO ACTION
:Sec;170.296 How is the IRR Inventory kept accurate and current? Comment: the deadlines shown will be impossible to meet as currently written.								

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments Section 170.296 was re-written by the Tech Standards workgroup.

Tribal Comments 3-28 Tribal Caucus understands the Federal Caucus agrees with this.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.296	P. 204, C(c)5	Funding	15	49		Reject Comment	DISAGREE	NO ACTION

Public Comment 170.296 How is the IRR Inventory kept accurate and current? Under (c) Why is the BIA correcting inventory. An inventory is collected from the field staff, how would a regional office accurately verify this information. Again, under (g) The BIA DOT approves all submissions into the National Inventory.

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments Section 170.296 was re-written by the Tech Standards workgroup.

Tribal Comments 3-28 Tribal Caucus understands the Federal Caucus agrees with this.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.296	P. 205, C(c)6	Funding	1364	5	YES	Reject Comment	DISAGREE	NO ACTION

Public Comment 170.296 How is the IRR Inventory kept accurate and current? Comment: Paragraph (g) states that BIADOT will approve all submissions from the BIA Regional Offices for inclusion into the National IRR Inventory. Many tribes experience great difficulty in getting IRR eligible projects added to their TIP and eventually reflected in the National IRR Inventory. The Tribe recommends that the Committee consider additional regulations which permits a tribe to challenge either the Region's or BIADOT's decision to exclude what a tribe believes to be an eligible project from the IRR inventory.

Workgroup Text Change

Workgroup Comments Addressed in C(c)3 and addressed in the rule in the data appeal section.

Federal Comments Section 170.296 was re-written by the Tech Standards workgroup.

Tribal Comments 3-28 Tribal Caucus understands the Federal Caucus agrees with this.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.296	P. 205, D1 Proposed Language	Funding	27	29	YES	Reject Comment	DISAGREE	NO ACTION
Public Comment	:sec;170.296 The last bullet was not in the original TTAM. We concur that the BIADOT is involved, however we recommend that their involvement be limited to quality assurance. Recommendation-delete last bullet in answer.							
Workgroup Text Change								
Workgroup Comments	Addressed in response to C(c)3							
Federal Comments	Section 170.296 was re-written by the Tech Standards workgroup.							
Tribal Comments	3-28 Tribal Caucus understands the Federal Caucus agrees with this.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.296	P. 204, A1 General Comments	Funding	41	25		Reject Comment	DISAGREE	NO ACTION
Public Comment	Page 51374, Subpart C, Section 170.296(a) & (f). BIA currently does not have the ability to send information electronically, unless they send a diskette or CD-rom by mail. It is unclear what benefit Tribes would gain by having an electronic copy of the inventory database.							
Workgroup Text Change								
Workgroup Comments	No request, no action taken.							
Federal Comments	Section 170.296 was re-written by the Tech Standards workgroup.							
Tribal Comments	3-28 Tribal Caucus understands the Federal Caucus agrees with this.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.296 Public Comment	P. 204, C(c)3	Funding	1156	13	YES	Accept with Modification	DISAGREE	AGREE
170.296 We also recommend that BIADOT involvement be limited to quality assurance.								
Workgroup Text Change	(g) delete in its entirety							
Workgroup Comments	Commenter is recommending that (g) be changed. The workgroup indicates that this item was not negotiated and needs to be deleted. It is noted that quality assurance may require additional attention in the NPRM. The workgroup would like an explanation regarding why non-negotiated activities were added to the TTAM portion of the NPRM. Quality assurance is covered in 170.700 under the stewardship plan.							
Federal Comments	Section 170.296 was re-written by the Tech Standards workgroup.							
Tribal Comments	3-28 Tribal Caucus understands the Federal Caucus agrees with this.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.296 Public Comment	P. 204, B1 Support of the Proposed Rule	Funding	392	6		Reject Comment	DISAGREE	NO ACTION
Section 170.296 How is the IRR Inventory kept accurate and current? Support this section.								
Workgroup Text Change								
Workgroup Comments No request, no action taken.								
Federal Comments Section 170.296 was re-written by the Tech Standards workgroup.								
Tribal Comments 3-28 Tribal Caucus understands the Federal Caucus agrees with this.								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.296	P. 204, C(c)1 Programmatic Concerns	Funding	1368	2	YES	Reject Comment	DISAGREE	NO ACTION
Public Comment	Section 170.296 pg. 51374 It's the Tribes' preference and recommendation that the IRR inventory data for a Tribe should be updated on a semi-annual basis.							
Workgroup Text Change								
Workgroup Comments	request to do updates on a semi annual basis. Workgroup rejects as this is tied to finalizing the funding formula distribution.							
Federal Comments	Section 170.296 was re-written by the Tech Standards workgroup.							
Tribal Comments	3-28 Tribal Caucus understands the Federal Caucus agrees with this.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.296	P. 205-206, D2	Funding	35	102	YES	Accept with Modification	DISAGREE	AGREE

:Sec; 170.296 How is the IRR Inventory kept accurate and current? Comment: the deadlines shown will be impossible to meet as currently written. Revised paragraph (b) to read: "The tribe may review the inventory data and advise the regional Road Engineer in writing of any errors, omissions, additions, and deletions with supporting resolutions and other documentation as necessary by April 1st of each year. If the regional office does not receive any response from the tribe's in their region by the deadline, then the regional Road Engineer will make the necessary updates to reflect changes as a result of construction projects being completed and enter these changes into the National Inventory database and provide a copy to the affected tribe. Revise paragraph (c) to read: "The regional Roads office reviews updates, corrections for errors, additions, and deletions submitted by the tribes and, if agreed to, will enter these changes into the National IRR Inventory database and provide a copy to the tribes by June 1 of each year." Revise paragraph (d) to read: "The tribes will review the changes and recommendations for additional corrections and provide revised changes by July of each year." Revise paragraph (e) to read: "The regional roads office reviews the final submissions and enters the final changes into the National IRR Inventory database by August P of each year. A copy is provided to the tribes. Any challenges to the final current years updates shall be in accordance with :sec; 170.288." Revise paragraph (f) to read: "The BIADOT performs quality assurance checks on the final updates and cer4fles the National IRR Inventory updates by September I of each year and provides both the tribes and regional offices with the Relative Need Distribution Factor percentage and funding breakouts for each tribe by September 30 for the new fiscal year beginning October 1st." Delete paragraph (g).

Public Comment

Delete (b) and replace with the following "(b) The tribe may review the inventory data and advise the regional road engineer in writing of any errors, emission, additions, and deletions with supporting resolutions or other documentation as necessary by March 15 of each year. If the regional office does not receive any response from a tribe in their region by the established deadline, then the regional road engineer will make the necessary updates to reflect changes as a result of construction projects being completed and enter these changes into the IRR Inventory Database and provide a copy to the affected tribe."

Change the following dates
 in (c) change July 1 to May 15
 in (d) change August 1 to June 15
 in (e) change September 1 to July 15
 in (f) change October 1 to August 15

Add new (g) "Any challenges to the current year'sw final updates shall be in accordance with 170.288."

Workgroup Text Change

Additional change to 170.286 answer
 change date from June 1 to June 15 to be consistent with 170.296

Workgroup Comments

Commenter is recommending to change Answers. (b) through (e). The workgroups need to coordinate this effort with Tech and Standards. TS has addressed this comment and changed the dates. Parked to look at TS dates and other issues such as potential rewrite and further coordination.



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commenter is recommending a change to (b) when a tribe fails to respond to the Region. Joint workgroups recommend to accept with modification. In addition, changes to the dates are proposed by the Tech Standards group to coordinate with the development of the IRRTIP.

Comment for change to (c) The regional Roads office reviews updates, corrections for errors, additions, and deletions submitted by the tribes and will enter appropriate changes into the IRR Inventory database and provide a copy to the tribes by May 15 of each year" - plus additional changes to (d), (e), and (f) in addition, the workgroup has recommended a change to 170.286 date from June 1 to June 15.

Also accept comment regarding challenges to final Inventory updates with addition of new (g) in the answer.

Section 170.296 was re-written by the Tech Standards workgroup.

3-28 Tribal Caucus understands the Federal Caucus agrees with this.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.296	P. 204, C(c)4	Funding	1382	4		Reject Comment	DISAGREE	NO ACTION

Public Comment Paragraph (g) of this part states that "The BIA DOT will approve all submissions from the BIA Regional Offices for inclusion in to the National IRR Inventory." The statement appears to indicate that the BIA DOT, as an independent entity, should be given the responsibility and authority to provide Quality Assurance checking, including transportation plan and field checks when necessary, to assure that inventory entries are accurate and appropriate and based on the guidelines set out in the final rule.

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments Section 170.296 was re-written by the Tech Standards workgroup.

Tribal Comments 3-28 Tribal Caucus understands the Federal Caucus agrees with this.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.297	P. 206, D1 Proposed Language	Funding	3	29		Reject Comment	AGREE	NO ACTION
Public Comment	170.297 Is transportation planning included in the IRR Inventory and IRR Transportation Improvement Program (TIP)? Comment: This section should be revised to clarify that while "only project specific transportation activities are included in the Inventory and TIP," section 170.406 provides that tribes "may identify transportation planning as a priority in their tribal priority list or TTIP."							
Workgroup Text Change								
Workgroup Comments	recommendation to revise for clarification between section 297 and 406. same as c(c)1 and c(c)2. The workgroup does not see a conflict between the two sections. Workgroup wants tech standards to look at 406 and coordinate its actions on 406 with Funding. Based on joint meeting, reject comment.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.297	P. 207, D2	Funding	35	103	YES	Accept with Modification	DISAGREE	AGREE

Public Comment :Sec; 170.297 Is transportation planning included in the IRR Inventory and IRR Transportation Improvement Program (TIP)? Comment: The answer is not consistent with the data to be used in the formula and the items used to computer the cost-to-improve component in Appendix C. Recommend the following rewrite: "The 2% tribal transportation planning is not subject to the TIP process and therefore not required to be in the IRR National Inventory."Other items that do need to be in the IRR National Inventory must be clearly defined with an input form developed in this rule and not left up to be decided at a later date.

Workgroup Text Change Delete original answer and replace with "No. Transportation planning is not subject to the TIP process and is therefore not required to be in the IRR Inventory"

commenter is recommending a rewrite of the answer to indicate 2% planning. Accept with modification.

Workgroup Comments The commenter is recommending the addition of an input form. accept with modification to additions of a new Q & A item after 170.274

Federal Comments Fed Caucus can not agree with deletion of original text and insertion of new text.

Tribal Comments PS
3-28 Original text is acceptable.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.297	P. 206, C(c)2	Funding	1337	67		Reject Comment	DISAGREE	NO ACTION

Public Comment Page 51374-Sec. 170.297 Comment: This section provides that transportation planning need not be included in the inventory and TIP. We agree with the exception that any transportation planning accomplished with IRR Program funds (ref. Page 51382. Sec. 170.406) needs to be included in the IRR TIP as a planning project.

Workgroup Text Change

Workgroup Comments commenter does not provide a rationale for thier comment. The workgroup reviewed the Q and A and believes it accurately represented the negotiation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.297	P. 206, C(c)1 Programmatic Concerns	Funding	348	4		Reject Comment	AGREE	NO ACTION
Public Comment	170.297 This Q and A conflicts with 170.406. 170.406 is the correct Answer for whether IRR funds can expended for Planning activities, particularly beyond the annual 2% amount.							
Workgroup Text Change								
Workgroup Comments	Commenter indicated their is a conflict with 170.406 and this section. The workgroup does not see a conflict.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.298	P. 207, C(c)1 Programmatic Concerns	Funding	35	104		Reject Comment	DISAGREE	NO ACTION
Public Comment	[Sec] 170.298 Why exclude transportation planning from the TIP and the IRR inventory? Comment [This is fine if your talking about the 2% tribal planning funds. But what if a tribe uses up to 100% of their construction funds for planning as described in [sec] 170.406 year after year?							
Workgroup Text Change								
Workgroup Comments	No request, no comment							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.299	P. 208, D2	Funding	1355	37	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:section; 170.299 There is a sense from the words used to change the original TTAM that the Federal government is not ready to partner with the tribes. Kawerak urges that the original TTAM Question and Answer be used, as follows: What funding issues will the IRR Coordinating Committee consider? The IRR Coordinating Committee will consider at a minimum, the following funding related issues: 1. New IRR Inventory Data and Form 2. Review Simplified Cost to Construct Methodology i. Verify Formula Calculations ii. Verify Formula Program and Design iii. Verify Bid Tab Methodology 3. Review Broader Cost Elements, not just roads 4. Consider Over-Design Issue 5. Consider Inflation Impacts on #1 Million Cap for HPP and Emergency Projects i. HPP Ranking System ii. Concept was discussed to report emergency/disaster expenditures to Congress yearly and request reimbursement. 6. Consider impact of including funded but non-constructed projects in CTC calculation.

Workgroup Text Change

Workgroup Comments Addressed by change to D1, accepted but not on this comment

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.299	P. 207, D1 Proposed Language	Funding	1355	9	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	<p>The NPRM at :sec; 170.299 substantially weakened the Coordinating Committee's responsibilities and left further revision of the Cost to Construct methodology up in the air. This was not the agreement. Kawerak urges that the original formula language be restored.</p> <hr/> <p>Delete Q and A and replace with</p> <p>170.299 "What funding issues will the IRR Coordinating Committee Consider?"</p> <p>"The IRR Coordinating Committee will consider at a minimum, the following:</p> <ul style="list-style-type: none"> (a) New IRR Inventory Data and Form (b) A review of the Simplified Cost to Construct Methodology <ul style="list-style-type: none"> (1)-Verify Formula Calculations (2)Verify Formula Program and Design (3)Verify Bid Tab Methodology (c) A review of the Broader Cost Elements, not just roads (d) Over-Design cost issues (e) Inflation Impacts on \$1 Million Cap for HPP and Emergency Projects <ul style="list-style-type: none"> (1) HPP Ranking System (2) Whether to report emergency/disaster expenditures to Congress yearly and request reimbursement (f) Impact of including funding but non-constructed projects in CTC calculations" 							
Workgroup Text Change								
Workgroup Comments	Request is to replace original language in the negotiated TTAM. Workgroup agrees with corrections to language and one additional change to address D3 in the opening sentence of the opening sentence in the reverted to answer.							
Federal Comments	Federal Caucus can not agree with the re-write as submitted by the FF Workgroup.							
Tribal Comments	PS 3-28 The tribal caucus considers this a core issue of the negotiated formula.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.299	P. 208, D3	Funding	35	105	YES	Accept with Modification	DISAGREE	AGREE

:Sec; 170.299 What are the responsibilities of the IRR Program Coordinating Committee for funding issues? Comment: The answer covers more than just funding issues (i.e. Over-Design issues). Therefore the question needs to be rewritten or the answer revised to stick with just funding issues. Paragraph (d) Over-Design Issues and (f) Impact of including funded but non-constructed projects in Cost-to Construct calculation needs to be defined in detail so that these criteria can be understood by the Coordinating and rule making Committees and applied uniformly and consistently across the entire IRR program.

Public Comment

Workgroup Text Change

Workgroup Comments Commenter is requesting change to overdesign component (d). Workgroup comment is to consider over design cost issues. Change has been incorporated into the answer in D1.

Federal Comments Federal Caucus can not agree with the re-write as submitted by the FF Workgroup.

Tribal Comments 3-28 The tribal caucus considers this a core issue of the negotiated formula.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.300	P. 209, A1 General Comments	Funding	15	50		Accept with Modification	AGREE	AGREE
Public Comment	170.300 How does the Long Range Transportation Plan process relate to the Relative Need Distribution Factor? Contradicting. The LRTP refers to TTAM and not the RNDF.							
Workgroup Text Change	Delete in Q "Relative Need Distribution Factor" and insert "TTAM"							
Workgroup Comments	Commenter is recommending that the LRTP relates to the TTAM. Workgroup accepts with modification.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.300 Public Comment	P. 210, D1 Proposed Language	Funding	35	107		Reject Comment	AGREE	NO ACTION
:Sec; 170.300 How does the LRTP process relate to the Relative Need Distribution Factor? Comment: This is already explained in Subpart D.								
Workgroup Text Change								
Workgroup Comments No request, no action taken.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.300	P. 210, C(c)1 Programmatic Concerns	Funding	381	5		Reject Comment	AGREE	NO ACTION
Public Comment	:sec; 170.300 How does the LRTP process relate to the Relative Need Distribution System? LRTP must remain as a plan not a constraint - it must be subject to change or modification to include a particular project at any given time based on "relative need" and circumstances (as supported by data). To be used overall, as a reservation-wide goal and plan at a particular time but not to be used as a prohibition for a needed project. May be used to support a project but should not be used to preclude a project.							
Workgroup Text Change								
Workgroup Comments	No request, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.301	P. 210, D1 Proposed Languagej	Funding	35	108		Accept with Modification	DISAGREE	AGREE
Public Comment	:Sec; 170.301 Are there cost constraints in the transportation needs identified in the LRTP? Comment: It appears the committee is mixing apples and oranges (i.e. confusing long range planning with a long range plan). Recommend replacing "LRTP" with "Long Range Transportation Plan". Otherwise the answer makes no sense. Then revise the answer as follows: "No, since the purpose of the Long Range Transportation Plan and planning process is to identify transportation needs based on rough estimates. Actual cost data used in the formula are based on the requirements of 170.275 and the methodology outlined in Appendix C."							
Workgroup Text Change	Delete in the Header prior to Section 170.290 "(LRTP)"							
Workgroup Comments	request is to rewrite the answer. Workgroup believes one correction is to change the lead in header into Section 290.							
Federal Comments	Sections 170.301 and 302 are covered under re-writes by Tech Standards.							
Tribal Comments	PS Will check 301 for duplicative language, 302 is Acceptable 3-28 The Tribal Caucus disagrees with the Federal comment as these Q and As were revised to fit into Subpart d and provides clarification.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.302	P 211 - Cc1	Technical Standards	415	83	YES	Accept Comment	AGREE	DISAGREE

Public Comment :Sec;170.302 What are the minimum requirements for a tribe's LRTPs? Comment: Again terminology is being mixed up here. This section conflicts with :Sec;170.427 and 428 wherein the requirements are not mandatory as stated here. It is also unclear (if your again talking about the Long Range Plan) why this plan must include VMT data, and inventory data forms. This is not appropriate and makes no sense.

Workgroup Text Change Delete Section since this issue has already been addressed in rewrite of section 400 by TS

Workgroup Comments Issue covered in ss408-411 during rewrite. See new sections. Agree that 302 conflicts with 427 and 428 regarding mandatory requirements. Changed during re-write.

Federal Comments TS deleted 302 and replaced with re-writes within 400's. Formula workgroup has also recommends moving re-write of 302 to 400's. Federal Caucus agrees with Tribal Caucus change to move sec. 302 to Subpart D as a new Q and A.

PS Will check 301 for duplicative language, 302 is Acceptable

Tribal Comments Tribal Caucus disagrees. 302 has been rewritten by the Funding Formula workgroup and relocated into subpart D



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.302	P 211 - A1	Technical Standards	41	27	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51374, Subpart C, section 170.302 (c). The proposed rule does not define what data elements are to be included in the inventory data forms for an eligible IRR project. How does the information differ from the information specified in section 170.302 (b)?

Workgroup Text Change

Workgroup Comments Actual forms and required data are addressed in other parts of regulation

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.302	P. 211, A1 General Comments	Funding	41	27	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	Page 51374, Subpart C, section 170.302 (c). The proposed rule does not define what data elements are to be included in the inventory data forms for an eligible IRR project. How does the information differ from the information specified in section 170.302 (b)?							
Workgroup Text Change	Delete in the answer in (b)" VMT data"and insert "other appropriate data as determined by the tribe" and delete (c) in its entirety							
Workgroup Comments	Commenter is requesting how the information differs from what is in 302(b) and 302(c). The workgroup believes there is a difference and clarification would improve the answer.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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Sec. 170.302	P. 211, C(c)1 Programmatic Concerns	Funding	415	83	YES	Accept with Modification	DISAGREE	AGREE
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Public Comment :Sec;170.302 What are the minimum requirements for a tribe's LRTPs? Comment: Again terminology is being mixed up here. This section conflicts with :Sec;170.427 and 428 wherein the requirements are not mandatory as stated here. It is also unclear (if your again talking about the Long Range Plan) why this plan must include VMT data, and inventory data forms. This is not appropriate and makes no sense.

Delete in the answer to (e) "from other agencies" add after 'regarding' "any" strike "the" and replace 'agencies' with "entities" before the ;

Workgroup Text Change

Workgroup Comments Commenter is identifying that this Q and A has requirements for the LRTP, but in other sections, it is a recommendation... and their may be some over write concerns. The workgroup accepts with modification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.303	P 211 - C(c)1	Funding	415	84	YES	Accept with Modification	AGREE	AGREE

Public Comment :Sec;170.303 Are all transportation projects identified on the tribe's LRTP used to calculate the tribe's allocation of the national allocation? Comment: Once again terms are being used that are not properly defined in both the question and answer. Also, this implies that the data from the "Long Range Plan?" will be used to update the "IRR National Inventory" database that drives the formula but to what extent? Surely the Committee's intent here is not to use cost data since these figures in the "Long Range Plan?" are guesstimates at best and would not be consistent with :Sec;170.275.

Workgroup Text Change Delete Q and A 170.303

Workgroup Comments (ff comment) Could put period after LRTP and strike rest of Question. Answer could reflect a period (.) after Inventory in the answer and drop the rest of the answer.
After lengthy discussion, the workgroup has determined that Q and A does not provide benefit in the regulation. Delete Q and A

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.355	pg. 213, C(c)1	Policy	15	51	YES	Reject Comment	AGREE	NO ACTION

Public Comment 170.355 Can BIA regional offices borrow IRR funds from each other to assist in the financing and completion of an eligible IRR project? This rule should require a process for the IRR Committee to review and ensure that funds are not lost in the system for any others reasons, except for road construction activities.

Workgroup Text Change

Workgroup Comments adequately addressed

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.355	P. 213, C(c)1 Programmatic Concerns	Funding	15	51	YES	Reject Comment	AGREE	NO ACTION
Public Comment	170.355 Can BIA regional offices borrow IRR funds from each other to assist in the financing and completion of an eligible IRR project? This rule should require a process for the IRR Committee to review and ensure that funds are not lost in the system for any others reasons, except for road construction activities.							
Workgroup Text Change								
Workgroup Comments	We believe the issue has been adequately covered.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.356 Public Comment	P. 213, C(c)1 Programmatic Concerns	Funding	15	52		Reject Comment	AGREE	NO ACTION
170.356 Can a tribe use IRR funds to pay back loans? Disagree. This process is too risky.								
Workgroup Text Change								
Workgroup Comments No action requested, no action taken.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.356 Public Comment	pg. 213, C(c)1	Policy	15	52	YES	Reject Comment	AGREE	NO ACTION
170.356 Can a tribe use IRR funds to pay back loans? Disagree. This process is too risky.								
Workgroup Text Change								
Workgroup Comments tribes wanted flexibility in financing in this area								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.357 Public Comment	pg. 214, C(c)1	Policy	15	53	YES	Reject Comment	AGREE	NO ACTION
170.357 Can a tribe apply for loans or credit from a state infrastructure bank? Disagree. This process is too risky.								
Workgroup Text Change								
Workgroup Comments same as above								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.357 Public Comment	P. 214, C(c)1 Programmatic Concerns	Funding	15	53		Reject Comment	AGREE	NO ACTION
170.357 Can a tribe apply for loans or credit from a state infrastructure bank? Disagree. This process is too risky.								
Workgroup Text Change								
Workgroup Comments No request, no action taken.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.401	P 225 - Ca1	Technical Standards	15	54		Accept with Modification	AGREE	AGREE
Public Comment	170.401 What transportation planning functions and activities must BIA perform for the IRR Program? These functions and activities needs to decrease each time and recognize ISDEEA.							
Workgroup Text Change	We have rewritten this section and addressed this during the rewrite.							
Workgroup Comments	Clarification.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.401	P 224 - A1	Technical Standards	3	30	YES	Accept with Modification	AGREE	AGREE

Public Comment 170.401 What transportation planning functions and activities must BIA perform for the IRR Program? Comment: We recommend that this provision and 170.402 be clarified as to the duties the BIA must perform as an Inherently Federal Function, versus those IRR duties and functions it must perform by law but which an Indian tribe or tribal organization may contract/compact for under P.L. 93 638. The current text may confuse tribes and BIA Regional staff who may believe that the activities listed in 170.401(b), and (d) through (j) are non contractible/non compactible functions which only the BIA can perform. This is not the case. We support the Tribal Caucus resolution of this issue.

Workgroup Text Change We have rewritten this section and addressed the comment.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.401	P 225 - D2	Technical Standards	5	6	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:Sec;170.401 What transportation planning functions and activities must BIA perform for the IRR Program?: Sec;170.401(b) Coordinating with states and their political subdivisions, metropolitan planning offices (MPOs), and rural planning offices on IRR regionally significant projects.CDOT recommends changing the proposed language as follows: " Consultation with States and their political subdivisions, metropolitan planning organizations, and rural planning organizations on IRR regionally significant projects."

Workgroup Text Change

We have addressed this comment during the rewrite of this section.

Workgroup Comments

Comment rejected; agreement to continue to use the term "coordination."

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.401	P 226 - D3	Technical Standards	1231	43	YES	Accept with Modification	AGREE	AGREE

Public Comment :Sec;170.401 What transportation planning functions and activities must BIA perform for the IRR Program? We recommend including a closing sentence after subsection (j) that provides: "These activities may be assumed by Indian tribes under self-determination contracts or self-governance agreements to the extent consistent with the ISDEAA."

Workgroup Text Change We have addressed during the rewrite of this section.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.401	P 226 - D4	Technical Standards	1337	72	YES	Accept with Modification	AGREE	AGREE
Public Comment								
Page 51381- Sec. 170.401 Comment: Insert "Program between "IRR" and "budgets".								
Workgroup Text Change								
We have addressed this during the rewrite of this section.								
Workgroup Comments								
Clarification; language consistency.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.401	P 225 - D1	Technical Standards	19	8	YES	Reject Comment	AGREE	NO ACTION

Public Comment :sec; 170.401(b). This subsection should be revised to read as follows: "(b) Consultation with States and their political subdivisions, and metropolitan planning offices (MPOs) on IRR regionally significant projects and the portions of the plan affecting areas of the State not under the jurisdiction of an Indian tribal government,". This change would place the BIA or a tribe operating under a self-determination or self-governance agreement under the same requirements for consultation in developing IRR TIPs as required for the State DOTs and MPOs for developing the STIPs and TIPs under 23 CFR part 450.

Workgroup Text Change Comment addressed in rewording of section and specific text suggested not accepted.

Workgroup Comments Concern is addressed in current wording.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.402 Public Comment	P 227 - D3	Technical Standards	5	8		Reject Comment	AGREE	NO ACTION
Workgroup Text Change	No change requested.							
Workgroup Comments	Adequately addressed in text.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.402	P 226 - Ca1	Technical Standards	1231	44	YES	Accept with Modification	AGREE	AGREE

Public Comment :Sec;170.402 What transportation planning functions and activities must tribes perform under a self-determination contract or self-governance agreement? This provision appears to require that an Indian tribe must assume transportation planning functions and activities under ISDEAA agreements, which is not the case. Similarly, this provision appears to require that Indian tribes that do choose to assume such functions and activities under an ISDEAA agreement are required to prepare a tribal TIP for each year it administers such funds under an ISDEAA agreement, which is also not the case. This provision should be modified to be consistent with the ISDEAA.

Workgroup Text Change We addressed this during the rewrite of this section.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.402	P 227 - D4	Technical Standards	1369	31	YES	Accept with Modification	AGREE	AGREE

This Pg 51381 Sec 170.402 issue is continuous from this comment page (27) to page (35), and contains various mentioned Part(s)/Subpart(s)/Section(s) of the proposed rule. We ask for these pages that any the; Comment(s). Question(s). Suggestion(s), Interpretation(s) Example(s) etc., and Clarity of the Rule issues be dealt with accordingly for that page. Issue Pg 51381 Sec 170.402 What transportation planning functions and activities must tribes perform under a self-determination contract of self-governance agreement? Rule Clarity issue. Comments: Here is the Tribe's/Band's (must do's) we have pointed out and elaborated on in previous pages. This one section is the key, to most Tribe's/Band's participating in the Transportation Planning Processes and is vague. It only points out what they (must do) while performing under a self-determination contract or self agreement. Throughout various areas of the proposed rule, there are piecemealed wordings, of what exactly the Transportation Planning Processes and Requirements Might be. There is no distinct Part/Subpart/Section that entails and brings these piecemealed wordings together to make a simple picture of what the Transportation Planning Processes and Requirements should be. Again, written in the (a) thru (m) there are additional allowable uses of IRR Program Monies stated, however if you read the "Pg 51386 Appendix A to Subpart B Allowable uses of IRR Program Funds" some of these new allowable uses are not in the Allowable Uses. Suggestions Please answer our question"

Public Comment

Workgroup Text Change We have rewritten this section for clarification purposes.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.402	P 226 - D1	Technical Standards	19	9	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:sec; 170.402(a). This subsection should be revised to read as follows: "(a) Consultation with States and their political subdivisions, and MPOs on IRR regionally significant projects and the portions of the plan affecting areas of the State not under the jurisdiction of an Indian tribal government,". This change would place the Indian Tribal Governments under the same requirements for consultation in developing their IRR TIPs as required for the State DOTs and MPOs for developing the STIPs and TIPs under 23 CFR part 450.

Workgroup Text Change

We have already addressed this during the rewrite of this section.

Workgroup Comments

Committee rejected term change.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.402	P 228 - D5	Technical Standards	348	5	YES	Accept with Modification	AGREE	AGREE

Public Comment

170.702 states "Tribes must prepare a TTIP" and this does not agree with 170.418 where a "tribal priority list" is acceptable to program a project into the Regional TIP. The later is the preferred method.

Workgroup Text Change We have addressed this during the rewrite of this section.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.402	P 228 - D6	Technical Standards	1337	73	YES	Accept with Modification	AGREE	AGREE
Public Comment								
Page 51381 - Sec.170.402 Comment: Insert "Program" between "IRR" and "funds".								
Workgroup Text Change								
Suggestion not found to apply to section no.402, but applies to no.404. Already addressed in rewrite of this section.								
Workgroup Comments								
Suggestion not found to apply to section no., however, general suggestion for language consistency purposes to incorporate throughout document, as appropriate.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.402	P 226 - D2	Technical Standards	3	31	YES	Accept with Modification	AGREE	AGREE

Public Comment

170.402 What transportation planning functions and activities must tribes perform under a self-determination contract or self governance agreement? Comment: For the reasons stated in 170.401, we believe that this section should be revised to reflect the fact that tribes and tribal organizations may assume all BIA duties performed under the IRR Program, pursuant to P.L. 93 638, with the exception of paragraphs (a) of NPRM section 170.401. Section 170.402 should include the following text before the first sentence of the NPRM reading: "Tribes must prepare a Tribal TIP (TTIP)...": "Except for functions and activities listed in 170.401, Tribes and tribal organizations assuming IRR transportation planning functions and activities under the ISDEAA may perform all transportation planning functions and activities otherwise performed by the BIA in its direct operation of the IRR Program, including among other activities:"

Workgroup Text Change We have already addressed this comment.

Workgroup Comments Clarification

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.403	P 228 - A1	Technical Standards	1369	33	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Issue Pg 51381 Sec 170.403 Who perform transportation planning for the IRR Program" Comments Again, as previously stated, Transportation Planning can be a program/project in itself, if a Tribe/Band contracts under PL 93-638 for 2% Transportation Planning, would this not be defined as program or project, as these monies has been continuos since 1991; if Tribe's/Band's bother to contract for the minimal amounts of funds available.FHWA is not identified with any section in Subpart D sec's 170.400 thru 170.406; to include not having an section like the BIA has in sec 170.401".Q. How come FHWA is not mentioned in this Subpart and following sections?SuggestionsRemediate the FHWA identification we mentionPlease answer our question"

Workgroup Text Change

Workgroup Comments BEYOND SCOPE

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.403 Public Comment	P 228 - D1	Technical Standards	369	108	YES	Accept Comment	AGREE	AGREE
:Sec; 170.403 Who performs transportation planning for the IRR Program? Comment: A space between "IRR" and "Program" is needed.								
Workgroup Text Change	Insert space between IRR and Program							
Workgroup Comments	Correcting punctuation.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.403	P 229 - D2	Technical Standards	3	32	YES	Accept Comment	AGREE	AGREE

Public Comment

170.403 Who performs transportation planning for the IRR Program? Comment: This NPRM section should follow 170.400 as 170.401. It correctly introduces the next two sections on planning activities and functions performed either by the BIA or by tribes under P.L. 93 638.

Workgroup Text Change Move section as recommended

Workgroup Comments Section can be placed better.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.403	P 228 - B1	Technical Standards	15	56	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.403 Who performs transportation planning for the IRR Program? Agree. There needs to be a time limitation. These performance of transportation planning needs to eventually be delegated to tribes within a certain (10-year period)

Workgroup Text Change

Workgroup Comments BEYOND SCOPE

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.404	P 229 - Ca1	Technical Standards	15	57	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.404 What IRR funds can be used for transportation planning? An increase to properly assert the ISDEEA is needed. In order for the tribes to begin to function adequately.

Workgroup Text Change

Workgroup Comments Beyond Scope

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.404	P 231 - D3	Technical Standards	3	33	YES	Accept Comment	AGREE	AGREE

Public Comment 170.404 What IRR funds can be used for transportation planning? Comment: As noted above, we recommend that the final regulations not state the percentage (currently 2%) of IRR funds that are reserved for transportation planning. The reauthorization of TEA 21 may establish a new percentage for transportation planning. The first sentence of 170.404 can be revised to read: "A percentage of the IRR funds are reserved for transportation planning for tribal governments as provided for under section 204(j) of Title 23."

Workgroup Text Change None

Workgroup Comments Already addressed in comment 404(A)(1) above

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.404	P 230 - D2	Technical Standards	1369	34	YES	Accept with Modification	AGREE	AGREE

Issue Pg 51381 Sec 170.404 What IRR funds can be used for transportation planning? Rule Clarity Issues. Up to 2 percent of the IRR funds are reserved for transportation planning for tribal governments as provided for under section 204(j) of Title 23. A tribe may make a request to the BIA regional office to enter into a self-determination contract or self-governance agreement for transportation planning activities and functions under the ISDEAA, or it may request a travel authorization to attend transportation planning functions and related activities using these funds. Comments This section answer does not include what is written for Sec 170.406 Can IRR construction funds be used for transportation planning activities? Yes With that in mind, this sentence and Pg 51382 cont Sec 170.405 How must tribes use planning funds?, It should have 2% in the sentence, and if a Tribe/Band uses Construction funds under PL 93-638 for Transportation Planning, this will eliminate the confusion(s) that is rampant within Sec's 170.404 and Sec 170.405. Also, at the end of this section, it says; "or it may request a travel authorization to attend transportation planning functions and related activities using these funds. Confusion with this portion of the total sentence. Q. Do the Tribe's/Band's request travel authorizations from the BIA? The words "Transportation Planning Functions", as these 3 (three) words if used to attend transportation planning related functions, can be twisted into an Audit finding nightmare with or without PL 93-638 contracting.

Public Comment

Workgroup Text Change Take "A tribe may . using these funds." Into Section 405.

Workgroup Comments - Other issues addressed by combining 406 into 404

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.404	P 229 - A1	Technical Standards	348	6	YES	Accept with Modification	AGREE	AGREE

Public Comment

170.404 states "up to 2% of IRR funds ... " are reserved for planning. Does this imply that authorizations above #275 million will not be subjected to a 2% takedown for planning?

Workgroup Text Change

Funds as defined in Title 23 U.S.C. Section 204(j) are specifically reserved for a tribal government's transportation planning.

Workgroup Comments

Statute will control. Amount of 2% may change in the future.

Federal Comments

Refer to global change regarding the term "2% planning" changing to Tribal Transportation Planning"

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.404	P 229 - D1	Technical Standards	35	117	YES	Accept with Modification	AGREE	DISAGREE

Public Comment :Sec;170.404 What IRR funds can be used for transportation planning?Comment: Also IRR Construction and maintenance funds can be used for transportation planning for construction projects or maintenance activities respectively and as discussed in :sec; 170.406 and Subpart G. Since the question is written in general terms this fact should also be included in the answer.

Workgroup Text Change Insert: Add 170.406 language into this section. Delete 406. Insert: (Also see Section G 170.800)

Workgroup Comments Clarification

Federal Comments Federal Caucus disagrees with Tribal Caucus Comment to delete "request". A request is necessary to reprogram to the Federal Finance program class as stated in the FHWA transfer letter for all IRR funds.

PS Insert at the end. "This process is initiated by a tribal request."

Tribal Comments Accept with modification in the rewritten answer, delete "request the" before use, and delete "of" after 'use'
Strike "(Also see Section G 170.800)



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.405	p 233 - D2	Technical Standards	1369	36	YES	Accept with Modification	AGREE	AGREE

Public Comment

Issue Pg 51381 & Pg 51382 Sec 170.405 How must tribes use planning funds? Clarity of this Rule Issue" IRR 2 percent transportation planning funds are only available for tribal governments. These funds support the development and implementation of the tribal transportation planning process and associated strategies for identifying their intermodal transportation needs. This can include attending transportation planning meetings, pursuing other sources of funds, development of the tribal priority list of any of the transportation function/activities as defined in the IRR Transportation Planning Policy Guide TTPG). Comments/Suggestions Make cites/references to Pg 51368 Appendix A to Subpart B, Allowable Uses of IRR Program Funds, to include; rectify all Other Allowable Uses we pointed out, and are/were hidden in other Part(s)/Subpart(s)/Section(s) and insert into the applicables in order to have a succinct picture. Insert 2% Transportation Planning, Transportation Planning, Constructions Planning etc., to the section question word/words and/or summary word/words.

Workgroup Text Change Include reference to Appendix A, Subpart B.

Workgroup Comments Clarification

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.405 Public Comment	p 233 - D1	Technical Standards	35	119	YES	Accept Comment	AGREE	AGREE
Workgroup Text Change Insert space between "Policy" and "guide" at end of paragraph.								
Workgroup Comments Clarification								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.405	P 231 - A1	Technical Standards	35	118	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:Sec; 170.405 How must tribes use planning funds? Comment: The proposed rule states that "pursuing other sources of funds" is allowable. Does this mean lobbying for funds? Please clarify. If so, this is not allowed under and federal law.

Workgroup Text Change

Workgroup Comments Anti-lobbying language is included in statute.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.405	p 234 - D3	Technical Standards	3	34	YES	Accept with Modification	AGREE	AGREE

Public Comment

170.405 How must tribes use planning funds? Comment: Strike the phrase "2 percent" in the first sentence of this section so that it reads: "IRR transportation planning funds are only available for tribal governments."

Workgroup Text Change Already addressed in 2% issue rewrite

Workgroup Comments Clarification

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.406	p 234 - C(c)1	Technical Standards	35	120	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec; 170.406 Can IRR construction funds be used for transportation planning activities? Comment: While it is true for smaller tribes whose share of construction funds are less that #100k, it would be appropriate to use these funds to better plan and leverage county and state funds for a project. However it is unappropriated for those tribes that receive several hundred thousand or several million to justify putting all the construction funds into planning activities. This is not conducive to meeting the transportation needs of these tribes.

Workgroup Text Change

Section 406 reworded to address issue and now has become a NEW section 404

Workgroup Comments

Other - Statement made, however, no suggested changes provided. TS dealt with issue and reworded to clarify.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.406	p 234 - D1	Funding	3	35	YES	Accept with Modification	AGREE	AGREE

Public Comment 170.406 Can IRR Construction funds be used for transportation planning activities? Comment: See above comments to NPRM 170.297 (51374): Comment: This section should be revised to clarify that while "only project specific transportation activities are included in the Inventory and TIP," section 170.406 provides that tribes "may identify transportation planning as a priority in their tribal priority list or TTIP.";

Workgroup Text Change Refer to Funding Committe to align with NEW section 404; insert 404; this used to be 406; see Q.297 on Page 206

Workgroup Comments Look into developing a new 406 to address these issues (Also 406 C(c)1. This was done by TS work group. Tech Standards accepts comment. Joint meeting - TS asks FF to review rewrite. Original 406 is deleted. Planning is address in 404. FF will review new 404 and 406. accept with mod

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.407	p 235 - D1	Technical Standards	3	36	YES	Accept with Modification	AGREE	AGREE

Public Comment 170.407 Can IRR 2 percent planning funds be used for road construction and other projects? Comment: As noted above the NPRM heading should be revised to strike the specific reference to "2 percent." Substitute the phrase "transportation" and "transportation planning" into the heading and answer portion, respectively.

Workgroup Text Change Insert recommended 2% rewrite language.

Workgroup Comments Clarification

Federal Comments Reference to 2% in answer needs to be included in global change.

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.408	p 235 - D1	Technical Standards	3	37	YES	Accept with Modification	AGREE	AGREE

Public Comment

170.408 What happens to 2 percent planning funds unobligated after August 15? Comment:. Strike "2 percent" in both the heading and answer portion of this provision.

Workgroup Text Change

Insert recommended 2% rewrite language

Workgroup Comments

Clarification

Federal Comments

Tribal Long Range Plan is in Q, and IRR Long Range Plan is in A. This needs to be corrected.

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.408	p 235 - D2	Technical Standards	1337	75	YES	Accept Comment	AGREE	AGREE

Public Comment

Page 51382 - Sec. 170.408 Comment: We suggest changing "may roll the unobligated balances into construction funds" to "may use the remaining funds for construction" for easier understanding.

Workgroup Text Change

Replace may roll .funds."

Workgroup Comments

with "may use the remaining funds for construction"

Federal Comments

Tribal Long Range Plan is in Q, and IRR Long Range Plan is in A. This needs to be corrected.

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.409	p 236 - C(c)1	Technical Standards	415	94	YES	Accept with Modification	AGREE	DISAGREE
Public Comment	[Sec]170.409 What is pre-project planning? Comment[while there is some legitimate pre-project planning that takes place within the IRR Program, this begs the question of where does the funds come from for this activity? Otherwise delete this section from the rule. '							
Workgroup Text Change	Change 1st sentence to read "Pre- project planning is part of overall transportation planning and includes the activities conducted ..."							
Workgroup Comments	Clarification							
Federal Comments	Federal Caucus agrees with Tribal Caucus change to delete "transportation".							
Tribal Comments	renumbered 414 Accept with modification, drop "transportation" from between 'metropolitan transportation planning organizations'							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.409	p 236 - D1	Technical Standards	368	6	YES	Accept with Modification	AGREE	AGREE

Public Comment :Section; 170.409 What is pre-project planning? Just as States and Metropolitan Planning Organizations (MPO) consult with tribes regarding regionally significant projects that may impact tribal land, accordingly, so should tribes and the Bureau of Indian Affairs consult with States and MPO's regarding regionally significant projects that may impact non-tribal land. It is therefore recommended that the term "cooperation" be replaced with "consultation" in sentence two of this Section. Additionally, this is in consideration that the term "cooperation" is not included in the defined terms under Section 170.6 or Section 170.100.

Workgroup Text Change Change "cooperation" to "consultation and coordination"

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.409	p 236 - D2	Technical Standards	3	38	YES	Accept with Modification	AGREE	AGREE

Public Comment 170.409 What is pre-project planning? Comment: Cross reference this NPRM provision in 170.143 (page 51363) to clarify that while no IRR funds may be expended for construction on projects not yet included on a tribe's TIP, IRR funds may be expended on pre-project planning activities as listed in 170.409.

Workgroup Text Change

Workgroup Comments Previously addressed when we added overall transpotrtation planning above in 409(c)(1)

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.410	p 237 - D2	Technical Standards	1337	76	YES	Accept Comment	AGREE	AGREE
<p>Public Comment Page 51382 - Sec. 170.410 Comment: The Transportation Improvement Program Process Chart does not in the Answer part of this section. We recommend this chart be moved to Section 170.417.</p>								
<p>Workgroup Text Change Move chart to 417</p>								
<p>Workgroup Comments Clarification</p>								
<p>Federal Comments</p>								
<p>Tribal Comments</p>								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.410	p 236 - D1	Technical Standards	35	122	YES	Accept with Modification	AGREE	AGREE

Public Comment :Sec; 170.410 How is the IRR Program transportation planning funded? Comment: A more appropriate question is "How is the IRR Program transportation planning activities funded". Also the answer is short on defining how the various sources that can be used to support this activity (i.e. refer to 170.404 & 406).

Workgroup Text Change Delete 410. Issue already addressed in 404.

Workgroup Comments Clarification

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.412	p 237 - A1	Technical Standards	35	123	YES	Reject Comment	AGREE	NO ACTION

Public Comment

[Sec] 170.412 What is the Indian Reservation Roads Transportation Improvement Program (IRR TIP)? Comment[How does a tribe get "non-IRR funded project" on to the IRR TIP if BIADOT has now converted this to an electronic process tied directly to the inventory?

Workgroup Text Change

Workgroup Comments It indicates that it may be used. It is a mechanism available to the tribes to get these projects reported to the State.

Federal Comments Section 430 became section 412.

Tribal Comments renumbered to 415



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.412	p 238 - D1	Technical Standards	1337	77	YES	Accept Comment	AGREE	AGREE
Public Comment	Page 51382-Sec. 170.412 Comment: Insert "Program" between "non-IRR" and "funded" in the second sentence of the Answer part of this section.							
Workgroup Text Change	Insert "Program" between "non-IRR" and "funded".							
Workgroup Comments	Clarification							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.412	p 237 - A2	Technical Standards	5	9	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:Sec;170.412 What is the Indian Reservation Roads Transportation Improvement Program (IRR TIP)?CDOT is concerned about the following statement in relation to its Project Priority Programming Process (4 P) CDOT has established for the STIP: "Information from the tribal TIP concerning non-IRR funded projects may be attached to the IRR TIP for inclusion in the STIP." What is included in "non-IRR funded projects?" The statement infers that a separate process outside the 4 P is available for including projects :non-IRR funds; in the STIP.

Workgroup Text Change

Workgroup Comments Concern noted. CDOT funded projects should already be on their STIP.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.413	p 238 - D1	Technical Standards	1337	78	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51382 - sec. 170.413 Comment: We recommend adding "eligible for IRR Program funding" after "projects" in the first sentence of the Answer part. This will clarify what transportation projects can be put in the TIP for the IRR Program.

Workgroup Text Change No Change

Workgroup Comments Unnecessarily restrains TTIP. Non IRR funded projects may be included on a TTIP.

Federal Comments

Tribal Comments renumbered to 416



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.413	p 238 - D2	Funding	35	124	YES	Referred to Technical Sta	NO ACTION	DISAGREE

Public Comment :Sec; 170.413 What is the Tribal Transportation Improvement Program (TTIP)? Comment: If the long range plan is to be used to update the inventory which drives the formula for which a TIP and TTIP is required to expend the funds distributed, then the term "The TTIP should be..." must be revised to "The TTIP must be..."

Workgroup Text Change This comment now applies to NEW 416. (ss413 was changed to 416). Change "should" to "must."

Workgroup Comments Referred to FUNDING WG to confirm. If FUNDING WG loosens the ties between TIP and LRTP, then this section will be affected. Tech Standards accepts comment
Joint meeting - recommend retaining original language "should" returned to Tech Standards to make change.

Federal Comments

Tribal Comments PS
Tribal caucus rejects change from "should" to "must"



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.414	p 238 - A1	Technical Standards	35	125	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:Sec; 170.414 Must the eligible projects on the tribal TIP be included in the IRR TIP? Comment: The answer here is "yes provided the Regional Road Engineer has determined them to be eligible and the resulting total IRR TIP amount does not exceed the available amount of funds for a given tribe." Otherwise you will have projects going up to FHWA that may be determined ineligible and the tribe and region would have to start the process all over again which this program does not have the luxury of time to do.

Workgroup Text Change

Workgroup Comments Already covered in 412 and 413

Federal Comments

Tribal Comments renumbered 419



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.414	p 239 - Cc1	Technical Standards	1337	79	YES	Reject Comment	AGREE	NO ACTION

Public Comment Page 51383-Sec. 170.414 Comment: We find the structure of the Question part of this section confusing and poorly structured. We recommend the Question part be changed to "What transportation improvement projects, from the tribal TIP, can be included in the IRR TIP?" Comment: This is subject to availability of funding. Also, the IRR TIP is subject to the approval of the Secretaries.

Workgroup Text Change

Workgroup Comments Comment would make rule discretionary. Recommend shifting 422 to follow this.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.415	p 239 - D2	Technical Standards	1394	6	YES	Accept with Modification	AGREE	AGREE

Public Comment :Sec;170.415 What happens to the tribal TIP after eligible projects are included in the IRR TIP? The Secretary and the Secretary of Transportation review and approve the IRR TIP. The IRR TIP, as approved by the Secretaries, is then included in the STIP without further action. Approval of the IRR TIP authorizes expenditure of IRR highway construction funds for those projects. Issue: The question is not answered. What happens to the IRR TIP is covered by :sec;170.426 and :sec; 170.436. Recommendation: #:sec;170.415 What happens to the TTIP after all eligible projects are included in the IRR TIP? The TTIP is retained by the Regional Office for a period of 5 years.

Workgroup Text Change

Workgroup Comments Resolved in 415 D1

Federal Comments

Tribal Comments renumbered 420



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.415	p 239 - D3	Technical Standards	35	126	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec; 170.415 What happens to the tribal TIP after eligible projects are included in the IRR TIP? Comment: the question is not answered in it's current form. Recommend the following: "What happens to the IRR TIP after eligible projects are included from the tribal TIP?"

Workgroup Text Change

Workgroup Comments Resolved in 415 D1

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.415	p 239 - D1	Technical Standards	1337	80	YES	Accept Comment	AGREE	AGREE

Public Comment

Page 51383-Sec. 170.415 Comment: The Question and Answer parts are not compatible. The Question part addresses the tribal TIP but the Answer part addresses the IRR TIP. We recommend the Question part be changed to- "What happens to the IRR TIP after the inclusion of tribal TIPs at each BIA Regional Office?" Comment; "IRR highway construction funds" is misleading. Probably a better term would be "IRR Program funds" For one thing, the project maynot be a highway project. For another thing, construction can't begin until PS&E is approved.

Workgroup Text Change

Change question per language shown. What happens to the IRR TIP after the inclusion of the tribal TIPs at each BIA Regional Office?" Delete ""highway construction"" from answer."

Workgroup Comments

Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.416	p 240 - Cc1	Technical Standards	1337	81		Accept with Modification	AGREE	AGREE

Public Comment

Page 51383, Sec. 170.416: Comment: We don't agree that it is the responsibility of the BIA to work towards leveraging funds from other agencies any more than it is the responsibility of other agencies to work towards leveraging funds from the BIA. We feel that it is the responsibility of the BIA to work through the planning process, to identify potential projects where it would be mutually advantageous for several agencies to cooperate in the development of projects.

Workgroup Text Change Move to 409. Add conformity issues. Delete 416

Workgroup Comments Clarification

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.416	p 240 - Cc3	Technical Standards	5	10	YES	Accept with Modification	AGREE	AGREE

Public Comment :Sec;170.416 What are the responsibilities of BIA prior to the IRR TIP being included in the STIP? CDOT is concerned about the lack of information on how BIA regional offices are to work cooperatively with tribal, state, rural, and MPO organizations concerning the leveraging of funds from non-IRR sources and identification of other funding sources in order to expedite IRR TIP projects.

Workgroup Text Change

Workgroup Comments See 416 C(c)1 above

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.416	p 240 - Cc2	Technical Standards	26	13	YES	Accept with Modification	AGREE	AGREE

Public Comment

Section 170.416 - What are the responsibilities of the BIA prior to the IRR TIP being included in the STIP? We are uncertain where it should be included (this may be the place, or perhaps it's appropriate elsewhere in the rule). In any event, the rule should clarify when and how conformity with state's air quality plans under the Clean Air Act is determined for IRR TIP's. As you know, conformity between approved transportation and air quality plans is a critical issue for many transportation activities in both metropolitan and non-metropolitan area; lapses in conformity often delay project delivery, and have been known even to jeopardize the availability of federal funds for certain transportation projects. For those reasons, we feel the rule must address conformity determinations, when they must be made, and the parties responsible for making these decisions.

Workgroup Text Change

Workgroup Comments See 416 C(c)1 above

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.417	P 241 - D2	Technical Standards	1370	23	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Rule - Page 51383 states: ? 170.417 ". . . (e) (:delete; Tribes that do not generate sufficient annual funding under the IRR funding formula to complete a project may submit their tribal priority lists to the BIA. The BIA will develop the region-wide control schedule and IRR TIP after consulting with and taking into account the tribe's priorities.) . . ." Comment: The Tribes request the deletion of the text identified above. The Tribes do not believe that there is any basis for a Region to reduce any Tribal government's IRR funding formula allocation without the written consent of the affected Tribal government. In order for a region to fund a project for a Tribal government that does not generate sufficient annual funding the Region would have to reduce another Tribal government's IRR funding formula allocation. It has been our sad experience that when the BIA Northwest Region chooses to follow this approach our annual IRR funding formula allocation has been reduced - at times to #0 annually. The Tribes suggested alternate approach should be the only approach.

Workgroup Text Change

Workgroup Comments This provides a mechanism for small tribes to obtain projects during the authorization.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.417	P 241 - D3	Technical Standards	3	39	YES	Accept Comment	DISAGREE	AGREE

Public Comment

170.417(e) How are projects placed on the TTIP and IRR TIP? Comment: We recommend that paragraph (e) of NPRM 170.417 be revised to reference the fact that tribes that do not generate sufficient annual funding under the IRR funding formula, in addition to seeking flexible financing, as noted in 170.4 17(e) of this provision, may also apply to the BIA for IRRHPP Program funds, as provided in Subpart C of the NPRM to finance a tribal priority project. The last two sentences of NPRM 170.417(e) can be revised to read: "Alternatively, such tribes may either enter a consortium of tribes and delegate authority to the consortium to develop the TTIP and tribal control schedule, may enter into agreement with other tribes to permit completion of the project, or may apply for IRRHPP Program funding under subpart C. In addition, in order to get a project on the IRR TIP, tribes may also seek flexible financing alternatives available as described in subpart C of this part."

Workgroup Text Change Add changes into section.

Workgroup Comments Further work done in the funding work group may effect this section.

Federal Comments Change ".... consulting with each affected tribe" to "... consulting with affected tribes...". Also, delete "program" after IRRHPP in second paragraph.

Tribal Comments PS Changes to (e) acceptable



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.417	p 240 - A1	Funding	35	127	YES	Reject Comment	AGREE	NO ACTION

Public Comment :Sec; 170.417 How are projects placed on the TTIP and IRR TIP? Comment: Under paragraph (a) based on the writeup in Subpart C, the TTIP must be taken from the tribes long range plan as further discussed in :sec; 170.413 above. There would be no "tribal listing" acceptable under this rule as written unless the tribe can show it came form their long range plan, correct?

Workgroup Text Change

Small tribe existing projects may exist on a tribal priority list. Therefore "tribal priority list" must stay. Tech Standards rejects comment.

Workgroup Comments

Joint meeting - ts has made modification to 417, review strikeout language. Deferred to FF to consider when reviewing parked items associated with 300-303. Funding work group must make sure that language (300 - 303) matches this section. Funding has reviewed and finds no problems with consistency. FF rejects comment based on TS recommendation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.417	p 241 - D1	Technical Standards	1337	82	YES	Accept Comment	DISAGREE	AGREE

Public Comment

Page 51383-Sec. 170.417 Comment: In (a) we recommend deleting "either the tribal priority list of". We base our recommendation on that a tribal priority list should be developed from the tribe's long range plan and this NPRM emphasizes the use of the tribal long range plans Insert "Program" between "IRR" and "funding" in the first sentence of (e). In the second sentence of (e) insert "each tribe" between "with" and "and". In the last sentence of (e) insert "IRR" between "the" and "TIP".

Workgroup Text Change

- b. Insert "Program" between "IRR" and "funding".
- c. insert "each tribe" between "with" and "and".
- d. Insert "IRR" between "the" and "TIP"

Workgroup Comments

Clarification

Federal Comments

Change ".... consulting with each affected tribe" to "... consulting with affected tribes...". Also, delete "program" after IRRHPP in second paragraph.

Tribal Comments

PS Tribal Caucus Agrees



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.418	P 242 - D1	Technical Standards	1337	83	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51383-Sec. 170.418 Comment: We recommend inserting "and is developed from their long range transportation plan" at the end of the first sentence.

Workgroup Text Change

Workgroup Comments May not pertain to all tribes. Comment is too restrictive.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.419	P 242 - D1	Technical Standards	27	33	YES	Reject Comment	AGREE	NO ACTION

Public Comment :sec;170.419 This question and answer is similar to :sec;170.433. Recommend deleting :sec;170.433 and adding (b) from :sec;170.433 to this answer. :sec;170.419 What is the IRR TIP annual update? The IRR TIP annual update is the process by which the IRR TIP is kept current. (a) The BIA regional office annually updates the IRR TIP for each state in its service area to reflect changes in the TTIP." (b) BIA regional offices should coordinate the annual update with each affected state transportation agency. This will ensure that approved IRR TIP updates are included with the STIPS."

Workgroup Text Change

Workgroup Comments Already covered in 433(b), which will be moved to 421

Federal Comments

Tribal Comments renumbered 423



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.419	P 242 - C(c)1	Technical Standards	1156	10	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.419 BIA regional offices should coordinate the annual update with each affected state transportation agency. This will ensure that approved IRR TIP updates are included with the STIPs."

Workgroup Text Change

Workgroup Comments Already covered in 433(b), which will be moved to 421

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.419	P 242 - C(c)2	Technical Standards	15	58	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.419 What is the IRR TIP annual update? Needs to be consistent in acquiring tribal approval rather than allowing full authorization for the BIA Regional office to approve and/or modify.

Workgroup Text Change

Workgroup Comments Already covered in 433(b), which will be moved to 421

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.420	p 243 - A1	Technical Standards	20	15		Accept with Modification	AGREE	AGREE
Public Comment	Updates to TIP on a quarterly basis. What situations can justify a quarterly update? Crises management isn't effective or efficient. Will current ADT be used? Projects on the TIP drive yearly construction funds, therefore, current year projects should be construction ready.							
Workgroup Text Change	We addressed this comment through rewrite of Section 400-436.							
Workgroup Comments	Clarification							
Federal Comments								
Tribal Comments	renumbered 424							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.420	p 246 - Cc7	Technical Standards	34	5		Accept with Modification	AGREE	AGREE

Public Comment

Key Areas of Disagreement Updating the IRR TIP - Subpart D Updates to the IRR TIP should be made by the BIA on a regularly scheduled semi-annual basis, and more often when there is a tribal request to modify the TIP in order for a tribe to acquire eligibility for IRR construction funds or when a tribe re-aligns its construction priority list. When a modification or update is requested, the BIA should be to complete the necessary changes to the TIP within 45 days of receipt of the tribe's request. If the BIA fails to respond within that time, the TIP should be deemed amended consistent with the tribe's request. The updated IRR TIP should be sent to all tribes involved without the tribes having to formally and specifically request a copy.

Workgroup Text Change

We addressed this comment during the rewrite of Sections 400-436.

Workgroup Comments

Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.420	p 245 - Cc6	Technical Standards	1388	8		Accept with Modification	AGREE	AGREE

Public Comment

Section :section;170.420, How is the IRR TIP updated?The Quinault Indian Nation does not agree with the Federal view that adjustments made to the IRR TIP following the IRR TIP process defined in this part on an annual basis.The Quinault Indian Nation does agree with the Tribal view, located on page 51337 of the Federal Register, Part C. Updating the IRR TIP- Subpart D. The Tribal Caucus recommends that the proposed regulation provide that updates to the IRR TIP occur on a quarterly basis. A quarterly update schedule would be similar to the schedule used by the States when they update their TIPS. The result would also ensure that the State TIPS are more accurate of tribal needs. Additionally, if both States and the BIA follow similar schedules, procedures, and documentation then tribal TIPS could be streamlined, and modifications limited when the BIA submits tribal TIPS to the States. Quarterly updates will ensure that all tribal TIPS are accurate. Having accurate tribal TIPS will provide another avenue for holding the BIA accountable for tribal transportation planning and construction projects.

Workgroup Text Change We addressed this comment during the rewrite of Sections 400-436.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.420	p 245 - Cc5	Technical Standards	378	6		Accept with Modification	AGREE	AGREE

Public Comment

Updating the IRR TIP - Subpart D :p. 51337; (proposed Sec. 170.420) The Tohono O'odham Nation endorses the Tribal Caucus proposed regulatory text for updating the IRR TIP included in the preamble at 67 Fed. Reg. 51337 for Sec. 170.420. Quarterly updates to the IRR TIP would ensure that no update takes longer than 90 days. Updates of this frequency will allow for better transportation planning at the federal and tribal levels that will, in turn, help maximize available resources. In the regulatory version supported by the Federal Caucus, updating would occur annually and may occur "as otherwise needed." This text is, at best, ambiguous, as it fails to elaborate how "otherwise needed" IRR TIP updates would be handled, what constitutes a "substantial change" to the TIP, or why an "otherwise needed" IRR TIP update is different than updating on a quarterly basis as recommended by the Tribal Caucus. The Nation therefore urges the adoption of the Tribal Caucus's text as a superior planning tool.

Workgroup Text Change We addressed this comment during the rewrite of Sections 400-436.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.420	p 244 - Cc3	Technical Standards	1370	24		Accept with Modification	AGREE	AGREE

Public Comment Rule - Page 51383 states: :section; 170.420 "How is the IRR TIP updated?" Comment: The Tribes request the deletion of the proposed federal caucus text and the insertion of the proposed tribal caucus text. Having a defined time line is critical to this process. The Tribes are not opposed to biannual revisions to the IRR TIP.

Workgroup Text Change We addressed this comment during the rewrite of Sections 400-436.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.420 Public Comment	p 243 - B3	Technical Standards	27	34		Accept with Modification	AGREE	AGREE
:sec;170.420 We concur with the Q and A proposed in the NPRM.								
Workgroup Text Change	We addressed this comment during rewrite of Sections 400-436.							
Workgroup Comments	Clarification.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.420	p 243 - B2	Technical Standards	35	3		Accept with Modification	AGREE	AGREE

Public Comment

C. Updating the IRR TIP - Subpart D: Comment: We find no need to be setting a strict time frame when it comes to updating the IRR TIP and it is very important to provide the flexibility, within reason, to allow for updates to address project concerns by tribes and/or regions so that funds are not lost. The real cut off date, and only cutoff date for TIP updates would be August 1St since the regions have to report to FHWA on their intent to obligate all or part of their funds, with the chance of getting any reserve funds back the next fiscal year, by August 15th. Therefore, any region or tribe should be allowed to update their TIP anytime "as necessary" during the year up to August Pt. To mandate updates otherwise would be an administrative burden on the tribes and regions.

Workgroup Text Change

We addressed this comment during rewrite of Sections 400-436.

Workgroup Comments

Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.420	p 243 - Cc1	Technical Standards	22	8		Accept with Modification	AGREE	AGREE

Public Comment Subpart D- (Page 51336) USET support the Tribal text for updating the IRR TIP included in the preamble page 51337. USET agrees that the IRR TIPs should be updates on a quarterly basis to ensure proper accounting of programs. Forcing Tribes to wait for an entire year to update IRR TIPS leads to further deterioration of tribal roads and an unreal picture of the needs in Indian country.

Workgroup Text Change We addressed this comment during rewrite of Sections 400-436.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.420	p 244 - Cc2	Technical Standards	3	68		Accept with Modification	AGREE	AGREE

Public Comment

Updating the IRR TIP - Subpart D (page 51337)(proposed Sec. 170.420) Comment: We endorse the Tribal Caucus proposed regulatory text for updating the IRR TIP included in the preamble of the NPRM at 51337 for Sec. 170.420. If only those transportation projects listed on an approved IRR TIP are eligible for construction funding, it would make sense that IRR TIPs be updated by the BIA quarterly and within an agreed amount of time (45 days) as recommended by the Tribal Caucus position. Failure to include Tribal transportation priority projects may delay much needed road and bridge improvements and threaten public safety. Quarterly updates to the IRR TIP would ensure that no update takes longer than 90 days. In the version supported by the Federal caucus, updating the IRR TIP would occur annually and may occur "as otherwise needed," but the proposed regulation does not identify how "otherwise needed" IRR TIP updates would be handled; what constitutes a "substantial change" to the TIP, or why an "otherwise needed" IRR TIP update is so different than updating the TIP on a quarterly basis as recommended by the Tribal Caucus. Public safety should outweigh a minimal administrative inconvenience.

Workgroup Text Change We addressed this comment during the rewrite of Sections 400-436.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.420	p 243 - B1	Technical Standards	1335	1		Accept Comment	AGREE	AGREE

Public Comment

BIA Road Maintenance [secs] 170.800- 815 One of our greatest concern regarding the IRR program is the maintenance of IRR facilities. The regulations identify what functions and types of facilities IRR maintenance funds can be used for] there is no discussion, however, of how IRR maintenance funds are distributed to tribes. The existing policy for distribution is based on either BIA jurisdiction of the facility or a grandfathered maintenance agreement from a prior construction activity. How would a tribe that does not currently receive IRR maintenance funds apply for and receive funds for what are clearly qualifying maintenance activities? For instance, [sec] 170.805 (a)(2) identifies !Non-BIA facilities, if the tribe served by the facility feels that maintenance is required to ensure public health, safety, and economy, and if the tribe executes an agreement with the owning public authority within available funding]! If we have no access to maintenance funds we have no opportunity to exercise this option. All tribes should have access to road maintenance funds. Funding needs to be increased to the IRR maintenance program, but also, a equitable method of identifying need and distributing funds also needs to be developed.

Workgroup Text Change We addressed this comment in rewrite of Section 400-436.

Workgroup Comments Clarification

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.420	p 244 - Cc4	Technical Standards	3	40		Accept with Modification	AGREE	AGREE

Public Comment

170.420 How is the IRR TIP updated? Comment: We endorse the Tribal Caucus version regarding the process by which the IRR TIP is updated and recommend it be substituted for the NPRM provision. See Tribal Caucus text at page 51337 (col. 3) and our further discussion of this non consensus issues in Part III. Contrary to the Administration's proposed rule, the Tribal Caucus version requires quarterly updates "or as otherwise needed" and provides that "except under unusual circumstances," the BIA will complete IRR TIP updates (whenever they occur) within 45 days of its receipt of the updated TTIP or tribal priority list from a tribe. If in 170.420, 170.422(a) and 170.423, the Secretary may amend the IRR TIP "at any time," it would make sense that this be regularized on a quarterly basis rather than having a BIA update the IRR TIP numerous times throughout a quarter. The Tribal position is reasonable, gives the BIA needed flexibility if circumstances warrant, and is appropriate in light of undue past delays by BIA to update Regional TIPs and the National IRR TIP. We suspect that the BIA's objections to quarterly updates and a 45 day time period to actually perform the update are based on the antiquated manner in which the IRR TIP is currently updated. Modernizing the means by which BIA officials update the IRR TIP would streamline the process to both the agency's and the tribes' benefit and give the BIA flexibility to update the IRR TIP in a manner that is more responsive to their tribal constituents needs.

Workgroup Text Change We addressed this comment during the rewrite of Sections 400-436.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.420	p 247 - Cd1	Technical Standards	12	8		Accept with Modification	AGREE	AGREE

Updating the IRR TIP The Tribe endorse the Tribal Caucus proposed regulatory text for updating the IRR TIP included in the preamble at 67 Fed. Reg. 51337 for Sec. 170.420. If only those transportation projects listed on an approved IRR TIP are eligible for construction funding, it would make sense that IRR TIPs be updated by the BIA quarterly and within an agreed amount of time (45 days) as recommended by the Tribal Caucus position. Failure to include Tribal transportation priority projects may delay much-needed road and bridge improvements and threaten public safety. Quarterly updates to the IRR TIP would ensure that no update takes longer than 90 days. In the regulation version supported by the Federal caucus, updating the IRR TIP would occur annually and may occur "as otherwise needed," but does not identify how "otherwise needed" IRR TIP updates would be handled; what constitutes a "substantial change" to the TIP, or why an "otherwise needed" IRR TIP update is so different than updating the TIP on a quarterly basis as recommended by the Tribal Caucus. The BIA should revise the process it uses to update an IRR TIP if implementing quarterly updates would result in a needless exercise. Public safety should outweigh administrative inconvenience. --Major projects will always remain a top-priority at the tribal level; however, there are some instances during local economic development in the private sector, which smaller projects cannot be ignored and have to be prioritized e.g., lights, accessibility, etc., The Turtle Mountain Tribe has a large population base within a condensed area, and within a year much can change. Therefore, different priorities arise regularly; that is, what was a priority three-four months ago may differ several months later. This should be considered to meet the priorities of the tribes.

Public Comment

Workgroup Text Change We addressed this comment during the rewrite of Sections 400-436.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.420	p 247 - D1	Technical Standards	1231	45	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec;170.420 How is the IRR TIP updated? For the reasons discussed above, the proposed provision should be deleted and replaced with the following text suggested by the Tribal Caucus:How is the IRR TIP updated?The updating process begins when the BIA provides the projected IRR funding amounts to each tribe, or an analysis of the existing tribal priority list or TTIP. New transportation planning information or substantial changes to an IRR tribal project may require an IRR TIP update. The BIA reviews the programming of proposed projects with the Indian Tribal Government and agreed upon adjustments are made to the IRR TIP on a quarterly basis or as otherwise needed. This updating process will, except under unusual circumstances, be completed within 45 days of receipt by the BIA of the updated TTIP or tribal priority list submitted by the tribe.

Workgroup Text Change

We addressed this comment during the rewrite of Sections 400-436.

Workgroup Comments

Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.420	p 247 - Cc9	Technical Standards	15	59		Accept with Modification	AGREE	AGREE

Public Comment

170.420 How is the IRR TIP updated? Updates should include the proper order of processing the annual plan. Updates are only authorized through the recommendations of the Tribes authorized body/committee by resolution.

Workgroup Text Change

We addressed this comment during the rewrite of Sections 400-436.

Workgroup Comments

Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.420	p 246 - Cc8	Technical Standards	38	5	YES	Accept with Modification	AGREE	AGREE

C. Updating the IRR TIP-Subpart D We think the disagreement as to how often the IRR Transportation Improvement Program (TIP) must be updated is an issue that can be resolved by adopting a rule that incorporates elements of both the tribal and federal views. The Tribal Caucus position emphasizes: (1) that a specific time frame be set out in the IRR regulations governing the frequency with which the BIA must update the IRR TIP, and (2) that a specific time frame be added by which the BIA must complete that IRR TIP update. We fully agree with each of these points. We think that the time frame governing the frequency for updating the IRR TIP set forth in the federal view ("on an annual basis or as otherwise needed") should be acceptable. The NPRM provides mechanisms by which a tribe may request an update or amendment of the IRR TIP in order to add or delete projects and/or to reflect significant changes in scope to a project where the annual update would not sufficiently capture important developments in tribal transportation planning. Meanwhile, the "quarterly basis or as otherwise needed" time frame suggested by the Tribal Caucus appears unmanageable in light of public comment requirements and the additional expenses involved. With respect to the specific time frame by which the BIA must complete the IRR TIP update, we recommend that IRR regulations adopt the solution offered by the Tribal Caucus-that the updating process be completed in 45 days, except in unusual circumstances. Where unusual circumstances are presented, however, we suggest that a maximum of a 60-day extension be set in the regulations.

Public Comment

Workgroup Text Change We addressed this comment during the rewrite of Sections 400-436.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.421	p 248 - Cc1	Technical Standards	5	11	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:Sec;170.421 Should the IRR TIP be coordinated within the STIP time frames?Similar to the concern expressed above related to ? 170.416, CDOT is also concerned about the BIA regional offices' ability to coordinate with the states' STIP timeframes. CDOT is also concerned about the process BIA intends to use to notify tribes, states, MPOs, rural planning organizations of IRR TIP development. CDOT is less concerned about an approved IRR TIP being included with the STIP when it is printed and distributed as CDOT's STIP is on-line and updated on a continually basis.

Workgroup Text Change No text change.

Workgroup Comments Comment does not offer solution

Federal Comments

Tribal Comments renumbered 429



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.421	p 248 - A1	Technical Standards	26	14	YES	Reject Comment	AGREE	NO ACTION

Public Comment Section 170.421 - Should the IRR TIP be coordinated within the STIP time frames? It is not clear to us what is to happen if TIP's and TIP updates are submitted in an appropriate time frame for inclusion in states' STIP's but are thereafter amended by the Secretary of Interior or the Secretary's designee.

Workgroup Text Change No text change.

Workgroup Comments Comment does not offer solution

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.422	p 249 - D2	Technical Standards	1337	84	YES	Accept with Modification	AGREE	AGREE

Public Comment Page 51383-Sec. 170.422 Comment: "At any time" could be administratively burdensome. Also updating the IRR TIP at the end of a fiscal year would serve no real purpose. Insert "may" between "Secretary" and "amend" in the first sentence. We recommend moving the last sentence of (b) out of (b) since it does not fit as part of the Answer. Also, by moving more emphasis can be place on the intent of this sentence.

Workgroup Text Change Insert section 434 language

Workgroup Comments clarification

Federal Comments

Tribal Comments 422 was deleted by the workgroup



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.422	p 248 - D1	Technical Standards	1370	25		Reject Comment	AGREE	NO ACTION

Public Comment Rule - Page 51383 states: :section; 170.422 "When may the Secretary amend the IRR TIP? . . . (b) . . . , by consulting with the affected tribe and obtaining its consent (:delete; whenever practicable). . . ." Comment: The Tribes request the deletion of the language identified above. The Tribes request that the Secretary obtain Tribal government written consent before any amendment to the IRR TIP. The Shoshone Bannock Tribes do not believe that there is any basis for a region to reduce any tribes IRR funding formula allocation without the written consent of the affected Tribe.

Workgroup Text Change

Workgroup Comments Comment adequately addressed

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.422	p 248 - Cc1	Technical Standards	35	126	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec; 170.415 What happens to the tribal TIP after eligible projects are included in the IRR TIP? Comment: the question is not answered in it's current form. Recommend the following: "What happens to the IRR TIP after eligible projects are included from the tribal TIP?"

Workgroup Text Change

Workgroup Comments Will address in Section 420

Federal Comments

Tribal Comments 422 was deleted by the workgroup



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.423 Public Comment	p 249 - Cc1 170.423 How is the IRR TIP amend?	Technical Standards	15	60		Reject Comment	AGREE	DISAGREE
Workgroup Text Change	<hr/> Impractical to accomplish this. Recommended that 423 be combined with the rewrite of 420 as this is the same process.							
Workgroup Comments	<hr/> Federal Caucus agrees with Tribal Caucus change, add "of receipt" and replacing "TTIP" with "projects in the IRRTIP" to renumbered 426.							
	<hr/> renumbered 426 and part of broader rewrite.							
Tribal Comments	<hr/> Tribal caucus accepts with modification. In the answer of the second sentence after 45 days, add "of receipt" Also, in the answer second paragraph first sentence. delete 'TTIP' and replace with "projects in the IRRTIP"							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.425	p 249 - D1	Technical Standards	5	12	YES	Reject Comment	AGREE	NO ACTION

Public Comment :Sec;170.425 How does public involvement occur in the development of the IRR TIP?(b) Public involvement activities may be conducted by the state transportation agency or the MPO.CDOT is concerned about the inclusion of this statement without some specific qualifier such as "upon agreement of the state transportation agency or MPO, public involvement activities may be conducted by the state transportation agency or MPO."

Workgroup Text Change

Workgroup Comments Process adequately addressed as is

Federal Comments

Tribal Comments renumbered 422



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.426	p 249 - D1	Technical Standards	1394	7	YES	Accept Comment	AGREE	AGREE

Public Comment

:Sec;170.426 What happens after the IRR TIP is approved?The IRR TIP is approved by the Secretary and the Secretary of Transportation and is returned to the BIA. Copies are provided to the BIA DOT, BIA regional offices, FHWA division office, and Indian tribal governments. The FHWA division office transmits the approved IRR TIP to the state transportation agency for inclusion in the STIP. Within 10 working days of receipt of the approved IRR TIP and IRR funds, the BIA enters the projects into the Federal finance system. Expenditure of funds for development of the projects may then begin even though the state transportation agency may not have yet added the approved IRR TIP to the STIP.Issue: This Q&A is the same as :sec; 170.436.Recommendation: Replace this Q&A with :sec; 170.436.

Workgroup Text Change

Delete 426 contents and insert language of 436 in its place.

Workgroup Comments

Clarification

Federal Comments

Tribal Comments

original 426 deleted and replaced with original 436 and renumbered to 425



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 10426 Public Comment	FF workgroup comment	Funding				Referred to Technical Sta		NO ACTION

Workgroup Text Change

Workgroup Comments The Tech Standards workgroup need to add to their rewrite of old 426 new 425 (b) and (c) Office of Self-Governance.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.428	p 250 - D2	Technical Standards	1337	86	YES	Accept Comment	AGREE	AGREE
Public Comment								
Page 51384-Sec. 170.428 Comment: We believe (d) needs to be expanded by adding "relating to transportation improvements".								
Workgroup Text Change								
Add - "relating to transportation improvements" to 428(d).								
Workgroup Comments								
Clarification								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.428	p 250 - D1	Technical Standards	35	129	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec; 170.428 What may a long-range transportation plan include? Comment: Since subpart C is now requiring that all tribes have a long range plan to justify the projects on the TIP and in the inventory, this section needs to be written in the "mandatory" sense. Recommend the lead in paragraph be changed to read: "The comprehensive long-range transportation plan must include sufficient information to justify the tribe's transportation needs for funding purposes and may include one or all of the following:"

Workgroup Text Change

We addressed this comment during the rewrite of Sections 400-436.

Workgroup Comments

Clarification.

Federal Comments

Tribal Comments

renumbered as 410



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.429	p 250 - D1	Technical Standards	1337	87	YES	Reject Comment	AGREE	NO ACTION

Public Comment Page 51384-Sec. 170.429 Comment We recommend combining the first two sentences into one paragraph and delete the parenthesis a,b and c because this is not needed, The three sentences in (a), (b) and (c) are not tied by subject matter such as a listing of things.Comment: The time horizon for long-range transportation planning should be 20 years to match state transportation planning horizons.Comment: This section constrains the long-range plan to 20 years. Sec. 170.301 provides that the long range plan is not constrained (in other words open ended). The two sections conflict and that needs to be rectified.

Workgroup Text Change

Workgroup Comments Does not add benefit to the existing language.

Federal Comments

Tribal Comments Has been renumbered and reorganized as 409



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.430	p 251 - Cc1	Technical Standards	41	38	YES	Reject Comment	AGREE	NO ACTION

Public Comment Page 51384, Subpart D, Section 170.430. Recommend authorizing small tribes to hold required public meetings concurrently with public meetings conducted by the Regional Transportation Authority (RTA), and to allow public notices to be issued jointly as part of corresponding notices published by the RTA.

Workgroup Text Change

Workgroup Comments Nothing says that this comment can't happen already

Federal Comments

Tribal Comments renumbered 412



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.430	p 251 - D2	Technical Standards	3	42	YES	Accept with Modification	AGREE	AGREE

Public Comment

170.430 How does BIA or a tribe involve the public in developing the IRR long range Transportation plan? Comment: Revise this section as follows: (a) BIA or the tribe must solicit public involvement. Tribes may do so in accordance with their own tribal laws and policies. (b) If there are no tribal policies, tribes must use the procedures in paragraphs (c) and (d) of this section. Public involvement begins at the same time long range transportation planning begins and covers the range of users, from private citizens to major public and private entities. Public involvement may be handled in either of the following two ways: (c) Public Meetings: BIA or the tribe must: (1)(4): no change; (d) Public Notice: BIA or the tribe must: (1)(2): no change; The above formatting changes make clear that if a tribe has its own law or policy on involving the public in developing long range transportation plans, the procedures for public meetings and public notices set out in 170.430 do not apply.

Workgroup Text Change

add "in the absence of local public newspapers, the tribe or BIA may post notices in accordance with local acceptable practices" to a(1) and b(1).

Workgroup Comments

Clarifies issue. Other portions are rejected.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.430	p 251 - D1	Technical Standards	1337	88	YES	Accept Comment	AGREE	AGREE

Public Comment Page 51384-Sec. 170.430 Comment: We suggest changing the sentence structure of (a) to "For public meetings the BIA or the tribe must:" This eliminates using colons twice in one sentence. We suggest the same change for (b)- "For a public notice the BIA or the tribe must:". We also recommend changing the sentence structure of (3) under (a) to "Provide information on funding and the planning process; and".

Workgroup Text Change Change (a) to "For public meetings, the BIA or the tribe must:" Change (b) to "For a public notice the BIA and the tribe must:" Change 3(a) to read "Provide information on funding and the funding process; and."

Workgroup Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.431	p 251 - Cc1	Technical Standards	26	15	YES	Accept with Modification	AGREE	AGREE

Public Comment

Section 170.431 - How is the IRR long-range plan developed and approved? We find the option listed as (A) (2) highly disturbing, and recommend its deletion. The development of transportation plans is an intrinsic governmental function, whether performed by states, metropolitan planning organizations, or tribes. The detailed work of developing such plans often is performed by contractors, but even in contracted situations, accepting such plans and approving them must be performed by an entity that is appropriately answerable to the citizens of the planning area. In our opinion, contractors are highly qualified to make planning recommendations to tribes, or to the BIA, but it is the tribes' and BIA's responsibility to take these recommendations and approve them.

Workgroup Text Change

Delete A,B, and C designations. Delete "and approved". Change "three" to "two". Delete Paragraph (2). Change (1) to (a). Change (3) to (b)

Workgroup Comments

Clarification

Federal Comments

Tribal Comments

renumbered 411



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.432	p 252 - D1	Technical Standards	1337	89	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51384-Sec. 170.432 Comment: The answer part of this section should also state that inventory costs are derived from the long-range transportation plans as stated in Sec. 170.271.

Workgroup Text Change

Workgroup Comments Additional language not needed

Federal Comments

Tribal Comments renumbered 413



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.433	p 252 - Cc1	Technical Standards	15	61	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.433 When does BIA update the IRR TIP? Again, BIA should not be given exclusive authority to update. The language should reflect the tribes authorization, since there are updates conducted on an annual basis.

Workgroup Text Change Delete this section altogether.

Workgroup Comments It is redundant with the information already contained in Sections 419, 420, and 421.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.433	p 253 - D5	Technical Standards	3	43	YES	Accept with Modification	AGREE	AGREE
Public Comment	170.433 When does BIA update the IRR TIP? Comment: We recommend that this provision be merged with 170.420 (page 51383).							
Workgroup Text Change	same as above							
Workgroup Comments	It is redundant with the information already contained in Sections 419, 420, and 421.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.433	p 253 - D4	Technical Standards	1394	9	YES	Accept with Modification	AGREE	AGREE

Public Comment

#:sec; 170.433 When does BJA update the IRR TIP?(a) The BIA regional office annually updates the IRR TIP for each State in its service area to reflect changes in the TTIP.(b) BIA regional offices should coordinate the annual update with each affected state transportation agency. This will ensure that approved IRR TIP updates are included with the STIPs. Issue: The annual update is already covered by :sec; 170.419.Recommendation: Delete this Q&A.

Workgroup Text Change same as above

Workgroup Comments It is redundant with the information already contained in Sections 419, 420, and 421.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.433	p 252 - D1	Technical Standards	1363	12	YES	Accept with Modification	AGREE	AGREE

Public Comment :sec;170.433- When does BIA update the IRR TIP?(a) On a quarterly basis or as otherwise requested by a tribe in accordance with :sec;170.420.(b) The BIA regional office annually updates the IRR TIP for each state in its service area to reflect the changes in the TTIP.(c) BIA regional offices should coordinate the annual update with each affected state transportation agency. This will ensure that approved IRR TIP updates are included with the State TIP's (STIP's).

Workgroup Text Change same as above

Workgroup Comments It is redundant with the information already contained in Sections 419, 420, and 421.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.433	p 252 - D2	Technical Standards	27	35	YES	Accept with Modification	AGREE	AGREE

Public Comment :sec;170.433 First, if this question and answer is to remain it belongs in the TIP section. It is similar to :sec;170.419 What is the IRR TIP annual update? Recommendation delete :sec;170.433 and add answer from :sec;170.433 (b) to :sec;170.419 (reference comment to :sec;170.419 above).

Workgroup Text Change same as above

Workgroup Comments It is redundant with the information already contained in Sections 419, 420, and 421.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.433	p 253 - D3	Technical Standards	1355	41	YES	Accept with Modification	AGREE	AGREE

Public Comment :section; 170.433 See our comment to :section; 170.419.:section; 170.419 This question and answer is similar to :section; 170.433. Kawerak recommends deleting :section;170.433 and adding (b) from :section; 170.433 to this answer, as follows: :section; 170.419 What is the IRR TIP annual update? The IRR TIP annual update is the process by which the IRR TIP is kept current. (a)The BIA regional office annually updates the IRR TIP for each state in its service area to reflect changes in the TTIP."(b) BIA regional offices should coordinate the annual update with each affected state transportation agency. This will ensure that approved IRR TIP updates are included with the STIPs."

Workgroup Text Change same as above

Workgroup Comments It is redundant with the information already contained in Sections 419, 420, and 421.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.434	p 254 - D1	Technical Standards	1394	10	YES	Accept with Modification	AGREE	AGREE

Public Comment :Sec; 170.434 When may the Secretary amend the IRR TIP?(a) The Secretary may amend the IRR TIP:(1) At any time if requested bythe tribe, in order to add or delete projects or reflect significant changes in scope; and(2) Before reducing the funding for, or rescheduling a project on theIRR TIP, by consulting with the affected tribe and obtaining its consent whenever practicable.(b) The Secretary may not reduce funding for or reschedule a project which is the subject of a negotiated agreement except under the terms of the agreement. The IRR TIP is amended using the same public involvement process as updating the IRR TIP.Issue: Amended IRR TIP is already covered by :sec; 170.422 & :sec; 170.423.Recommendation: Delete this Q&A.

Workgroup Text Change same as above

Workgroup Comments clarification

Federal Comments

Tribal Comments renumbered 427



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.434	p 254 - D2	Technical Standards	3	44	YES	Accept with Modification	AGREE	AGREE

Public Comment 170.434 When may the Secretary amend the IRR TIP? Comment: We recommend that this provision be merged with 170.422 (j 51383).

Workgroup Text Change same as above

Workgroup Comments clarification

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.434	p 253 - A1	Technical Standards	415	103	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec;170.434 When may the Secretary amend the IRR TIP? Comment: this is a duplication of :Sec;170.422. It appears that some of the work in this Subpart has been changed from what was submitted by the committee.

Workgroup Text Change

Re-number and move this section to 422. Change both the question and answer to "amend/update" (Sub-Committee recommendation)

Workgroup Comments

Clarification

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.435	p 254 - D1	Technical Standards	3	45	YES	Accept with Modification	AGREE	AGREE
Public Comment	170.435 How does BIA or a tribe solicit public participation during the development of the IRR TIP? Comment: Delete this provision which repeats 170.425 (page 51383).							
Workgroup Text Change	Delete section (same as 425)							
Workgroup Comments	clarification							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.435	p 254 - D2	Technical Standards	1394	8	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec; 170.435 How does BIA or a tribe solicit public participation during the development of the IRR TIP?Public involvement is required in the development of the IRR TIP.(a) BIA or the tribe may publish a notice in the local and tribal newspapers when the draft tribal or IRR TIP is complete. The notice must indicate where a copy can be obtained, who to contact for answers to questions, where comments may be submitted, and the deadline for submitting comments;(b) BIA or the tribe may conduct one or more public meetings at which it solicits comments, either orally or in writing; or,(c) BIA, the tribe, the State, or the metropolitan planning office may conduct other involvement activities.Issue: Public involvement is already covered by :sec;170.424 & :sec;170.425 Recommendation: Delete this Q&A.

Workgroup Text Change Delete section (same as 425)

Workgroup Comments clarification

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.436 Public Comment	p 255 - A1	Technical Standards	415	104	YES	Accept with Modification	AGREE	AGREE
:Sec;170.436 What happens after the IRR TIP is approved? Comment: Again this is a duplication of :Sec;170.426. What happened here?								
Workgroup Text Change	Delete section (move language to replace 426)							
Workgroup Comments	clarification							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.436 Public Comment	p 255 - D1	Technical Standards	1337	92	YES	Accept with Modification	AGREE	AGREE
Page 51385-Sec. 170.436 Comment: We recommend deleting this section since it is the same as 170.426.								
Workgroup Text Change	Delete section (move language to replace 426)							
Workgroup Comments	clarification							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.437	p 258 - D1	Technical Standards	1337	93	YES	Accept with Modification	AGREE	AGREE
Public Comment	Page 51385-Sec. 170.437 Comment: Item (b) is not something for public hearings so we recommend this item be deleted. The tribes and the BIA outside of public hearings address this.							
Workgroup Text Change	Add after "are to"--"inform the public and obtain public input into the IRR TIP, LRTP, and specific IRR Projects and to promote coordination and comprehensive planning of IRR activities" Delete (a, b and c) POLICY - add word "preliminary" before "locations" in paragraph (b).							
Workgroup Comments	Clarification POLICY - question talks about public hearings for long range transportation plans, so item (b) is an appropriate issue to be discussed.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.439	p 259 - D4	Technical Standards	1363	34	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:sec;170.610-How are IRR Program management systems funded and implemented? IRR Program management systems shall be funded out of BIA' s 6 percent.

Workgroup Text Change Note: ss438 revised.

Workgroup Comments Not applicable to this section
POLICY - Already addressed by another comment and revision.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.439	p 259 - D2	Technical Standards	27	37	YES	Accept with Modification	AGREE	AGREE

Public Comment :sec;170.439 The answer (2) indicates that Public hearings for the IRR TIP and long-range transportation plans conducted by BIA are funded using IRR construction funds. This is not true unless the BIA has identified transportation planning for the specific Tribe(s) on their IRR TIP. This would require that the Tribe identify transportation planning as a priority on either the tribal priority list or tribal TIP. It is far more viable that any activity that is not related to a specific project, which transportation planning in general is not, should be considered a function to be carried out using BIA IRR program management and oversight funds. Recommend change: (2) . . . conducted by BIA are funded using IRR program management and oversight funds.

Workgroup Text Change We addressed this comment by rewriting 438/9

Workgroup Comments Clarification
POLICY - Question is adequately covered. The 6% available for BIA's use is out of the scope of section 439. Same comment as pg. 258, D1.

Federal Comments Global change pertaining to 2% change to transportation planning.

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.439	p 259 - D3	Technical Standards	1363	33	YES	Accept with Modification	AGREE	AGREE

Public Comment

:sec;170.609-How are public hearings for IRR planning and projects funded? Transportation planning public hearings are funded by 2 percent planning or 6 percent administrative funds. Project public hearings are funded by construction funds.

Workgroup Text Change We addressed this comment by rewriting 438/9.

Workgroup Comments Clarification. POLICY - Question is adequately covered. The 6% available for BIA's use is out of the scope of section 439. Same comment as pg. 258, D1.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.439	p 259 - D6	Technical Standards	3	48	YES	Accept with Modification	AGREE	AGREE
Public Comment	170.439 How are public hearings for IRR planning and projects funded? Comment: Strike the phrase "2 percent" in paragraph (a)(2) of this section as the statutory amount may change in reauthorization.							
Workgroup Text Change	Will address as 204(j) as previously indicated							
Workgroup Comments								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.439	p 259 - D5	Technical Standards	1363	35	YES	Reject Comment	AGREE	NO ACTION

Public Comment 170.611-How will the IRR management systems be implemented?A nationwide management system will be maintained and implemented by BIA Division of Transportation using IRR Program management funds. BIA Regional Offices will provide the database information for this nationwide system. Tribes may collect and provide this information in accordance with the terms of a self-determination contract or self-governance agreement.

Workgroup Text Change Note: Revision of ss438.

Workgroup Comments Not applicable to this section

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.439	p 258 - D1	Technical Standards	38	29	YES	Accept with Modification	AGREE	AGREE

Public Comment :sec; 170.439. The proposed provision should be deleted and replaced with the following text suggested by the Tribal Caucus: How Are Public Hearings for IRR Planning and Projects Funded? Transportation planning public hearings are funded by 2 percent planning or 6 percent administrative funds. Project public hearings are funded by construction funds.

Workgroup Text Change We addressed this by rewriting section 438/9.

Workgroup Comments Clarification. POLICY - Question is adequately covered. The 6% available for BIA's use is out of the scope of section 439.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.440	p 260 - D1	Technical Standards	1337	94	YES	Accept Comment	AGREE	DISAGREE
Public Comment	Page 51385-Sec. 170.440 Comment: Insert "is" between "determination" and "based" in the second sentence of the answer part of this section, Sec. 170.434 does not contain criteria for determining whether or not a public hearing is needed.							
Workgroup Text Change	Insert "is" between "determination" and "based". POLICY - insert the word "is" between "determination" and "based" in the second sentence of the answer part of this section. Change 434 to 439.							
Workgroup Comments	Clarification							
Federal Comments	Federal Caucus agrees with Tribal Caucus change, grammatical change.							
Tribal Comments	renumbered 438 tribal caucus accepts with modification. Take comma out after BIA ",," and place a comma after the 'appropriate tribe' ",,"							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.440 Public Comment	p 260 - D2	Technical Standards	27	38	YES	Accept Comment	AGREE	AGREE
:sec;170.440 wrong cite ":sec;170.434". Recommend change cite to :sec;170.438.								
Workgroup Text Change	Change 170.434 to 170.438 or whatever new subsection results due to resequencing							
Workgroup Comments								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.440	p 260 - D3	Technical Standards	1394	11	YES	Accept with Modification	AGREE	AGREE

Public Comment #:sec; 170.440 How does BIA or the tribe determine the need for a public hearing?The tribe, or BIA, after consultation with the appropriate tribe and other involved agencies, determines whether or not a public hearing is needed for an IRR TIP, long-range transportation plan or project. The determination based on the criteria in :sec; 170.434.Issue: The criteria is found in :sec; 170.438 not :sec; 170.434.Recommendation: Combine :sec; 170.438 and :sec; 170.440 us :as; follows::Sec; 170.438 How does BIA or the tribe determine the need for a public hearing? The tribe, or BIA, after consultation with the appropriate tribe and other involved agencies, determines whether or not a public hearing is needed for an IRR TIP, long-range transportation plan or project.The determination is based on the following criteria:(a) Is a new route;(b) Would significantly change the layout or function of connecting or related roads or streets;(c) Would cause a substantial adverse effect on adjacent real property;(d) Is controversial or expected to be controversial in nature; or(e) Is for obtaining input during the TIP and long-range transportation planning processes.

Workgroup Text Change Use question from 440 in the place of 438. Combine the answer text for 438 and 440 for the answer text for the new 438 (see re-write of Public Hearings). Delete Number 440 after completion
POLICY - change section "440" to "438" and move to before 438 and redesignate sections. Change reference to "439" in sentence.

Workgroup Comments Clarification
POLICY - same as above

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.441	p 260 - Cc1	Technical Standards	1337	95	YES	Accept Comment	AGREE	AGREE

Public Comment Page 51385-Sec. 170.441 Comment: We believe these activities are not needed and would place too great a burden on a tribe or the BIA to give notice to the public before project activities begin (even though the determination has been made that public hearings are not necessary). That would require a tribe or the BIA to post dozens of public notices for little projects, including signing projects, chip seal projects, culvert replacement projects, etc. This is too large a burden for no good reason. We believe this is not practiced in the Federal-aid transportation programs and we believe it not necessary for the Federal Lands Highway Program.

Workgroup Text Change Delete section in its entirety.

Workgroup Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.442	p 261 - D2	Technical Standards	21	15	YES	Reject Comment	AGREE	NO ACTION
Public Comment	170.442 Recommend adding: or;(b) (3) by the normal method of notifying the public used in common practice by the Tribe.							
Workgroup Text Change	POLICY - insert "utilizing normal methods of notfication." after "hearing" in 442(b)(1)							
Workgroup Comments	Regulation is flexiable enough to allow various options							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.442	p 261 - D1	Technical Standards	1337	96	YES	Accept with Modification	AGREE	AGREE

Public Comment

Page 51385-Sec.170442 Comment: We recommend changing (2) to "(2) By sending it to the affected tribe(s) or BIA Regional Office". This makes (2) compatible with the subject of this sentence that is "BIA or the tribe".

Workgroup Text Change

Change (2) to read: "A courtesy copy of the notice shall be provided to the affected tribe(s) and/or BIA Regional Office."
POLICY - insert the word "or BIA Regional Office" after "affected tribe(s)".

Workgroup Comments

Clarification

Federal Comments

Note to writers: to reflect that the BIA or Tribe will respond to the other, change "and/or" to "and".

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.443	p 261 - D1	Technical Standards	1337	97	YES	Accept with Modification	AGREE	AGREE
Public Comment								
Page 51385-Sec. 170.443 Comment: We recommend the project development activities of surveying, design, environmental clearance and archeological clearance also be included in (c) (3).								
Workgroup Text Change								
Change end of (3) to "may include but is not limited to:" Insert: (vi) environmental and/or archeological clearance POLICY - insert a new (i) in 443(c)(3) stating "project development activities of surveying, design, environmental clearance and archeological clearance." Redesignate other sections.								
Workgroup Comments								
Other issues too detailed for public hearing								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.446	p 262 - Cc1	Technical Standards	15	62		Reject Comment	AGREE	NO ACTION

Public Comment

IRR Inventory: 170.446 What is the IRR inventory? Agree. Except that the BIA and the Tribes need to be consistent on road inventory. They need to begin re-establish road inventory according the tribes updates.

Workgroup Text Change No text change recommended.

Workgroup Comments Comment noted and rejected.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.446	p 263 - D2	Technical Standards	1337	99	YES	Accept Comment	AGREE	AGREE

Public Comment

Page 51386-Sec. 170.446 Comment: We recommend changing the first sentence to "The IRR inventory is a comprehensive database of all transportation facilities eligible for IRR Program funding by tribe, reservation, BIA region, Congressional district, State and county."

Workgroup Text Change change "list of information" to "database."

Workgroup Comments Clarification.

Federal Comments Answer needs to be changed as follows: Last sentence "... as required in subpart C." changed to " as required in section 170.291."

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.446	p 262 - Cc2	Technical Standards	1382	3	YES	Reject Comment	AGREE	NO ACTION

Public Comment It appears that an assumption has been made that the existing database for the inventory is acceptable and that the information included is accurate. We believe this is not the case. Some of the information contained in the existing inventory is not accurate and should be updated and changed. We suggest that a Quality Assurance Program (QAP) be instituted in the new rule for checking and verifying the existing inventory and for any future inventory entries. Since 80% of the funding amount depends directly or indirectly on information contained in the inventory it would be prudent to assure that the information contained in the inventory is accurate and appropriate for the use intended.

Workgroup Text Change No text change.

Workgroup Comments This is a quality assurance issue and this section only defines the IRR inventory and does not address administration of inventory.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.446	p 263 - D1	Funding	35	132	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec; 170.446 What is the IRR inventory? Comment: clearly this is not consistent with Subpart C and will need to be expanded to address all the important elements that must be collected and maintained in the IRR National Inventory to be consistent with Subpart C and to verify the accuracy and legitimacy of any distribution formula. It is recommended that those sections in Subpart C that deal with the inventory be added to this Subpart.

Workgroup Text Change

Possible consolidation into Subpart D of all inventory issues not directly related to Funding Formula (Subpart C).

Delete at the end "subpart C" and replace with "in accordance with 170.299"

Workgroup Comments

All inventory related questions in Subpart C that do not directly pertain to the Funding Formula should be moved to Subpart D-Inventory (Section 446 et seq).. Tech standards accepts with mod

FF and TS joint effort, also responds to 170.290 415-69.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.447	p 263 - D1	Technical Standards	1337	100	YES	Accept with Modification	DISAGREE	AGREE

Public Comment

Page 51386-Sec. 170.447 Comment: We think this section and Sec. 170.290 could be combined since the IRR inventory is used in the distribution of IRR Program funds but this is not addressed in Sec. 170.447.

Workgroup Text Change

Insert before NPRM text answer the following:,"In addition to its role in Funding,"

Workgroup Comments

170.290 refers strictly to the funding Formula and the IRR Inventory is used for other purposes in addition to the funding formula. Clarification provided.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.448	p 263 - D1	Technical Standards	1337	101	YES	Accept with Modification	AGREE	AGREE
<p>Public Comment Page 51386-Sec. 170.448 Comment: The answer of this section does not answer the question. We recommend deleting this section since the subject is better addressed in Sec. 170.449.</p>								
<p>Workgroup Text Change Replace section 448 and 449 with section 296. However, keep the last sentence of 448 and place this sentence at the end of 296, as a new paragraph (H). Also dates in section 296 should be made consistent with dates and language accepted in the rewrite of section 400, referencing the new update schedule for TIPS. In "B" of 296, the following text should be added after "...with authorizing resolutions..." ADD: "..or similar official authorization by March 15." In addition the following changes to 296 should be made: (c) of section of 296 should be changed to "May 15"; (d) of section 296 should be changed to "June 15;" (e) of section 296 should be changed to "July 15" and (f) should be changed to "August 15" in order to reflect the appropriate dates changes made during the rewrite.</p>								
<p>Workgroup Comments Clarification.</p>								
<p>Federal Comments</p>								
<p>Tribal Comments Tribal caucus reviewed 296. recommended change to add an "h" needs to be added to ff's changes 'h' is from old 448 last sentence. In addition, acceptance of "or similar official authorization" by March 15. Other dates changes are already incorporated into FF's rewrite.</p>								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.449	p 264 - D1	Technical Standards	3	49	YES	Accept with Modification	AGREE	AGREE

Public Comment

170.449 How are transportation facilities added to or deleted from the IRR inventory? Comment: Revise the last sentence of this section reading: A BIA regional office "approves the submission : the IRR inventory by a tribe; if it is accurate and the facility is eligible as an IRR facility. "The phrase "if it is accurate" is capable of multiple meanings and it would be useful for the IRR regulations to more precisely define what is meant by an "accurate" inventory submission. All too often, tribal requests to the BIA to update a tribe's inventory are denied. This provision should cross reference other regulatory provisions which identify the content of an IRR inventory update or the "checklist" which BIA personnel will review when reviewing a tribal inventory submission (e.g., inventory submissions must include atlas maps, strip maps, functional classification of road, surface type, etc.).

Workgroup Text Change

Replace with changes made in section 448. See above.

Workgroup Comments

Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.450	p 264 - Cc1	Technical Standards	1373	4		Reject Comment	AGREE	NO ACTION

Public Comment

170.450 Using all IRR roads will defeat the whole purpose of helping and building Indian country road ways. This gives an upper hand to tribes and reservations that are situated in an urban area and allows double dipping when it comes to accounting of roads. In addition, if tribes are taking credit and earning money for state and county roads, who is to say that the state does not have a right to ask for some of the money earned.

Workgroup Text Change

No text change.

Workgroup Comments

The comment does not relate to the question.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.450	p 265 - D1	Technical Standards	1337	102		Accept Comment	AGREE	AGREE

Public Comment Page 51386-Sec. 170.450 Comment: Insert "transportation" between "What" and "facilities" in the question part of this section.

Workgroup Text Change Add the word "transportation" between "What" and "facilities".

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.450	p 264 - Cc2	Technical Standards	1373	6		Reject Comment	AGREE	NO ACTION

Public Comment 170.450 The amount of proposed miles that a region can place in the inventory should be limited to the standing rule of 2% per year (i.e., adding 100 miles of a road is ridiculous and only hurts the IRR program by not getting construction funds to the tribes that need the funding based on true inventories). These roads will never be built and should not be placed on the inventory. The sole purpose of placing them on the inventory is to earn funding through the relative need formula. Allow a one time update and allow all tribes to update their inventories and start over again (i.e., complete phase III).

Workgroup Text Change No text change.

Workgroup Comments This comment does not relate to this question.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.451	p 265 - A2	Technical Standards	41	39		Accept with Modification	AGREE	AGREE

Public Comment

Page 51386, Subpart D, Section 170.451. Who is responsible for ensuring the accuracy of the database, and who is responsible for correcting database information determined to be inaccurate.

Workgroup Text Change

This section has been deleted.

Workgroup Comments

Section 451 has been deleted per comment p. 265 D1.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.451	p 265 - Cc1	Technical Standards	415	106		Accept with Modification	AGREE	AGREE

Public Comment

IRR Inventory::Sec;170.451 How accurate must the IRR road inventory database be? Comment: Because we are now talking about other modes of transportation such as bridges, transit, trails, paths, etc., this section needed to provide some accuracy to these other eligible transportation facilities. These other transportation facilities must also be addressed here if they are to be used to determine a tribe's Cost-to-Construct (i.e. bridges measured to the nearest m of foot, transit buildings the same, trails to the nearest meter or foot, etc).

Workgroup Text Change

This section has been deleted.

Workgroup Comments

Agreement with comment p.265 D1.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.451	p 265 - D1	Technical Standards	1337	103	YES	Accept Comment	AGREE	AGREE

Public Comment Page 51386-Sec. 170.451 Comment: Delete "road" between "IRR" and "inventory" since is redundant and not needed. This accuracy seems to be addressing just roads but if there is a needed for a section on accuracy then bridges and other transportation facilities is also needed. We recommend deleting this section.

Workgroup Text Change Delete this section, 451.

Workgroup Comments Agree with comment; this section should be deleted.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.451 Public Comment	p 265 - A1	Technical Standards	348	7	YES	Accept with Modification	AGREE	AGREE
170.451 shows a road length must be within 100 feet and the current database only allows 0.10 mile increments (roughly 500 feet).								
Workgroup Text Change	This section has been deleted.							
Workgroup Comments	Agreement with comment pg.265 D1.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.452 Public Comment	p 266 - D1	Technical Standards	1337	104		Accept with Modification	AGREE	AGREE
Page 51386-Sec. 170.452 Comment: Delete "road" after "IRR" in (b).								
Workgroup Text Change	Delete this section							
Workgroup Comments	Agree with comment p.268, D2 under Multiple.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.456 Public Comment	p 266 - A1	Technical Standards	5	15		Accept Comment	AGREE	AGREE
:Sec;170.456 What is function classification?								
Workgroup Text Change	Delete this section.							
Workgroup Comments	Agree with comment p.267, C(c) 1.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.457	p 266 - C1	Technical Standards	5	16	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec;170.457 What are the functional classifications of the IRR Program? CDOT recommends there be consistency between the functional classification system categories used by the states and those used in the IRR Program. It would be confusing to have different functional classification systems related to different federal programs. CDOT recommends language be added for coordination with states regarding functional classification in the IRR program.

Workgroup Text Change Delete this section.

Workgroup Comments Agree with comment p.266, C(c) 1.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.457	p 267 - D1	Funding	27	40	YES	Accept with Modification	DISAGREE	AGREE

Public Comment

:sec;170.457 BIA functional classification identified in the Q and A does not match Table 1 of Appendix C. Recommend revising either the table or the Q and A.

Workgroup Text Change

Delete this section 457.

Workgroup Comments

Agree with comment. Committee believes that Funding should examine Table 1 on Federal Register page 51378 and all related provisions in Subpart C. Tech standards accepts with mod

Joint Meeting - TS wants FF to rework AC and delete 170.457. FF Workgroup has rewritten table 1.

Federal Comments

Fed Caucus can not agree with re-write of Table 1.

Tribal Comments

PS Tribal and Federal agreement to delete 457



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.459	p 267 - D1	Technical Standards	1337	106		Accept with Modification	AGREE	AGREE

Public Comment Page 51387-Sec. 170.459 Comment: This is not the process for the surface design for IRR projects. The question should be reworded to insure the reader understands this determination is for an inventory surf coding and is for the surface design for an IRR project. Delete "road" between "IRR" and "project" in the question part of this section.

Workgroup Text Change Delete this section.

Workgroup Comments Reference rationale in section 457 and 456. Accordingly, this comment no longer applies since this section has been deleted.

Federal Comments

Tribal Comments Sections 453 and 459 deleted in their entirety



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.462 Public Comment	pg. 269, D1	Policy	1337	107	YES	Accept Comment	AGREE	AGREE
Page 51387-Sec. 170.462 Comment: Insert "Program" between "IRR" and "funds" in the question and in the first sentence of the answer.								
Workgroup Text Change	global change							
Workgroup Comments	global change							
Federal Comments	Global change to insert "Program" between IRR and Funds.							
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.465	p 269 - D1	Technical Standards	1370	26	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Rule - Page 51387 states: :section; 170.465 " May BIA use FHWA-approved State or tribal design standards? . . . Comment: The Tribes suggest that the following amendment be considered, "Yes, BIA . . ." and tribes "may use FHWA-approved State or tribal design standards (:delete;?)".

Workgroup Text Change

Workgroup Comments Question concerns BIA only. Take ? out of answer.

Federal Comments

Tribal Comments



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Sec. 170.468	p 270 - Ca1	Technical Standards	15	63	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Design:170. 468 If BIA or FHWA denies a design exception, can that decision be appealed? Standards when agreed upon between the BIA and tribes, under ISDEEA and federal standards, there should be no denials. This section gives the BIA full authority to approve. The BIA should assist in development of a tribal standard with consideration of ISDEEA. It should be stipulated that tribes adopt a design conducive to meeting the requirements for this part.

Workgroup Text Change

Workgroup Comments Already covered in section 467

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.469	p 270 - Cc1	Technical Standards	15	64	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.469 How long does BIA or FHWA have to approve or decline a design exception request by a tribe? If problems occur, the FHWA should be consulted rather than the BIA Regional Office.

Workgroup Text Change

Workgroup Comments Already covered in section 467 and 468

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.472	p 270 - D1	Technical Standards	15	65	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.472 What road and bridge construction standards are used in the IRR Program? This section, however reflect a prior agreement, in that deleting-"... federal standards as may be negotiated between BIA and the tribe.."

Workgroup Text Change

Workgroup Comments Comment unclear. Appendix B is adequate

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.473	p 271 - Cc1	Technical Standards	15	66	YES	Reject Comment	AGREE	NO ACTION

Public Comment 170.473 What standards must be used for intermodal projects? If the tribes are asserting ISDEEA where there is a Professional Engineer, why should the standard meet or exceed federal standards. The communities of tribes do not sometimes require other standards as some standards cover metropolitan communities.

Workgroup Text Change

Workgroup Comments Covered under PL 638

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.475	p 271 - A1	Technical Standards	15	67	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.475 How will BIA monitor the IRR project during construction? At current the relationship between the tribes and the BIA should be re-examined. Due to some excelling tribes thrive to be more self-sufficient, the BIA personnel worries about their people.

Workgroup Text Change

Workgroup Comments No change suggested

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.476	p 271 - D1	Technical Standards	38	30	YES	Accept with Modification	AGREE	DISAGREE

Public Comment :sec; 170.476. This provision establishing tribal consultation requirements for changing a construction project includes the qualification that it be done "where feasible." Feasibility is subject to wide-ranging interpretations and is inappropriate as a pre-condition for consultation with tribes. Strike the term "where feasible" from this provision.

Workgroup Text Change Delete "where feasible." Replace consultation with coordination. Replace "change" and "changes" with "change the scope of" or "changes in the scope"

Workgroup Comments clarification

Federal Comments Federal Caucus agrees with Tribal Caucus change.

Tribal Comments Tribal Caucus accepts with modification. in the question, delete "consultation" and replace with "coordination"



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.479	p 272 - Cc1	Technical Standards	15	68	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.479 What IRR construction records must tribes and BIA keep? Language in cooperation should be similar in acquiring BIA Records. BIA must provide access to records pertaining to road activities to tribes, upon reasonable request.

Workgroup Text Change No Change

Workgroup Comments Already included in other areas

Federal Comments

Tribal Comments



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Sec. 170.479	p 272 - D1	Technical Standards	35	135	YES	Reject Comment	AGREE	NO ACTION

Public Comment :Sec; 170.479 What IRR construction records must tribes and BIA keep? Comment: The table is inappropriate and should be put back to the paragraph format. Also, this section does not address the level of detailed records required under :sec; 170.478 to determine compliance with contract terms regardless of the types of construction contract and self governance agreements.

Workgroup Text Change No Change

Workgroup Comments Table is adequate. What is required is included in other regulations

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.480	p 273 - D2	Technical Standards	35	136	YES	Accept with Modification	AGREE	DISAGREE

Public Comment

:Sec; 170.480 Can a tribe review and approve Plans, Specifications and Estimates (P.S.& E.) Packages for IRR projects? Comment: This topic covers pre-construction activities and therefore belongs under subsection "Design".

Workgroup Text Change

Sec. 480-481 rewritten to address disagreement item.

Workgroup Comments

PS&E will now have its own heading.

Federal Comments

Federal Caucus disagrees with the deletion of 'd' through the end.

Tribal Caucus accepts with modification:

Tribal Comments

Change the question and answer to the following:
Q What is a Plans, Specifications, and Estimage (PS&E) package?
A. PS&E package contains the follow items:
Strike 'd.' through the end.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.480 Public Comment	p 273 - Cc1	Technical Standards	1355	48		Accept with Modification	AGREE	AGREE
:section; 170.480 We concur with the tribal caucus position as stated in the preamble.								
Workgroup Text Change	Sec. 480-481 rewritten to address disagreement item.							
Workgroup Comments	In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.480	p 273 - D1	Technical Standards	21	16	YES	Accept with Modification	AGREE	AGREE

Public Comment

170.480 Recommend deleting the Q & A 170.480 and replacing with the following; Yes. As a public authority, a tribe may assume review and approval authority of PS&E packages under a Stewardship Agreement pursuant to a Public Law 93-638 contract or self-governance agreement. The Public Law 93-638 contract of self-governance agreement may serve as the Stewardship agreement. Alternatively, a tribe without a Stewardship Agreement may assume responsibility to review and approve PS&E packages under a self-determination contract or self-governance agreement so long as the Indian tribe or tribal organization has: (1) Provided assurances in the contract or agreement that the construction will meet or exceed proper health and safety standards; (2) obtained the advance review of the plans and specifications from a licensed professional engineer who has certified that the plans and specifications meet or exceed the proper health and safety standards; and (3) provided a copy of the certification to BIA.

Workgroup Text Change

Sec. 480-481 rewritten to address disagreement item.

Workgroup Comments

In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.480	P. 272 Ca1	Technical Standards	422	10	YES	Accept with Modification	AGREE	AGREE

Public Comment

I do not support the proposed :sec;170.480-Can a tribe review and approve plans, specifications, and estimates (PS&E) for IRR projects? My disagreement is not with the confirmation that a tribe can assume this function but instead the proposed language requiring the tribe to meet the definition of a state and a required stewardship agreement with the Secretary of Transportation. Title 23 does not prohibit a tribe from assuming the PS&E approval function nor does it require a tribe to qualify as a state. Therefore, the presumption that a tribe must enter into stewardship agreement in the same manner as a state is not valid, unless a tribe chooses to do so. Title 23 does however, recognize the Secretary of the Interior as a state and thus the PS&E approval function has been delegated to the BIA. Under the ISDEAA, all BIA programs, services, functions, activities or portion thereof, are subject to self-determination contracts and self-governance agreements. The final regulation should reflect that Indian tribes could assume the PS&E approval function under a self-determination contract or self-governance agreement.

Workgroup Text Change

Sec. 480-481 rewritten to address disagreement item.

Workgroup Comments

In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.481	p 274 - Ca1	Technical Standards	422	11	YES	Accept with Modification	AGREE	AGREE

Public Comment I do not support the proposed :sec;170.481 that identifies who must approve PS&E's for IRR projects. :sec;170.481 poses additional requirements that the Secretary must conduct health and safety reviews of all tribally approved PS&E's. Under:sec;403(e)(2) of the ISDEAA, the Secretary is only required to ensure that proper health and safety standards are included in the agreement. Instead, the BIA has interpreted this provision to mean they have to perform the health and safety function. This is neither required nor is it necessary. The final regulation should reflect that Indian tribes can ensure health and safety so long as proper health and safety standards are included in the contract or agreement.

Workgroup Text Change Sec. 480-481 rewritten to address disagreement item.

Workgroup Comments In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.481	p 275 - D2	Technical Standards	1156	17	YES	Accept with Modification	AGREE	AGREE
Public Comment	170.481 We recommend deleting and using the following: Must all packages be approved?							
Workgroup Text Change	Sec. 480-481 rewritten to address disagreement item.							
Workgroup Comments	In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.481 Public Comment	p 274 - Cc1	Technical Standards	1355	49		Accept with Modification	AGREE	DISAGREE
	:section; 170.481 We concur with the tribal caucus position as stated in the preamble.							
Workgroup Text Change	Sec. 480-481 rewritten to address disagreement item.							
Workgroup Comments	In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.							
Federal Comments	Federal Caucus agrees with Tribal Caucus rewrite, in (a)(3) insert "performed by the Tribe." and delete "required" and insert ", to the extent applicable," in (a)(1)							
Tribal Comments	Accept with modification in the answer 481 answer (a) (3) Delete "to be constructed by tribal labor" and insert "performed by the Tribe." in (a)(1) Strike "required" after 'safety standards' after the phrase "Appendix B to Subpart D" insert ", to the extent applicable,"							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.481	p 274 - D1	Technical Standards	27	43	YES	Accept with Modification	AGREE	DISAGREE

Public Comment

:sec;170.481 Recommend deleting and using the following: Must All PS and E Packages Be Approved? Yes. All PS and E packages must be signed and/or sealed by the appropriate licensed professional engineer, and by the appropriate official as follows: (a) Absent an approved Stewardship Agreement, FHWA approves all PS and E packages submitted by BIA; (b) Where an approved Stewardship Agreement exists between FHWA and the BIA Regional Office, PS and E packages are approved by an official in the BIA Regional Office; (c) Where an Indian tribe has assumed the responsibility to approve PS and E packages for IRR projects, in accordance with the question and answer above, the PS and E packages are approved by the tribe; (d) Where an Indian tribe has not assumed the responsibility to approve PS and E packages under paragraph (c) above, PS and E packages are approved under paragraph (a) or (b) above, as applicable.

Workgroup Text Change

Sec. 480-481 rewritten to address disagreement item.

Workgroup Comments

In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.

Federal Comments

Federal Caucus agrees with Tribal Caucus to insert "funded" between 'IRR' and 'projects' in 480 (B).

Tribal Comments

Accept with modification:
170.480 (B) insert in the question, between IRR projects, "funded"



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.481	p 275 - D3	Technical Standards	35	137		Accept with Modification	AGREE	DISAGREE
Public Comment	:Sec; 170.481 Who must approve all PS&E packages? Comment: Again this is a pre-construction activity that belongs under the subsection for "Design".							
Workgroup Text Change	Sec. 480-481 rewritten to address disagreement item.							
Workgroup Comments	PS&E will now have its own heading.							
Federal Comments	Federal Caucus disagrees with Tribal Caucus rewrite. The Secretary must review all PS&E to ensure plans meet health and safety requirements.							
Tribal Comments	Accept with modification: 481 F. in the question, replace 'should' with "must" delete 'tribally' and replace with "federally" In the answer, delete 'request that the tribe', delete 'required', insert after subpart D ", to the extent applicable"							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.482	p 275 - Cc1	Technical Standards	348	8	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.482 imposes an unreasonable requirement to always have a "licensed engineer" to make changes to plans. This in essence means that Contracting Officers and Awarding Officials must be licensed engineers. I do not think so.

Workgroup Text Change

Workgroup Comments Commenter has misinterpreted proposed rule.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.485	p 276 - D1	Technical Standards	1231	49	YES	Accept with Modification	AGREE	DISAGREE

Public Comment :Section; 170.485 Who has final acceptance of the IRR project audit? As discussed above, we recommend that this provision be modified to read: Who Has Final Acceptance of the IRR Construction Project Report?(a) With regard to JRR construction projects performed by BIA, the Secretary has final acceptance and approval of the IRR construction project report.(b) With regard to IRR construction projects performed by tribes under Public Law 93-638, the signatory authority has final acceptance and approval of the IRR construction project report.

Workgroup Text Change Sections 483-495, see changes provided in external document (Bob Sparrow's computer)
See changes proposed by MUL 295-D5.

Workgroup Comments Clarification.

Federal Comments Federal Caucus disagrees with the tribal caucus modification in 170.487(E).
Federal Caucus does agree with other Tribal Caucus acceptances.

Tribal Comments Tribal Caucus accepts 170.485 A
Tribal Caucus accepts 170.NEW (B)
Tribal Caucus accepts 170.486 (C)
Tribal Caucus accepts 170.NEW (D)
Tribal Caucus accepts with modification 170.487 (E) under 'ADD' delete "both" and "and tribe"



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.486	p 276 - A2	Technical Standards	1374	4		Accept with Modification	AGREE	AGREE

Public Comment

Subpart :D; Subsection 170.486; does the DI-137, Release of Claims also constitute a project closeout? Or when the BIA completes the final construction audit findings and release the remaining contract dollars to the Tribe?

Workgroup Text Change

Sections 483-495, see changes provided in external document (Bob Sparrow's computer)
See changes proposed by MUL 295-D5.

Workgroup Comments

Comments are all a part of project closeout and included in the rewrite.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.486	p 276 - Cc1	Technical Standards	21	17	YES	Accept with Modification	AGREE	AGREE

Public Comment

170.486 Q. When does a project closeout occur? A project closeout occurs after the final project inspection is concluded and the IRR project is accepted by the signatory authority (the entity with final authority to sign the PS&E package).

Workgroup Text Change

Sections 483-495, see changes provided in external document (Bob Sparrow's computer)
See changes proposed by MUL 295-D5.

Workgroup Comments

Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.486	p 276 - A1	Technical Standards	20	19	YES	Reject Comment	AGREE	NO ACTION

Public Comment

When does a project closeout occur? "when the entity with final authority signs the PS&E". Who is the final entity? If the tribes want to retain the services of BIA force account how will the organization be supported and maintain after full payment to the tribes is dispersed?

Workgroup Text Change No Change.

Workgroup Comments Comment inaccurate. This is not when close out occurs.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.487 Public Comment	p 277 - D1	Technical Standards	1231	51	YES	Reject Comment	AGREE	NO ACTION
:Section; 170.487 Who must conduct the project closeout and develop the report? As detailed above, delete this provision in its entirety.								
Workgroup Text Change	Sections 483-495, see changes provided in external document (Bob Sparrow's computer) See changes proposed by MUL 295-D5.							
Workgroup Comments	Clarification.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.488	p 277 - D1	Technical Standards	1231	52	YES	Accept with Modification	AGREE	AGREE

Public Comment :Section; 170.488 What information must be made available for the project closeout? For the reasons noted above, we recommend replacing this provision with the following:What Information Is Made Available for the Project Closeout? If the project closeout and development of project closeout report is not contracted or compacted then all project information must be made accessible for the IRR construction project closeout. Such information may include, but is not limited to: daily diaries, weekly progress reports, sub-contracts, subcontract expenditures, salaries, equipment expenditures, etc.

Workgroup Text Change Sections 483-495, see changes provided in external document (Bob Sparrow's computer)
See changes proposed by MUL 295-D5.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.489	A1 pg. 277	Delivery of Services	15	69		Accept Comment	AGREE	AGREE

Public Comment 170.489 Who is provided a copy of the IRR construction project closeout report? No Comment. Not familiar with procedure, policies and its implementation issues or problems. Any closeout reports should have summaries. Summaries should be provided and shared with tribes, regularly.

Workgroup Text Change No Changes recommended by commentor
TS - No change requested.

Workgroup Comments The commentor was making a statement. No change or recommendation provided. Tech. Standards has taken this comment for response.
TS - Comment noted.

Federal Comments

Tribal Comments Tribal Caucus accepts 170.485 (G)



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.489	p 277 - D1	Technical Standards	1231	53	YES	Accept with Modification	AGREE	AGREE

Public Comment :Section; 170.489 Who is provided a copy of the IRR construction project closeout report? For the reasons noted above, we recommend replacing this provision with the following:Who is Provided a Copy of the JRR Construction Project Closeout Report?Projects negotiated under Public Law 93-638, as amended, should specify who will be provided a copy of the closeout report.

Workgroup Text Change Sections 483-495, see changes provided in external document (Bob Sparrow's computer)
See changes proposed by MUL 295-D5.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.489	p 278- D2	Technical Standards	35	138	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec; 170.489 Who is provided a copy of the IRR construction project closeout report? Comment: This section should be combined with :sec; 170.490 as they both discuss the same topic and therefore would read better in this rule. Then delete this section.

Workgroup Text Change Sections 483-495, see changes provided in external document (Bob Sparrow's computer)
See changes proposed by MUL 295-D5.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.491 Public Comment	p 278 - A1	Technical Standards	15	70	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments ACTION - Look at original language of 491 to see if language is missing DS - Would unduly hamper ability of responsible entity to designate appropriate personnel.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.491	p 278 - Cc1	Technical Standards	1374	5	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Subsection 170.491, Final audit findings :are not; presently being accomplished in order for a timely contract closeout. There must be a realistic timeframe set, in order to expedite the process of closing out the contracts by the BIA under a self-determination contract and to release the remaining monies to the Tribes without further scrutiny. As an example, the Pueblo of Zuni currently has four self-determination contracts that have been completed several years ago, but have yet to be closed out, due to final construction audits not being completed to this date.

Workgroup Text Change

Workgroup Comments Timeframe already included

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.500	p 279 - D1	Technical Standards	15	71	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.500 What provisions apply to acquiring IRR Program rights-of-way over trust and restricted lands? Regardless federal statutory authority for tribes to acquire grant rights-of-way across the reservation, the tribes requires consultation and public hearings. Language after 25 CFR part 169 "... except where federal statutory authority exists for tribes to grant rights-of-way across their reservation without approval by the Secretary.", should be deleted.

Workgroup Text Change

Workgroup Comments Some tribes have statutory authority to grant ROW.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.501	p 279 - A1	Technical Standards	415	112	YES	Referred to Policy	NO ACTION	NO ACTION

Public Comment

:Sec;170.501 What must a right-of-way easement document contain at a minimum? Comment: Some regions and/or tribes have permitting processes in place to control such things as over size and over weight vehicles, adjacent road access, utility crossings, etc. It is recommended that this issue be addressed in this rule here or elsewhere otherwise those processes will be discontinued and ultimately the tribes will suffer as a result.

Workgroup Text Change

Requests addressing more than is in rule currently on tribes' permitting processes.

Workgroup Comments

The issue of tribes' permitting processes for overweight or oversize vehicles is covered in 170.940. Permitting processes for other issues in the comment, such as adjacent road access and utility crossings are not addressed in this rule. commenters request that tribes' ability to have these permitting processes be addressed in rule. Refer to Policy Work Group.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.501	p 279 - D1	Technical Standards	1231	54	YES	Parking Lot	NO ACTION	DISAGREE

Public Comment :Section; 170.501 What must a right-of-way easement document contain at a minimum? For the reasons identified in the key areas of disagreement discussed above, replace the proposed language with the following:What Must the Rights-of-way Easement Documents Contain at a Minimum? (a) All rights-of-way documents shall include the following: (1) Identification of the grantor and grantee; (2) Legal description of the property acquired for the right of-way; (3) Right-of-way plat/map of definite location; (4) A statement of the term of the right-of-way, whether for a specific term of years, whether it includes a right of renewal, or whether the grant is in perpetuity;(5) Terms and conditions on the grant of the right-of-way, including but not limited to, other permissible uses of the right-of-way, or specific restrictions on the rights-of-way easements;(6) Identification of whether the rights-of-way includes the right to construct, and/or re-construct the facility; and (7) A statement on whether the right-of-way may be transferred or assigned, and the terms and conditions under which a transfer or assignment may occur. (b) Nothing in this part is intended to supersede the requirements of 25 CFR part 169 where part 169 is applicable to the right-of-way at issue. (c) A right-of-way document, if covering maintenance, may include an identification of maintenance responsibilities assumed by the grantee or retained by the grantor, and whether such rights convey with any transfer of the rights-of-way.

Workgroup Text Change Commenter requested change in tribal view language.

Workgroup Comments Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition"

Federal Comments

Tribal Comments Tribal Caucus recommends the deletion of 500-502, and inserts new language



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.502	281-D3	Technical Standards	41	42		Parking Lot	NO ACTION	NO ACTION

Public Comment

Page 51389, Subpart D, Sections 170.502. The alternate wording on page 51341 proposed by the Tribal Caucus for who grants a Right-of-way is more comprehensive than the wording submitted by the Federal Caucus. Recommend incorporating the proposal of the Tribal Caucus.

Workgroup Text Change

Commenter requested change in tribal view language

Workgroup Comments

. Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition" OR remove ROW references from rule.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.502	280-D2	Technical Standards	1231	55	YES	Parking Lot	NO ACTION	NO ACTION

Public Comment

:Section; 170.502 How are rights-of-way granted on Indian trust or restricted fee lands? For the reasons described above, we recommend replacing the proposed language with the following:Who Grants a Right-of-way on Indian Trust or Restricted Fee Lands?The tribe must consent in writing to the granting of a right-of-way on any land title to which is held by the tribe or in which the tribe holds a beneficial interest. Where an individual Indian has an interest in tribal land by virtue of a land use assignment, acquisition of the individual Indian's interest for purposes of a right-of-way shall be done in accord with applicable tribal law, and require the written consent of the tribe. Where an individual Indian holds an allotment in trust or subject to a restraint against alienation, acquisition of a right-of-way over such allotment must be made in accordance with 25 CFR 169, or such other federal law as may apply to the allotment at issue.

Workgroup Text Change Commenter requested change in tribal view language

Workgroup Comments . Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition"

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.502	p 280 - A1	Technical Standards	20	20	YES	Reject Comment	AGREE	NO ACTION

Public Comment Who grants right of ways? BIA follows procedures set forth in 25 CFR 169. These requirements were established from the principle of fairness. Please explain step by step as to the fair treatment to tribal members for grant of right-of-way and the legal process the land owner can appeal if discrimination is evident?

Workgroup Text Change

Workgroup Comments Part 169 provides for appeal of any decision under 25 CFR 169. and tribal law applies if individual is tribal member and issues is one of tribal land use. Adequately covered in other regulations.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.502	280-D1	Technical Standards	21	23	YES	Parking Lot	NO ACTION	NO ACTION

Public Comment

170.502 Recommend the following regulatory provision: Q Who grants a right of way on Indian Trust or Restricted Fee Lands? The tribe must consent in writing to the granting of a righ of way on any land title to which is held by the tribe or in which the tribe holds a beneficial interest. Where an individual Indian has an interest in tribal land by virtue of a land use assignment, acquisition of the individual Indian's interest for purposes of a right of way shall be done in accord with applicable tribal law, and require the written consent of the tribe. Where an individual Indian holds an allotment in trust or subject of a restraint against alienation, acquisition of a righ of way over such allotment must be made in accordance with 25 CFR 169, or such other federal law as used for additional construction activities" and insert "are used for contractivle non-project specific activities at both the BIADOT and regions.

Workgroup Text Change Commenter requested change in tribal view language.

Workgroup Comments Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition"

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.510	D1 pg. 298	Delivery of Services	15	72	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.510 What are BIA IRR Program reviews? Language where tribal representatives are sent to participate should clearly state the President or/Tribal Chairman or his designee as authorized.

Workgroup Text Change

Workgroup Comments Because there is no added value to the rule by adopting this comment. Requires unnecessary detail. TS - Tribal representatives selected by Tribal process

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.511 Public Comment	D2 pg. 298	Delivery of Services	21	18	YES	Accept with Modification	AGREE	AGREE
170.511 Recommendation combine (1) and (2) to read: "Transportation planning".								
Workgroup Text Change								
Workgroup Comments This comment addressed in comment 1337-111 D1, pg. 298. TS - Already addressed with suggested change from 511 D1								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.511	D1 pg. 298	Delivery of Services	1337	111	YES	Accept with Modification	AGREE	AGREE

Public Comment

Page 51389-Sec. 170.511 Comment: We recommend replacing (1) Transportation with (1) Program Management and Oversight since transportation is a broad subject and not appropriate or applicable here. We also recommend changing (b) to "The review may result in recommendations to improve program management, transportation planning, design, contract administration, construction, construction monitoring, financial management and systems management activities performed by a BIA regional office."

Workgroup Text Change

DS -Under (a) - change (1) to "Program Management and Oversight" and change (2) to "Transportation Planning". Remaining bullets remain unchanged. Under (b) add "Program Management and Oversight" and "Construction Monitoring".
TS - Replace "(1) Transportation" with "(1) Program management and oversight". Insert "program management" after "improve" in (b)

Workgroup Comments

Changes help to clarify the rule. Recommendation from DS workgroup adopted as recommended.
TS - Clarification

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.511	A1 pg. 298	Delivery of Services	15	73		Reject Comment	AGREE	NO ACTION

Public Comment

170.511 What is an IRR process review of a BIA regional office? How, if recommendations are made are the recommendation guaranteed. And, if the recommendations are not implemented then what. This part requires better clarity.

Workgroup Text Change

Workgroup Comments

These items are recommendations not Directives. The committee does not intend that the recommendations are mandated. This comment may be answered in 513.
TS - No guarentees in the process

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.512	C(c)1 pg. 299	Delivery of Services	15	74	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.512 What happens with the information gathered from the IRR process review? This mechanics of allowing the Bureau of Indian Affairs to conduct on-site, exit report and recommendations is not in the best interest of an excelling self-sufficient program. The recommendations would be to acquire a management team from a private section to conduct these on-site visits. The team should include members of the tribes committees, contracting officers, program directors and program specialists along with an Engineer.

Workgroup Text Change

Workgroup Comments

This comment is addressed by 170.511. This rule does not preclude the BIA from utilizing an independent review of the program, depending on availability of funds.
TS - Outside of scope

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.512	D1 pg. 299	Delivery of Services	1337	112	YES	Accept Comment	AGREE	AGREE

Public Comment

Page 51389-Sec.170.512 Comment: We recommend changing (b) to "Prepare a written report of its findings and recommendations." This eliminates the redundancy presently in this sentence.

Workgroup Text Change

Change 1st sentence to read as follows: "(b) Prepare a written report of its findings and recommendations." TS - Delete 1st sentence after "recommendations". Leave 2nd sentence in place

Workgroup Comments

This recommendation clarifies the answer.
TS - Clarification

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.513	D1 pg. 299	Delivery of Services	21	19		Reject Comment	AGREE	NO ACTION

Public Comment After 170.513 Q. What happens when the BIA DOT or FHWA determine that a Region is nonresponsive to request for information associated with the data used to calculate the annual TTAM or other vital information used to generate funding distributions to the tribes? When the FHWA or BIADOT determine that a Region is non-responsive, it is the responsibility of the FHWA and BIADOT to intervene and assist the Region in providing the information prior to implementation of funding distribution calculations. It is also the responsibility of the FHWA and BIA DOT to assure that all Regions are sufficiently trained to perform the requirements of the IRR program.

Workgroup Text Change TS - Delete 1st sentence of (d) in its entirety. Add: " (e) If corrective action implementation is deemed unacceptable, appropriate action(s) will be taken by BIADOT and/or FHWA."

Workgroup Comments Commentor requesting clarification as to what happens if the Region is non-responsive to a request for information vital to formula generation. No specific change to the rule requested.
TS - Clarification

Federal Comments This Q&A addresses process review, the commentor is referencing requests for information pertaining to inventory/formula, not in process reviews. This should be added to the workgroup comments. Tech Standards recommendation was also rejected by the federal caucus.

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.513	A1 pg. 299	Delivery of Services	15	75		Reject Comment	AGREE	NO ACTION
<p>Public Comment 170.513 What happens when the review process identifies areas for improvement? The management team will then develop these plans for corrective action.</p>								
<p>Workgroup Text Change</p>								
<p>Workgroup Comments Did not accept previous recommendation for a management team of which this is a part. TS - Inappropriate for the management team to develop plans for regional roads office</p>								
<p>Federal Comments</p>								
<p>Tribal Comments</p>								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.515	C(c)1 pg. 300	Delivery of Services	388	31	YES	Accept with Modification	AGREE	AGREE
Public Comment	:sec; 170.515. Replace the proposed language with the following text submitted by the Tribal Caucus: How Are IRR Program Management Systems Funded? IRR Program management systems shall be funded out of BIA's 6 percent.							
Workgroup Text Change	TS - Change first sentence to read "BIA uses IRR program management and oversight funds to develop the nationwide IRR program management systems."							
Workgroup Comments	Comment requests inclusion of language stating that BIA management systems be funded by BIA 6%. Need to revisit w/policy, and visit the current NRPM regarding management systems. Issue tabled for review by policy and tech. standards. TS - Note: "PM&O" needs to be defined in rule and term used consistently.							
Federal Comments	There will be a global change throughout the document changing the term 2% planning to reference Tribal Transportation Planning (23 USC 204 J) in accordance with Policy and Tech Standards Workgroups. A definition will be added to the rule to define Transportation Planning as defined in 23 USC 204 J. - Policy had also made a change to this section. Fed Caucus will agree with changes made by DOS.							
Tribal Comments	Change 2% reference to 23 USC 204(J)							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.516	300-D2	Technical Standards	38	33	YES	Accept with Modification	AGREE	AGREE

Public Comment :sec; 170.516. The Tribal Caucus version of this provision should be used in place of the proposed text. The provision should state as follows: How Will The IRR Management Systems Be Implemented? A nationwide management system will be maintained and implemented by BIA Division of Transportation using IRR Program management funds. BIA Regional Offices will provide the database information in accordance with the terms of a self-determination contract or self-governance agreement.

Workgroup Text Change T/S recommends deleting the section.

Workgroup Comments Management system regs are being developed by FHWA. How Management Systems will be implemented and funded is not established now and questions and answer on it are premature and outside scope of this rule.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.516	300-D1	Technical Standards	27	49	YES	Accept with Modification	AGREE	AGREE

Public Comment

:sec;170.516 The answer indicates that the BIA will use construction funds to provide database information. This is not a project specific activity and more broadly falls under the category of activities that the Federal government must do although the activity is clearly contractible. We believe this is an activity that should be funded with program managements and oversight funds. We recommend: delete BIA. . . "using IRR construction funds" and replace with IRR program management and oversight funds.

Workgroup Text Change

Delete section. It is covered in Section 515.

Workgroup Comments

Covered in Section 515. BIA Database information will be funded from PM&O funds, not construction funds.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.600	D1 pg. 303	Delivery of Services	1231	58	YES	Parking Lot	NO ACTION	NO ACTION

Public Comment :Section; 170.600 What IRR Program functions may be assumed by a tribe in a self-determination contract or self-governance agreement? As discussed above, we request that the proposed text be deleted and replaced with the following text as proposed by the Tribal Caucus:What IRR Pro grain Functions May Be Assumed by an Indian Tribe in a Self-Determination or Self-Governance Agreement? At the option of a tribe, all IRR functions, including those associated with BIA's 6 percent administrative funds, other than inherent federal functions, may be included in a self-determination contract or self-governance agreement.

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue Government believes this issue is outside the scope of this rule making. Comment directed at contractibility and compactibility.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.601	D1 pg. 305	Delivery of Services	27	50	YES	Reject Comment	AGREE	NO ACTION

Public Comment :sec;170.601 in light of other recommendations within this comment document we recommend changing (j)(1) from "Maintaining the official IRR inventory" to "Providing quality assurance for the official IRR inventory." Delete-"Maintaining" and Insert-"Providing quality assurance"... (o)(?) Add-"Maintaining the official Regional IRR inventory."

Workgroup Text Change

Workgroup Comments Quality assurance is already covered under (j)15 (Reviewing IRR inventory information for quality assurance;)

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.601	pg. 304, C(a)1	Policy	11	10	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

Section 170.600-636 (Page 51390) - Delete Section 170.601 in its entirety, because it is inconsistent with existing law, and erodes tribal sovereignty. Activities that have historically have been contractible through Public Law 93-638, Indian Self-Determination And Education Assistance Act as ammended (PL 93-63 8), would continue to be contracted. Follow the intent of PL 93-638 contracting. Many of the items specified in the proposed rule as "non-contractible are inconsistent with the intent of PL 93-638 contracting, this erodes the existing PL 93-638 intent, and tribal sovereignty. Only activities that are clearly a "trust responsibility" of the federal government are non-contractible. Current regulations specify, "up to 6%" and do not require 6%. Some tribes are capable and can perform some of the activities in the "non-contractible" items, i.e., environmental review and preparation of environmental documents. Tribes need to be allowed to include administration fees in PL 93-638 contracts as an item. The purpose of PL 93-638 was to establish: "...a meaningful Indian Self-Determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services."

Workgroup Text Change

Workgroup Comments

This is a disagreement item and is one of the items that the Secretary has stated is outside the scope of this rulemaking.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.601	pg. 304, C(c)1	Policy	1355	4		Accept Comment	AGREE	AGREE

Public Comment

In :sec; 170.601 the federal side uses about two full pages of the Federal Register listing everything that cannot be contracted. Although many - probably most - of the functions and activities listed are things Kawerak would agree are not contractible, some are contractible under an IFF analysis and others may be depending on the particular circumstances, such as whether the BIA itself will be the facility owner. Further, some of the items listed may have an IFF associated with them but are also tribal functions, i.e. virtually anything having to do with "coordination."

Workgroup Text Change

Workgroup Comments

While no specific change was requested, the commenter identified that tribes have certain coordination responsibilities, as identified in subparts B & D, that deal with meetings with other governments and public hearings. These coordination activities would be carried out by tribes in certain instances.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.602	pg. 305, D1	Policy	27	51	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment :sec;170.602 We believe that there are numerous activities that are currently contractible and funded under program management and oversight. These are activities that are not project specific. We believe non-project specific activities should continue to be funded from this funding source. We recommend: delete (b) ..."IRR project construction funds" insert "IRR program management and oversight funds."

Workgroup Text Change

Workgroup Comments This is a disagreement item, and one that the Secretary has determined is outside the scope of this rulemaking.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.604	D1 pg. 305	Delivery of Services	1355	57	YES	Accept with Modification	AGREE	AGREE

Public Comment

:section; 170.604. This answer does not respond to the question, and provides no useful information. Either it should be revised to answer the question, or the section should be deleted.

Workgroup Text Change

Change word "How" from beginning of question to "When". Change "... Secretary will develop a national and" to read ".... Secretary will develop national and...".

Workgroup Comments

Rewording of Q&A corrects grammatical errors in the Q&A.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.606	C(c)1 pg. 306	Delivery of Services	381	7		Reject Comment	AGREE	NO ACTION

Public Comment

:sec; 170.606 What happens to the unused portion of IRR Program management funds reserved by the Secretary? Given the state of roads in Indian country, realistically there should not be any unused IRR Program management funds. If there are, someone is not doing his/her job and the Indian people are not being well-served, and we then have performance and accountability issues with BIA Department of Transportation at the Regional Offices.

Workgroup Text Change

Workgroup Comments no change requested. Commentor asking question on what happens to unused IRR dollars.

Federal Comments

Should reference 170.270 instead of IRR relative need formula or TTAM as proposed by previous rewrite.

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.606	A1 pg. 306	Delivery of Services	15	76		Accept with Modification	NO ACTION	AGREE

Public Comment

170.606 What happens to the unused portion of IRR Program management funds reserved by the Secretary? The paragraph needs to continue as to how funds are re-distributed to the Regional Office and how these funds are to be utilized.

Workgroup Text Change insert after Formula: [see subpart C].

Workgroup Comments to provide additional information as requested by the comment.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.606	D2 pg. 306	Delivery of Services	1355	58	YES	Reject Comment	AGREE	NO ACTION

Public Comment :section; 170.606 We believe program management and oversight funds are also used for contractible non-project related activities. Recommend changes to answer as follows: delete "are distributed to BIA regions using the IRR Relative Need Formula and used for additional construction activities" and insert "are used for contractible non-project specific activities at both the BIADOT and regions."

Workgroup Text Change

Workgroup Comments Existing regulatory language is accurate.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.606	D1 pg. 306	Delivery of Services	35	140		Accept Comment	DISAGREE	AGREE

Public Comment

:Sec; 170.606 What happens to the unused portion of IRR Program management funds reserved by the Secretary? Comment: Reference to "IRR Relative Need Formula" is not consistent with Subpart C although this is the proper reference used here.

Workgroup Text Change

change IRR Relative Need Formula to TTAM

Workgroup Comments

consistency with subpart C

Federal Comments

The term TTAM is too broad. "using the TTAM (see subpart C)" should be replaced with "in accordance with section 170.270"

Tribal Comments

PS Acceptable



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.608	A1 pg. 307	Delivery of Services	15	77		Reject Comment	AGREE	NO ACTION
Public Comment	170.608 May IRR Programs be contracted under the ISDEAA? It is assumed that there are administrative dispute and alternative dispute governing contracts under ISDEAA							
Workgroup Text Change	No Change requested							
Workgroup Comments	Commentor did not request any specific changes							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.608	D1 pg. 307	Delivery of Services	35	141	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:Sec; 170.608 May IRR Programs be contracted under the ISDEAA? Comment: there is only one IRR Program but many activities and functions that can be contracted for. The word "Programs" should be changed to "Program" in the question and "functions and/or activities" in the answer.

Workgroup Text Change

Workgroup Comments Use of the word "programs" is consistant with the definition used in Sec. 170.6

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.610	D1 pg. 315	Delivery of Services	1355	60		Accept with Modification	AGREE	AGREE

Public Comment :section; 170.626 We believe that the BIA does not and should not have unrestricted access to force account, and that the reference to self-determination contracts/agreements is unnecessary. We recommend revising the answer as follows: BIA may use force account methods in the IRR program when it can verify cost benefits over other methods of construction and the tribe consents.

Workgroup Text Change After "(h) The various options available to the tribe for IRR construction projects, i.e., direct service" add " (i.e. force account, Buy Indian contracts, Federal Acquisition Regulation contracts, etc.)"

Workgroup Comments Addresses comment directed at section 170.626

Federal Comments Need to add "BIA" before force account, and change the "and" to "or" before self-governance.
- re-write of 610 does not address other comments addressing publishing of availability of funds being published in the Fed Reg.

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.610	C (c) 2 pg. 307	Delivery of Services	35	142	YES	Reject Comment	DISAGREE	NO ACTION

Public Comment :Sec; 170.610 What must BIA include in the notice of availability of funds?Comment: "The notice of availability of funds that the BIA publishes in the Federal Register" will result in a hold up for funds being distributed. It makes no sense to be publishing such information in the federal register since Subpart C adequately addressing notices. This is an unfair administrative burden on the BIA.

Workgroup Text Change

Workgroup Comments Tribes believe it is necessary for their planning purposes, subpart C does not specifically address such notices.

Federal Comments Federal Caucus believes that a Federal Register notice is not necessary and will delay issuance of funds. Publishing in the Fed Register will negatively affect timelines set forth in other Q&A's. (170.296)

Tribal Comments PS



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.610	C (c) 1 pg. 307	Delivery of Services	381	8	YES	Reject Comment	AGREE	NO ACTION

Public Comment :sec; 170.610 What must BIA include in the notice of availability of funds? We strongly recommend that funds be obligated by October 1 of each year recognizing that this is in conflict with Section 170.256 that addresses timeline for IRRHPP. It is a lengthy process to :publish; notices in the Federal Register and we do not recommend that process.

Workgroup Text Change

Workgroup Comments Two different timelines: because 170.610 discusses availability of funds by Oct 1, whereas Sec. 170.256 is dealing with funds already available. Refer to funding for further consideration: NOFA at 170.610 applies to HPP

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.611	D1 pg. 308	Delivery of Services	1337	114		Accept Comment	AGREE	AGREE
Public Comment	Page 51393-Sec. 170.611 Comment: Insert "make" between "must" and "advance" in the first sentence of the answer.							
Workgroup Text Change	Section 170.614: In the question, add the word, "make", between "Secretary" and "advance".							
Workgroup Comments	Issue from .611 was referred by the workgroup to .614 because we believe the comment is applicable to .614							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.613 Public Comment	D1 (c) pg. 308	Delivery of Services	1337	114	YES	Accept Comment	AGREE	AGREE
Workgroup Text Change	Page 51393-Sec. 170.611 Comment: Insert "make" between "must" and "advance" in the first sentence of the answer. in the first line of the answer, insert the word, "make", between "must" and "advance".							
Workgroup Comments	issue from .611 was referred to .613 because we believe the comment is applicable to .613							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.614	D1 pg. 308	Delivery of Services	1231	63	YES	Parking Lot	NO ACTION	AGREE

Public Comment

:Section; 170.614 May the Secretary advance payments of IRR funds to a tribe under a self- determination contract or construction activities? As noted above, we recommend replacing this provision with the following:May an Indian Tribe or Consortia Receive Advance Payment of IRR Funds Under a Self-Determination Contract for Construction Activities? Yes. BIA and the tribes must negotiate a schedule of advance payments as part of the terms of a self-determination contract that includes construction or constructing engineering activities. Tribes may receive advance payments of IRR funds in annual, semiannual or quarterly installments in accordance with 25 CFR 900.132. Indian tribes may not expend funds advanced under this section for construction and construction engineering on an IRR project prior to approval of a PS&E for the project.

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the advance pay issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments gramatical change add word "make"



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.615	D1 (a) pg. 336	Delivery of Services	1363	22	YES	Parking Lot	NO ACTION	NO ACTION

Public Comment

:respondent rennumbers section and provides new wording; I do not support :sec;;sec;170.600 through :sec; 170.608 dealing with the contractibility and compactibility of IRR programs, services, functions, and activities. The ISDEAA requires the Secretary to make available all funds for services to which the Secretary would have otherwise provided to a tribe prior to an executed self-determination contract or self-governance agreement. The government's argument that the "up to 6 percent" is solely for performing inherent federal functions does not carry with it the proper statutory authority to do so, nor is there any evidence that congress intended to earmark these funds for non-contractible activities. I also disagree with the notion that BIA is allowed to withhold administrative funds for project related functions. To continue the practice of withholding administrative funds severely reduces a tribe's ability to directly benefit Indian communities with improved roads and bridges. The final regulation should reflect congressional intent that all IRR funds are subject to the ISDEAA, including BLA's 6 percent.

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the advance pay issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.616	D1 (b) pg. 336	Delivery of Services	1363	22	YES	Parking Lot	NO ACTION	NO ACTION

Public Comment

:respondent rennumbers section and provides new wording; I do not support :sec;;sec;170.600 through :sec; 170.608 dealing with the contractibility and compactibility of IRR programs, services, functions, and activities. The ISDEAA requires the Secretary to make available all funds for services to which the Secretary would have otherwise provided to a tribe prior to an executed self-determination contract or self-governance agreement. The government's argument that the "up to 6 percent" is solely for performing inherent federal functions does not carry with it the proper statutory authority to do so, nor is there any evidence that congress intended to earmark these funds for non-contractible activities. I also disagree with the notion that BIA is allowed to withhold administrative funds for project related functions. To continue the practice of withholding administrative funds severely reduces a tribe's ability to directly benefit Indian communities with improved roads and bridges. The final regulation should reflect congressional intent that all IRR funds are subject to the ISDEAA, including BLA's 6 percent.

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the advance pay issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.616 Public Comment	D1 (a) pg. 308	Delivery of Services	1337	114	YES	Accept Comment	AGREE	AGREE
Workgroup Text Change in the first line of the question, insert the word, "make", between "Secretary" and "advance".								
Workgroup Comments issue from .611 was referred to .616 because we believe the comment is applicable to .616								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.617 Public Comment	D1 (b) pg. 308	Delivery of Services	1337	114	YES	Accept Comment	AGREE	AGREE
Public Comment Page 51393-Sec. 170.611 Comment: Insert "make" between "must" and "advance" in the first sentence of the answer.								
Workgroup Text Change in the first line of the question, insert the word, "make", between "Secretary" and "advance".								
Workgroup Comments issue from .611 was referred to .617 because we believe the comment is applicable to .617								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.617	D1 pg. 309	Delivery of Services	1231	64	YES	Parking Lot	NO ACTION	NO ACTION

Public Comment

:Section; 170.617 May the Secretary advance payment of IRR funds to a tribe or consortia under a self-governance agreement? For the reasons note above, replace this provision with the following:May an Indian Tribe or Consortia Receive Advance Payments of IRR Funds Under a Self-Governance Agreement?Yes. Advance payments must be made to an Indian tribe in annual or semi-annual installments at the discretion of the tribe. Advance payments shall be made to the tribe in the amount established by the IRR funding formula. Within 21 days after apportionment, BIA shall transfer all IRR funds advanced under this section to the Office of Self-Governance for prompt payment to the tribe or consortia. Indian tribes may not expend funds advanced under this section for IRR activities that are not included on an approved IRR TIP.

Workgroup Text Change

Workgroup Comments

This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the advance pay issue. Government believes this issue is outside the scope of this rule making. Workgroup considering adding sentence to the end of the answer, William will discuss with other Tribal Reps and return.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.618 Public Comment	D1 pg. 309	Delivery of Services	1363	41	YES	Reject Comment	AGREE	NO ACTION
:sec;170.618-Delete this section in its entirety.								

Workgroup Text Change

Workgroup Comments This comment goes entirely to the Q&A. Federal view is that deleting this Q&A is outside the scope of this rulemaking. Consideration of this comment does not imply tribal agreement to the Q&A itself.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.620	B2 pg. 310	Delivery of Services	35	13		Parking Lot	NO ACTION	NO ACTION

Public Comment

M. Savings - Subpart E: Comment: It is quite apparent that this issue is covered in current law. We therefore recommend to leave the writeup as currently presented in :sec; 170.620. Furthermore, because these funds are tied to the TIP process, and the fact 23 U.S.C. 204 specifically requires Secretarial approval, the tribal position here is flawed. Also the citation in Part 1000 refers to "BIA programs" which the IRR Program is not. It is an FT-TWA program run by the BIADOT under a Stewardship Agreement is it not?

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the savings issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.620	D2 pg. 314	Delivery of Services	41	44		Parking Lot	NO ACTION	NO ACTION

Public Comment

Page 51393, Subpart E, Section 170.620. The alternative and additional wording proposed by the Tribal Caucus on pages 51350 - 51351 have persuasive justification, and should be adopted.

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the savings issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.620	D4 pg. 314	Delivery of Services	415	117		Accept with Modification	NO ACTION	DISAGREE

Public Comment :Sec;170.620 Can Indian tribes and tribal organizations performing under self-determination contracts of self-governance agreements keep savings that result from their administration of IRR projects or an entire tribal IRR Program? The term "tribal IRR Program" is inappropriate in the question and recommend it be changes to read "IRR PSFA's". How can a tribe contract it's own program? This is what the question eludes to.

Workgroup Text Change

Workgroup Comments This comment was addressed by workgroup response to comment no. 1337-115. Term "entire tribal IRR program" was removed as suggested by this comment. Consideration of this comment does not imply tribal agreement to the Q&A itself.

Federal Comments

Tribal Comments Record below is inconsistent with the actions of the DOS workgroup.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.620	D1 pg. 313	Delivery of Services	21	24		Parking Lot	NO ACTION	NO ACTION

Public Comment

170.620 Recommend the following two provisions to address this issue: Yes. An Indian tribe or tribal organization may retain savings for each fiscal year for which a contract or agreement is in effect. A tribe or tribal organization must use any savings that it realizes under a contract or agreement, including a construction contract of :or; agreement: (a) To provide additional services or benefits under the contract or agreement or (b) as carryover. Q. Can an Indian Tribe or tribal organization performing under a Self-determination contract of Self-governance agreement keep profits resulting from the administration of IRR project (s) or an entire tribal IRR program? Yes. Indian tribes and tribal organization may use without restriction profits resulting from an IRR project or program performed under a fixed-price self-determination contract or a self-governance agreement.

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the savings issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.620	B1 pg. 310	Delivery of Services	415	116		Parking Lot	NO ACTION	NO ACTION

Public Comment :Sec;170.620 Can Indian tribes and tribal organizations performing under self-determination contracts of self-governance agreements keep savings that result from their administration of IRR projects or an entire tribal IRR Program? Comment: Concur that the use of the resulting excess funds shall be determined by the Secretary after consultation with the tribes. Recommend that savings be directed to transportation projects or transportation-related purposes of the affected tribe.

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the savings issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.620	C (c)1 pg. 313	Delivery of Services	1369	26		Parking Lot	NO ACTION	NO ACTION

ISSUE Pg 51350 - Key Areas of Disagreement M. Savings - Subpart E The issue is whether tribes performing under self-determination contracts or self-governance agreements may keep savings. Rule Clarity Issue Comments We accept the Tribal Caucus View. Federal View The Federal View cites the 1998 PL 93-63 8 amendments which says: "Beginning in fiscal year 1998, and thereafter, where the actual costs of construction projects under self-determination contracts, compacts or grants, pursuant to PL 93-638 are less than the estimated costs thereof, use of the resulting excess fluids shall be determined by the appropriate Secretary after consultation with the Tribes". The Federal Text is inserted at Pg 51393 Sec 170.620 which says Can Indian Tribes and Tribal Organizations performing under Self-Determination contracts or Self-Governance Agreements keep savings that result from their administration of IRR projects or an entire tribal IRR Program? Rule Clarity Issues. Comments/Suggestions The Federal View does not say, yes Or no to this question This question should be answered, no matter what view is presented and included in the interim-final or final rule. Define what IRR Projects are, and meaning, and include such, in the applicable Part(s), Subpart(s), Section(s), Index, Definition(s), and Allowable Uses. Define what an Entire Tribal IRR Program Entails and Means, and include such, in the applicable Part(s), Subpart(s), Section(s), Index, Definition(s), and Allowable Uses. (cont comment #27)

Public Comment

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the savings issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.620	C(a)3 pg. 311-312	Delivery of Services	1231	29		Parking Lot	NO ACTION	NO ACTION

M. Savings - Subpart E This is another one of the issues the Department has determined to be "outside the scope of this rulemaking." If this issue is outside the scope of the rulemaking, then the federally proposed provision relating to this issue that are currently presented in the proposed rule (proposed section 170.620) cannot be a part of the regulations and must be stricken. If this provision is not stricken, then the issue is ripe for negotiation. The ISDEAA grants Indian tribes the right to retain and use savings realized in the administration of federal programs under self-determination contracts and self-governance agreements. A plain reading of the provision the federal caucus cites, 25 U.S.C. :sec; 450e-2, reveals that it relates only to construction costs, and does not extend to non-construction activities. Properly read together with 25 U.S.C. :sec;450j-1(a)(4) (allowing tribes to retain and use savings on cost-reimbursement construction contracts to provide additional benefits or services under the contract), the Secretary can agree in advance through these regulations that the savings on construction costs will be used to provide additional benefits or services. This approach would be entirely consistent with that taken by the Department in the final regulations implementing Title IV of ISDEAA-regulations which were promulgated after 25 U.S.C. :sec;450e-2 became law. The Title IV regulations authorize self-governance tribes to retain savings and use such funds, including savings realized under a construction contract, to provide additional services or benefits or as carryover. Moreover, a tribe assuming all of the IRR programs, functions, services, activities, or portions thereof, under a self-governance agreement receives its funding based on the IRR "Relative Need" distribution basis and any funding remaining at the end of the fiscal year is considered carryover.

Public Comment

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the savings issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.620	C(a)4 pg. 312	Delivery of Services	3	83		Parking Lot	NO ACTION	NO ACTION

Savings - Subpart E (pages 51350-51351) (proposed sec. 170.620) Comment: We agree with the view of the Tribal Caucus (pages 51350-51351) that the Federal proposed regulatory text for 170.620 improperly limits a tribe's discretion to use savings associated with IRR projects or programs., pages 51350- 51351. To repeat, without elaboration, the mandate of 25 U.S.C. 450e-(2) that the Secretary of Interior must consult with tribes, adds nothing to the regulations and is over broad in its reach. First, the statutory provision was not meant to cover non-construction IRR activities. Second, the statute must be harmonized with 25 U.S.C. 450j-1(a)(4) which authorizes tribes to retain and use savings on cost-reimbursement construction contracts "to provide additional benefits or services under the contract." Third, the intent of the legislation concerned school construction activities and finally, final regulations implement ing Title IV of P.L. 93 638 (25 C.F.R. Part 1000) already provide authority to tribes and tribal consortium to retain savings and use such funds, including savings realized under a construction contract, to provide additional services or benefits or as carryover. These regulations were promulgated after 25 U.S.C. 450e-2 became law. The Secretaries are free to do the same thing here. It is unwise and impractical for the BIA not to implement the Secretary's current thinking with regard to the use of savings under P.L. 93 638. We therefore endorse the Tribal Caucus version and reiterate our views regarding the appropriate scope of the rulemaking. See 25 C.F.R. 900.134 ("At the end of a self determination construction contract, what happens to savings on a cost reimbursement contract?"); 42 C.F.R. 137.341, 137.342 and 137.343 (final IHS regulations implementing Title V of P.L. 93-638) regarding construction regulations for "advance payments" to self governance tribes and use of "savings" under self governance construction agreements.

Public Comment

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the savings issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.620	C(a)1 pg. 310	Delivery of Services	365	3		Parking Lot	NO ACTION	NO ACTION

Public Comment

170.620 Can Indian tribes and tribal organizations performing under self-determination contracts of self-governance agreements keep savings that result from their administration of IRR projects or an entire tribal IRR program? Comment: We do not agree with the proposed rule that excess funds shall be determined by the secretary. The Tribes should not have to ask the Secretary to keep savings that result from their administration of IRR projects. This is unreasonable and eliminates the opportunity for tribes to contract, compact and retain their rightful share of IRR program funding. Savings are to be carried over to provide additional services to which the funds were appropriated. The final regulation should reflect the savings and profit provisions authorized by the ISDEAA.

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the savings issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.620	C(a)2 pg. 311	Delivery of Services	22	12		Parking Lot	NO ACTION	NO ACTION

Public Comment

Subpart E- (Page 51350-351) USET is concerned about the Federal assertion that advance funding and savings are outside the scope of the rulemaking. These issues are relevant and clearly fall within the scope of this rulemaking. USET strongly opposes the unwarranted late attempt by the federal government to attempt to limit the scope of the NPRM. Statutory authority exists for the BIA to provide advance payment in 25 U.S.C. :sec;450j-1 and 25 CFR :sec;900.19. The BIA and contracting Tribes may negotiate an advance payment on terms more favorable to the Tribe as well. Good business practices dictate that the BIA transfer IRR funds to Tribes as soon as possible so that tribes can draw interest while preparing for the use of those funds. The federal position imposes micro-management onto a tribally-operated IRR program and onto sovereign nations. The fact is that most Tribes have been more successful with the management of funds and programs than many federal agencies. Tribes know what they need in order to improve their transportation programs and should be given the funds to do so.

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the advance pay and savings issues. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.620 Public Comment	D3 pg. 314	Delivery of Services	1337	115	YES	Reject Comment	AGREE	NO ACTION
Page 51393-Sec. 170.620 Comment: We recommend deleting "tribal" in the question part of this section and replacing it with "their portion of the".								

Workgroup Text Change

Workgroup Comments The answer is clearer as written.

Federal Comments This Question does have a grammatical error. Change "self-determination contracts of self-governance agreement" needs to be changed to "self-determination contracts or self-governance agreements" (change "of" to "or").

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 10152 Public Comment	Not in response to specific comment	Delivery of Services	9999	1		Accept Comment	AGREE	AGREE
Workgroup Text Change	Recommend in the answer: add before the first word (a); change (a) in the second sentence of the answer to (1); change (b) in the 3rd paragraph to (2); change (c) to (b)							
Workgroup Comments	a1 and 2 apply to Title 1 and b applies to self-governance. This change is recommended by the workgroup for clarification, not in response to a specific comment.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.623	D1 pg. 314	Delivery of Services	1337	116	YES	Accept Comment	AGREE	AGREE

Public Comment Page 51393-Sec. 170.623 Comment: We find the question and answer being incompatible. The answer does not address "What protections?". Also, 25 CFR 900.131(a) - (b) does not address "protections". We recommend changing the question to "What may happen if a tribe fails to complete the contracted project work?" Then 25 CFR 900.131 (b)(12) & (b)(13) can be used to address tribal failure to perform in its contract.

Workgroup Text Change Change question to read as follows: "What may happen if a tribe fails to complete the contracted work?"

Workgroup Comments Answer is now responsive to the question.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.625	D1 pg. 315	Delivery of Services	1337	117	YES	Accept with Modification	AGREE	AGREE

Public Comment

Page 51393-Sec. 170.625 Comment: We recommend deleting the second sentence since 25 CFR 900.130 (e) applies only for cost-reimbursable contracts.

Workgroup Text Change

Change last sentence as follows: After the word costs, add the words "in a cost reimbursement contract". and move 2nd sentence (See 25 CFR 900.130(e). to end (last sentence) of answer.

Workgroup Comments

This change will clarify the last sentence of the answer as applying only to cost reimbursement contracts.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.626	D1 pg. 315	Delivery of Services	1355	60	YES	Accept with Modification	AGREE	AGREE

Public Comment :section; 170.626 We believe that the BIA does not and should not have unrestricted access to force account, and that the reference to self-determination contracts/agreements is unnecessary. We recommend revising the answer as follows: BIA may use force account methods in the IRR program when it can verify cost benefits over other methods of construction and the tribe consents.

Workgroup Text Change adding direct service options to Section 170.610.

Workgroup Comments Workgroup addressed comment under section 170.610

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.633	D1 pg. 316	Delivery of Services	1363	46	YES	Accept with Modification	AGREE	DISAGREE

Public Comment :sec;170.633-What IRR Program activities are subject to the construction regulations set forth in Subpart K of 25 CFR Part 1000? All IRR Program activities are subject to Subpart K of Part 1000 with the exception of the following activities that are not considered construction and are not subject to Subpart K: 1) activities related to administrative support services, coordination, and monitoring oversight of the planning, design and construction process; 2) activities related to direct responsibility for the construction project through day-to-day on-site management and administration of the project, which may include cost management, project budgeting, project scheduling and procurement and other construction management services; 3) activities related to management services; and 4) activities related to a road construction program wholly assumed by a Tribe/Consortium under TEA-21 which involves more than one project so long as the agreement contains assurances by the Tribe/Consortium that proper health and safety standards will be met. Notwithstanding items (1)- (4), it is intended that for design and construction of individual construction projects, Subpart K of 25 CFR Part 1000 applies.

Workgroup Text Change After 1000 add: "including applicable exceptions within Subpart K,"

Workgroup Comments Commentor is recommending the answer provide better clarification.

Federal Comments Federal Caucus disagrees with Tribal Caucus comment.

Tribal Comments Tribal caucus discussed and determined the change did not address the commenter's concern. Rejects change.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.634	C (c)1 pg. 316	Delivery of Services	1355	6		Workgroup Disagree	AGREE	NO ACTION

Public Comment We also object to :sec; 170.634 which suggests that every single "activity" must be included in a FHWA TIP and Control Schedule. There is no statutory basis for this rule. Any tribal program that is operating multiple projects and doing the long range-planning, inventory, and TIP development work is going to have many functions that are difficult to ascribe to a specific "project." All this rule does is impose unnecessary budgeting burdens on the tribe, and/or require it to go through the empty process having to put an administration or planning project in the TIP every year to keep its program going.

Workgroup Text Change Terminate answer after "to adequately describe the work" for the remainder of 1st sentence. reference to 25 CFR to remain. (This change was originally accepted (w/mod) by the workgroup, has since been rejected by Federal members of workgroup) See comment below.

Workgroup Comments Addresses the commentor's concern that every single activity needs to be in the TIP. Eliminates language towards this reference. Workgroup (Federal) could not remove reference to TIP. Language needs to be developed to clarify the "every single" activity does not need to be included on the TIP in order to be included in the AFA. Neither side (Federal or Tribal) wants or intends for "every single" activity to be included on the TIP.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.634 Public Comment	D1 pg. 316	Delivery of Services	1363	47	YES	Reject Comment	AGREE	NO ACTION
:con't from comment 22;;sec;170.634-Delete this section in its entirety.								
Workgroup Text Change								
Workgroup Comments Will be addressed by workgroup response to comment no. 1355-6.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.635	D1 pg. 317	Delivery of Services	35	145	YES	Reject Comment	AGREE	DISAGREE

Public Comment

:Sec; 170.635 Are contract support funds provided in addition to the 2 percent (2%) IRR transportation planning funds? Comment: this section belongs under the section for transportation planning under Subpart D. Also the answer is not proper in content; recommend the following: "Contract support costs are an eligible cost under the IRR Program and should be included in a tribe's budget. The funds for contract support costs come out of the tribe 's allocation of IRR Pro gram funds."

Workgroup Text Change

TS - Strike NPRM answer and add "Contract support costs are an eligible cost under the IRR Program and should be included in a tribe's budget. The funds for contract support costs come out of the tribe's allocation of IRR Program funds."

Workgroup Comments

This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the contract support issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Federal Caucus agrees with Tribal Caucus technical correction change.

Tribal Comments

Tribal Caucus accepts with modification Technical Correction
Delete in the question "Part J" and replace with "(j)"



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.636	D1 (c) pg. 333	Delivery of Services	1363	22	YES	Parking Lot	NO ACTION	NO ACTION

Public Comment

:respondent rennumbers section and provides new wording; I do not support :sec;;sec;170.600 through :sec; 170.608 dealing with the contractibility and compactibility of IRR programs, services, functions, and activities. The ISDEAA requires the Secretary to make available all funds for services to which the Secretary would have otherwise provided to a tribe prior to an executed self-determination contract or self-governance agreement. The government's argument that the "up to 6 percent" is solely for performing inherent federal functions does not carry with it the proper statutory authority to do so, nor is there any evidence that congress intended to earmark these funds for non-contractible activities. I also disagree with the notion that BIA is allowed to withhold administrative funds for project related functions. To continue the practice of withholding administrative funds severely reduces a tribe's ability to directly benefit Indian communities with improved roads and bridges. The final regulation should reflect congressional intent that all IRR funds are subject to the ISDEAA, including BLA's 6 percent.

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the contract support issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.701	343-D2	Technical Standards	1363	52	YES	Accept Comment	AGREE	AGREE
<p>Public Comment :sec;170.701-Delete this section in its entirety.</p>								
<p>Workgroup Text Change Delete Sections 170.700 through 170.705</p>								
<p>Workgroup Comments Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.</p>								
<p>Federal Comments</p>								
<p>Tribal Comments</p>								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.701	343-D1	Technical Standards	35	147	YES	Reject Comment	AGREE	NO ACTION

Public Comment

:Sec; 170.701 What is an IRR Program stewardship agreement? Comment: the maintenance side of this program must also be included in this agreement.

Workgroup Text Change

Workgroup Comments Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.702	343-D1	Technical Standards	1363	53	YES	Accept Comment	AGREE	AGREE
<p>Public Comment :sec;170.702-Delete this section in its entirety.</p>								
<p>Workgroup Text Change Delete sections 170.700 - 170.705</p>								
<p>Workgroup Comments Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.</p>								
<p>Federal Comments</p>								
<p>Tribal Comments</p>								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.703 Public Comment	343-D1	Technical Standards	1363	54	YES	Accept Comment	AGREE	AGREE
:sec;170.703-Delete this section in its entirety.								
Workgroup Text Change	Delete sections 700 - 705							
Workgroup Comments	Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.704	344-D1	Technical Standards	1337	120	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51394-Sec. 170.704 Comment: We recommend adding environmental investigations and archeological surveys to (c) and include road maintenance responsibilities in the answer part of this section.

Workgroup Text Change

Workgroup Comments Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.704	344-D2	Technical Standards	1363	55	YES	Reject Comment	AGREE	NO ACTION

:sec;170.704-What must be included in an IRR Program Stewardship Agreement? 1) Description of the planning, design, construction, and maintenance activities developed to ensure work meets applicable requirements. 2) Assumption of review and approval of PS and Es developed for Indian Reservation Road (IRR) construction projects and project monitoring. 3) The standards which will be implemented in accordance with these Regulations.Nothing in the Stewardship Agreement shall be construed to diminish or affect the rights, privileges and responsibilities of Indian tribes or tribal organizations to administer

Public Comment IRR programs under a self-determination contract or self-governance agreement, or to incorporate these IRR Program activities into such a contract or agreement.

Workgroup Text Change delete Sections 700 - 705

Workgroup Comments Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.705	344-D2	Technical Standards	1337	121	YES	Accept with Modification	AGREE	AGREE

Public Comment

Page 51395-Sec. 170.705 Comment: The question and answer are not compatible. We recommend changing the question part of this section to "What is the process for obtaining an IRR program stewardship agreement"?

Workgroup Text Change

Delete sections 700 - 705

Workgroup Comments

Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.705	344-Cc1	Technical Standards	5	17	YES	Accept with Modification	AGREE	AGREE

Public Comment :Sec;170.705 What is the process for obtaining the facility owner's review of the PS&E? CDOT is concerned that review of plans by the FHWA regional office, BIA and FHWA headquarters is excessive. CDOT recommends that a review by the FHWA regional office is adequate to approve BIA funding for projects located on state highways located within Indian Reservations.

Workgroup Text Change Delete sections 700 - 705

Workgroup Comments Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.705 Public Comment	344-D1	Technical Standards	1363	56	YES	Accept Comment	AGREE	AGREE
:sec;170.705-Delete this section in its entirety.								

Workgroup Text Change Delete sections 700 - 705

Workgroup Comments Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.705	345-D3	Technical Standards	15	78	YES	Reject Comment	AGREE	NO ACTION

Public Comment 170.705 What is the process for obtaining the facility owner's review of the PS&E? The language change from (a) "BIA regional or tribe prepares.." to "BIA regional in cooperation and in consultation with tribe shall prepare"; (b) FHWA or designated body shall visit the BIA and tribes to evaluate the capabilities to assume the proposed IRR Program responsibilities.

Workgroup Text Change

Workgroup Comments Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.706	345-Cc1	Technical Standards	15	79	YES	Reject Comment	AGREE	NO ACTION

Public Comment

170.706 Can a direct service tribe and BIA region sign a Memorandum of Understanding (MOU)? Any MOU or intergovernmental agreements should be requested by the tribe and by the BIA.

Workgroup Text Change

Workgroup Comments Comment is unclear

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.800	349-C(c)1	Technical Standards	7	7		Reject Comment	AGREE	NO ACTION

Public Comment

Page 51395: Second column, Subpart G-BIA Road Maintenance, Section 170.800. What is IRR Transportation Facility Maintenance? It states, "Maintenance is the performance of activities to keep an IRR transportation facility at its as constructed condition and to insure the health, safety, and economical use of the traveling public. Most system roads are dirt road and never were constructed. Begin maintaining these roads from wagon trails and today we are having problems with drainages by not having these roads constructed to standard. What needs to take place in order to get these roads to standard with such a small fair share?"

Workgroup Text Change

Workgroup Comments Outside Scope

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.803	349-D1	Technical Standards	1337	122		Reject Comment	AGREE	NO ACTION

Public Comment

Page 51395-Sec. 170.803 Comment: We recommend deleting the second sentence since it is not needed since the question is "How is road maintenance funded?"

Workgroup Text Change

Workgroup Comments Although not relevant to the question, it helps clarify other program funding

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.805	350-C(c)1	Technical Standards	17	5		Reject Comment	AGREE	NO ACTION

Public Comment

Delete items 4, 7, 8, and 9 from the items that should be maintained as part of the BIA system. These items are seldom found on reservations and are included solely for the benefit of non-Indian access to the reservations. There is currently - nor does it look as if there ever will be - enough funds to properly maintain the basic BIA road system on the reservations as it is today. Adding additional responsibilities and facilities to an already overburdened and underfunded system intended primarily for urban recreational facilities in a rural setting is not appropriate. Tribes can use their own revenue streams to build and maintain these types of facilities. Bus stations should be built and maintained with regional transportation funding and government to government MOU's :Memorandum of Understanding; where bus routes and attendant facilities cross into Indian country.

Workgroup Text Change

Workgroup Comments These items are eligible under this program.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.805	350-D2	Technical Standards	35	150		Reject Comment	AGREE	NO ACTION

Public Comment :Sec; 170.805 What facilities are eligible for maintenance and operation under the BIA Road Maintenance Program? Comment: A Q&A for what facilities are ineligible for maintenance and operation should be developed to be consistent with :sec; 170.115 for use of IRR program funding. Again this is not a program but a part of the IRR Program.

Workgroup Text Change

Workgroup Comments Not necessary. Eligible items provided. Maintenance is not part of the IRR Program funding.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.805	350-D1	Technical Standards	1337	123		Accept Comment	DISAGREE	AGREE
Public Comment	Page 51395-Sec. 170.805 Comment: (b) (9) Motorized trails- how did this happen?? We recommend changing this to "Vehicle trails".							
Workgroup Text Change	Change 805(b)(9) to "vehicle trails"							
Workgroup Comments	Clarification							
Federal Comments	Recommend keeping term motorized vehicles.							
Tribal Comments	PS change to motorized vehicle trails.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.811	351-A1	Technical Standards	7	8		Accept with Modification	AGREE	AGREE

Public Comment Refer to page 51396, third column, Section 170.811: Can Maintenance Program funds be used to upgrade IRR facilities? Answer is No. Although answer may be no, but most times some small area require special attention for safety reasons. Can Maintenance Program funds cover the cost of archaeological surveys?

Workgroup Text Change

Workgroup Comments Item covered in Appendix A, Number 11.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.815	351-C(c)1	Technical Standards	41	46		Accept with Modification	AGREE	AGREE

Public Comment

Page 51396, Subpart :G;, Section 170.815. Draft copies of the Secretarial report should be provided to each tribe so that the tribes know what is being reported to Congress, and so that tribes can provide feedback to the Secretary to ensure that the report is accurate.

Workgroup Text Change

Add "Secretary shall provide a draft copy of the findings to the affected tribe for comment prior to the Secretary forwarding it to Congress. "

Workgroup Comments

Check 23 USC 204 to see what copies/notifications are required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.815	352-C(c)2	Technical Standards	7	9		Reject Comment	AGREE	NO ACTION

Page 51396: Third column, Section 170.815. What happens if a facility is not being maintained due to lack of funds? Answer, if the Secretary determines that an IRR transportation facility is not being maintained under IRR-RFMS :IRRTFMS Indian Reservation Roads Transportation Facility Management System; standards due to insufficient funding, the Secretary must report these findings to Congress under 23 U.S.C. 204. Question: B.I.A. Roads program is trying to maintain these roads but heavy equipment are breaking down due to age causing serious down time and to unavailability of funds towards equipment replacement. Will this example qualify under this section if proper findings were reported to subject above?

Public Comment

Workgroup Text Change

Workgroup Comments Out of Scope

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.819	352-D1	Technical Standards	41	47	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51397, Subpart :G;, Section 170.819. Clarify that the inspections apply only to structures with an opening of more than 20 feet, per 23 CFR 650.301.

Workgroup Text Change

Workgroup Comments Out of Scope

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.823	353-D1	Technical Standards	2	6	YES	Accept with Modification	AGREE	AGREE

Public Comment Section 170.823 should be amended to read: "The Secretary may, in consultation with a tribe and applicable private landowners restrict or temporarily close the IRR transportation facility to public use" The important point here is that private landowners be included in the decision process so as to protect access to their property.

Workgroup Text Change Insert "and applicable private landowners" after "tribe". Add "notification for safety and life threatening situations is not required; after Part 5, at the end of (A).

Workgroup Comments Clarification

Federal Comments Part "a" of answer should reference 170.120.

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.823	353-D2	Technical Standards	28	6	YES	Accept with Modification	AGREE	AGREE

Public Comment There are some more word changes in struck sections and sub-sections (170.823). "When can access to Indian Reservation Roads (IRR) transportation facilities be restricted?" Our recommendation: Amend Section 170.823 to read: "The Secretary may, in consultation with a tribe and applicable private landowners, restrict or temporarily close an IRR transportation facility to public use for the following reasons."(We have no problem with the reasons listed for closure in this section, but the point is: this whole rule is now eliminating the input or consultation of private property (fee-simple landowners), from the process, from any notice, or from any consideration regarding possible road closures to their land.

Workgroup Text Change

Workgroup Comments Covered under 823 D1 above

Federal Comments Part "a" of answer should reference 170.120.

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.905	pg. 360, D1	Policy	27	57	YES	Reject Comment	AGREE	NO ACTION

Public Comment :sec;170.905 The question is too broad and does not take into account the type of training that is required to use radioactive material in the density testing phase of a project. Recommend the answer be revised: (a) Yes for training associated with quality control, assurance, or mediation of IRR construction projects or, (b) No, for training not associated with the construction of IRR projects.

Workgroup Text Change

Workgroup Comments Covered under item (45) in Appendix A.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.922	pg. 361, C(c)1	Policy	418	5	YES	Reject Comment	DISAGREE	DISAGREE

Public Comment Under Section 170.922, "May Tribes Impose taxes or Fees on those performing IRR Program Services?", it seems to me that this section is in direct conflict with the U.S. Supreme Court's decision in Atkinson Trading Company vs. Shirley 432 US 645 (2001), a tribal taxation case adverse to tribal taxation.

Workgroup Text Change add "and delegated authority under the ISDEAA (25 USC 450e(b)(2)" after "inherent authority".

Workgroup Comments making clarification to answer commenter's question

Federal Comments Concern of Federal Caucus. Proposed language change included in Policy workgroups re-write.

Tribal Comments PS disagreement



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.929	pg. 362, A1	Funding	41	49	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51399, Subpart H, Section 170.929. If DOT denies an ERFO claim, can the tribe seek assistance through IRRHPP under section 170.251 (page 51371)?

Workgroup Text Change

Funding Formula response:

Commenter is asking a question regarding the application for an emergency disaster project.

Workgroup Comments

The workgroup believes this has already been addressed in the Qs and As. The answer is yes, that the tribe can apply to IRRHPP. No action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.938	pg. 367, D1	Policy	1369	18	YES	Accept with Modification	AGREE	AGREE

Public Comment

Transportation Departments If you read Pg 51399 - Sec 170.938 Are there any other funding sources available to operate Tribal Transportation Departments? Comment NO > IRR Program Federal Funds is not identified, unless readers interprets that: on Pg. 51400 under this Sec.170.938(h) Federal, state, private and local transportation grants assistance. to mean, that the LRR Program Federal Funds would be mean that the IRR Program Federal Funds would be covered under (h)?Q. Is this interpretation correct? Suggestions Answer our interpretation(s) and correct if needed. This section is out of alignment in Subpart H, and should be moved to after Sec 170.939. Make a correct interpretation that IRR Program Funds "would be covered under (h) of this section".

Workgroup Text Change switch 170.938 with 170.939.
TS - Switch section 938 and 939

Workgroup Comments clarifies rule to answer commenter's questions.
TS - Clarification

Federal Comments

Tribal Comments Did TS make suggested switch?



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.939	pg. 367, C(c)1	Policy	1369	15	YES	Reject Comment	AGREE	NO ACTION

On Pg 51400 - Sec 170.939 - Can tribes use IRR Program funds to pay for costs to operate a tribal transportation department? Clarity of the Rule Issue "Yes; Tribes can use IRR Program funds to pay the cost of administration and performance of approved 1RR Program activities. Comments We find that it is not written in this proposed rule, as to what would be the make up of a Tribal Transportation Departments.i.e. > NO Examples of, and NO Guiding Rule/Section(s) Explanation(s) as to what would make up such a "BASIC" Tribal Transportation Department. This is basically the only language within the proposed rule that allows IRR Program Funds to be used for Transportation Planning processes (less 2 % Transportation Planning Program and Fundings) and approved eligible transportation planning related activities, to include this proposed rule requirements of the (Tribe's/13zmd "MUST DO's).Suggestions Have the NEG RF Committee provide written> Examples o1 and Guiding Rule/Section(s)Explanation(s) as to what would make up such a 'BASIC" Tribal Transportation Department.(cont comment #16)

Public Comment

Workgroup Text Change

Workgroup Comments adequately addressed

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.939	pg. 369, D1	Policy	3	61	YES	Accept with Modification	AGREE	AGREE

Tribal Transportation Departments 170.938 - 170.939 Are there any other funding sources available to operate tribal transportation departments? and Can tribes use IRR Program funds to pay for costs to operate a tribal transportation department? Comment: Although the list of eligible Federal and funding sources to finance a tribal transportation department (170.93 8) is not exhaustive, the list does not expressly provide for funding of Tribal transportation departments using IRR funds as partially suggested in 170.939. We recommend revising 170.939. Although the answer to the question "Can tribes use IRR Program funds to pay for costs to operate a tribal transportation department?" is "yes," the answer appears to be qualified by the what follows: "Yes, Tribes can use IRR Program funds to pay the cost of administration and performance of approved IRR Program activities." Although IRR Program funds are limited, tribes may use such funds for transportation planning. As such, the NPRM should expressly site the IRR Program as an eligible funding source in 170.938 for tribes wishing to establish or maintain Tribal transportation departments. We recommend striking the text of the first sentence of 170.939 after the word "Yes."

Public Comment

Workgroup insert word "planning" before "administration" in both sentences.
Text Change TS - Add "See Appendix A, Subpart B" after "activities" at the end of the first sentence.

Workgroup clarifies what are allowable uses.
Comments TS - Clarification.

Federal Comments

Tribal Comments Did TS make suggested change?



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.939	pg. 369, D2	Policy	1369	41	YES	Reject Comment	AGREE	NO ACTION

Public Comment ISSUE Subpart H - Miscellaneous, Pg 51400 Sec 170.939 Can tribes use IRR Program funds to pay for cost to operate a tribal transportation department? Rule clarity issues Yes, Tribes can use IRR Program funds to pay the cost of administration and performance of approved IRR Program activities. Tribal Transportation Departments is not in the Definitions on Pg 51359 Sec 170.6. Tribal Transportation Departments is not in the: Pg 51368 Appendix A to Subpart B Allowable Uses of IRR Program Funds. Define Tribal Transportation Departments and insert on Pg 51359 Sec 170-6. Insert Tribal Transportation Departments on Pg 51368 Appendix A to Subpart B Allowable Uses of IRR Program Funds. Some words in the summary explanation that needs defining and summarizing and included in allowable uses are: Administration Performance Administration is not in the; Definitions on Pg 51359 Sec 170.6. Define Administration and insert on; Pg 51359 Sec 170.6 Administration is not in the; Pg 51368 Appendix A to Subpart B Allowable Uses of IRR Program Funds. Insert Administration on; Pg 51368 Appendix A to Subpart B Allowable Uses of IRR Program Funds. Performance is not in the; Definitions on Pg 51359 Sec 170.6. Define Performance and insert in the Definitions on; Pg 51359 Sec 170.6 Performance is not in the; Pg 51368 Appendix A to Subpart B Allowable Uses of IRR Program Funds. Insert Performance on: Pg 51368 Appendix A to Subpart B Allowable Uses of IRR Program Funds. Add the words administration and performance to the their respective Subparts, Sections and Appendix's

Workgroup Text Change TS - Add "costs to operate a tribal transportation department" to Appendix A, Subpart B.

Workgroup Comments reject because adequately addressed.
TS - Additional eligible item

Federal Comments

Tribal Comments Did TS make change?



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.940	370-A1	Technical Standards	7	10	YES	Accept with Modification	AGREE	AGREE

Public Comment Page 51400: First column, Section 170.940. Can tribes regulate oversize or overweight vehicles? Answer is yes. Question: Most truck traffic through Hopi and Navajo Reservation are overweight and causing road surface failures (dirt and paved). Who makes the ruling to where this weight can be controlled?

Workgroup Text Change

Workgroup Comments Question answered within 170.940

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.940	370-C(c)1	Technical Standards	35	152	YES	Accept with Modification	AGREE	AGREE

Public Comment

:Sec; 170.940 Can tribes regulation oversize or overweight vehicles? Comment: Is there a jurisdictional concern here over BIA roads as opposed to other roads within Indian country? Shouldn't the tribe and BIA jointly decide how best to regulate travel on BIA owned roads?

Workgroup Text Change

Workgroup Comments Question answered within 170.940

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.941	pg. 370, C(a)1	Policy	38	12	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

I. Arbitration Provisions-Subpart H We support the Tribal Caucus view that all dispute resolutions techniques and procedures authorized by the ISDEAA and regulations of 25 C.F.R. Parts 900 and 1000 are applicable to disputes arising under a construction activity. The federal position is inconsistent with the ISDEAA. The tribal version recognizes that the alternative dispute technique chosen must be "appropriate" for the situation and "not derogate the principles and authorities of the ISDEAA and its implementing regulations." We agree that the federal position takes an unnecessarily narrow approach when interpreting the provisions of the ISDEAA. To the extent the ISDEAA can be interpreted to allow greater variety of dispute resolution techniques for resolution of conflicts between Indian tribes and the federal government, that interpretation should prevail. For this reason, we request that the tribal version be substituted for the federal provision at :sec; 170.941.

Workgroup Text Change

Workgroup Comments

Arbitration provision. Federal and tribal representatives are still working on developing mutual language

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.941	pg. 371, C(a)3	Policy	1231	21	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

I. Arbitration Provisions - Subpart H During the course of the negotiations, the Tribal and Federal Caucuses jointly agreed to language which addresses the availability of alternative dispute resolution ("ADR") technique and procedures to Tribes and tribal organizations, and the Secretary. However, after the conclusion of negotiations, the Federal Caucus decided to revisit the issue and renege on its prior agreement on this negotiated language. It is inconsistent with the tribal-federal negotiated rulemaking process for the agency to withdraw its agreement and substantively revise its position after the conclusion of negotiations. The Federal Caucus's revised position is problematic because it would make all of the dispute resolution techniques and procedures authorized under the ISDEAA and its implementing regulations inapplicable to construction activity disputes, notwithstanding permissive statutory and regulatory provisions to the contrary. Moreover, the ADR authorities and options mentioned in 25 U.S.C. :sec;4501 (model contract section (b)(12))-the provision of apparent concern to the Federal Caucus-are entirely within the scope of permissible ADR approaches authorized by the ADR Act, the Contract Disputes Act, and the ISDEAA and its implementing regulations.

Workgroup Text Change

Workgroup Comments Arbitration provision. Federal and tribal representatives are still working on developing mutual language

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.941	pg. 371, C(a)2	Policy	22	17	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

(Page 51343) USET supports the Tribal view that all dispute resolution authorized by the ISDA and 25 CFR Parts 900 and 1000 apply to disputes dealing with construction activity.

Workgroup Text Change

Workgroup Comments Arbitration provision. Federal and tribal representatives are still working on developing mutual language

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.941	pg. 372, D1	Policy	1231	70	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

:Section; 170.941 Are alternative dispute resolution procedures available to self-determination and self-governance tribes and the Secretary to resolve disputes between them in performing IRR Public Law 93-638 activities? For the reasons discussed above, the proposed provision should be replaced with the following:Are Alternative Dispute Resolution Procedures Available to Se Determination and Self-Governance Tribes and the Secretary to Resolve Disputes Between Them in Performing IRR Public Law 93-638 Activities?Indian tribes and tribal organizations are entitled, at their option, to use the appropriate dispute resolution techniques or procedures set out in:(a) The ADR Act, 5 U.S.C. 57 1-583;(b) The contract Disputes Act, 41 U.S.C. 601-613; and(c) The Indian Self-Determination and Education Assistance Act (including the mediation and alternative dispute resolution options listed in 25 U.S.C. 4501 (model contract section (b)(12)) and the implementing regulations.

Workgroup Text Change

Workgroup Comments

Arbitration provision. Federal and tribal representatives are still working on developing mutual language

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Sec. 170.952	pg. 374, D1	Policy	26	16	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Section 170.952 - Are federal funds available for coordinated transportation services for a tribe's Welfare-to-Work, Temporary Assistance for Needy Families, and other quality of life improvement programs? We are glad to see this section included in the rule, as many tribe's transportation needs revolve around the challenge of helping tribal members and other residents of tribal communities access the services they need for employment, education, health care, etc. We feel that the helpfulness of this section's statement would be enhanced by including near the end of this paragraph the sentence, "To the extent allowed under Federal law, IRR funds may be deemed to have lost their Federal character when used by a tribe or tribal organization for matching these and other Federal grant and contract funds."

Workgroup Text Change

Workgroup Comments Question is adequately answered. Comment is outside the scope of section 952.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	pg. 117, A1	Policy	41	8	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Page 51368, Appendix A to Subpart B, paragraph B.6. This paragraph authorizes the use of IRR Program funds for privately owned transit facilities. Presumably, such facilities must be accessible to the public, as specified in the definition of IRR transportation facilities in section 170.6 (page 51360). Paragraph B.6. should be clarified accordingly.							
Workgroup Text Change								
Workgroup Comments	adequately addressed							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	pg. 117, A2 Page 51368, Appendix A to Subpart B, paragraph B.1. Does this paragraph mean that IRR Program funds can or cannot be used for bridges over 20 feet in length?	Policy	41	7	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change	no change necessary							
Workgroup Comments	Reviewed. IRR funds can be used for bridges and structures regardless of length.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	pg. 117, B2 :pg.; 51368/69 Appendix A Subpart B IRR Program Funds-Recommend approval of Appendix A.	Policy	40	7		Accept Comment	AGREE	AGREE
Workgroup Text Change								
Workgroup Comments	NO change requested.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 215, C1 Concerns with Appendix A to Subpart C - IRR High Priority Project Scoring Matrix, the first scoring criteria under (a); why is there a "proposed route" mentioned? Accidents and fatality normally occur on established roads or routes. Under scoring criterias (c), (e), (f), and (g); are indicators that a select tribal organization will benefit from this scoring matrix. That is why the Pueblo of Zuni is :unsupportive; of this IRRHPP adjustment factor.	Funding	1374	3		Accept with Modification	DISAGREE	AGREE
Workgroup Text Change	In the matrix (a) delete "proposed" and replace with "submitted"							
Workgroup Comments	Comment regarding the term 'proposed' route. The workgroup agrees and has made a change with modification.							
Federal Comments	Fed caucus can not agree with re-write of table.							
Tribal Comments	PS Error on stike out document. Delete 'proposed' and replace with "Submitted" prior stikeout was an error from "moderate to accidents."							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P. 216, C(c)6	Funding	384	5	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	Regarding the "High Priority Projects Scoring Matrix" (at page 51375), Warm Springs notes that the Proposed Rule does not reference environmental assessments. The Proposed Rule should include an analysis of what happens if the natural resources and environmental assessments show that there will be adverse consequences from the projects.							
	Two additional Q and As to be insert after 170.257							
	Q. Must the Tribe/BIA submit an ERFO or FEMA application for an IRRHPP-funded emergency/disaster project as appropriate?							
	A. Yes. The Tribe/BIA must submit an ERFO or FEMA application for any IRRHPP-funded emergency/disaster project that are eligible for ERFO or FEMA. For additional information on ERFO or FEMA reference sections 170.924 - 170.932.							
	Q. Must the Tribe/BIA use ERFO or FEMA awards received for IRRHPP emergency/disaster projects to reimburse the IRRHPP program?							
	A. To the extent permitted by law, the ERFO or FEMA award will be used to reimburse the IRRHPP program for approved damage expenditures							
Workgroup Text Change	Add additional footnote to matrix title {footnote "3"} Footnote will read "\3\ this matrix does not apply to emergency/disaster projects funded with IRRHPP."							
	The commenter indicates the environmental assessments are not referenced. The workgroup does not believe these apply							
Workgroup Comments	The commenter indicates that FEMA reimbursements should be sought. This is an area that the workgroup indicates the original TTAM included reimbursement for funds received from ERFO and this was not in the NPRM. The workgroup agrees and is providing language using the original language with modifications for two additional Q and As as well as a footnote to the matrix title.							
Federal Comments								
Tribal Comments	PS							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 216, D1 Proposed Language Page 51375	Funding	41	28	YES	Reject Comment	AGREE	NO ACTION
<p>The table awards zero points to a tribe that currently has a project. However, section 170.245 states that eligible applicants may have only one application pending in the IRRHPP at any time. Therefore, the table entry under zero points that states "currently has project" should include a note that says "Ineligible for IRRHPP funding per section 170.245."</p>								
Workgroup Text Change								
Workgroup Comments The request is to add additional language regarding ineligibility. The workgroup considered the comment and rejected it.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P. 215, C2	Funding	415	86	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Appendix A to Subpart C; IRR Priority Project Scoring Matrix: Comment: this matrix is flawed and has categories that are subjective and cannot be measured by any stretch of the imagination. This concept is unfair to large land based and high mileage inventory tribes. Criteria (b) needs to be changed so that these tribes can be included for consideration in this set-aside. Otherwise this concept should be deleted from the proposed rule.							
Workgroup Text Change								
Workgroup Comments	Request is to change subsection b. The workgroup feels this was a significant factor in the negotiation and does not eliminate any tribe's opportunity to participation in the program.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 215 - 216, C(c)3 Appendix A to Subpart C-IRR High Priority Project Scoring Matrix Again, while the Nation supports the overall approach to the High Priority Scoring Matrix, the Nation notes that the projects may receive points for "Accident and fatality rate for proposed route." However, project receiving such points are not required, by design, to improve safety. For this reason, the Nation suggests that no points be awarded to a project under this category unless the project is, in fact, designed to address the problem or cause of the accident and fatality rate. Such an approach is only logical.	Funding	378	22		Accept with Modification	DISAGREE	AGREE
Workgroup Text Change								
Workgroup Comments	Comment was addressed in C1 with modification. No further action taken.							
Federal Comments	Fed caucus can not agree with re-write of table.							
Tribal Comments	PS Footnotes and clarification acceptable.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 215, C(c)1 Programmatic Concerns Page 51375, Appendix A to Subpart C, item (g). It is not clear how project proposals are to address the listed subfactors in terms of all weather access. Recommend adding a section that explains minimum requirements needed for each subelement to be applicable to a high priority project.	Funding	41	30	YES	Reject Comment	AGREE	NO ACTION
<hr/>								
Workgroup Text Change								
<hr/>								
Workgroup Comments	Comment to the HPP matrix (g) to add a section to explain the minimum requirements. The workgroup rejects the comment							
<hr/>								
Federal Comments								
<hr/>								
Tribal Comments								
<hr/>								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P. 216, C(c)4	Funding	41	29	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Page 51375, Appendix A to Subpart C, item (d). The range of matched funds under the three point column is too wide. Recommend assigning 10 points for projects with an 80 percent or greater match, 5 points for projects with a 50-70 percent match, and 3 points for projects with 20-49 percent match.							
Workgroup Text Change								
Workgroup Comments	Request is to change the scoring range for matching. The workgroup believes this would require renegotiation and rejects the comment.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P. 216, C(c)5	Funding	1337	70		Accept with Modification	DISAGREE	AGREE
Public Comment	Page 51375, Appendix A to Subpart C - IRR High Priority Project Scoring Matrix: Comment: Item (b), years since last IRR construction project completed, should not include road sealing project from the 15% allowed for road sealing projects. These projects should be classified as IRR maintenance projects. Comment: There needs to be a tie-breaking mechanism.							
Workgroup Text Change	Add a footnote to (b) "{footnote (2)}: IRR road sealing projects are excluded from projects under this criterion							
Workgroup Comments	Recommendation that road sealing not be considered as "construction" in the scoring matrix. The workgroup considers this comment valid, and recommends a change to the note section of the scoring matrix.							
Federal Comments	Comment is inconsistent with section 170.248.							
Tribal Comments	PS Add on footnotes are acceptable. Issue with "Note"							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 215, C(c)2	Funding	384	6	YES	Reject Comment	AGREE	NO ACTION
Warm Springs notes that the Proposed Rule (at page 51375) does not account for projects on "checkerboarded" lands. In such situations, the percentage of the land in such projects owned by the Tribe should be a factor.								
Workgroup Text Change								
Workgroup Comments	Recommendation to add a qualification for checkerboard land. The request is unclear to the workgroup, in what they want. Workgroup rejects because it would require renegotiation.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of SP. 218, D3		Funding	41	31		Accept with Modification	DISAGREE	AGREE

Public Comment

Page 51375, Appendix B to Subpart C, example. To be consistent, the values for the step factors should be expressed in tenths (as in the table on page 51376) or in hundredths (as applied in the total step factor value in the examples on page 51376). The total value for the step factor then should be expressed in identical terms everywhere it is used.

Delete the existing Appendix B to Subpart C and replace with the following:

Appendix B to Subpart C-Population Adjustment Factor

Example to §170.266

The Minimum Base Allocation (MBA) calculation is as follows:

n MBA = Minimum Base Allocation

n DF = Distribution Factors are defined as 1, 3.5, 5, 6.5, and 8 as shown in the table under 170.263

n \$A = IRR Authorization in Allocation Year

n N1, N2, N3, N4, N5 = the number of tribes in each population range 1 - 5

n DF1, DF2, DF3, DF4, DF5 = the distribution factor for each population range (1, 3.5, 5, 6.5, and 8)

Example to §170.263

The mathematical equation for the Population Adjustment Factor calculation is as follows:

n PAFn = Population Adjustment Factor for a given population range

n DFn = Distribution Factor 1, 3.5, 5, 6.5, or 8 for a population range (n= 1,2,3,4,or 5)

n MM = million

n \$A = IRR Authorization in Allocation Year

n N1, N2, N3, N4, N5 = the number of tribes in each population range 1 - 5

For an allocation of \$350MM, for an MBA the calculation is:

$$MBA = \frac{0.125 \times (\$350MM - \$275MM)}{[(1 \times 17) + (3.5 \times 66) + (5 \times 309) + (6.5 \times 137) + (8 \times 29)]}$$

Workgroup
Comments
Text Change



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$$\text{MBA} = \$9,375,000 = \$3,216$$
$$2,916$$

To calculate the PAF for a population range the following calculation is used:

$$\text{PAF1} = \text{MBA} \times \text{DF1}$$

$$\text{PAF1} = \$3,216 \times 1.0 = \$3216$$

$$\text{PAF2} = \text{MBA} \times \text{DF2}$$

$$\text{PAF2} = \$3,216 \times 3.5 = \$11,255$$

Comment regarding tenths or 100ths. Will be addressed by small workgroup working on D2 and evaluated for consistency. Accepted with mod
This effort was accepted by the workgroup as a total reorganization of Appendix B to Subpart C

Refer to Funding Formula Subworkgroup drafting.doc.

PS Will be clarified in 225 and additional Q and As.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of SP 217 - 218, D2		Funding	41	32	YES	Accept with Modification	DISAGREE	AGREE

Public Comment

Page 51375, Appendix B to Subpart C, example. The heading of the example, "example using #350 million authorization," is misleading in that it implies that the gross authorization is available for computing the PAF and MBA. The heading should be titled "example using a net authorization of #350 million after takedowns." Page 51375, Appendix B to Subpart C, step (c) to PAF calculation. It is not clear where the comment "(step 3 above)" refers. Page 51376, Appendix B to Subpart C, formula for computing the PAF. The examples illustrating the computation of the PAF do not show the full mathematical calculation, as is used afterwards in the computation of MBA. Since the PAF calculation appears before the MBA calculation, the PAF calculations should show how the amounts of #9,375,000 and 2,915.50 are derived, as is shown for the MBA calculation. Page 51376, Appendix B to Subpart C, table about the population adjustment factor. As with the example on page 51375, the title is misleading and should be changed to read "example using a net authorization of #300 million after takedowns."

Workgroup Text Change

Under Example Using \$350 Million Authorization, in (c) Delete (step 3 above) and replace with "(step (c) above)" renumber (c) and (d) respectively to (d) and (e)
 In (b) after the first ";" add a new number "(c)" do a carriage return
 In (b) change reference to step 1 to "step a"

Workgroup Comments

Paragraph 1: The commenter is referring to the example as not matching up to the Q & A with the "takedown" language. The workgroup rejects as this is purely an example and is correct as written. Workgroup has addressed the after takedown language.

Paragraph 2: The commenter is noting a problem with an inconsistency in the number. The workgroup determined this was a typo error complicated by the conversion in the numbering from the original TTAM document. Comment is accepted with modification.

Paragraph 3: The commenter is noting a variation in the mathematical notation between the appendix and 170.266. The workgroup agrees that there is room for improvement in the layout of the Appendix. Accept with modification.

Paragraph 4: The commenter is referring to the example as not matching up to the Q & A with the "takedown" language. The workgroup rejects as this is purely an example and is correct as written. The takedown issues have been addressed by the ff workgroup.

Federal Comments

PS Will be clarified in 225 and additional Q and As.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of	SP. 217, D1 Proposed Language	Funding	35	113		Reject Comment	AGREE	NO ACTION
Public Comment	<p>Appendix B to Subpart C; Population Adjustment Factor: Comment: The example shown is totally misleading and does not comply with the write-up under Subpart C. There is numerous typos (i.e. for example #275MM) and misleading terms and definitions that are not clearly defined that are being used though out this writeup. As indicated previously, this is not a tribal shares program and this PAF and MBA does not address the intent of the law nor does it provide funding based on "true transportation need". This concept is unsupported by sound rationale, statistical analysis, or accepted scientific approach. If this funding set-aside concept cannot be supported by sound applications of statistical analysis, or mathematical derivations of real data, these sections should be deleted from the entire funding distribution concept because it lacks the required considerations to the relative need requirements in TEA-2 1. This is very important to a program, that is project based, as opposed to a tribal entitlement program.</p>							
Workgroup Text Change								
Workgroup Comments	The commenter is objecting to the use of the PAF. This was a significant factor in the negotiation and is rejected.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of SD1		Technical Standards	1382	8	YES	Accept Comment	AGREE	AGREE

Public Comment We suggest that the publication by the American Association of State Highway and Transportation Officials (AASHTO) titled "Guidelines of Geometric Design of Very Low-Volume Local Roads (ADT :less than or equal to; 400), (Copyright 2001) be inserted as a design standard for the IRR Program.

Workgroup Text Change Insert " 22. AASHTO Guidelines of Geometric Design of Very Low -Volume Local roads, Copyright 2001)

Workgroup Comments Clarification

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of Spg. 119, D4		Policy	1355	15	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Appendix A to Subpart B We believe that several additional allowable uses should be included in this section. They include: -Environmental dust control, including chemical applications, road sealing, and pavement overlays. -Safety projects for motorized and non-motorized trails including: -Emergency shelters -Emergency rescue equipment and training -Safety education -Trail markings for motorized and non-motorized facilities including: -Trail delineation -Hazard identification -Seasonal trail markers across water (can be waterways or frozen surfaces)

Workgroup Text Change

In A(33) after insert a new A(34) to state "other eligible activities described in this part," and redesignate remaining paragraphs. Do the same after B(64) and redesignate.

Workgroup Comments

Environmental dust control, etc, safety projects for motorized and non-motorized trails are already addressed, Any specific items that are excluded (emergency shelters and emergency rescue equipment and training) are specifically excluded.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of Spg. 118, D1		Policy	3	22	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Appendix A to Subpart B - Allowable Uses of IRR Program Funds Planning and Design Activities Comment: Appendix A should expressly authorize travel and lodging costs incurred by tribes for employee training or continuing education in transportation planning, or for Tribal participation in the IRR Program Coordinating Committee (in the event Federal funding is limited for member or alternate member travel). References are made for such "on the job education" (App. A.A.33) (51368, col.3), LTAPs (App.A.A.19) (51368, col. 2) and "public meetings and public involvement activities"(App. A.A.25) (51368, col. 2), but not the travel and lodging expense associated with attending such events. BIA regions should not require tribes to obtain approval by the FHWA or the yet-to-be-created IRR Program Coordinating Committee before such activities are approved.

Workgroup Text Change

Workgroup Comments adequately addressed in the transportation planning sections

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of Spg. 117, C(c)1		Policy	348	2	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Appendix A to Subpart B, B.8. states only Tribally owned post secondary schools, this should be all schools roads and bridges including BIA-owned.

Workgroup Text Change

Workgroup Comments Similar to C10 on pg. 88. Because tribally-operated schools are affiliated with a tribe whereas, postsecondary may not be and need separate eligibility.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of Spg. 119, D3		Policy	35	32	YES	Accept with Modification	AGREE	AGREE

Public Comment

Appendix A to Subpart B: Comment: Under subparagraph (A), items 1 & 3 appear duplicative. Also since there is a distinct part of IRR construction funds reserved for 2% planning and the listing covers planning activities, it is recommend to revise paragraph (A) to read: "IRR Program Funds (including the 2% planning funds) can be used for the following planning and design activities:".What was the thinking behind item (17) as it appears to be duplicative? There appears to be inconsistency between items (22) & (26) and between this appendix and 170.115. What makes advanced technological devices such as GPS units given special status to allow purchase over say computers and computer design software or survey equipment? Surely its far more cost effective in this day of high technology to purchase such equipment rather than rent or lease.It is recommended that the term "transit facilities" be clearly defined in this subpart as well as in Subpart A.

Workgroup Text Change

Add "or in this part" to the end of 170.115(f).

Workgroup Comments

Addressed in 170.115.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of Spg. 118, D2		Policy	1337	31	YES	Accept with Modification	AGREE	AGREE

Page 51368-Appendix A to Subpart B Comment: In B.7 change "increasing" to "increase". Page 51369-Appendix A to Subpart B Comment: We recommend changing B.17 to "Engineered spot safety improvements" since spot safety improvements are not always identified in a safety study. Comment: For B.22 we recommend this activity be reconsidered both as an allowable stand alone project or as part of a reconstruction or resurfacing project. Future development plans may not be funded and constructed that could cause unnecessary expenditure of IRR Program funds. Comment: B. 26- After construction of traffic monitoring, management and control facilities and programs, it seems that capital and operating costs should be considered maintenance items not eligible for IRR Program funding. The projects should fall off the IRR TIP and ongoing operational costs should be the responsibility of the owner. Comment: B.27- The language of this item could be improved. Our recommendation is "Safely accommodating the passage of vehicular and pedestrian traffic through construction zones." Comment: B.34 & B.36- These two items seem to be more or less the same eligible activity so we recommend combining them into one eligible activity. Comment: B.43- Sec. 170.130 does not provide any requirements for the design and construction of these facilities. Comment: B.47- This doesn't seem like an eligible construction and improvement activity. It is somewhat covered in part A.13 of Appendix A to Subpart B (page 51368), For each project cultural and historic properties must be identified, evaluated and mitigated where necessary. These activities must occur before construction begins. It is very unclear what this statement of an eligible activity means. Comment: B. 52- Public involvement should be completed before a project goes to construction so we recommend this activity be deleted from the list of eligible construction activities.

Public Comment

Workgroup Text Change Change "increasing to increase" in B7. Change B17 to "Engineer spot safety improvement". Accept B27, B43. "See section 170.137" B47, B52 are rejected.

Workgroup Comments Change "increasing to increase" in B7. Change B17 to "Engineer spot safety improvement". Accept B27, B43. "See section 170.137" B47, B52 are rejected.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of Spg. 120, D5		Policy	420	5	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Appendix A ADD "including design of 23 U.S.C. 661 bridges which by this promulgation includes 6 to 20 feet in length structures and eliminates the \$1.5 million limitation for non-BIA owned bridges."

Workgroup Text Change

Workgroup Comments Bridges are already covered by A(2).The \$1.5 million limitation issue is outside the scope of this regulation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of Spg. 117, B1		Policy	26	10		Accept Comment	AGREE	AGREE

Public Comment

Appendix A to Subpart B - Allowable Uses of IRR Program Funds
We are pleased to see these comprehensive lists, as they truly capture the expressed desire of Congress to give tribes and tribal transportation stakeholders the same range of multi-modal transportation options as states and other governments long have enjoyed under federal law. We urge the committee to retain this list in its entirety under the final rule for the IRR program.

Workgroup Text Change

Workgroup Comments no change requested.

Federal Comments

Tribal Comments



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Appendix A of	SP. 220-221, C(c)6	Funding	41	33	YES	Accept with Modification	DISAGREE	DISAGREE
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Public Comment

Page 51378 and 51379, Appendix C to Subpart C, tables 1 and 2. -- While many of the technical terms in this table may be generally understood, definitions of the road classes and ADT should be included as a note to the table, added to the definitions in section 170.6 or cross-referenced to paragraph 5 of the basic procedures on page 51379.-- The purpose of distinguishing among flat, rolling and mountainous terrain in table 1 is unclear, unless referenced to its application in table 2, note 1 (e). What differentiates between flat and rolling, and between rolling and mountainous terrains? Is the terrain of a road based on its entire length, or are individual segments evaluated separately.-- The shorthand description of "ADT&20" in the third note of table 1 (and in the second note to table 2) may not be understood by all readers to mean, " the 20 year projected ADT." Additionally, tables 1 and 2 should include or cross-reference to the default values contained in paragraph 3 of the basic procedures (page 51379).-- The third note to table 1 also should authorize the use of traffic projection rates above 2 percent per year where there is quantifiable evidence that justifies a higher growth rate. -- So that IRR standards don't become outdated, an additional note should be added stating that should highway standards change, the adequacy standards of the Federal Highway Administration, contained in Title 23 of the U.S. Code take precedence over the standards contained in this rule. -- Rearrange the columns of table 2, from left to right, so that they correspond with the step-by-step process described in paragraph 1 of the basic procedures following the table.

Workgroup Text Change

appendix c subpart C A. 5. Functional Classification add to reference (Ref. section 170.456) "& 170.457)" to read "(Ref. section 170.456 & 170.457)"

Reference strikeout language for Appendix C

Workgroup Federal Comments

1 The commenter recommends additional definitions rural classes, ADT, ADT+20 as a note to the table. Workgroup accepts with modification.

2 Recommendation that Tables 1 and 2 need to include crossreferences to default values. Workgroup believes that changes to the order of the Appendix could address this issue. To be addressed by subworkgroup.

3 Recommendation that Table 1 should allow ADT projection beyond 2 % per year when justified. Coordinate with tech and standards

4 Definition of flat, rolling, and mountainous. and additional explanation of sectioning for terrain. workgroup agrees that a reference regarding inventory questions be referred to the IRR Inventory Workbook and subsequent revision. Workgroup rejectsd

5 There should be a note that should Highway standards change the FHWA standards take precedence. Workgroup rejects the comment as there are no adequacy design standards in title 23.

6 Rearrange the columns in table 2. Reject comment as the workgroup feels the table is explanatory as it.

7 Recommend including a full description of class P 5 and cross reference instead of listing twice. workgroup recommends cross reference to 170.457. accept with modification.

8 The commenter recommends that their be cross references wiithin Appendix c to subpart c. Covered by reworking order of appendix by



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Subgroup.

9 The commenter is recommending revising passages so that terminology is used consistently within the rule. accept with mod

10 The commenter recommends including a full description in one location and using cross references elsewhere. accept with mod

11 The commenter recommends combining tables for aggregate cost and surface cost. The workgroup believes the tables are best utilized as separate tables. Comment rejected.

Fed Caucus can not agree with re-writes of tables.

PS Federal Caucus still reviewing table.

Tribal Caucus recommends adding the term "housing clusters," after This road may serve



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Appendix A of	SP. 221, D1 Proposed Language	Funding	415	89	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	Appendix C to Subpart C; Cost-to Construct:Under Paragraph (D)- Incidental Costs, the categories shown have duplications (for example (d) and (p), (e) and (q), and (c) and (o) are a few). Also, there are other incidental cost categories missing such as cattle guards, erosion control, right-of-way monuments, gates, etc. Structural concrete is NOT an incidental item and may be directly related to construction of a bridge or major drainage structure. However "minor concrete" would be.							
Workgroup Text Change	See rewrite Appendix C language Reference "NPRM changes funding 03-25-03.doc" on the desktop							
Workgroup Comments	commenter has indentified duplicate items in paragraph (D) (d) and (p) , (c) and (o), (n) and (s), (h) and (r). Accept comment and defer to subworkgroup to delete duplicates and renumber. Other incidental items are missing. Workgroups believes these are covered under (D) (j) Other Minor Incidentals. Reject Location of structural concrete under incidental construction. Workgroup rejects. Structural concrete for drainage structures under 20' in length belongs under incidental. It may also belong under bridge costs.							
Federal Comments	Fed Caucus can not agree with re-writes of appendix C.							
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of SP. 219, C(c)3		Funding	4	6	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

Cost to Construct Appendix C of Subpart C (Page 51379) Two comments on the implementation of the cost-to-construct. First, the default to be used for the function class 3 streets/roads is too low. This needs to be increased to no less than 50 ADT. Second, the method for calculating the cost-to-construct per mile from the averaging of State, Tribal, and National Tribal bid tabs undermines the determination of actual costs. We believe, especially in locations such as Alaska that the costs of construction should not be watered down by a National Tribal Average, nor should a National Tribal Average be used to increase the cost-to-construct in Regions with lower costs. We recommend that the costs-to-construct should be generated based on local specific bid tabs (including state and local government) and engineer's estimates.

Workgroup Text Change

Workgroup Comments

Recommendation to take the default for class 3 from 25 to 50. Workgroup disagreement item.

Recommendation to remove the National tribal average from the bid tab calculation. Refer to subworkgroup reference with 275 C(c)1 and C(c)3.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of	SP. 219-220, C(c)5	Funding	1382	7	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Page 51378 of the Federal Register contains a table of "Adequate Standard Characteristics" which includes information for 20 Adequate Standards. It is our opinion that additional standards are needed for Rural Major Collector and Rural Local Roads. A publication by the American Association of State Highway and Transportation Officials (AASHTO) titled "Guidelines for Geometric Design of Very Low-Volume Local Roads (ADT :less than or equal to; 400), (Copyright 2001) includes guidelines which suggest that rural roads with less than 400 ADT may be constructed to narrower widths than the minimum widths shown in the table. According to the publication, total widths, including shoulder widths, could vary from 18 feet to 26 feet depending on Design Speed and functional subclass. It does not make much sense to suggest that the minimum width of road identified in the rule should be wider than the minimums recommended by AASHTO. Therefore, we suggest that additional standards be included in the table to represent narrower widths as per the AASHTO publication.

Workgroup Text Change

Workgroup Comments

Requester is requesting additional field in the Adequacy Design Standard. The workgroup believes this section is for generating Cost to Construct and does not impact what the tribe will actually construct. The tribe may build narrower roads based on low volume road standards. Workgroup rejects.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of SP. 219, C(c)4		Funding	381	6		Reject Comment	AGREE	NO ACTION

Public Comment Appendix C to Subpart C: Cost-to-Construct This "simplified Approach to compute the cost-to-construct" is not simple for the layman - Tribal consideration must include BIA roads engineer input here (or independent Engineering Consultant). And cost may not be, sometimes should not be, a determining factor in the "relative need" of a particular project. Particular projects have to be costed out anyway as part of an application.

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of	SP. 218 - 219, C(c)2	Funding	1355	38	YES	Accept with Modification	DISAGREE	AGREE

Appendix C to Subpart C - Cost to Construct, under Basic Procedures, page 51379 The default value for "functional Class 3 Streets-roads" is 25 ADT. This is far too low for a community street. In light of the fact that ADT traffic data to date for class 3 roads has not been collected, we recommend a more reasonable default ADT. Kawerak recommends changing the default value from 25 to 50: "...functional Class 3 Streets-roads is 50 ADT. "We have also reviewed BIADOT's proposed implementation of the Modified Simplified Cost to Construct. This is not found in the document, but changes the implementation of the Cost to Construct factor. Based on information provided by the BIADOT we have learned that the simplified approach will only consider the current surface type and future surface type to determine the cost to construct. The problem with this method is that it doesn't take into account roads that are currently too narrow, a problem commonly found on the IRR system. We recommend a simple solution. In addition to the surface type, collect information on the current width of the IRR route section. Use the Adequacy design standard (ADS) width to calculate a percentage of additional width need as though for a "new" road. Example% new cost factor = (Adequacy Design Standard Width - Existing Width)/Adequacy Design Standard WidthSo for instance, consider a road 12 feet wide. If the ADS calls for a 24' wide road the Incidental construction cost, Grade and Drain, and Gravel would be multiplied by the length of the section and the % new cost factor% new cost factor = $(24 - 12) / 24$ or 50%

Public Comment

Add to 170.299

Workgroup Text Change

in answer (b) 4 "Address inadequate roadway widths

Commenter recommends changing the default for class 3 roads from 25 to 50. workgroup disagreement item.

Commenter has identified a possible implementation problem with the simplified approach when just considering surface and future surface type changes when evaluating CTC as it doesn't take into account. The ff workgroup accepts with mod through additional changes to 170.299

Workgroup Comments

Federal Comments Fed Caucus can not agree with re-writes of tables.

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	Appendix A of SP. 221, D2	Funding	21	9	YES	Workgroup Disagree	NO ACTION	NO ACTION
Public Comment								
Recommend changing the default value from 25 to 50: "...functional Class 3 streets-roads is 50 ADT :Average Daily Traffic;.								
Workgroup Text Change								
Workgroup Comments Default of ADT to 25 for class 3 is too low. Workgroup disagreement, same issue as C(c)2.								
Federal Comments								
Tribal Comments								



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Appendix A of	SP. 218, A1 General Comments	Funding	20	6		Accept with Modification	DISAGREE	AGREE
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Public Comment What constitutes a construction need (CN) of 4? Can a proposed alignment deviate from the original road i.e. 25 feet off of existing center line, for a CN of 4? The CN has to be more specifically defined. If the tribes are going to rank the construction need, a third party will need to demonstrate if the CN reflects the actual condition.

Insert footnote into Table 2. after Const. need "\1\" in the first column

Add footnote at the end of table 2

" \1\ Construction Need

Construction Need 0: Roads that are constructed to their design standard

Construction Need 1: Existing roads needing improvement

Construction Need 2: Construction need of others (state, county, etc.)

Construction Need 3: Maintenance only, substandard or other road for which no improvement is planned

Construction Need 4: Proposed roads, roads which do not currently exist and need to be constructed

Roads or sections of roads which have been improved to their acceptable standard(s) are classified in the road inventory as construction need of 3 (CN3) roads or construction need of 0 (CN0) roads. CN3 roads or sections of roads are roads for which no further improvements are planned. Roads or sections of roads which have been improved to their acceptable standard but future improvements are anticipated, should be classified as CN0 until further improvements are needed due to deterioration based on age or increased traffic volumes. While classified as CN3 or CN0, roads are not included in the cost to construct calculations."

Workgroup Text Change

Workgroup Comments Commenter is noting problem with construction need. The workgroup agrees that there is a lack of construction need definition and recommends the insertion of a footnote to table 2 of the construction need codes definitions. The information was taken from the preamble page 51332 and the IRR Inventory handbook.

Federal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of	SP. 218, C(c)1 Programmatic Concerns	Funding	415	88		Accept with Modification	DISAGREE	AGREE
Public Comment	Appendix C to Subpart C; Cost-to Construct: Comment: The so called BIA "Simplified Approach to Compute the Cost-to-Construct" is not so simple. Also what is "project need' databases? What was the date of the "bridge study' and how will costs be developed, entered into the inventory, and ultimately used in the funding formula? This is not addressed in this write-up.							
Workgroup Text Change	Insert in Appendix C Replace BIA Bridge Studies with "BIA Bridge Inspections, from these inspections, bridge cost to construct are calculated."							
	Request for clarification. The workgroup believes it is adequately covered in A 1. and rejects the comment							
Workgroup Comments	The other request is how the bridge inventory be used into the inventory. The workgroup has addressed these issues by modification to other sections of the NPRM. The Simplified Approach to calculating the Cost to Construct is an interim method. In developing the final Cost to Construct methodology the IRR Coordinating Committee is to include data from the bridge inventory into the funding calculations. Reference 170.294 and 170.299. Parked {Get clarification from BIADOT on BIA Bridge Study.}							
Federal Comments	Fed Caucus can not agree with re-writes of appendix C.							
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of SP. 220-221, D3		Funding	17	2		Reject Comment	AGREE	NO ACTION

Public Comment

Pg51379 - New road classifications - Class 4-6. These classifications include designations ie: roads and motorized trails for administration of forest, oil, grazing etc., non road type paths for use by foot traffic, bicycles, trail bikes etc, and public parking facilities adjacent to scenic by-ways, rest areas etc. The primary purpose for all of these types or roads/trails is for access by the public to Indian lands for recreational and extractive purposes not for improvement of the existing IRR road systems. Other funds exist to construct and maintain these types of facilities. If a tribe wishes to build these types of road than they need to use their own tribal funds to do so and these facilities should not be considered part of the federal aids system. The tribe - not the federal government - should build and maintains these types of facilities as well as control access from these types or roads/trails into and on the reservation. Class 4 needs to eliminate sentence 3 and 4 beginning with "also included...". Class 5 needs to be eliminated in its entirety, and class 6 needs to eliminate all references to scenic byways, rest areas, and other scenic pullouts.

Workgroup Text Change

Workgroup Comments Commenter does not like inclusion of trails within the Cost to Construct. Workgroup indicates that this is allowed by Statute. Reject

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of	SP. 221, C(c)6 adt + 20 2% growth rate limit	Funding	41	33	YES	Reject Comment	DISAGREE	NO ACTION
Public Comment	<p>Page 51378 and 51379, Appendix C to Subpart C, tables 1 and 2. -- While many of the technical terms in this table may be generally understood, definitions of the road classes and ADT should be included as a note to the table, added to the definitions in section 170.6 or cross-referenced to paragraph 5 of the basic procedures on page 51379.-- The purpose of distinguishing among flat, rolling and mountainous terrain in table 1 is unclear, unless referenced to its application in table 2, note 1 (e). What differentiates between flat and rolling, and between rolling and mountainous terrains? Is the terrain of a road based on its entire length, or are individual segments evaluated separately.-- The shorthand description of "ADT&20" in the third note of table 1 (and in the second note to table 2) may not be understood by all readers to mean, " the 20 year projected ADT." Additionally, tables 1 and 2 should include or cross-reference to the default values contained in paragraph 3 of the basic procedures (page 51379).-- The third note to table 1 also should authorize the use of traffic projection rates above 2 percent per year where there is quantifiable evidence that justifies a higher growth rate. -- So that IRR standards don't become outdated, an additional note should be added stating that should highway standards change, the adequacy standards of the Federal Highway Administration, contained in Title 23 of the U.S. Code take precedence over the standards contained in this rule. -- Rearrange the columns of table 2, from left to right, so that they correspond with the step-by-step process described in paragraph 1 of the basic procedures following the table.</p>							
Workgroup Text Change	<p>3 Recommendation that Table 1 should allow ADT projection beyond 2 % per year when justified. Coordinate with tech and standards</p>							
Workgroup Comments	<p>This is referred from C(c)6 P. 220-221 Joint meeting - Tech standards did not address. It does</p>							
Federal Comments	<p>Fed Caucus can not agree with re-writes of tables.</p>							
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of Sp 358 - Cc1		Technical Standards	1370	34	YES	Reject Comment	AGREE	NO ACTION

Public Comment

34 Rule - Page 51396 states: :section; 170.808 "What activities are eligible for funding under the BIA Road Maintenance Program? ...Appendix A to Subpart G... (27) Maintaining other IRR intermodal transportation facilities provided there is a properly executed agreement with the owning public authority within available funding."Comment: The Tribes do not believe that the intent of Congress was to promulgate regulations utilizing highway trust funds that pertain to IRR Interior funded road and bridge maintenance. There needs to be a clearly defined annual maintenance distribution to the tribal base level. The Tribes do not agree with the above identified proposed use as it depleted scarce IRR Interior maintenance funding and continues the State's jurisdictional authority that relates to the problems of P.L. 83-280. State assumption of those seven (7) general activities or areas pursuant to P.L. 83-280, which include maintenance and policing of those roadways, continue to lessen tribal jurisdiction and tribal sovereignty.

Workgroup Text Change No Change

Workgroup Comments Outside scope

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix A of S358-D1		Technical Standards	367	3	YES	Reject Comment	AGREE	NO ACTION

Public Comment Appendix A...to Subpart G 4. Insert to start sentence "Washing," Add limitations of AASHTO Maintenance Manual for definition of maintenance to items 6,19 and 25.

Workgroup Text Change No Change

Workgroup Comments Already implied by existing language and current maintenance practices

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	Appendix B of Spg. 120, B1	Policy	40	8		Accept Comment	AGREE	AGREE
	Public Comment :pg.; 51369 Appendix B to subpart b, Recommend approval.							
	Workgroup Text Change							
	Workgroup Comments No change requested.							
	Federal Comments							
	Tribal Comments							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix B of Spg. 120, D1		Policy	26	11	YES	Accept with Modification	AGREE	AGREE

Public Comment

Appendix B to Subpart B - Sources of Tribal Transportation Training and Education Opportunities. We respectfully ask that our organization be correctly identified at item 25 on this list. We are the "Community Transportation Association of America." Furthermore, item 26 names an information and technical assistance activity of ours, still available to tribes, that has been renamed. We therefore suggest that item 26 be deleted from the list.

Workgroup Text Change

change 25 to state "Community Transportation Association of America"

Workgroup Comments

deleting 26 because it is part of 25

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix B of Spg. 120, C(a)1		Policy	1337	32	YES	Reject Comment	AGREE	NO ACTION

Public Comment Page 51369, Appendix B to Subpart B, Sources of Tribal Transportation Training and Education Opportunities. Comment: This Appendix is out of place in the Code of Federal Regulations since it is not a regulation. It is informational and incomplete. It is more properly included in guidance such as the IRR. Transportation Planning Procedures and Guidelines.

Workgroup Text Change

Workgroup Comments appendix is part of the regulation

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Appendix B of S302-D1		Technical Standards	1382	8	YES	Accept Comment	AGREE	AGREE

Public Comment We suggest that the publication by the American Association of State Highway and Transportation Officials (AASHTO) titled "Guidelines of Geometric Design of Very Low-Volume Local Roads (ADT :less than or equal to; 400), (Copyright 2001) be inserted as a design standard for the IRR Program.

Workgroup Text Change Insert "22 AASHTO Guidelines of Geometric Design of Very Low- Volume Local Roads, Copyright 2001)"

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	Pg. 57, A1	Funding	35	14	YES	Reject Comment	AGREE	NO ACTION
Public Comment	:Sec; 170.1 What is the authority for this part? Comment: During the preparation of the combined formula herein, non of the federal members of the rule making committee were given the opportunity to review and comment on the work of the tribal caucus. As a result some of the features being used in the formula have no scientific basis or true "transportation need" rationale.							
Workgroup Text Change								
Workgroup Comments	refer to FF Funding formula comment: The commenter is issueing a comment. No request made, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	pg. 373, C(a)1	Policy	1313	2	YES	Workgroup Disagree	NO ACTION	NO ACTION
Public Comment	I do not support the proposed :sec;;sec;170.941-943 dealing with arbitration provisions. This issue is about what alternative dispute resolution methods are available and how alternative dispute resolution options may be used. In cases where it is appropriate, the Alternative Dispute Resolution Act (25 U.S.C.) should be available to tribes as an option to resolve disputes, even in the area of construction. This is not to take away from tribal rights regarding the Contracts Disputes Act or other dispute resolution methods authorized by the ISDEAA, but instead an alternative approach to avoid costly litigation. The final regulation should reflect this thought.							
Workgroup Text Change								
Workgroup Comments	Arbitration provisions. waiting for clearance on draft language from federal attorney. Update 3-24-03: no agreement on proposed language.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C1 pg. 318-319	Delivery of Services	1369	22		Reject Comment	AGREE	NO ACTION
Public Comment	<p>ISSUE Pg 51345 - Key Areas of DisagreementK. Contractibility and Compactibility of TEA-21 Programs - Subpart E Tribal View - No Comments/Suggestions with the Tribal View Pg 51348 Key Areas of Disagreement Federal View - Federal Proposal is as follows: question and answer excerpt. What IRR Program Functions may be assumed by a Tribe in a Self-Determination Contract or Self-Governance Agreement?All IRR functions and activities that are otherwise contractible may be included in a Self-determination or Self-Governance Agreement. (23 USC 202(d)3)(B). CommentsThis is the first page we find, that really identifies that somehow a Tribe/Band can have and employ IRR Program Staff fund an Office and/or, Transportation Department, etc. Functions and Activities are not defined and have no meanings within the proposed rule.Functions is in the question, but the answer has functions and activities Suggestions Write language in the proposed rule, that will allow Tribe's/Band's to use IRR Program Funds to employ staff, have an basic office, etc. and insert the language into the applicable Part(s)/Subpart(s)/Section(s). Clarify why Functions is in the question, but, the answer has functions and activities? Define Functions and Insert into definitions on Pg 51359 sec 170.6.Define Activities and Insert Activities definitions on Pg 51359 sec 170.6. Insert Functions and Activities into Pg 51368 Appendix A to Subpart B. Allowable uses of IRR Program Funds and other applicable Part(s)/Subpart(s)/Section(s).Federal View - Federal Proposal is as follows: question and answer excerpt. What IRR Project and Program Functions are not Otherwise Contractible? The following IRR functions or activities are non-contractible.The list is extensive and covers (a) thru (r)(cont comment #23)</p>							
Workgroup Text Change								
Workgroup Comments	<p>1. Coordinate response with Policy Workgroup (eligibility issue). 2. The definition issue is parked because it relates to contractibility. 3. Coordinate with Policy Workgroup the meaning of "Transportation Planning Procedures and Guideline Manual". Comment directed at contractibility and compactibility.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	C(a)3 pg. 321	Delivery of Services	373	6		Parking Lot	NO ACTION	NO ACTION
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Public Comment

We do not support the proposed :secs;170.614 through :sec;170.618 regarding advance payments. As written, these sections pose additional payment restrictions on tribes beyond the requirements of the ISDEAA and TEA-21. For example, a tribe is required to have an approved Transportation Improvement Plan (TIP) prior to the advance payment, regardless of a tribe's share of the IRR funding formula. The net is a severe reduction in a tribe's ability to receive a full lump-sum advance payment. The TIP is the official document granting expenditure authority for IRR projects. The TIP is not, however, the authority or the mechanism for a lump-sum advance payment under the ISDEAA, rather it is the executed self-determination contract of self-governance agreement. The final regulation should reflect this fact.

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the advance pay issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(d)1 pg. 333-334	Delivery of Services	12	13		Parking Lot	NO ACTION	NO ACTION
Public Comment	<p>As noted in the proposed rule, the full Committee reached agreement regarding the advance payment of IRR funds to Indian Tribal Governments performing IRR non-construction activities under self-determination contracts and self-governance agreements, but could not reach agreement over the wording of proposed regulations for the advance payment of IRR funds to Tribal Governments performing IRR construction and construction-engineering activities. We concur with the Tribal Caucus that the Federal position is unwarranted as a matter of law and unwise as a matter of policy. We endorse the Tribal Caucus's proposed regulatory language set out in the preamble to the proposed rule. Statutory authority exists for the BIA to provide advance payments. 25 U.S.C. :section; 450j-1(f); see also 25 C.F.R. :section; 900.19; 25 U.S.C. :section; 458cc(g)(2). Quarterly advance payments are the minimum amounts authorized by law for self-determination construction contracts (25 C.F.R. 900.132), but the BIA and contracting Tribes may negotiate an advance payment schedule on terms even more favorable to the Tribes based on the factors listed in the regulation. Good business judgment dictate that the BIA transfer limited IRR funds to Indian Tribes as soon as possible so that Tribes may draw interest, administer the program, account for and utilize such funds to further the goals and objectives of the program. We share the view of the Tribal Caucus and the Congress, including such influential members as Senator John McCain, that there is nothing special or different about the IRR Program which suggests Tribes cannot be trusted to receive advance funding for and utilize the IRR funds, and the proceeds of such funds, to construct IRR roads and bridges. The Federal position, and proposed regulations, imposes too much micro-management into a tribally operated IRR program.</p>							
Workgroup Text Change								
Workgroup Comments	This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the advance pay issue. Government believes this issue is outside the scope of this rule making.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	D9 pg. 338-340	Delivery of Services	1231	59		Reject Comment	AGREE	NO ACTION
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:Section; 170.601-608 The proposed text in these provisions should be deleted and replaced by the following provisions proposed by the Tribal Caucus:What Is an Inherently Federal Function?An inherently Federal function is a Federal function that cannot legally be transferred to a self-determination and self-governance tribe.How Will BIA and a Tribe Determine Which IRR Program Functions May Be Included in a Self-Determination or Self Governance Agreement?(a) At the request of a tribe, BIA and the tribe will jointly identify all of the IRR Program functions that are part of or support the program, function, service or activity, or portion thereof, which a tribe might wish to assume. BIA shall also identify an estimated cost to accompany each of the identified functions.(b) BIA shall provide the requested information to the tribe in writing no later than 30 days after receipt of the request.(c) BIA shall also identify which of these functions it believes are inherently federal functions, with the rationale to support its conclusion.(d) BIA will meet with and negotiate with the tribe the cost of the identified assumable functions. BIA and the tribe shall also seek to reach agreement about which functions are appropriately considered inherently federal.(e) BIA shall maintain and update a list of all IRR Program functions which Indian tribes assume under Title I or IV of Public Law 93-638,as amended. BIA shall distribute this list to each of the BIA Regional Offices and it shall be available for review by an interested tribe.

Public Comment

Workgroup Text Change

Workgroup Comments

This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. Comment references contractability and compactability. and general opposition of the listing of non-contractible items rather than case by case negotiation for each AFA.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	C(a)9 pg. 324	Delivery of Services	34	9		Parking Lot	NO ACTION	NO ACTION
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Key Areas of Disagreement Contractibility and Compactibility of TEA-21 Programs - Supbart E - 6% Management Funds The essential issue is how much of the 6% IRR Program management funds the BIA receives from the FHWA should the tribes be entitled to. It is obvious that the BIA needs all of the 6% to manage an inefficient bureaucracy. It is very doubtful that there exists any "remaining funds" from the 6% available for construction. The funds would be much better spent if tribes were given the option of assuming all IRR Program functions under a self-determination contract or self-governance compact, if

the functions are not inherently federal, i.e., those that cannot be legally transferred to the tribes. Simply because it is BIA "policy" to use the 6% management funds for "oversight and trust responsibilities" - a fiduciary position it is already funded to carry out and has carried out very poorly - is not sufficient reason to preclude the tribes from receiving an appropriate share of the 6% funds. The BIA should be required to state, publish and justify to the tribes any administrative activities it feels are exclusive federal functions. If an activity cannot be justified, then it should be assumable by the tribes and tribes should then receive an appropriate portion of the 6% administrative funds associated with a tribe's project. Considering the avowed purposed and intent of ISDEAA to promote tribal autonomy, it is clear that as much funding as possible should be available to the tribes and not "diverted to pay for BIA bureaucracy."

Public Comment

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. Comment directed at contractibility and compactibility.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(a)6 pg. 322	Delivery of Services	1358	10		Parking Lot	NO ACTION	NO ACTION
Public Comment	I do not support the proposed :sec;:sec;170.614 through :sec;170.618 regarding advance payments. As written, these sections pose additional payment restrictions on Tribes beyond the requirements of the ISDEAA and TEA-21. For example, a Tribe is required to have an approved TIP prior to the advance payment, regardless of a Tribe's share if the IRR funding formula. The net effect severely reduces a Tribe's ability to receive a full lump-sum advance payment. As mentioned earlier, the TIP is the official document granting expenditure authority for IRR projects. The TIP is not however, the authority or the mechanism for a lump-sum advance payment under the ISDEAA, it is the executed self-determination contract or self-governance agreement. The final regulation should reflect this fact.							
Workgroup Text Change								
Workgroup Comments	This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the advance pay issue. Government believes this issue is outside the scope of this rule making.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	C(c)5 pg. 332	Delivery of Services	1231	24		Parking Lot	NO ACTION	NO ACTION
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K. Contractibility and Compactibility of TEA-21 Programs - Subpart E This is another one of the issues the Department has determined, after several months of negotiation by tribal and federal officials, to be "outside the scope of this rulemaking." However, the NPRM provides absolutely no basis whatsoever in support of the position that this issue (with its various layers of sub-issues) is outside the scope of the rulemaking. If this issue is outside the scope of the rulemaking, then the federally proposed provisions relating to this issue that are currently presented in the proposed rule (presented on pages 5 1347-350 and introduced among proposed sections 170.600-.636) cannot be a part of these regulations and must be stricken. If these provisions are not stricken, then the issue is ripe for negotiation. TEA-21 clearly requires that "all funds" under Title 23 appropriated by Congress to the IRR Program are to be made available to contracting and compacting tribes under the ISDEAA, including those funds necessary for carrying out administrative functions. Therefore, unless the functions at issue are inherently federal in nature, an Indian tribe may assume and perform them under an ISDEAA agreement as a matter of law. Where an Indian tribe and the BIA cannot agree on whether a particular function is an inherently federal function, the tribal recommendation would enable the parties to use existing dispute resolution processes under 25 C.F.R. Parts 900 and 1000. Also, the 6% program management funds can be used to fund IRR Program Management Systems as well as public hearings for IRR planning and projects, because the costs of these activities are "related to the cost of planning, research, engineering, and construction" as set out in 23 U.S.C. :sec; 202(d)(3)(A).

Public Comment

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. Comment references contractability and compactability.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C2 pg. 319-320	Delivery of Services	1235	14	YES	Parking Lot	NO ACTION	NO ACTION
Public Comment	<p>This issue goes to the core of the IRR Program's potential and purpose. For this reason, we again protest the Federal view that the Tribal position goes beyond the scope of the rulemaking. To continue to mask the true size of the administrative costs to Indian Tribes to operate federal programs -- by narrowing the class of Indian Self-Determination contracts and compacts eligible for contract support cost funds - does a great disservice to all Indian Tribes and undermines the statutory goal of P.L. 93-638, since 1988, to provide the "Secretarial" level of funding to Tribes which assume such programs. Forcing Tribes to subsidize contract support cost requirements by taking IRR construction funds is no solution. DOT and BIA should advocate for full funding of the IRR Program.</p>							
Workgroup Text Change								
Workgroup Comments	<p>This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the contract support issue. Government believes this issue is outside the scope of this rule making.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(c)6 pg. 333	Delivery of Services	1231	25		Parking Lot	NO ACTION	NO ACTION
Public Comment	<p>The federal approach is inconsistent with TEA-21 because it ignores the requirement that all IRR funds be made available consistent with the ISDEAA. The federal approach is further inconsistent with the ISDEAA, because it deems by administrative fiat certain functions to be non-contractible without reason or analysis under the declination criteria under Title I-in fact, the Interior Department attempted to do this under proposed regulations issued in January of 1994 (See 59 Fed. Reg. 3166, 3180 (proposing a provision, 900.106(d), that list specific non contractible functions), and Congress amended the ISDEAA to:clarify that the Secretary's determinations regarding whether a contract proposal is authorized by the Act (the issue known as "contractibility"), and regarding contract funding levels are issues which must be assessed as part of the declination contract review,approval and appeal process set forth in section 102 (a) (2) of the Act (that is, these issues may not be identified as part of some "threshold" assessment, nor in any other way that would escape the critical procedural protections available under section 102).</p>							
Workgroup Text Change								
Workgroup Comments	<p>This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. Comment references contractability and compactability. Comment introduces concept of contractability and the threshold issue (Title 1).</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(a)14 pg. 328	Delivery of Services	34	10		Parking Lot	NO ACTION	NO ACTION
Public Comment	Key Areas of Disagreement Availability of Contract Support Funding - Subpart E This issue, regardless of litigation status, should be open to public comment. This is a matter of overall compliance with federal law.Consistent with the provisions of the ISDEAA, the requirement for contract support funds must be extended to IRR Program activities as an eligible item included in tribes' budgets.							
Workgroup Text Change								
Workgroup Comments	This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the contract support issue. Government believes this issue is outside the scope of this rule making.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	D8 pg. 338	Delivery of Services	384	12		Parking Lot	NO ACTION	NO ACTION
Public Comment	Warm Springs disagrees with the proposed regulation at 25 CFR :sec; 170.601, 25 CFR 170.635 and 25 CFR :sec; 170.620. Theses are issues on which there was no agreement between Tribal and Federal negotiators during the negotiated rulemaking process. Warm Springs supports the tribal position on these issues as set out on page 51345 and page 51350, respectively.							
Workgroup Text Change								
Workgroup Comments	This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility, contract support, and savings issues. Commentor supports tribal position on 601, 620, and 635. Government believes this issue is outside the scope of this rule making. Comment references contractability and compactability.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	D6 pg. 337	Delivery of Services	1369	25		Parking Lot	NO ACTION	NO ACTION
Public Comment	<p>K. Contractibility and Compactibility of TEA-21 Programs - Subpart E Pg 51349 Key Areas of Disagreement Federal View - Federal Proposal is as follows: question and answer. May Tribes include the cost for contractible Supportive Administrative Functions in the budgets? Rule Clarity Issue Yes. Tribes may use IRR Project funds contained in their contracts or annual funding agreements for contractible supportive administrative functions? Suggestions In the Question: Define as to what Supportive Administrative Functions are, and their meanings, and inserting in the applicable Part(s)/Subpart(s)/Section(s) and or Definition(s). In the Answer: Again, Include an chart/diagram differentiating the different elements within the IRR Project Funds are and meanings for this statement, and inserting in the applicable Part(s)/Subpart(s)/Section(s) and or Definition(s). When the abbreviations and/or the IRR. (Indian Reservation Roads) wordings are/is used within the rule, there should be additional words used in conjunction with them, that explains the intents, For examples; Administration, Planning, Transportation Planning, 2% Transportation Planning, Construction, Project and/or Program and use plurals if needed, etc.</p>							
Workgroup Text Change								
Workgroup Comments	<p>This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. LAST SENTENCE REQUESTS CLARIFICATION OF LIST IN SECTION 601. Comment directed at contractibility and compactibility.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(a)1 pg. 320	Delivery of Services	4	9		Parking Lot	NO ACTION	NO ACTION
Public Comment	Advance Funding :secs; 170.614-618 We strongly support the tribal caucus position. The proposed federal regulations unnecessarily restrict the ability of Title I contracting tribes to obtain advanced funding in accordance with P.L. 93-638. The federal position fails to distinguish between general program functions of a 638 contractor, and the specific construction and design functions. There is no reasonable basis to withhold any amount of general program funding.							
Workgroup Text Change								
Workgroup Comments	This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the advance pay issue. Government believes this issue is outside the scope of this rule making.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	C(a)11 pg. 325	Delivery of Services	38	17		Parking Lot	NO ACTION	NO ACTION
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Public Comment

L. Availability of Contract Support Funding-Subpart EWe share the Tribal Caucus' view and recommend that the final rule adopt its proposed language, which states that contract support costs are to be included for IRR Program activities assumed under self-determination contracts and self-governance agreements. The Federal view would have tribes pay their incurred contract support costs from IRR program funds. Unless Indian tribes request, and Congress appropriates, adequate contract support cost funds for tribal administration of PSFAs assumed under P.L. 93-638, tribes would be forced to use direct service funds for the payment of indirect cost expenses. This approach would require the entity assuming the Secretary's performance of a federal program to "subsidize" or incur a financial penalty as a condition of accepting the Federal program. Contract support cost funding is integral to the IRR program's purpose and has been a key debate in the negotiated rulemaking. It cannot and should not be deemed beyond the scope of the rulemaking. The final rule must be changed. By narrowing the class of ISDEAA contracts and compacts eligible for contract support cost funds, the Federal proposal undermines the statutory goal of P.L. 93-638 to provide the same level of program funding to tribes which assume such programs as is provided to the agency. Forcing tribes to subsidize contract support cost requirements by taking IRR construction funds is no solution. For these reasons, we call for :sec's; 170.635-636 of the NPRM to be deleted and replaced by the single provision proposed by the Tribal Caucus at 67 Fed. Reg. 51350.

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the contract support issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	C(a)10 pg. 325	Delivery of Services	38	14		Parking Lot	NO ACTION	NO ACTION
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Public Comment

Advance Funding-Subpart E Statutory authority exists for the BIA to provide advance payments. 25 U.S.C. :sec's; 4501(b) and 4501(c)(b)(6); see also 25 C.F.R. :sec; 900.10; 25 U.S.C. :sec; 458cc(g)(2). For self-determination construction contracts, the BIA must provide advance payments on at least a quarterly basis. 25 C.F.R. :sec; 900.132. The BIA and contracting tribes may negotiate an advance payment schedule on terms even more favorable to the tribes based on the factors listed in the regulation. See id. Prudent administration of federal funds calls for the BIA to transfer limited IRR funds to Indian tribes as soon as possible so that tribes may draw interest, administer the program, account for and utilize such funds to further the goals and objectives of the program. As the Tribal Caucus points out in the Preamble comment, there is nothing special or different about the IRR Program that suggests tribes cannot receive advance funding for and utilize the IRR funds, and the proceeds of such funds, to construct IRR roads and bridges. The Federal position, and proposed regulations, imposes inappropriate federal oversight and bureaucracy upon tribally operated IRR programs. We endorse the Tribal Caucus view that the Federal position is unwarranted as a matter of law and unwise as a matter of policy. We do not believe that the federal effort to unilaterally eliminate this issue form the rulemaking process after the full committee debated this at great length is appropriate. We endorse the Tribal Caucus's proposed language set out in the Preamble at 67 Fed. Reg. 51344 and urge that :sec's; 170.614 and 170.617 be replaced by the Tribal Caucus provisions in the Preamble.

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the advance pay issue. Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(a)12 pg. 325-326	Delivery of Services	3	79		Parking Lot	NO ACTION	NO ACTION
Public Comment	<p>Contractibility and Compactibility of TEA-21 Programs - Subpart E (pages 51345-51347) (proposed sec. 70.600-.636) Comment: We endorse the Tribal Caucus's approach to the contractibility/compactibility issue. See, pages 51345-51347. We agree that the Federal approach is inconsistent with TEA-21, P.L. 93-638 and the Interior Department's own controlling regulations implementing Title IV of P.L. 93-638. , NPRM pages 78690, 78693 ("The Department will decide what functions are ... inherently federal on a case by case basis after consultation with the Office of the Solicitor"). Here again, we must strongly object to the Federal attempt to shrink the scope of the rulemaking. TEA-21 is clear. With the exception of those funds required by the Departments to perform the few inherently federal functions, "all funds" under Title 23 appropriated by Congress to the IRR Program are to be made available to contracting and compacting tribes, including those funds necessary for carrying out administrative functions. The Tribal Caucus's proposed regulatory text offers a common sense approach to this issue. We believe that the unless contracting a PFSA would violate a law, the PFSA is contractible and that a case by case review is required. We agree that consultation and fair dealing with Indian tribes on the scope of retained/inherently federal functions should minimize disagreements and promote uniformity in the IRR Program. Where a tribe and the BIA cannot agree on whether a particular function is an inherently federal function, the tribal recommendation allows the parties to use existing dispute resolution processes under regulations implementing Title I or Title IV of P.L.93 638.</p>							
Workgroup Text Change								
Workgroup Comments	<p>This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. Comment directed at contractibility and compactibility.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(c)2 pg. 328	Delivery of Services	1233	54		Parking Lot	NO ACTION	NO ACTION
Public Comment	Subpart E (170.601 -.636). Comment[For the reasons stated in Part III below, we endorse the Tribal Caucus proposed regulatory text at page 51344 in lieu of the Administration's proposal for these sections and recommend that the Administration include provisions in the final IRR regulations as being within the scope of the rulemaking.It is unfortunate that the TEA 21 Committee devoted months developing Service Delivery provisions to the NPRM and could not reach consensus. The Tribal Caucus position is reasonable and consistent with the goals and objectives set out at the beginning of these comments.							
Workgroup Text Change								
Workgroup Comments	This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the advance pay issue. Government believes this issue is outside the scope of this rule making.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(c)4 pg. 329-332	Delivery of Services	1231	12		Parking Lot	NO ACTION	NO ACTION
Public Comment	<p>G. Self Governance Compacts - Subpart EThe "Tribal View" on this non-consensus item appearing on page 51342 is a significantly edited version of the language the Tribal Caucus submitted to the Interior Department. In fact, the Department altered the Tribal View so much that the Tribal Caucus's proposed regulatory provision for addressing the disagreement was deleted and the reasoning in support of the tribal proposal was substantively different, thereby denying the public the ability to properly assess the Tribal Caucus's position on the issue and regulatory proposal. We repeat the Tribal View here, as it should have appeared in the NPRM: Notice of Proposed Rulemaking; preamble, and adopt it as our comment on this issue:Tribal View:The Tribal Caucus feels that the regulations set forth in Subpart K of 25 CFR Part 1000 (Tribal Self-Governance Program) do not adequately or appropriately address the situation where a tribe or consortium may choose to assume IRR Program activities under its self-governance agreement. The Tribal Caucus proposes the following regulatory provision to address when Indian tribes and consortia assume and perform IRR Program activities under a self-governance agreement:</p>							
Workgroup Text Change								
Workgroup Comments	<p>This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. Comment references contractability and compactability, and disagrees with the reference to Subpart K. Specific recommendation that line item reference be deleted from 170.634.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(c)3 pg. 329	Delivery of Services	1233	58		Parking Lot	NO ACTION	NO ACTION
Public Comment	170.635-.636 Are contract support funds provided in addition to the 2 percent (2%) IRR transportation planning funds? and May contract support costs for IRR construction projects be paid out of Department of the Interior or BIA appropriations? Comment: For the reasons stated in Part III below, we endorse the Tribal caucus proposed regulatory text at page 51350 in lieu of the Administration's proposal for whether contract support costs are available from Department of the Interior appropriations in addition to IRR funds for transportation planning and recommend that this issue be addressed in the final IRR Program regulations.							
Workgroup Text Change								
Workgroup Comments	This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the contract support issue. Government believes this issue is outside the scope of this rule making.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(c)1 pg. 328	Delivery of Services	1233	57		Parking Lot	NO ACTION	NO ACTION
Public Comment	170.633 - 170.634 What IRR PFSA's are subject to the construction regulations set forth in subpart K of 25 C.F.R. part 1000? and How are IRR program projects and activities included in the self-governance agreement? Comment: We object to the Administration's narrow interpretation of TEA-21 and P.L. 93-638 and its insistence that tribes are assuming discrete construction projects and activities and not assuming IRR Program administration. The Cherokee Nation and the Red Lake Band of Chippewa Indians operate comprehensive IRR transportation programs under Self Governance agreements with the BIA. This program should be expanded to other eligible Indian tribes interested in compacting the IRR Program from the BIA, with the exception of the few inherently federal functions that the Secretary must retain by law. See NPRM page 51342.							
Workgroup Text Change								
Workgroup Comments	This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. Comment references contractability and compactability. Also recommends expansion of the demonstration projects (i.e. Red Lake and Cherokee).							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(a)4 pg. 321-322	Delivery of Services	373	8		Parking Lot	NO ACTION	NO ACTION
Public Comment	<p>We do not support the proposed :secs;170.633-634 regarding self-governance compacts. First, Title IV of the ISDEAA (Indian Self-Determination and Education Assistance Act; and its implementing regulations 925 CFR Part 1000) clearly identify what programs can be assumed by an Indian tribe under a self-governance agreement. To limit tribal assumption of IRR programs to 25 CFR Part 1000, Subpart K, would unfairly limit a tribe's ability to assume a full-blown roads program as authorized by TEA-21 and the ISDEAA. Subpart K, by itself, only deals with individual construction projects and does not adequately address other activities that are non-construction projects and does not adequately address other activities that are non-construction related. We find no reference in these proposed IRR regulations identifying that the IRR program is fully subject to the remainder of 25 CFR Part 1000. This is neither lawful nor is it acceptable. We also object to the notion that these IRR program regulations should identify how IRR projects and activities are included in a self-governance annual funding agreement. By state, all programs, services, functions and activities are fully subject to negotiation and this it is entirely inappropriate to include provisions in this regulation that would impose non-negotiable requirements for tribal assumption of the IRR program. The final regulation should reflect these facts.</p>							
Workgroup Text Change								
Workgroup Comments	<p>This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. Comment references contractability and compactability, and disagrees with the reference to Subpart K.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	356-D2	Technical Standards	367	2	YES	Accept with Modification	AGREE	AGREE
Public Comment	<p>170.805 (b) (1) insert after "appurtenances" the words "within R/W and maintenance easements" (b) (2) insert after "drainage" the words "ways and" (b) (3) add to end "including lighting" (b) (11) add to end "and boat ramps" 170.810 (b) (1), (2) and (3) add to each at the end "by crew size, with equipment size and their condition." 170.813 insert after "Coordinating Committee" the words "within three months of final rule promulgation." 170.821 insert after "materials" the word "sabotage". 170.822 insert after "acts of" the words "terrorism and"</p>							
Workgroup Text Change	<p>Reject changes to 805(b) and 805(2). For 805(b)(3), insert "including runway lighting" For 805(b)(11), insert "and boat ramps" Reject changes to 810(b)(1)(2)(3) Reject changes to 813 Accept changes for 821, accept with Modification; add "catastrophic failure or natural disaster" after "circumstances". Delete "natural" Accept with mod 822; delete after "local governments"</p>							
Workgroup Comments	Clarification.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	355-D1 Page 51395-Sec. 170.816 - Sec. 170.820	Technical Standards	1337	124	YES	Accept Comment	AGREE	AGREE
Comment: We recommend these sections on bridge inspections be moved to Subpart D since bridge inspections are funded from the IRR Program rather the Road Maintenance Program.								
Workgroup Text Change	Move ss816 - 820 to Section D							
Workgroup Comments	Clarification.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P 289 - Ca14	Technical Standards	38	8	YES	Accept with Modification	AGREE	AGREE
Public Comment	E. IRR Construction Project Reports-Subpart D The Tribal and Federal Caucuses disagree on several issues related to the closeout of IRR construction projects. Interpretation of the ISDEAA once again lies at the heart of the substantive disagreement on these issues. We endorse the Tribal Caucus view. The Federal Caucus has again proposed redundant procedures with respect to the questions of who must conduct the project closeout, what information is made available for the project closeout and who receives copies of the closeout report. We agree with the Tribal Caucus that the ISDEAA adequately covers these issues and that the regulatory provisions proposed by the Tribal Caucus be substituted for the Federal Caucus provisions found at :sec's; 170.485, 170.486 and 170.488. We further concur with the Tribal Caucus and recommend that :sec's 170.487 and 170.489 be deleted in their entirety and that they not be replaced.							
Workgroup Text Change	Sections 483-495, see changes provided in external document (Bob Sparrow's computer) See changes proposed by MUL 295-D5.							
Workgroup Comments	Clarification.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	294-D2 Page 51388-Sec. 170.480 and Sec. 170.481 PS&E approval is not a construction activity.	Technical Standards	1337	109	YES	Accept with Modification	AGREE	AGREE
Workgroup Text Change	Sections 480 -481 rewritten							
Workgroup Comments	PS&E now will have its own heading							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	348-D3	Technical Standards	35	146	YES	Accept with Modification	AGREE	AGREE
Public Comment	Subpart F - Program Oversight and Accountability: Comment: Sections 170.705, 707, and 708 relate to pre-construction activities and should be moved to the subsection on "Design" under Subpart D. This way it is very clear to the reader all the requirements under pre-construction and P.S.&E. requirements.							
Workgroup Text Change	Move 707 and 708 to Subpart D .							
Workgroup Comments	Clarification. Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	353-A1 Page 51396, Subpart :G;, Sections 170.809 and 170.810. BIA Regions should be required to coordinate maintenance schedules with all tribes located in the region, and should provide a copy of finalized schedules to each tribe.	Technical Standards	41	45	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments	Impracticala to implement							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	281-B2	Technical Standards	35	5	YES	Accept with Modification	AGREE	AGREE
Public Comment	<p>E. IRR Construction Project Reports- Subpart D: Comment: Under Tribal View - Disagree with the comment that "The tribal Caucus believes that the JRR regulations should only address IRR construction project closeout reports and omit discussion of IRR project audits." Current standard engineering practice requires audits of project material quantities that have been incorporated into the project. These audited quantities are the basis for progress payments to the contractor. Also we disagree with the statement at the bottom of the page that reads "... closeout of an IRR project, which the regulations define as the final accounting of all IRR construction project expenditures and closing of financial books of the Federal Government for the project, occurs once the final inspection has been completed and the IRR construction project has been accepted by the signatory authority for the project, which is the entity with final authority to sign the PS&E package." In reality final inspection occurs whereupon punch items are identified for completion and/or correction before the project can be accepted. Final acceptance occurs, in many cases, long after the final inspection and final quantities for payment are determined.</p>							
Workgroup Text Change	<p>Sections 483-495, see changes provided in external document (Bob Sparrow's computer) See changes proposed by MUL 295-D5.</p>							
Workgroup Comments	<p>Clarification.</p>							
Federal Comments								
Tribal Comments								



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	295-D6	Technical Standards	27	45	YES	Accept with Modification	DISAGREE	AGREE
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:sec;170.500-:sec;170.502 We concur with the tribal caucus comments identified in the preamble. We recommend deleting :sec;170.500-:sec;170.502 and inserting the following regulatory provisions: Q. What Must the Rights-of-way Easement Documents Contain at a Minimum? (a) All rights-of-way documents shall include the following: (1) Identification of the grantor and grantee; (2) Legal description of the property acquired for the right-of-way; (3) Right-of-way plat/map of definite location; (4) A statement of the term of the right-of-way, whether for a specific term of years, whether it includes a right of renewal, or whether the grant is in perpetuity; (5) Terms and conditions on the grant of the right-of-way, including but not limited to, other permissible uses of the right-of-way, or specific restrictions on the rights-of-way easements; (6) Identification of whether the rights-of-way includes the right to construct, and/or re-construct the facility; and (7) A statement on whether the right-of-way may be transferred or assigned, and the terms and conditions under which a transfer or assignment may occur. (b) Nothing in this part is intended to supersede the requirements of 25 CFR part 169 where part 169 is applicable to the right-of-way at issue. (c) A right-of-way document, if covering maintenance, may include an identification of maintenance responsibilities assumed by the grantee or retained by the grantor, and whether such rights convey with any transfer of the rights-of-way.

Public Comment

Workgroup Text Change Use tribal text.

Workgroup Comments Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition"

Federal Comments Issue is still in parking lot

Tribal Comments PS



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	295-D4	Technical Standards	1370	28	YES	Accept with Modification	AGREE	AGREE
Public Comment	Rule - Page 51389 states: :sections; 170.485-489 "Who has final acceptance of the IRR project audit? . . . Who is provided a copy of the IRR construction project closeout report?Comment: The Tribes request the deletion of the proposed federal caucus text and the insertion of the proposed tribal caucus text/methodology.							
Workgroup Text Change	Sections 483-495, see changes provided in external document (Bob Sparrow's computer) See changes proposed by MUL 295-D5.							
Workgroup Comments	Clarification.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	p 268 - D1 Page 513S5-IRR Inventory Comment: We recommend putting Sec. 170.446 - Sec. 170.451 together with Sec. 170.290 - Sec. 170.295 since all of these sections are on the IRR inventory.	Technical Standards	1337	98	YES	Accept with Modification	AGREE	AGREE
Workgroup Text Change	Sections rewritten and renumbered.							
Workgroup Comments	Clarification.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P 283 - Ca3	Technical Standards	422	12	YES	Accept with Modification	AGREE	AGREE
Public Comment	I do not support the proposed :sec;;sec;170.484-491 dealing with project closeout reports. While it may be necessary to identify who prepares these reports, these sections, as written, violate the single-agency audit, annual trust evaluation, and reporting requirements of the ISDEAA. These activities are adequately covered in 25 CFR Part 900 and in Part 1000. The final regulation should reflect this thought.							
Workgroup Text Change	Sections 483-495, see changes provided in external document (Bob Sparrow's computer) See changes proposed by MUL 295-D5.							
Workgroup Comments	Clarification.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	291-Cc3	Technical Standards	1388	11	YES	Accept with Modification	AGREE	AGREE
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Section :section;170.485-489, Who has final acceptance of the IRR project audit? When does a project closeout occur?Section :section;170.485 states that the Secretary (of Interior) has final acceptance and approval of the project including the IRR project audit. The Quinault Indian Nation supports the Tribal view, which states that a project closeout occurs when a final project inspection has been completed, and the signatory authority has accepted the IRR project. This signatory authority could be the Secretary of Interior or a tribe if that project's construction has been PL-638 contracted out.Section :section;170.486 states that a project closeout occurs after the final project inspection is concluded and the IRR project is accepted by the facility owner and the Secretary. The Quinault Indian Nation supports the Tribal view regarding this section. In particular, the Quinault Indian views project closeout occurring after the signatory authority has accepted the IRR project. The Quinault Indian Nation supports this position since it allows tribes to decide who completes the project closeout. Again, this signatory authority could be the Secretary of Interior or a tribe if the project construction has been PL-638 contracted out.The Quinault Indian Nation supports the Tribal Caucus stance that Title I Self-Determination regulations (25 CFR part 900) and Title IV Self-Governance regulations (25 CFR part 1000) adequately cover project closeout.The Quinault Indian Nation supports the Tribal Caucus position that the proposed regulations be limited to the BIA's preparation of the closeout report and leave the scope of project information to be made accessible for the IRR construction project closeout, when a tribe assumes such duties under the authorities of the ISDEAA, to the negotiation of the BIA and a tribe.

Public Comment

Workgroup Text Change Sections 483-495, see changes provided in external document (Bob Sparrow's computer)
See changes proposed by MUL 295-D5.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	295-D5	Technical Standards	1363	20	YES	Accept with Modification	AGREE	AGREE
:sec;170.487 through :sec;170.491-Delete these sections in their entirety.								
Workgroup Text Change	Sections 483-495, see changes provided in external document (Bob Sparrow's computer) See changes proposed by MUL 295-D5.							
Workgroup Comments	Clarification							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	292-Cc4	Technical Standards	1355	50	YES	Accept with Modification	AGREE	AGREE
:section; 170.485 - :section; 170.489 We concur with the tribal caucus position represented in the preamble.								
Workgroup Text Change	Sections 483-495, see changes provided in external document (Bob Sparrow's computer) See changes proposed by MUL 295-D5.							
Workgroup Comments	Clarification.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	D1	Technical Standards	41	36	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Page 51383, Subpart D, Sections 170.419 and 170.420. The comments of both the Tribal and Federal caucuses have merit. Recommend amending Section 170.419 to provide for a mid-year update as the Federal remarks suggest at item (4) on page 51338. Section 170.420 also should be amended to incorporate a modified variant of Federal remarks from the second paragraph of page 51338, stating "Minor adjustments to funding between various projects, or within the activities (Preliminary Engineering, Construction Engineering, Construction) of a particular project that are considered to be insignificant do not require a TIP update."							
Workgroup Text Change								
Workgroup Comments								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	p 256 - D2	Technical Standards	27	32	YES	Accept Comment	AGREE	AGREE
-:sec;170.403 Typo "IRR Program" -:sec;170.402 Typo "Policy Guide" -Formatting Page 51382 problems due to chart.								

Workgroup Text Change

Workgroup Comments Previously addressed

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	p 256 - Cc3 :Section; 170.430 and 170.435 The public participation requirements for long range transportation planning should parallel the State and MPO :Metropolitan Planning Organization; requirements.	Technical Standards	390	7	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments	Issues already adequately addressed							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	p 255 - Cc2	Technical Standards	422	9	YES	Accept with Modification	AGREE	AGREE
Public Comment	I do not support the proposed :sec;170.420 or :sec;170.433, stating how and when is the IRR-TIP updated. The IRR-TIP is the official document granting Indian tribes expenditure authority for IRR projects. The proposed language does not hold BIA accountable for timely updates of the IRR-TIP except on an annual basis. It also leaves the determination up to BIA as to whether other updates are necessary. Under this scenario, Indian tribes may have to wait an entire fiscal year to receive expenditure authority for certain IRR projects. This is neither acceptable nor is an appropriate use of IRR funding. The final regulation should reflect quarterly updates of the IRR-TIP or as otherwise requested by Indian tribes.							
Workgroup Text Change								
Workgroup Comments	Rewritten section for clarification.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	p 257 - D7 Page 51383-Sec. 170.427 and Sec. 170.428 Comment: We recommend moving these two sections to the Long Range Transportation Planning section of this NPRM.	Technical Standards	1337	85	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments Adequate where located								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	p 257 - D8 Page 51384, Subpart D, Sections 170.428 and 170.429. Recommend rearranging the order of these sections, so that the purpose of long-range planning (currently in section 170.429) is discussed before the discussion what what can be included in the plan (currently in section 170.428).	Technical Standards	41	37	YES	Accept Comment	AGREE	AGREE
Workgroup Text Change	Sections will be re-sequenced into correct order							
Workgroup Comments								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	p 256 - D3	Technical Standards	1337	74	YES	Accept Comment	AGREE	AGREE
Public Comment	Pages 51381 and 51382 -Sec. 170.402 and Sec. 170.405, Comment: These two sections are essentially the same and should be combined. The answers seem to focus on what tribes must do and what, in addition, they may do. With respect to what tribes must do, we feel that: "Tribes must, in cooperation with BIA, states and local governments or Metropolitan Planning Organizations, carry out a transportation planning process consistent with metropolitan and statewide planning as prescribed by the FHWA for the coordinated Federal Lands Highway Program and select projects for implementation from the Transportation Improvement Program subject to BIA and FHWA approval".In the last line of Sec.170.405 "IRR Transportation Planning Policy Guide" needs to be corrected to "IRR Program Transportation Planning Procedures and Guidelines".							
Workgroup Text Change	Will review and referenced accordingly throughout document.							
Workgroup Comments	Clarification							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	p 257 - D5 Page 51383, Subpart D, Sections 170.417 and 170.418. Recommend rearranging the order of these sections, since section 170.417 presently discusses the "tribal priority list" before the list is described in section 170.418.	Technical Standards	41	35	YES	Accept Comment	AGREE	AGREE
Workgroup Text Change	Sections will be re-sequenced into correct order							
Workgroup Comments	Clarification							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	p 256 - D4	Technical Standards	1394	5	YES	Accept Comment	AGREE	AGREE
Public Comment	#:sec;170.414 Must the eligible projects on the tribal TIP be included in the IRR TIP? Yes, eligible projects on the tribal TIP must be included in the IRR TIP.Issue: The term "tribal TIP" is not defined and should be changed to TTIP in :sec;170.414 and :sec;170.415.Recommendation: :Sec;170.414 Must the eligible projects on the TTIP be included in the IRR TIP? Yes, eligible projects on the TTIP must be included in the IRR TIP.							
Workgroup Text Change	Will correct throughout document							
Workgroup Comments	Clarification							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	p 267 - Cc1	Technical Standards	394	16	YES	Accept with Modification	AGREE	AGREE
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Section 170.456 (Page 51386) What is functional classification? Section 170.457 (Page 51386-513870 What are the functional classifications of the IRR Program. The Functional classification of roadways is the process by which streets and highways are grouped into classes, or systems, according to the character of service they are intended to provide. Separate and distinct definitions are required for roads in rural areas as opposed to roads in urban areas. With each level of functional classification is a corresponding level of access control and roadway width. These considerations directly affect the cost of any future roadway improvements. Recommend that the IRR Coordinating Committee establish functional classifications for the IRR road system that meets the FHWA guidelines. The proposed NPRM definition for road functional class does not meet those guidelines. Recommend that non-road facilities be characterized and have funding categories, with facility standards of eligibility, described using some other method than "Functional Classifications". Functional classification already has an established meaning in all other transportation programs. To distinguish the cost and establish eligibility of any non-road Intermodal Facilities using the term functional classification is not only confusing it also is inaccurate.

Public Comment

Workgroup Text Change Delete section.

Workgroup Comments Agree with comment.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	p 267 - A1	Technical Standards	41	40	YES	Accept Comment	AGREE	AGREE
Public Comment	Page 51386, Subpart D, Sections 170.452 and 170.453. -- Who produces atlas maps and strip maps, and who maintains copies of these maps?-- Are the maps to be generated electronically with a specific software format, is the master document to be paper-based from U.S. Geological Service topographical maps, or are map formats intentionally undefined? If the format is intentionally undefined, is there a preferred format? If master copies of maps are to be paper based, are there any required or desired specifications regarding paper dimensions?							
Workgroup Text Change	Delete this section.							
Workgroup Comments	Agee with comment p268, D2.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	p 257 - D9 :Sec;170.430, 170.431, 170.435	Technical Standards	5	13	YES	Reject Comment	AGREE	NO ACTION
:Pertaining to public involvement; CDOT recommends changing the proposed language so it parallels the public involvement requirements in 23 USC 134 and 135, and 23 CFR Part 450 for long range transportation plans and TIPs/STIP.								
Workgroup Text Change								
Workgroup Comments Issues already being addressed in responding to other Q&As.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	p 257 - D10 :section; 170.434, 170.425.	Technical Standards	1355	42	YES	Accept Comment	AGREE	AGREE
Workgroup Text Change								
Workgroup Comments Issues already being addressed in responding to other Q&As.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	p 268 - Cc2	Technical Standards	394	7	YES	Accept with Modification	AGREE	AGREE
An example of the need for this :Region Coordination Committee; committee is displayed later in this NPPM in Sections 170.456 and 170.457, when Roadway Functional Classifications are inaccurately defined on Pages 51386-51387.								
Workgroup Text Change	Delete section.							
Workgroup Comments	Inaccurately defined.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	Cc6	Technical Standards	1315	15	YES	Parking Lot	NO ACTION	NO ACTION
Public Comment	<p>Section 170.500-502 (Page 51389)-Right of Way (ROW) Many road rights of way have been granted to counties, states and the federal government that cross tribal land. Usually, the main reason for this conveyance is to have that agency build and/or maintain the road due to lack of funding in the tribal coffers or in the Bureau of Indian Affairs road maintenance budget. However, the conveyance of a road right of way has several significant impacts on the tribe's authority to regulate and control activity occurring on those roads. The conveyance of property ownership from the tribe is unnecessary as stated in the Code of Federal Regulations (CFR) Title 23 Highways, Revised as of April 1, 1998, Subpart H: Right-Of-Way And Environment Part 710 Right-Of-Way, General responsibilities item :sec; 710.203(d) Adequacy of right-of-way. The interest acquired in all rights of way for Federal aid highways shall be adequate for the construction, operation, and maintenance of the highway and for the protection of both the transportation facilities and the traveling public.-Recommend adding another section, 170.503, stating that the right of way be established using an easement that does not transfer property ownership from the Tribe. This protects the tribes' right of way for projects that may have been approved years in advance and the tribe's position and circumstance may change, not wishing for additional rights of ways to be granted. It insures that all parties requesting rights of way need approval of the Tribe at any point in time for any purpose.</p>							
Workgroup Text Change	good recommendations for changes							
Workgroup Comments	Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition"							
Federal Comments								
Tribal Comments								



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	P 287 - Ca9	Technical Standards	22	9	YES	Accept with Modification	AGREE	AGREE
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Public Comment

(Page 51338-339) USET also supports the Tribal position the review and approval of PS &E packages are activities which Indian tribes may assume under P.L. 93-638. Also, Indian tribes may assume the authority to review and approve PS& E packages under a Stewardship Agreement. This review and approval process is not an inherent federal function and many tribes are capable of performing this function at least at the same level currently being done by federal agencies. USET does not agree with the federal position that Tribes should be compared to states when entering into a stewardship agreement. It is not appropriate to extend provisions of state transportation departments onto Indian tribes. Indian Tribes only receive a fraction of the funding that states do and it is not fair to hold Tribes to those same standards.

Workgroup Text Change

Sections 480 - 481 rewritten

Workgroup Comments

In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P 287 - Ca8	Technical Standards	22	10	YES	Accept with Modification	AGREE	AGREE
Public Comment	(Page 513389-340) USET supports the Tribal view that requirements for audits for projects are already addressed in existing regulations of P.L. 93-638 and do not need duplication in the final rule. The Tribes would like clarification of which entity may accept the IRR project close-out reports. The BIA may identify the content of those close-out reports on the projects that the BIA administers.							
Workgroup Text Change	See rewrite of sections 482 - 489							
Workgroup Comments	References to audits have been deleted to be consistent with ISDEAA							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	p 261 - D1	Technical Standards	3	47		Accept Comment	AGREE	AGREE
Public Comment	Public Hearings As a general observation, there are a number of provisions which precede the section on "Public Hearings" devoted to involving the public in development of the IRR long range transportation plan and IRR TIP (170.430 and 170.435)(page 51384). We recommend that these provisions be integrated with the provisions under the heading of "Public Hearings" on page 51385 and the entire section perhaps reorganized to place the public hearing sections before the provisions on how tribes use the long range transportation plan and how the BIA updates the IRR TIP (170.432 and 170.433). Additional changes may be required in the final rule to clarify when tribal laws and policies on public consultation (see 170.430) supersede the procedures set out in the Public Hearings portion of this subpart (170.437 170.445).170.437 What are the purposes and objectives of public hearings for the IRR TIP, LRTP,and IRR projects? Comment: Reorganize this section to group provisions on "public hearings" together. NPRM provision 170.437 through 170.170.445 should precede 170.432 and 170.433.							
Workgroup Text Change	will review the sequencing after corrections/changes are made. Move 432 and 433 after 445?							
Workgroup Comments	Q's & A's pertaining to similar subjects will be grouped together.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	Cc8	Technical Standards	1167	9	YES	Parking Lot	NO ACTION	NO ACTION
Public Comment	Section 170.500-502 (Page 5 1356-51357) - Right of WayRecommend that another section is added, 170.503, stating that the right of way cannot be transferred. This protects the tribes' right of way for projects that may have been approved years in advance and the tribe's position and circumstance may change, not wishing for additional rights of ways to be granted. It insures that all parties requesting rights of way, need approval of the Tribe at any point in time for any purpose. Right of war should pertain to third parties, not for BIA IRR projects.							
Workgroup Text Change	ROW change 500-502							
Workgroup Comments	Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition"							
Federal Comments								
Tribal Comments								



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	294-D3	Technical Standards	27	44	YES	Accept with Modification	AGREE	AGREE
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:sec;170.485-:sec;170.489 We concur with the tribal caucus position represented in the preamble. We recommend the following regulatory provision, delete :sec;170.485-:sec;170.489 and insert: Q. Who Has Final Acceptance of the IRR Construction Project Report? (a) With regard to IRR construction projects performed by BIA, the Secretary has final acceptance and approval of the IRR construction project report. (b) With regard to IRR construction projects performed by tribes under Public Law 93-638, the signatory authority has final acceptance and approval of the IRR construction project report. Q. When Does a Project Closeout Occur? A project closeout occurs after the final project inspection is concluded and the IRR project is accepted by the signatory authority (the entity with final authority to sign the PS and E package). Q. What information is made available for the project closeout? If the project closeout and development of project closeout report is not contracted or compacted then all project information must be made accessible for the IRR construction project closeout. Such information may include, but is not limited to: Daily diaries, weekly progress reports, sub-contracts, subcontract expenditures, salaries, equipment expenditures, etc. Q. Who is provided a copy of the IRR construction project closeout report? Projects negotiated under Public Law 93-638, as amended, shall specify who will be provided a copy of the closeout report. Unless the proposed regulation is corrected in the final regulation to identify the recipients of the IRR construction project closeout report, regardless of which entity prepares the report, Our recommendation is to delete the provision entirely.

Public Comment

Workgroup Text Change Sections 483-495, see changes provided in external document (Bob Sparrow's computer)
See changes proposed by MUL 295-D5.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	354-Cc2	Technical Standards	4	1		Reject Comment	AGREE	NO ACTION
Public Comment	<p>BIA Road Maintenance :secs; 170.800- 815 One of our greatest concern regarding the IRR program is the maintenance of IRR facilities. The regulations identify what functions and types of facilities IRR maintenance funds can be used for; there is no discussion, however, of how IRR maintenance funds are distributed to tribes. The existing policy for distribution is based on either BIA jurisdiction of the facility or a grandfathered maintenance agreement from a prior construction activity. How would a tribe that does not currently receive IRR maintenance funds apply for and receive funds for what are clearly qualifying maintenance activities? For instance, :sec; 170.805 (a)(2) identifies "Non-BIA facilities, if the tribe served by the facility feels that maintenance is required to ensure public health, safety, and economy, and if the tribe executes an agreement with the owning public authority within available funding;" If we have no access to maintenance funds we have no opportunity to exercise this option. All tribes should have access to road maintenance funds. Funding needs to be increased to the IRR maintenance program, but also, a equitable method of identifying need and distributing funds also needs to be developed. We propose this issued be tasked to and addressed by the IRR program coordinating committee.</p>							
Workgroup Text Change	No Change							
Workgroup Comments	Outside Scope or addressed in other parts of the regulations							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	D1	Technical Standards	26	12	YES	Accept with Modification	AGREE	AGREE
Public Comment	<p>Section 170.401 - What transportation planning functions and activities must BIA perform for the IRR program? Section 170.402 What transportation planning functions and activities must tribes perform under a self-determination contract or self-governance agreement?Both of these sections make reference to "regional planning offices" or RPO's. While some states may have established such sub-state planning bodies, they are not called for under federal transportation law and regulation. Therefore, it seems ill-advised to make reference to such bodies in this rule. We recommend that the rule make reference only to the planning bodies and processes required under federal law and regulation, specifically, the statewide transportation planning carried out by state departments of transportation, and the metropolitan transportation planning carried out by metropolitan planning organizations.</p>							
Workgroup Text Change	<p>Move Sections 816 - 820 to Section D. Add "or other appropriate planning authority" after RPO</p>							
Workgroup Comments	<p>Clarification. Some States may not refer to planning authorities as"Regional Planning Offices," so language added to include any appropriate planning authority.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	353-A2	Technical Standards	1315	20		Reject Comment	AGREE	NO ACTION
Public Comment	Section 170.800-823 (Page 51357)-Maintenance There is a lack of funding available for maintenance. FHWA/BIA need to request more funding to meet the needs of new construction facilities and maintenance of exiting transportation facilities. -When Maintenance Funding is allocated or appropriated from the Highway Trust Fund the TTAM formula variable CTI value (50 percent) should be replaced for all existing roadways by the percent of allowable road sealing expenditures (15 percent).							
Workgroup Text Change								
Workgroup Comments	Outside Scope							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	A1 Section 170.419 and Section 170.420 pg. 51383 basis.	Technical Standards	1368	3		Reject Comment	AGREE	NO ACTION
Workgroup Text Change	change 419, 420							
Workgroup Comments	impractical to implement							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	347-D2	Technical Standards	27	56	YES	Accept with Modification	AGREE	AGREE
Public Comment	:sec;170.701-:sec;170.705 We concur with the tribal caucus position presented in the preamble. Our recommendation is to revise the proposed regulation to simply list the content of the Stewardship Agreement without identifying whether a particular activity is performed by BIA or a tribe and to require that the work to be performed will comply with "applicable requirements" (Federal or tribal) rather than stating that the work must meet "prescribed policies and procedures of BIA and FHWA." To achieve this result, we recommend revising the proposed regulation to read as follows: Q. What Must Be Included in an IRR Program Stewardship Agreement? An IRR Program Stewardship Agreement must include: (a) Description of the planning, design, construction, and maintenance activities developed to ensure work meets applicable requirements; (b) Assumption of review and approval of PS and Es developed for Indian Reservation Road (IRR) construction projects and project monitoring; and (c) The standards which will be implemented in accordance with these regulations. Nothing in the Stewardship Agreement shall be construed to diminish or effect the rights, privileges and responsibilities of Indian tribes or tribal organizations to administer IRR programs under a self-determination contract or self-governance agreement, or to incorporate these IRR Program activities into such a contract or agreement.							
Workgroup Text Change	Delete 700 - 705							
Workgroup Comments	Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	345-A1 Page 51394-Sec. 170.700 and Sec. 170.701 Comment: The IRR Program Stewardship Plan also addresses maintenance of the BIA road and bridge system and the appropriate responsibilities.	Technical Standards	1337	119	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments	Previously addressed. Maintenance is one of the items in a stewardship plan. Not in the Stewardship agreement							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	354-Cc1	Technical Standards	1237	4		Accept Comment	AGREE	AGREE
Public Comment	Federal Highway Administration and Bureau of Indian Affairs need to request more funding to meet the need for maintenance of existing facilities (Section 170.800-823 "Maintenance"). Insufficient funding has perpetuated poor road conditions, and delayed critical road maintenance. Many seasons of little or no maintenance has degraded roads to the point where major construction will be the only alternative for improvement. Money spent on adequate maintenance could save the higher costs of construction.							
Workgroup Text Change	No Change							
Workgroup Comments	Outside Scope							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	301-D1	Technical Standards	3	53	YES	Accept with Modification	AGREE	AGREE
Public Comment	170.515 and 170.516 How are IRR Program management systems funded? and How will the IRR management systems be implemented? Comment: Strike the phrase "2 percent" in these sections as reauthorization of TEA 21 may specify a different percentage or methodology by which to calculate each tribe's IRR transportation planning funds.							
Workgroup Text Change	Consistent language ..use 23 USC, Section 204(j) language previously indicated							
Workgroup Comments	Clarification							
Federal Comments	uniform change pertaining to Tribal planning							
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	345-B1	Technical Standards	35	8	YES	Accept with Modification	AGREE	AGREE
Public Comment	H. Content of Stewardship Agreements - Subpart F: Comment: unless the law specifically allows the tribes to enter into a Stewardship agreement with the FHWA rather than with the Secretary under BIA, this issue is moot. The federal view is correct in that it does state in 23 U.S.C. 204(j) that both the Secretary and Secretary if Interior must approve the projects which is indirectly interpreted to include any Stewardship agreements that cover the use of IRR Funds which requires an approved IRR TIP.							
Workgroup Text Change	Delete sections 700 - 705							
Workgroup Comments	Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	D10 pg. 340	Delivery of Services	1231	66	YES	Accept with Modification	AGREE	DISAGREE
Public Comment	<p>:Sections; 170.633-.634 For the reasons noted above, we recommend deleting both of these provisions and replacing it with the following:What IRR Program activities are subject to the construction regulations set forth in Subpart K of25 CFR Part 1000? All IRR Program activities are subject to Subpart K of Part 1000 with the exception of the following activities that are not considered construction and are not subject to Subpart K:(1) activities related to administrative support services, coordination, and monitoring oversight of the planning, design and construction process;(2) activities related to direct responsibility for the construction project through day-to-day on-site management and administration of the project, which may include cost management, project budgeting, project scheduling and procurement and other construction management services;(3) activities related to management services; and(4) activities related to a road construction program wholly assumed by a Tribe/Consortium under TEA-21 which involves more than one project so long as the agreement contains assurances by the Tribe/Consortium that proper health and safety standards will be met.Notwithstanding items (1) - (4), it is intended that for design and construction of individual construction projects, Subpart K of 25 CFR Part 1000 applies.</p>							
Workgroup Text Change	<p>After 1000 add: "including applicable exceptions within Subpart K,"</p>							
Workgroup Comments	<p>Comment was also addressed with workgroup response to comment 1363-46.</p>							
Federal Comments	<p>No action.</p>							
Tribal Comments	<p>Tribal Caucus rejects change.</p>							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	D7 pg. 337	Delivery of Services	18	20		Parking Lot	NO ACTION	NO ACTION
Public Comment	<p>Self-Governance Compacts - Subpart E (p.51342) (proposed sec. 170.633-634)The Standing Rock Sioux Tribe endorse the tribally recommended regulatory text at 67 Fed. Reg. 51342 and recommend that final regulations reflect that all provisions of Part 1000 of Title 25 of the Code of Federal Regulations apply when an Indian tribe assumes IRR Program activities under a self-governance agreement, unless otherwise clarified in the IRR regulations. The Standing Rock Sioux Tribe concur with the Tribal Caucus view that the regulations of Subpart K of 25 C.F.R. Part 1000 (self-governance regulations of the BIA) do not adequately or appropriately address issues arising when a tribe or consortium assumes IRR Program activities under a self-governance agreement. Subpart K of 25 C.F.R. Part 1000 regulations govern construction projects assumed under a Self-Governance agreement. IRR Program funding covers administration of the entire IRR Program, including administration, planning and construction activities. More specific guidance is required in these (TEA-21) regulations to elaborate up on the provisions found in Subpart K of the Part 1000 regulations.The disagreement between the tribes and the Federal caucus stems from the Federal Caucus's view that only projects, and not programs, are being assumed by Indian tribes and tribal consortium. This is not the case. These Part 170 IRR regulations should not unnecessarily constrain Indian tribes which seek to assume an entire transportation program under a self-governance compact when Congress has expressed its intent in support of greater tribal control and autonomy over the IRR Program.</p>							
Workgroup Text Change								
Workgroup Comments	<p>This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. Comment references contractability and compactability, and disagrees with the reference to Subpart K.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	D3 pg. 337 Pages 51390 - 51394, Subpart E, Sections 170.600 - 170.636. The alternate wording proposed by the Tribal Caucus on pages 51345- 51347 has very persuasive justification, and should be adopted.	Delivery of Services	41	43	YES	Parking Lot	NO ACTION	NO ACTION
Workgroup Text Change								
Workgroup Comments	This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. Comment directed at contractibility and compactibility.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	B2 pg. 318	Delivery of Services	35	12		Reject Comment	AGREE	NO ACTION
Public Comment	L. Availability of Contract Support Funding - Subpart E: Comment: We support the idea of Interior appropriation providing the contract support funds for all 638 contracts and/or agreements under the TRR Program. Realistically this will not happen unless the tribes are willing to get Congress to make changes in the laws. This is an issue outside the scope of this rule making and should be dropped from further consideration.							
Workgroup Text Change								
Workgroup Comments	No specific request is made to change or delete any section.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(a)7 pg. 322-323 Advance Funding-Subpart E (proposed sec. 170.614-618 at 67 Fed. Reg. 51393)	Delivery of Services	1396	17		Parking Lot	NO ACTION	NO ACTION
Public Comment	The full Committee reached agreement regarding the advance payment of IRR funds to Indian tribal governments performing IRR non-construction activities under self-determination contracts and self-governance agreements, but could not reach agreement over the wording of proposed regulations for the advance payment of IRR funds to tribal governments performing IRR construction and construction-engineering activities. We are especially concerned about the Federal assertion that advance funding and savings are outside the scope of the rulemaking. While the Committee was not able to reach consensus on these issues of crucial importance both to tribal self-determination and the efficient and effective implementation of the IRR program by Indian tribes, the issues are clearly relevant and plainly within the scope of the rulemaking. The Tribe strongly protests the unwarranted post facto attempt to limit the scope of the NPRM. We concur with the Tribal Caucus that the Federal position is unwarranted as a matter of law and unwise as a matter of policy. We endorse the Tribal Caucus's proposed regulatory language set out in the preamble to the proposed rule at 67 Fed. Reg. 51344-345.							
Workgroup Text Change								
Workgroup Comments	This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the advance pay and savingst issues. Government believes this issue is outside the scope of this rule making.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(a)13 pg. 327-328	Delivery of Services	1231	27		Parking Lot	NO ACTION	NO ACTION
Public Comment	<p>L. Availability of Contract Support Funding - Subpart E This is another one of the issues the Department has determined to be "outside the scope of this rulemaking." However, the NPRM provides absolutely no basis whatsoever in support of the position that this issue is outside the scope of the IRR rulemaking. If this issue is outside the scope of the rulemaking, then the federally proposed provisions relating to this issue that are currently presented in the proposed rule (proposed sections 170.635-.636) cannot be a part of the regulations and must be stricken. If these provisions are not stricken, then the issue is ripe for negotiation. The ISDEAA requires the Interior Secretary (in the absence of factors supporting declination) to enter into contracts with requesting tribe for programs, functions, services, activities, and portions thereof, including when those financed by appropriations of other Federal agencies passed through to the Secretary. 25 U.S.C. :sec;450f(a)(1)(D). The ISDEAA also requires that the Secretary add to such self-determination contracts and self-governance agreements contract support costs funding. 25 U.S.C.:secs; 450j-1(a), 450j-1(g), 458cc. The ISDEAA contains no language or provision distinguishing between contract support costs associated with funds passed through from other Departments, and costs associated with funds appropriated directly to the Interior Department. Similarly, the Interior Department appropriations language does not limit the contract support appropriation to only those contracted or compacted activities funded by the Interior appropriation.</p>							
Workgroup Text Change								
Workgroup Comments	<p>This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the contract support issue. Government believes this issue is outside the scope of this rule making.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	C(c)2 pg. 342 :pg.; 51348 Non-contractible-	Delivery of Services	40	3		Reject Comment	AGREE	NO ACTION
(small B)(5) tribes should be authorized to contract with state and counties to share construction costs.								

Workgroup Text Change

Workgroup Comments Comment is addressed in section 170.112.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	B3 pg. 318	Delivery of Services	35	10		Reject Comment	AGREE	NO ACTION
Public Comment	J. Advance Funding - Subpart E: Comment: The tribal caucus position is flawed in that you cannot expend any funds for a project or project activities without an Approved TIP in place. It appears that the tribal caucus is trying to circumvent the TIP process that everyone has to comply with including the States and local governments. So why should the tribes be given preferential treatment here that no state has? It seem that if a tribal government wishes to be treated like a state government, then maybe the tribes need to look to Congress for relief rather than side stepping the 638 regulations.							
Workgroup Text Change								
Workgroup Comments	No specific request is made to change or delete any section.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	D2 pg. 336	Delivery of Services	1231	67	YES	Parking Lot	NO ACTION	NO ACTION
Public Comment	:Sections; 170.635-.636 Delete these two provisions and replace them with the following single provision:Are Contract Support Funds Available for IRR Program Activities Performed Under Public Law 93 - 638 Contracts?Yes, in accordance with sections 106(a)(3) and 403 of Public Law 93-638 contract support funds are available.							
Workgroup Text Change								
Workgroup Comments	This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the contract support issue. Government believes this issue is outside the scope of this rule making.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	B1 pg. 317-318	Delivery of Services	35	11		Reject Comment	AGREE	NO ACTION
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Public Comment K. Contractibility and Compactibility of TEA-21 Programs - Subpart E: Comment: We understand that any remaining 6% PM&O funds are distributed to the regions and tribes for use on approved projects and project activities. It appears that the tribal caucus believes that the BIA is to give the entire 6% of PM&O funds to the tribes and leave the BIA holding the bag. The Interior annual appropriations Act does allow for the BIA to take up to 6% of the TRR Funds to oversee the program and to carry out non-project related activities for the betterment of the program. We point out that none of the regions or BIADOT have ever used the entire 6% of funds to oversee the IRR Program and the remaining funds were put into construction projects for the benefit of the tribes. The problem is not that those funds unspent should go to the tribes but rather no one knows until late in the year what those amount will be. Therefore, the tribal caucus proposal, as written, in the 9 Q&As will not work. Also, this issue is contract or compact dependant in that no one knows until the contract or compact is negotiated what activities the tribe will perform and what activities the government will perform. So to assume that the tribe is entitled to their so called "share" of the 6% is ludicrous. The most effective use of the remaining PM&O funds is to put it back into actual construction of on-going transportation projects for the tribes. After all isn't that what this program is all about?

Workgroup Text Change

Workgroup Comments No specific request is made to change or delete any section.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(a)5 pg. 322	Delivery of Services	373	9		Parking Lot	NO ACTION	NO ACTION
Public Comment	<p>We oppose the proposed :secs; 170.635-636 dealing with contract support funds. The government's position that contract support funding is not available or applicable to the IRR program is totally inconsistent with the ISDEAA and OMB :Office of Management and Budget; Circular A-87. Currently, the Interior Department is required to make contract support finding available for all such contracts and agreements in accordance with :sec;106(a) and :sec;403 of the ISDEAA, regardless of program origin. The final regulation should reflect this fact.</p>							
Workgroup Text Change								
Workgroup Comments	<p>This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the contract support issue. Government believes this issue is outside the scope of this rule making.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	D5 pg. 337	Delivery of Services	1370	32		Parking Lot	NO ACTION	NO ACTION
Public Comment	Rule - Page 51393 states: :sections; 170.614-618 "May the Secretary advance payments of IRR funds to a tribe under a self-determination contract for construction activities? . . . How are advance payments made when additional IRR funds are made available after execution of the self-governance agreement?Comment: The Tribes request the deletion of the proposed federal caucus text and the insertion of the proposed tribal caucus text/methodology. The Tribes request that wherever the term "self-governance" is used in the Rule that it be replaced with "P.L. 93-638". Title 1 and Title 4 of 638 contracting/compacting should be applied equally and consistently.							
Workgroup Text Change								
Workgroup Comments	1st Sentence requesting deletion of proposed federal caucus text to be put in parking lot(This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the advance pay issue. Government believes this issue is outside the scope of this rule making.). Reject Last two sentences/comments.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(a)8 pg. 323	Delivery of Services	34	7		Parking Lot	NO ACTION	NO ACTION
Public Comment	Key Areas of Disagreement Self-Governance Compacts - Subpart E TEA-21 includes language as to the ability of a tribe to assume all IRR Program activities, under a self-governance compact, that are not inherently federal functions, rather than being allowed to assume only individual IRR projects. The BIA has again failed or refused to comply with P.L. 93-638. Self-governance tribes should be allowed to take on as much responsibility for the IRR Program as they are willing to assume - in the true spirit of self-governance.							
Workgroup Text Change								
Workgroup Comments	This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. Comment directed at contractability and compactability.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	C(a)2 pg. 320-321	Delivery of Services	1355	2		Parking Lot	NO ACTION	NO ACTION
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Public Comment

A. Availability of Funds pursuant to PL 93-638The general federal position expressed in Subpart E, :sec; 600-636 in regard to contract/compactibility issues suggests FHWA and the BIA intend to defy statutory law. Congress, in TEA-21, expressly made all IRR funds and functions subject to PL 93-638, "notwithstanding any other provision of law." 23 USC 202(d)(3)(A). Further, :sec; 202(d)(3) subpart (B) provides that the funds made available under 202(d)(3)(A) are to be paid regardless of the administrative level of the BIA which formerly performed the function; i.e it doesn't matter if the function was previously performed at the Agency, Regional, or Central Office level. The federal position turns the plain and common sense meaning of subpart (B) on its head, by reading it as a limitation on the type of function that can be contracted. In PL 93-638 contracting, the determination of which functions and funding are subject to 638 contracting turns on whether the function is "inherently federal." The federal agency is entitled to retain as residual funds sufficient funding to enable it to perform its inherently federal functions (IFFs). The federal proposed rules ignores the IFF and residual funds analysis in favor of simply listing everything the federal team doesn't want contracted, and providing a blanket exclusion of its 6% PM&O funds. The federal justification for this position as expressed in the preamble is logically flawed. The issue of "program management financing" is not merely a "policy matter between BIA and FHWA." Congress has established the ground rules. Specifically, Congress put an "up to 6%" cap on the BIA's general program administration and also provided that all IRR functions, including administrative functions, be subject to PL 93-638 contracting - to the extent, like any program subject to PL 93-638, that particular functions are not inherently federal.

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. Comment references contractability and compactability.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	C(c)7 pg. 333	Delivery of Services	1231	26		Parking Lot	NO ACTION	NO ACTION
Public Comment	<p>Senate Report 103-374 at 5-6 (emphasis added). The Interior Department's approach here in identifying certain functions as non contractible represents an attempt by the Department to implement the ISDEAA (under the JRR program regulations) in a manner specifically prohibited by the 1994 amendments to the ISDEAA. It also is inconsistent with the Interior Department's publicly announced process for making determinations as to which functions are inherently federal in nature and thus non-contractible. See 66 Fed. Reg. 78690, 78693 ("The Department will decide what functions are ... inherently federal on a case by case basis after consultation with the Office of the Solicitor"). The Department has provided no memorandum or opinion, from the Solicitor's office or otherwise, indicating that each and every of the items identified in the federal proposal as non-contractible are inherently federal functions and the basis for that conclusion. We believe that the tribal proposal presents a fair and common sense approach to making these determinations. Therefore, for these reasons, and for the reasons stated in the Tribal View on this issue, we recommend rejecting the federal proposal (presented on pages 5 1347-350 and introduced among proposed sections 1 70.600-.636), and adopting the tribal proposal (pages 51345-347).</p>							
Workgroup Text Change								
Workgroup Comments	<p>This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. Comment references contractability and compactability, and general opposition of the listing of non-contractible items rather than case by case negotiation for each AFA.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	D1 pg. 334-336	Delivery of Services	1363	22		Parking Lot	NO ACTION	NO ACTION
Public Comment	:respondent rennumbers section and provides new wording; I do not support :sec;;sec;170.600 through :sec; 170.608 dealing with the contractibility and compactibility of IRR programs, services, functions, and activities. The ISDEAA requires the Secretary to make available all funds for services to which the Secretary would have otherwise provided to a tribe prior to an executed self-determination contract or self-governance agreement. The government's argument that the "up to 6 percent" is solely for performing inherent federal functions does not carry with it the proper statutory authority to do so, nor is there any evidence that congress intended to earmark these funds for non-contractible activities. I also disagree with the notion that BIA is allowed to withhold administrative funds for project related functions. To continue the practice of withholding administrative funds severely reduces a tribe's ability to directly benefit Indian communities with improved roads and bridges. The final regulation should reflect congressional intent that all IRR funds are subject to the ISDEAA, including BLA's 6 percent.							
Workgroup Text Change								
Workgroup Comments	This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. Comment references contractability and compactability, and essentially disagrees with the reference to Subpart K							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	D4 pg. 337	Delivery of Services	1370	31	YES	Parking Lot	NO ACTION	NO ACTION
Public Comment	Rule - Page 51394 states: :sections; 170.633-634 "What IRR programs, functions, services, and activities are subject to the construction regulations set forth in subpart K of 25 CFR part 1000? . . . How are IRR program projects and activities included in the self-governance agreements?" Comment: The Tribes request the deletion of the proposed federal caucus text and the insertion of the proposed tribal caucus text/methodology. The Tribes request that wherever the term "self-governance" is used in the Rule that it be replaced with "P.L. 93-638". Title 1 and Title 4 of 638 contracting/compacting should be applied equally and consistently.							
Workgroup Text Change								
Workgroup Comments	1st Sentence requesting deletion of proposed federal caucus text to be put in parking lot.(This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the eligibility issue. Government believes this issue is outside the scope of this rule making. Reject Last two sentences/comments. Comment directed at contractibility and compactibility, and references Subpart K.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 214, A1 General Comments Page 51374- involvement, NEPA, cultural resources, ROW, PS&E and all other requirements of IRR Program funded projects have to be in place when project financing is done as addressed in these sections.	Funding	1337	69	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments request is to expand the Q and A to include additional items. The workgroup believes the issues are adequately covered and are also covered in statute at 23 USC 122.								
Federal Comments								
Tribal Comments								



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	P. 140, C1	Funding	1377	4	YES	Accept with Modification	DISAGREE	AGREE
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Public Comment 2 percent Tribal Transportation Planning :sec;170.232 and chart in :sec;170.226The funding distribution of the 2 percent Tribal Transportation Planning (2 percent TTP) should not be linked to the tribal percentages of the TTAM. Also, the amount available to the 2 percent Tribal Transportation Planning needs to be based on 2 percent of the annual IRR program appropriated before other takedowns.

Workgroup Text Change

Takedowns - Takedowns language in NPRM was not original language proposed by consensus of the full committee, recommend reverting to original language.

Workgroup Comments Workgroup accepts, refer to Exel file - takedowns.exe as part of the funding formula rationale { resident on the desktop}.Changes made to 225, 235, 247, and 265.
Comment is to change distibution method for planning - disagreement item of the workgroup

Federal Comments

Tribal Comments PS addressed with 225



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	P. 142, D1 Proposed Language 170.225	Funding	3	23	YES	Accept with Modification	AGREE	AGREE
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Public Comment 170.225 How are IRR Program funds allocated? Comment: We recommend that in the final rule the percentage figure of "2%" be stricken and the TEA-21 statutory reference (23 U.S.C. 204(j)) be used in lieu of the 2% figure for the Transportation Planning Program amount. Legislation, such as S.2971 introduced this session by Senator Bingaman, proposes 4% for Transportation Planning Program. The final rule should not reference a particular percent as that figure may change in TEA-21's reauthorization. The same comment would apply to the "2% Planning" box in the diagram following 170.226. Substitute, for example, "the statutory amount provided in 23 U.S.C. 204(j)." 170.232. How does BIADOT allocate and distribute 2% Transportation Planning funds? Comment: See comments to 170.225 regarding the reference to "2%" in this subpart.

Workgroup Text Change

Workgroup Comments handled by P. 135, D3 in both the question and answer. The comment is accepted with modification. Consistency throughout the document must be verified in the handling of converting "2% ...planning" to a reference to 23 USC 204(j) planning.

Federal Comments 2 % planning global change.

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 167, D1 Proposed Language Sec. 170.248-250	Funding	420	11	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change	170.248 Replace "#1,000,000.00" with "5,000,000.00" 170.249 Replace "#1,000,000.00" with "#5,000,000.00 in any one year". 170.250 Replace the limitation of #1,000,000.00 as above. Comment: The one million limitation is arbitrary and should be based on the current capabilities of the majority of construction efforts of the Bureau of Indian Affairs as to what they can complete in one construction season. Normal projects that make an impact often have winter shutdowns and are actually carrying over the dollars as unspent obligations.							
Workgroup Comments	Commenter is requesting the the funding per project be changed to 5 million. The workgroup acknowledges that this is one of the key negotiated areas of the funding formula, therefore the recommendation is rejected as this would require reopening negotiations.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 140, A1 General Comments	Funding	7	2		Reject Comment	AGREE	NO ACTION
Can traffic counters or recorders be purchased with funds from the 2 percent planning grants?								
Workgroup Text Change								
Workgroup Comments	No change requested, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 176, D1 Proposed Language Page 51372	Funding	41	19	YES	Reject Comment	AGREE	NO ACTION
<p>170.263 - 170.266. Change the end of section n170.263 to read: "?based upon the population ranges and distribution factors shown in table 170.263 (as further explained in Appendix B to subpart C)." Renumber sections 170.264 - 170.266 to become sections 170.263(a) - 170.263(c) respectively. Then, move the table to be after section 170.263(c) (presently section 170.266). Also eliminate the column titled "distribution factor", and rename the column titled "funding amount per tribe (minimum base allocation)" to be called "distribution factor based on minimum base allocation (MBA)".</p>								
Workgroup Text Change								
<p>request is to 1) edit section 263 - will review later. 2) Renumbering of 264-266 - parked as this might be addressed by numbering of co-chair.</p>								
Workgroup Comments								
<p>Workgroup addressed many of the comments by rewriting Appendix B. Workgroup does not believe the recommendation provides significant improvement to the proposed regulation and rejects.</p>								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 149, C(c)1 Programmatic Concerns	Funding	1384	5	YES	Reject Comment	AGREE	NO ACTION
<hr/>								
Workgroup Text Change								
<hr/>								
Workgroup Comments	Recommendation is that we use a different population component. We believe that is has been adequately covered by the rule, and would require renegotiations.							
<hr/>								
Federal Comments								
<hr/>								
Tribal Comments								
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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 166-167, A2 Sections 245-257; section;170.245-257,	Funding	1388	1	YES	Reject Comment	AGREE	NO ACTION
<p>The Quinault Indian Nation would like the Federal Register, Sections 170.245-257, to reflect the possibility of what happens when a tribe has an emergency/disaster need and a high need. The Quinault Indian Nation would like to know if it is possible under this proposed rule, Sections:sections; 170.245-257, if a tribe can be funded for an emergency project while simultaneously being funded high ranked IRRHPP project. The Quinault Indian Nation would like this clarified in the proposed rule. The Quinault Indian Nation supports in only extreme cases, a tribe's ability to be funded for an emergency/disaster related project and a high ranked IRRHPP project at the same time. These extreme cases would be reviewed by case-by-case basis with highly, restrictive guidelines.</p>								
Workgroup Text Change								
Workgroup Comments commenter is requesting a change. The negotiation for the IRRHPP included and agreement that the applicant would only have one application in at any given time. rejected								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 166, A1 General Comments Sec. 170.245 and 170.248 applications? Sec. 245 & 248	Funding	3	25	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change	commenter is requesting additional language to make sure that direct service tribes are not favored over other tribes. Workgroup rejects on the basis that the concern is adequately covered in the rule.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P. 168, D3 Sec. 245-257 Rule - Page 51371	Funding	1370	18	YES	Reject Comment	AGREE	NO ACTION
Public Comment	<p>states: :section; 170.245-257 " What is the IRR High Priority project (IRRHPP) Program?" Comment: The Tribes request the deletion of these sections. The Shoshone-Bannock Tribes disagree with the diversion of 5% & 12.5% of the scarce IRR funds or any funding increase to a High Priority Project Program pork barrel fund. The proposed rule fails to show how the Shoshone-Bannock Tribes will receive a fair distribution of this 17.5% of IRR program funds. Our program is grossly under funded with our existing IRR inventory of roads projected to take in excess of 200 years to improve to an adequate standard at current funding levels. To divert funding from known needs to a perceived need by the smaller tribes with little present or potential road inventory is unconscionable. All tribes have an equal ability to receive funding under the relative need distribution factor because proposed roads receive the same treatment as an existing unimproved road therefore the argument that a small tribe without any roads cannot fund a road is untrue. Funding is based upon need if there is no need why provide funds? This is a program directed by Congress to develop the transportation infrastructure of tribal governments, not a program to develop small tribal governments. Let all tribes receive the scarce funding on an equal basis. The Tribes request that the secretary explain why a small tribal community on a small reservation should receive critically necessary road improvements before a small community on a large reservation.</p>							
Workgroup Text Change								
Workgroup Comments	<p>Commenter is requesting that 245 - 257 be deleted, the IRRHPP. This was a major portion of the negotiated agreement, meant to meet the requirements of the statute requiring the negotiated rulemaking. Comment is rejected</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 167-168, D2 Sec. 245-257 Section 170.245-170.257-IRR	Funding	1339	3	YES	Reject Comment	AGREE	NO ACTION
<p>The high priority projects favors smaller tribes and will allow for exaggerations of needs and confuses real needs. The high priority project proposal should be deleted.</p>								
Workgroup Text Change								
<p>Workgroup Comments Commenter wants to delete high priority projects. The workgroup believes this was a major concept of the negotiated formula, meant to meet the requirements of the statute requiring the negotiated rulemaking.</p>								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 167, C(c)2 Sections 248-250	Funding	41	13	YES	Reject Comment	AGREE	NO ACTION

Page 51371, sections 170.248, 170.249 & 170.250. The limit should be increased to at least #1.5 million.

Workgroup Text Change

Workgroup Comments Commenter is requesting the the funding per project be changed to 1.5 million. The workgroup acknowledges that this is one of the key negotiated areas of the funding formula, therefore the recommendation is rejected as this would require reopening negotiations.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P. 175, C(c)1 Programmatic Concerns	Funding	394	15	YES	Workgroup Disagree	NO ACTION	NO ACTION
Public Comment	<p>Section 170.263-170.267 (Page 51372) Population Adjustment Factor. Every tribe has a transportation need regardless of size; the current formula as proposed does not address the needs of small tribes. When evaluating a minimum base-funding amount, in multiple participant programs, it is considered prudent to design and provide for the common participant. During the IRR Negotiated Rulemaking process, TEA-21 funding for "Capacity Building" was established at #35,000 per tribe per year. This amount (#35,000) should be considered the Minimum Base Allocation (MBA). Capacity Building funds have proven to be an effective tool allowing a majority of tribes to participate in transportation in their communities. This method of funding during the last three years (2000, 2001 and 2002) afforded Tribes with the ability to initiate projects and/or in cooperation with other agencies. Many of these projects will not be completed without a comprehensive, coordinated, continuing effort by the Tribal Government. Capacity Building was a Negotiated Consensus agreement, and vigorously recommended to be retained.</p>							
Workgroup Text Change								
Workgroup Comments	<p>Commenter is referring to section 263-267 Request is to continue \$35,000 as a minimum base allocation. The PAF was a key factor in the negotiation of the funding formula, and would require a complete renegotiation of the funding formula. Workgroup disagreement item.</p>							
Federal Comments								
Tribal Comments								



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	P. 176, D2	Funding	1370	21	YES	Reject Comment	AGREE	NO ACTION
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Rule - Page 51371 states: :sections; 170.263-267 "What is the PAF?. . .What population data is used to determine the PAF?" Comment: The Tribes request the deletion of these sections. The Tribes disagree with the diversion of 12.5% of the scarce IRR funds or any funding increase to a Population Adjustment Factor. The proposed rule fails to show how the Shoshone Bannock Tribes will receive a fair distribution of this 12.5% of IRR program funding increases. Our program is grossly under funded with our existing IRR inventory of roads projected to take in excess of 200 years to improve to an adequate standard at current funding levels. To divert funding from known needs to a perceived need by the smaller tribes with little present or potential road inventory is unconscionable. All tribes have an equal ability to receive funding under the relative need distribution factor because proposed roads receive the same treatment as an existing unimproved road therefore the argument that a small tribe without any roads cannot fund a road is untrue. Funding is based upon need if there is no need why provide funds? This is a program directed by Congress to develop the transportation infrastructure of tribal governments, not a program to develop small tribal governments. Let all tribes receive the scarce funding on an equal basis. The Tribes request that the secretary explain why a small tribal community on a small reservation should receive critically necessary road improvements before a small community on a large reservation.

Public Comment

Workgroup Text Change

Workgroup Comments Comment is essential same comment as D3, Page 168 request to delete PAF. This was a key factor in the negotiation and would require reopening the renegotiation - Workgroup rejects.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 214, C(c)1 Programmatic Concerns Page 51374-4	Funding	1337	68		Reject Comment	AGREE	NO ACTION
<p>General Comment on Flexible Financing Comment: We think the Committee should further consider the ethical/legal implications of allowing a current administration to spend funds today that otherwise would have been available to future administrations. In some cases the future administration will have different agendas than the current administration.</p>								
Workgroup Text Change								
<p>Workgroup Comments Recommendation to have the committee consider the implementations from change in administration. The workgroup believes these proposed regulations adequately address these types of concerns.</p>								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	pg. 96	Policy	1340	1		Reject Comment	AGREE	NO ACTION
Under Subpart B, Subsection 170.130 through 170.138, the Pueblo of Zuni is not in favor of any and all language contained in this subsection. There are too many unknowns. Certainly, the Pueblo of Zuni will not benefit from this.								
Workgroup Text Change	no change							
Workgroup Comments	tribal transportation facilities vary from reservation to reservation.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	pg. 92, B1 Use of IRR and Cultural Access Roads-Subpart A (p. 51358) (proposed sec. 170.120-.126) We support the approach to cultural access roads as proposed in the NPRM.	Policy	1396	29		Accept Comment	AGREE	AGREE
Workgroup Text Change								
Workgroup Comments	no change requested.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	Pg. 69, D1	Policy	368	3	YES	Reject Comment	AGREE	NO ACTION
Public Comment	<p>The terms "cooperation" and "cooperative" are used several times in the Proposed Rule when discussing BIA or tribal related activities, functions or responsibilities in conjunction with federal, state and other non-tribal governmental entities (see Sections 170.101; 170.108; 170.179 first paragraph, and items (g) and (h); 170.409; 170.416; 170.417; 170.902; and 170.918(d)). There is no definition for the term "cooperation" in either Section 170.6 or Section 170.100 of the Proposed Rule. Furthermore, the existing USDOT-FHWA regulations on transportation planning assistance and standards (see 23 CFR 450.104) identify and define the three "C's" of consultation, cooperation and coordination, which States and Metropolitan Planning Organizations are to conduct with tribal governments as well as all other parties/agencies when implementing the Statewide Long-Range Transportation Planning Process, developing the Statewide Transportation Plan, and developing the Statewide Transportation Improvement Program. Since the identification of the term "collaboration" in this section is not consistent with 23 CFR 450.104 and that definition of the term has basically the same purpose, it is recommended that the term "collaboration" be replaced with the term "cooperation" throughout the Proposed Rule. This revision would keep the IRR Program regulation terminology consistent with the current USDOT-FHWA regulations while at the same time addressing the included concerns of the tribes.</p>							
Workgroup Text Change	No change in text.							
Workgroup Comments	Reject because felt that terms consultation, collaboration, and coordination as defined were stronger concepts.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	Pg. 69, A1 Non-Indians should have a meaningful voice in the consultation, collaboration, coordination found in Subpart B, Sections 170.100 through 170.122, as well as a loud, clear voice in "Public Hearings" Section, under Subsection 170.437 through 170.445.	Policy	29	10		Reject Comment	AGREE	NO ACTION
Workgroup Text Change	No change in text.							
Workgroup Comments	170.100-170.122 covers govt-to-govt consultation, and non-Indians had voice in public hearing process (170.435-445).							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P. 167, C(c)1 Programmatic Section 170 C-245-246 Concerns Sec. 245-246	Funding	1362	6	YES	Reject Comment	AGREE	NO ACTION
Public Comment	<p>Section 170 C-245-246 (Page 51371) - IRR High Priority Projects (IRRHPP). This aspect of the Funding Formula was established to provide funding for those tribes whose annual allocation is insufficient to complete their highest priority project. This funding pool is capped at one million dollars per year per tribe. -Remove the eligibility for emergency projects within the IRRHPP funding pool. This formula component (IRRHPP) is the only feature that allows most tribes (over three quarters, 75% of Tribal Governments) to fund a project. Emergency transportation situations should be included within this regulation, but should not be included to the detriment of those tribes that do not receive sufficient funds to complete even one priority project.</p>							
Workgroup Text Change								
Workgroup Comments	<p>Commenter is requesting that the emergency portion of the IRRHPP be deleted. The workgroup acknowledges that this is one of the key negotiated areas of the funding formula, therefore the recommendation is rejected as this would require reopening negotiations.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 212, D1 Proposed Language Sec 301 & 302	Funding	41	26	YES	Accept with Modification	AGREE	AGREE
Workgroup Text Change	Page 51374 Subpart C, Sections 170.301 & 170.302. Recommend combining these sections with sections 170.427 & 170.428 on page 51384, so that all policy concerning the content of LRTP can be found in one place. In particular, section 170.302 describes what LRTP must include, while section 170.428 describes what they may include. These two themes relate very closely.							
Workgroup Comments	recommendation to combine LRTP in this section with that in the Tech Standards portion of the regs. The workgroup has already identified some need for sections to be in different sections, but we also agree to coordinate our effort with Tech and Standards. Workgroup has address. 303 has been deleted, and changes to 301 and 302							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 208-209, D1 Sec 292 - 298 Pages 51373-51374, Subpart C, Sections 170.292 - 170.298. Recommend combining these sections with sections 170.446 - 170.451 on Page 51386, so that all policy concerning the content and use of the IRR Inventory can be found in one place. In particular, section 170.292 describes what cannot be included in the IRR Inventory, while section 170.450 (page 51386) describes what it can include. These two themes relate very closely.	Funding	41	24	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments	Recommendation is to combine all IRR Inventory Q and As into one section of the document. The workgroup rejected this type of comment in previous comment as this section has to do with how the Inventory impacts the CTC.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	282-Ca1	Technical Standards	41	41	YES	Accept with Modification	AGREE	AGREE
Public Comment	Page 51388, Subpart D, Sections 170.480 and 170.481. The alternate wording in pages 51338 - 51339 proposed by the Tribal Caucus has persuasive justification, and should be adopted. Tribal authority for self-determination and self-government should be interpreted liberally in the application of Federal law. The statutory mandate for the Secretary to ensure that health and safety standards are provided for can be achieved through reviews of tribal certifications, as is commonly accomplished by Federal agencies in other programs.							
Workgroup Text Change	Sections 480-481 rewritten.							
Workgroup Comments	In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P. 140-141, C2	Funding	4	4	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	<p>2% Tribal Transportation Planning :sec; 170.232 and chart in :sec;170.226 The funding distribution of the 2% Tribal Transportation Planning (2%TTP) should not be linked to the tribal percentages of the TTAM. Also, the amount available to the 2%TPP needs to be based on 2% of the annual IRR program appropriated amount not a diminished amount based on what's available after takedowns. We believe that the distribution of the 2% planning should be based on specific activities tribes are expected to accomplish with the limited funds. For example, consultation with the state and local governments on transportation planning and in the development of the State Transportation Improvement Program (STIP), training on transportation topics, non-project specific transportation meetings, Tribal Technical Assistance Program (TTAP), State, BIA, FHWA, and other transportation conferences. These are activities that all tribes should be engaged in, so fund it so all tribes can participate at an equitable level. We recommend a determination of "cost to participate" by tribe specifically for travel to meetings (a geographic isolation or remote access evaluation).</p>							
Workgroup Text Change	<p>Takedowns - Takedowns language in NPRM was not original language proposed by consensus of the full committee, recommend reverting to original language.</p>							
Workgroup Comments	<p>Workgroup accepts, refer to Exel file - takedowns.exe as part of the funding formula rationale { resident on the desktop}.Changes made to 225, 235, 247, and 265.</p> <p>Comment is to change distribution method for planning - disagreement item of the workgroup</p>							
Federal Comments								
Tribal Comments	<p>PS addressed with 225</p>							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P. 141-142, C(c)2 Section 299	Funding	1355	8		Accept with Modification	DISAGREE	AGREE
Public Comment	<p>TJAM & Funding Issues A. Changes to the Consensus Formula. The funding formula as published contains several substantive changes from the formula agreed to at Negotiated Rule-making. Kawerak opposes these changes. 1. In :sec; 170.225 and 170.226, the amount allocated to the 2% transportation planning funds, the High Priority Projects (HPP) and Population Adjustment Factor (PAF) has been reduced. As agreed to by the tribal caucus, these funds were to be calculated at the full appropriations level. The NPRM arbitrarily reduces the amount made available for these purposes by providing that they be calculated after other take-downs are removed from the appropriated amount. Where the set-asides are mechanically transferred from the funding stream is irrelevant; the key point is how they are calculated. Establishing a slightly larger 2% planning pool and the amounts for the HPP and PAF were critical issues for the small tribes at the Negotiated Rule-making; in fact the consensus formula was a long way from a reasonable amount. For the BIA to arbitrarily reduce these elements of the funding distribution is unacceptable. It is just as inappropriate as unilaterally changing the percentages allocated to VMT or Population would be. 2. Many of the tribal participants at the Negotiated Rule-making believed that the cost-to-improve element of the formula was badly flawed. A key agreement reached was that the cost issues were too technical and too complex to be adequately dealt with in the negotiated rulemaking, but that they should be deferred to the Coordinating Committee. Accordingly, the consensus formula provided that the "simplified approach" be used on an interim basis, but that the Coordinating Committee be charged with revising that part of the allocation system.</p>							
Workgroup Text Change	<p>takedown issue - Takedowns language in NPRM was not original language proposed by consensus of the full committee, recommend reverting to original language.</p>							
Workgroup Comments	<p>Workgroup accepts, refer to Exel file - takedowns.exe as part of the funding formula rationale { resident on the desktop}. Changes made to 225, 235, 247, and 265.</p> <p>Note being referred to discussion on 170.299 covered under d (1) of 299. accepted with mod handled under 299</p>							
Federal Comments								
Tribal Comments	<p>PS addressed with 225</p>							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P. 141, C(c)1 Programmatic Concerns	Funding	375	3	YES	Accept Comment	DISAGREE	AGREE
Public Comment	In sections 170.225 and 170.226, the amount allocated to the 2% transportation planning funds, the High Priority Projects (HPP) and Population Adjustment Factor (PAF) has been reduced. As we understand the tribal caucus agreed that these funds were to be calculated at the full appropriations level. The NPRM arbitrarily reduces the amount made available for these purposes by providing that they be calculated after other take-downs are removed from the appropriated amount. Where the set-asides are mechanically transferred from the funding stream is irrelevant; the key point is how they are calculated. Establishing a slightly Larger 2% planning pool and the amounts for the HPP and PAF were critical issues for the small tribes at the Negotiated Rule-making; in fact the consensus formula was a long way from a reasonable amount. For the BIA to arbitrarily reduce these elements of the funding distribution is unacceptable. It is just as inappropriate as unilaterally changing the percentages allocated to VMT or Population would be.							
Workgroup Text Change	Takedowns -Takedowns language in NPRM was not original language proposed by consensus of the full committee, recommend reverting to original language.							
Workgroup Comments	Workgroup accepts, refer to Exel file - takedowns.exe as part of the funding formula rationale { resident on the desktop}.Changes made to 225, 235, 247, and 265.							
Federal Comments	Takedown Issue.							
Tribal Comments	PS addressed with 225							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P. 123-125, C7 Sections 225-236 Section 170.225-170.236	Funding	1315	6	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	<p>Every tribe has a transportation need regardless of size; the current formula as proposed does not address the needs of a vast number of the tribes. When establishing the minimum funding amount in a multiple participant program, it is considered necessary to design and provide the minimum value for the common participant. During "Negotiations" for this rule, Tribal and Full Committee Consensus Agreements established a new program called "Capacity Building". An annual funding pool set-aside was established from the TEA-21 Highway Trust Fund (HTF) legislation. The Indian Reservation Roads Program reserved 35,000 dollars for each tribe during fiscal years 2000, 2001 and 2002 to perform "Capacity Building". When the Negotiated Rulemaking Committee established the Capacity Building Program setaside, the committee defined the minimum annual "Common Participant" need at 35,000 dollars.-Capacity Building funds have proven to be an effective tool allowing a majority of tribes to participate in transportation in their communities. This method of funding during the last three years (2000, 2001 and 2002) afforded Tribes with the ability to initiate projects in cooperation with other agencies. Many of these projects will not be completed without a comprehensive, coordinated, continuing effort by the Tribal Government. Capacity Building was a Negotiated Consensus agreement, and must be retained.</p>							
Workgroup Text Change	<p>Commentor request is to allocate minimum based funding of \$100,000 annually to tribes, and that the after takedowns language for the 25% of the amount over 275 million be struck. Workgroup disagreed on \$100,000 (ref A1 on page 121)</p> <p>Takedowns language in NPRM was not original language proposed by consensus of the full committee, recommend reverting to original language.</p>							
Workgroup Comments	<p>Workgroup accepts, refer to Exel file - takedowns.exe as part of the funding formula rationale { resident on the desktop}.Changes made to 225, 235, 247, and 265..</p>							
Federal Comments	<p>Take Down issues.</p>							
Tribal Comments	<p>PS addressed with 225</p>							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	P 290 - Ca16	Technical Standards	38	7	YES	Accept with Modification	AGREE	AGREE
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Public Comment

D. PS&E Approval Authority-Subpart D The issues as to whether a tribe may assume the review and approve plans, specifications and estimates (PS&E) arises as another disagreement between the tribal and federal sides based on what we believe to be an impermissible federal interpretation of the relationship between the ISDEAA and TEA-21. It also reflects the Federal Caucus' failure to acknowledge that Indian tribes may assume PS&E review and approval authority under ISDEAA agreements AND stewardship agreements. The Federal Caucus proposal would require a tribe to seek a separate stewardship agreement with DOT, rather than permitting the tribe to assume such duties under its self-determination contract or self-governance agreement. This proposal unnecessarily introduces the risk of redundant and/or inconsistent agreements. We concur with the rationale presented by the Tribal Caucus in this Preamble section. We also join the Tribal Caucus in emphatically rejecting the Federal Caucus notion that the construction provisions of the ISDEAA require the Secretary to assure compliance with health and safety standards by reviewing the PS&E. Rather, the ISDEAA requires the Secretary "to ensure that proper health and safety standards are provided for in the funding agreements." 25 U.S.C. :sec; 458cc(e)(2). So long as the tribe has provided assurances in its agreement that its construction project will meet or exceed proper health and safety standards and the licensed engineer has certified that the plans and specifications do meet or exceed these standards, no additional health and safety review by the Secretary is required. For these reasons, we urge that the regulatory provisions proposed by the Tribal Caucus be substituted for the Federal Caucus provisions found at :sec's; 170.480 and 170.481.

Workgroup Text Change

Sections 480 -481 rewritten

Workgroup Comments

In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P 290 - Ca15	Technical Standards	34	6	YES	Accept with Modification	AGREE	AGREE
Public Comment	Key Areas of Disagreement PS&E Approval Authority - Subpart D The review and approval of plans, specification and estimate packages are activities that tribes are certainly competent to assume under self-determination and self-governance contracts, as long as signed and/or sealed by a licensed professional engineer, to assure that the construction will meet or exceed proper health and safety standards. "Retaining a ::BIA;; bureaucratic check in every detail of IRR planning and construction is unnecessary and creates redundancy and inefficiency." Requiring Stewardship Agreements, as a prerequisite to tribal review of PS&Es, falls into the category of "redundant and inefficient." The contractual agreement between a tribe and the BIA would be deemed a sufficient guarantee of performance in any other legal arena. Such burdensome micromanagement is yet another example of the BIA's failure to comply with P.L. 93-638.							
Workgroup Text Change	Sections 480 - 481 rewritten							
Workgroup Comments	In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	D2	Technical Standards	1337	27		Accept Comment	AGREE	AGREE
Page 51363-Sec. 170.144 Comment: Insert "Program" between "IRR" and "funds" in the Question part and in the first sentence of the Answer.								
Workgroup Text Change	change 480-481 Insert "Program" after "IRR" and before "funds"							
Workgroup Comments	Accept minor change to read "IRR Program Funds"							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	P 284 - Ca6	Technical Standards	1337	5		Parking Lot	NO ACTION	NO ACTION
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Page 51341-F. Contents of Rights-of-Way Documents-Subpart D Comment: We have reviewed the concerns expressed by the Tribal Caucus as they apply to the negotiated proposed rules. We find the Tribes have the feeling that present regulations put an inappropriate burden on Tribes and particularly on Tribal land. Examination of 25 CFR :sec; 169 Rights-of-Way Over Indian Lands and 25 CFR :sec; 170 Roads of the Bureau of Indian Affairs should eliminate the Tribe's apprehension. When a public use of Tribal, allotted or fee property for right-of-way is necessary the land interest is protected by the Constitution's Fifth Amendment. The history of protecting trust land goes back to The Department of the Army, Secretarial Orders, United States Codes and 25 CFR :sec; 169. The more recent Uniform Act provides protection to owners who hold their property interest in fee. In paragraph one and two of the Tribal View the Tribal Caucus expressed concern about requiring damage deposit, as referenced in 25 CFR :sec; 169.4 and 25 CFR :sec; 169.14. This issue is addressed in Part :sec; 169.4; "When the applicant is an instrumentality of the Federal or State Government and is prohibited by law from depositing estimated damages in advance or agreeing to indemnification, the requirement for such a deposit and indemnification may be waived providing the applicant agrees in writing to pay damages promptly when they are sustained." Tribes can have these requirements waived, but must realize that when damages occur they have a responsibility to cover the cost to cure. Tribes can also resolve this issue by maintaining a bonded or "special deposit" account, as indicated in Part :sec; 169.14, to insure payment of damages on allotted parcels not held in their entirety by the tribe.

Public Comment

Workgroup Text Change ROW

Workgroup Comments Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition"

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	296-D8	Technical Standards	1337	110	YES	Accept with Modification	DISAGREE	AGREE
Page 51387-Constructlon and Construction Monitoring and Rights-of-Way Comment: We recommend separating Rights-of-Way from Construction and Construction Monitoring because it is a project development activity and not a construction activity.								
Workgroup Text Change								
Workgroup Comments	ROW will have its own section headingR							
Federal Comments	issue is still in parking lot							
Tribal Comments	PS under federal review							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	295-D7	Technical Standards	1370	29	YES	Parking Lot	NO ACTION	NO ACTION
Public Comment	Rule - Page 51389 states: :sections; 170.501-502 "What must a right-of-way easement document contain at a minimum? . . . How are rights-of-way granted on Indian trust or restricted fee lands?"Comment: The Tribes request the deletion of the proposed federal caucus text and the insertion of the proposed tribal caucus text/methodology. The Shoshone-Bannock Tribes believe that Congressional intent is clear that the Committee develop a proposed Rule irregardless of what part of the CFR they are contained in.							
Workgroup Text Change								
Workgroup Comments	Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition"							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	293-Cc7	Technical Standards	1338	6	YES	Parking Lot	NO ACTION	NO ACTION
Section 170.500-502 (Page 51389) - Right of Way (ROW) Right-of-Way granting should only be for the facility, not the land.								

Workgroup Text Change

Workgroup Comments Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition"

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	P 288 - Ca12	Technical Standards	388	9	YES	Parking Lot	NO ACTION	NO ACTION
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Public Comment

F. Content of Rights-of-Way Documents-Subpart D Although the Tribal and Federal Caucuses generally agree on the minimum content of a right-of-way document, the Tribal Caucus has appropriately rejected the Federal Caucus's unqualified reliance upon 25 C.F.R. Part 169 (Rights-of-Way Over Indian Lands). That rejection is particularly necessary where an Indian tribe is itself seeking to construct a road across its own trust or restricted fee lands. Part 169 primarily sets out procedures by which third parties, such as railroads, utilities, and state or local governments, obtain rights-of-ways over reservation lands. Many of the requirements of part 169 are not applicable to Indian tribes securing rights-of-ways for roads on their own reservations. As a result, the NPRM does not provide clear guidance on the questions presented; rather it introduces uncertainty as to the extent to which Part 169 should apply to the IRR Program. We agree with the Tribal Caucus' recommendation that if the regulations are to apply to both tribal and federal administration of the IRR program, the regulations must be drafted to accommodate both, and not focus solely on the standards by which the BIA must operate the program. The content of rights-of-way documents should be uniform and no arbitrary distinction made between trust, restricted fee or fee-simple lands. We urge that the NPRM provisions at :sec's; 170.501-502 be replaced by the Tribal Caucus' provisions set out in the Preamble.

Workgroup Text Change

ROW

Workgroup Comments

Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition"

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P 284 - Ca5	Technical Standards	422	13	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	<p>I do not support the proposed :sec;;sec;170.501-502. These sections address the contents of a right-of-way easement document and who grants right-of-way. The status of the land should not dictate the content of the right-of-way document and I strongly disagree with the government's reliance upon and reference to 25 CFR 169 (Rights-of-Way Over Indian Lands) in these proposed regulations without appropriate qualifications. Part 169 primarily sets out procedures by which third parties, such as railroads, utilities, and state or local governments, obtain rights-of-way over reservation lands. Many of the requirements of part 169 are not applicable to Indian tribes securing rights-of-way for roads through their own lands. Another concern is that some tribes have federal statutory authority to grant rights-of-way across their reservations without Secretarial approval under part 169 (See, e.g., 64 Stat. 442, as amended, 75 Stat. 499 :sec;2). Furthermore, there is no procedure for acquiring rights-of-way over non-alienable fee simple lands. The final regulation should contain a consistent right-of-way easement document. The final regulation should also identify that the party responsible for granting the right-of-way depends upon the status of the land in question.</p>							
Workgroup Text Change	change 501-502							
Workgroup Comments	<p>Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition"</p>							
Federal Comments	issue is still in parking lot							
Tribal Comments	PS under federal review							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	Cc5	Technical Standards	1355	51	YES	Parking Lot	NO ACTION	NO ACTION
:section; 170.500 - :section; 170.502 We concur with the tribal caucus comments identified in the preamble.								
Workgroup Text Change	change 500-502							
Workgroup Comments	Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition"							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P. 288 - Ca11	Technical Standards	22	11	YES	Parking Lot	NO ACTION	NO ACTION
Public Comment	(Page 51341-342) USET endorses the Tribal position that the content of right-of-way documents need consistency. We do not agree with the federal view that 25 CFR Part 169 is the appropriate authority over this area. Part 169 requires the applicant to indemnify the federal government against liability for loss life, personal injury, and property damage. USET feels that this as well as most of Part 169 does not apply to tribal governments trying to secure roads on their own reservation lands. We agree that the Part 169 should be limited in scope and written to accommodate both the Tribal and federal views.							
Workgroup Text Change								
Workgroup Comments	Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition"							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
		Technical Standards	422	13		Parking Lot	DISAGREE	DISAGREE
Public Comment	<p>I do not support the proposed :sec;;sec;170.501-502. These sections address the contents of a right-of-way easement document and who grants right-of-way. The status of the land should not dictate the content of the right-of-way document and I strongly disagree with the government's reliance upon and reference to 25 CFR 169 (Rights-of-Way Over Indian Lands) in these proposed regulations without appropriate qualifications. Part 169 primarily sets out procedures by which third parties, such as railroads, utilities, and state or local governments, obtain rights-of-way over reservation lands. Many of the requirements of part 169 are not applicable to Indian tribes securing rights-of-way for roads through their own lands. Another concern is that some tribes have federal statutory authority to grant rights-of-way across their reservations without Secretarial approval under part 169 (See, e.g., 64 Stat. 442, as amended, 75 Stat. 499 :sec;2). Furthermore, there is no procedure for acquiring rights-of-way over non-alienable fee simple lands. The final regulation should contain a consistent right-of-way easement document. The final regulation should also identify that the party responsible for granting the right-of-way depends upon the status of the land in question.</p>							
Workgroup Text Change								
Workgroup Comments	<p>Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition"</p>							
Federal Comments	<p>issue is still in parking lot</p>							
Tribal Comments	<p>PS Still under review by Feds. Tribal Caucus language provided for Right - of- Way Accept with mod</p>							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P 289 - Ca13	Technical Standards	1364	14		Parking Lot	NO ACTION	NO ACTION
Public Comment	<p>Content of Rights of Way Document - Subpart D Comment: We agree and endorse the Tribal Caucus position (pages 51341-51342) that the content of right of way documents should be consistent regardless of the status of the property. We disagree with the Federal position that 25 C.F.R. Part 169 is the sole or appropriate authority without proper qualification. Part 169 of Title 25 C.F.R. set out procedures by which third parties, not Indian tribes, obtain rights of way over reservation lands. Many of the requirements of Part 169 are not applicable to Indian tribal governments which seek to secure rights of way for roads on their own reservations. Part 169 further requires the applicant to indemnify the United States, the owners and occupants of the land, against liability for loss of life, personal injury and property damage and further requires a deposit to cover such damages. These are absurd and unnecessary provisions when a tribe is acting as the Federal government under a self-determination contract or self-governance agreement to build roads and bridges on its own reservation or lands. We agree with the Tribal Caucus's proposal that the regulations of this section must be drafted to accommodate both Federal and tribal performance of right-of-way duties, and not focus solely on the standards applicable when the BIA carries out this activity. Therefore, the final regulations should limit Part 169 to "where appropriate." The Tribal Caucus's proposal accomplishes this at page 51341m col 2 ("What must the rights of way easement documents contain at a minimum?" "...(b) Nothing in this part is intended to supersede the requirements of 25 C .F.R part 169 where part 169 is applicable to the right of way issue."). We further agree with the Tribal Caucus's view that the content of rights of way documents should be uniform and no arbitrary distinction should be made between trust, restricted fee or fee simple lands.</p>							
Workgroup Text Change	<p>Among other suggestions, add "Where appropriate" after "Part 169 applies".</p>							
Workgroup Comments	<p>Section on right of way will be rewritten. Moving away from a conveyance of land to a consent based agreement. T/S recommends taking term "right of way" out in the context of a tribe or BIA acquiring land for "public transportation corridor acquisition"</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	346-Cc2	Technical Standards	1231	20	YES	Accept with Modification	AGREE	AGREE
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Public Comment

H. Content of Stewardship Agreements - Subpart F Indian tribes should be able to enter into a stewardship agreement directly with the FHWA and incorporate such agreement into a self-determination contract or self-governance agreement for operation of a program, function, service, activity, or portion thereof, of the IRR Program. Also, a tribe without a stewardship agreement should be able to assume authority to review and approve PS&E packages under a self-determination contract or self-governance agreement, as discussed above. Moreover, Indian tribes have the authority to develop their own policies and procedures to be applied, so long as those policies and procedures are consistent with applicable federal requirements. For these reasons, we recommend adopting the tribal proposal (pages 5 1342-343). The federal proposal (proposed sections 170.701-.705) would impose unnecessary obstacles to the negotiation of a stewardship agreement. As proposed by the Federal Caucus, a tribal IRR Program stewardship agreement would contain such requirements as mandatory health and safety reviews of the PS&E by the Secretary of the Interior and PS&E review by the facility owner. As a condition to negotiating stewardship agreements with tribes, both the BIA and FHWA would visit Indian tribes which submit stewardship agreements and the FHWA would then evaluate, under an unspecified set of criteria, the capabilities possessed by such tribes. It is inappropriate to impose on Indian tribal governments statutory requirements applicable to state transportation departments which Congress did not choose, in enacting TEA- 21, to apply to Indian tribes. For these reasons, we recommend rejecting the federal proposal in favor of the tribal proposal.

Workgroup Text Change Delete sections 700 - 705

Workgroup Comments Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	346-Cc1	Technical Standards	38	11	YES	Accept with Modification	AGREE	AGREE
Public Comment	H. Contents of Stewardship Agreements-Subpart F We concur with the Tribal Caucus position that Indian tribes may enter into an agreement directly with the FHWA and incorporate such agreement into a self-determination contract or self-governance agreement for operation of a program, function, service or activity of the IRR program. We think that Indian tribes should be permitted to review and approve PS&E packages regardless of whether or not they have a direct agreement with the FHWA. We urge the adoption of the Tribal Caucus' proposed regulatory text set out in the Preamble serve as :sec; 170.701 of the final rule. The Federal proposal fails to acknowledge that the FHWA has delegated to the BIA review and approval authority for PS&E packages. We request that :sec's; 170.702-704 be deleted from the final rule.							
Workgroup Text Change	Delete sections 700 - 705							
Workgroup Comments	Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	345-Ca1	Technical Standards	756	18	YES	Accept with Modification	AGREE	AGREE
Public Comment	I do not support the proposed :sec;;sec;170.701-705-Content of stewardship agreements. My disagreement with these sections is closely related to PS&E approval authority as discussed earlier. The issue here is whether a tribe is allowed to enter into a stewardship agreement with the FHWA thereby assuming PS&E approval authority, outside of a self-determination contract or self-governance agreement. The answers is yes, nothing in Title 23 U.S.C. prohibits a tribe from entering into a stewardship agreement if the tribe chooses to do so. However, the provisions of a stewardship agreement may be included in a self-determination contract or self-governance agreement if the tribe chooses to do so. I disagree however, with the government's proposal to place additional restrictions and bureaucratic control within the context of these agreements. The final regulation should incorporate provisions, based on the redesign authorities of the ISDEAA, which allows tribes the choice of whether to include the PS&E approval function within the context of a separate stewardship agreement, a self-determination contract, or in a self-governance agreement.							
Workgroup Text Change	Delete setions 700 - 705							
Workgroup Comments	Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	347-D1	Technical Standards	1370	33	YES	Accept with Modification	AGREE	AGREE
Public Comment	33 Rule - Page 51394 states: :sections; 170.701-705 "What is an IRR Program stewardship agreement?... What is the process for obtaining the facility owner's review of the PS and E?Comment: The Tribes request the deletion of the proposed federal caucus text and the insertion of the proposed tribal caucus text/methodology. The Tribes support the Tribal governments inclusion as full partners in national and regional stewardship agreements.							
Workgroup Text Change	Delete 700 - 705							
Workgroup Comments	Due to the rewrite of the PS&E Approval Qs & As, these Q's & A's are no longer needed to assure that the tribes may assume PS&E review and approval under a Stewardship plan.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	P 286 - Ca7	Technical Standards	1231	8	YES	Accept with Modification	AGREE	AGREE
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Public Comment

D. PS&E approval authority - Subpart D Indian tribes that assume all of the eligible programs, functions, services and activities relative to the IRR program under self-determination contracts and self-governance agreements must be able to assume the review and approval of plans, specifications and estimate ("PS&E") packages. There is nothing inherently federal about the review and approve PS&E packages and the self-governance IRR demonstration has shown the ability of Indian tribes to assume this authority in a manner that meets the requirements of TEA-2 1 and the ISDEAA if accompanied by (i) written assurances that the PS&E meet or exceed proper health and safety standards; (ii) approval of PS&E packages by licensed engineers; and (iii) submission of a copy of such approval or certification to the BIA prior to construction. Indeed, Indian tribes are public authorities and, as such, may assume PS&E review and approval authority under stewardship agreements, or pursuant to ISDEAA agreements (which may serve as stewardship agreements since Indian tribes "step into the shoes" of the BIA when assuming and administering IRR activities). For these reasons, we support the tribal caucus proposal (pages 5 1338-339).

Workgroup Text Change

Sections 480-481 rewritten.

Workgroup Comments

In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	282-C1	Technical Standards	1388	9	YES	Accept with Modification	AGREE	AGREE
Public Comment	Section :section;170.480-481, Can a tribe review and approve Plans, Specifications, and Estimate (PS&E) packages for IRR Projects? Who must approve all PS&E packages?The Quinault Indian Nation supports a position, which allows for the review and approval of plans, specifications, and estimate packages as activities that Indian tribes may assume under self-governance contracts or agreements, stewardship agreements, or ISDEAA agreements. The Federal position only allows tribal review and approval of PS&E if a tribe meets the requirements of a state as defined in 23 USC 302(2) and enters into a stewardship agreement with the Secretary of Transportation. The Quinault Indian believes the Federal position is limited and inflexible to Indian tribes.							
Workgroup Text Change	Sections 480-481 rewritten.							
Workgroup Comments	In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	282-C2	Technical Standards	12	9	YES	Accept with Modification	AGREE	AGREE
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Public Comment

The Tribe supports the Tribal Caucus position and endorses its proposed regulation text that the review and approval of plans, specifications and estimate (PS&E) packages are activities that Indian Tribes may assume under P.L. 93-638. See 67 Fed. Reg. 51338-51339. Precedent already exists for this under the IRR Self-Governance Demonstration program. In addition, Indian Tribes, as public authorities, may assume the authority to review and approve PS&E packages under a Stewardship Agreement :or its successor term;. Tribes may assume review and approval authority of PS&E packages under a Stewardship Agreement pursuant to P.L. 93-638 contract or self-governance agreement. The P.L. 93-638 contract or self-governance agreement may serve as the Stewardship Agreement. In the absence of a Stewardship Agreement, Tribes may assume PE&E approval authority under a self-determination contract or self-governance compact with 1) written assurances that the construction will meet or exceed proper health and safety standards; 2) advance review of PS&E packages by a licensed engineer who has certified that the plans meet or exceed applicable standards; and 3) a copy of the certification to the BIA. Of course, all PS&E packages must be signed or sealed by a licensed professional engineer.

Workgroup Text Change

Sections 480-481 rewritten.

Workgroup Comments

In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P 283 -Ca2	Technical Standards	1231	9	YES	Accept with Modification	AGREE	AGREE
Public Comment	The federal proposal (proposed sections 170.480-.481) would require an Indian tribe to meet "the requirements of a state as defined in 23 U.S.C. 302(a)" of TEA-21 and enter into a stewardship agreement with the Department of Transportation ("DOT"). Without providing meaningful standards in place for how a tribe demonstrates it has "adequate powers" or is "suitably equipped and organized to discharge to the satisfaction of the Secretary of Transportation the duties required," federal officials have unfettered discretion to allow some tribes to approve PS&E packages, and deny other tribes that same authority. Moreover, the federal caucus seeks to extend to apply to Indian tribes provisions of TEA-21 that, by their very terms, are applicable only to state transportation departments. TEA-21 does not include "Indian tribes" within the definition of "States" nor do tribes receive their proportionate allocation of TEA-21 funds to meet state standards. For these reasons, the federal proposal is inappropriate.							
Workgroup Text Change	Sections 480 and 481 rewritten.							
Workgroup Comments	In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P 287 - Ca10	Technical Standards	3	70	YES	Accept with Modification	AGREE	AGREE
Public Comment	<p>(cont from 69) The Federal position, which would require a tribe to meet "the requirements of a state as defined in 23 U.S.C. 302(a)" of TEA-21 and enter into a Tribal IRR Program stewardship agreement with DOT, is wholly unacceptable. This places far too much discretion in the hands of Federal officials (how does a tribe demonstrate that it has "adequate powers" or is "suitably equipped and organized to discharge to the satisfaction of the Secretary of Transportation the duties required."). The Federal Caucus inappropriately extends provisions of TEA 21, applicable to state transportation department s, to Indian tribes. TEA-21 does not include "Indian tribes" within the definition of "States" nor do tribes receive their proportionate allocation of TEA-2 1 funds to meet state standards. Equating tribes as states and imposing similar conditions is not mandated by TEA- 21 nor is it reasonable when Indian tribes receive only a fraction of the Federal funding state transportation programs receive to operate transportation programs. The IBIA should be seeking ways to empower and enable tribes to take on these responsibilities, not use inappropriate statutory references to hamstring tribal efforts to assume greater responsibility and control for the IRR Program serving their communities.</p>							
Workgroup Text Change	Sections 480 - 481 rewritten							
Workgroup Comments	In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	281-B1	Technical Standards	1337	4	YES	Accept with Modification	AGREE	AGREE
Public Comment	Page 51338-III. Key Areas of DisagreementPS&E Approval Authority-Subpart D Comment: We disagree with the Tribal View that Tribes contracting IRR project development under PL 93-638 or performing this activity under a Self-Governance Agreement have PS& E approval authority. If this should happen then the responsibility and liability should be also given to the Tribe. We support the Federal View and the Federal proposal as shown on page 51339.							
Workgroup Text Change	Sections 480-481 rewritten.							
Workgroup Comments	In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	p 268 - D2 Page 51386-Sec. 170.452- Sec. 170.455	Technical Standards	1337	105		Accept Comment	DISAGREE	AGREE
Workgroup Text Change	Delete sections 452-455.							
Workgroup Comments	Clarification. Too technical for rule.							
Federal Comments								
Tribal Comments	PC Federal Caucus wants to retain 453, 454, 455							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 126, D2 Formatting Problems	Funding	27	20		Accept Comment	AGREE	AGREE
<p>Support C. General Comments: within this subpart there are various locations with are page-formatting problems. For example, page 51370 :sec;170.232, associated with the IRR funding formula diagram in :sec;170.226. Also a space is needed in :sec;170.235 (c).</p>								
Workgroup Text Change								
Workgroup Comments Recommend correcting typographical errors								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 193, C(c)4	Funding	1315	22	YES	Accept with Modification	AGREE	AGREE
In the formula, the American Indian and Alaska Native (AIAN) total Indian service population should be used.								
Workgroup Text Change								
Workgroup Comments Request is to use AIAN service population. Workgroup addressed in A2 page 190								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 193, C(c)3 Sections 270, 274, and 279	Funding	39	9		Reject Comment	AGREE	NO ACTION
<p>Section 170.270, 274 and 279. Cost to Construct and VMT as the most significant factors in the funding formula at 170.270, includes all costs for all eligible IRR projects, as those projects are listed and defined at Appendix A to Subpart B. The calculation for cost to construct and VMT should be limited to Indian Reservation Roads on the BIA Road Inventory, on which funding for the IRR program is intended and desperately needs to be used. Formula factors which subvert this basic premise dilute an already scarce pool of construction funding, divert scarce resources to unwarranted entities and projects, and perpetuate a windfall to state highway programs, some of whom presently include state and county roads on which IRR funds are spent in their inventory.</p>								
Workgroup Text Change								
Workgroup Comments Request is to limit inventory to BIA roads. The workgroup rejects as this would require renegotiation.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P. 192-193, C(c)2	Funding	375	5		Reject Comment	AGREE	NO ACTION
Public Comment	<p>Paragraphs 170.270 through 170.282 and Appendix C to Subpart C propose to replace the present Relative Need Formula with the Relative Need Distribution Factor to distribute IRR construction funds to Tribes. Although the existing weighting of the RNDF components remain the same (50% for CTC, 30% for VMT and 20% for Population), the rules propose 4 significant methodology changes for calculating the values of the components. Under the proposed rules:1. All IRR Routes, including Tribal, state, municipal, county and other federal roads, are included. Previously, only BIA-administered roads (except in Oklahoma) on the IRR System were used in calculating the Cost-to-Improve and VMT elements of the relative need formula,2. The CTC will also include the cost for non-road projects, such as trails, bikeways, ferry and transit terminals and rest areas. Because the proposed rules are not clear as to what facilities will be incorporated into the CTC at this time, it is not possible to determine accurately the short term impact of the proposed rules on a Tribe's CTC and RNDF. It does appear that the proposed methodology will likely have a significant negative impact on RR funding for Western Region Tribes as a whole. Preliminary calculations indicate that an annual reduction in the construction program could range from about #3 million to #21.9 million for Western Region Tribes. Table 1 :see atch 1; shows the miles of IRR roads by region and jurisdiction. As noted in the "BIA% of Total" column, Tribes in the Western Region have the second highest percentage of TRR roads that are BTA-administered. This suggests that the Western Region will lose a substantial share of the overall CTC and VMT, resulting in a substantial loss of construction funds. The calculations at the bottom of Table 1 are provided to show a possible impact for the Western Region at the current #275 million authorization level.</p>							
Workgroup Text Change								
Workgroup Comments	Request is to perform a preliminary analysis of the impact of the use of data prior to final ruling. Workgroup believes this was outside the scope of the committee.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 192, C(c)1 Programmatic Concerns 170.270-170.298	Funding	1341	11		Reject Comment	AGREE	NO ACTION
170.270-170.298 comment: Should be done consistent with FHWA regional offices in T-21, ranked by tribes w/ appeals to the committee. Relative need should reflect actual tribal need, value and priority not the divided shares of limited federal resources.								
Workgroup Text Change								
Workgroup Comments	No request, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 125, C8, Emergency Transportation Situations	Funding	1320	9	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change	<p>Emergency Transportation Situations should be included within this regulation, but should not be included to the detriment of those tribes that do not receive sufficient funds to complete a project. Recommend that a new separate five percent (5 percent) takedown category (Emergency/Disaster Projects) be included within the Tribal Transportation Allocation Methodology (TTAM) in addition to the High Priority Projects (HPP). Recommend that the funding pool be calculated as 5 percent of the Construction Program. Any of the 5 percent funds not allocated by the new category Emergency/Disaster Projects (EDP) by August 1 of the fiscal year would be distributed to the regions using the TTAM Construction Program calculation by August 15 of that same fiscal year. Recommend that any funds received from the ERFO program be used to replenish the EDP funding set-aside account. Governmental subdivisions of a tribe were authorized to submit projects for selection to the Emergency/Disaster Projects program, if and only if the governmental subdivision is authorized to receive and spend Federal Funds.</p>							
Workgroup Comments	<p>Commentor is asking for: 1) a new seperate 5% takedown for Emergencies/Disaster Program, in addition to HPP 2) any funds recovered from ERFO be used to replentish the proposed new program.</p> <p>The workgroup rejects comment 1) because is was already negotiated and addressed by the HPP. The workgroup recommends that comment 2 be rejected because it is outside of the charge of the Neg-Reg.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 122, C3 Sections 272-170, 270 - 170.298	Funding	420	13	YES	Reject Comment	AGREE	NO ACTION
<p>Comment: These sections are all an undue burden. The Reg Neg committee in its efforts only modified the existing tilted formulations and allowed only minor dollar amounts to try the new concept of IRRHPP. The promulgation of this draft clearly does not meet the intent of the authorizing legislation for equitable distribution of funds. Additional steps and processes should be based on the value added concept. With a conversion to using the IRRHPP, following value added concepts, the ranking should be done by tribes and reviews or appeals given to the IRR Program Coordinating Committee. The end result will probably reduce a central office level of BIA transportation management as was done with FHWA regional offices in TEA-21.</p>								
Workgroup Text Change								
Workgroup Comments Commentor is requesting a change to the ranking process for HPP. The workgroup believes the request is outside the scope								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 123, C6 Sections 225, :sec; 170.225 (c) (2), :sec; 170.235 (b), :sec; 170.247, :sec; 170.235, 247, 265	Funding	1355	28	YES	Accept with Modification	DISAGREE	AGREE
Workgroup Text Change	Takedown - Is there a statutory requirement for the change? If there was anything illegal, the government should provide the rational for the change.							
Workgroup Comments	Takedowns language in NPRM was not original language proposed by consensus of the full committee, recommend reverting to original language. Workgroup accepts, refer to Exel file - takedowns.exe as part of the funding formula rationale { resident on the desktop}.Changes made to 225, 235, 247, and 265.							
Federal Comments	Take Down issues.							
Tribal Comments	PS addressed with 225							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 123, C5 Sections 245 & 263 Section 170.245 and 170.263	Funding	1338	1	YES	Referred to Policy	NO ACTION	NO ACTION
Meeting in Santa Fe, NM, presenters were unable to define Governmental Subdivision of a tribe. Therefore, we recommend striking Governmental Subdivision of a Tribe from these sections.								
Workgroup Text Change								
Workgroup Comments Two options, either strike or define Governmental Subdivision.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P. 122 - 123, C4 section 226	Funding	363	1	YES	Reject Comment	AGREE	NO ACTION
Public Comment	<p>Pinon Chapter is a local government entity of the Navajo Nation Government delegated with authorities to address local community concerns and implement local community development including roads improvement; and Pinon Chapter is located in the former joint use and has been a host community to Navaho Hopi Relocation relocates from other communities causing a tremendous increase in population, which creates a need for more and better services such as education, health, social services and community development such as improved roads; and Pinon Chapter has 98% of its community roads that are unpaved becomes impassable and unsafe during inclement weather, and the school buses get stuck in the mud and snow with students in the buses; this results in interference with students education and learning. Pinon Chapter and the Navajo Nation have the greatest need for road improvements, and the proposed rule in 25 CFR, Part 170, are unfair and is not based on needs. Now therefore be it resolved that: Pinon Chapter hereby opposes the proposed rule in 25 CFR Part 170, especially part 170.226, titled IRR Funding Formula. Further be it resolved that Pinon Chapter recommends to reinstate the Relative Need Formula, to base funding on needs.</p>							
Workgroup Text Change								
Workgroup Comments	Would require renegotiation of the rule.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P126, C10 Sections 267 & 278 Section 170.267 and 170.278-VMT (vehicle miles traveled) (ADT) to compute the VMT.	Funding	1339	5	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments	Section 267 is a miss cite of the rule. The recommendation proposes to change the proposed formula as negotiated and is rejected by the workgroup.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P125, C9 Sections 225-236 Equity Appropriation	Funding	11	5	YES	Reject Comment	AGREE	NO ACTION
Section 170.225-170.236 (Page 51355) - Equity Appropriation Formula - A 70% construction cost factor should be used rather than the current or proposed percentages for the formula.								
Workgroup Text Change								
Workgroup Comments The workgroup rejects the comment as it would require renegotiation of the funding formula.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	pg. 359, B1	Policy	35	9	YES	Workgroup Disagree	NO ACTION	NO ACTION
Public Comment	I. Arbitration Provisions - Subpart H: Comment: It seem appropriate that the arbitration Provisions in 25 CFR Part 900 & 1000 cover any disputes under self determination contracts or self governance agreements and that all other disputes would fall under those provisions as currently shown in :sec; 170.941 & 952. Therefore, the tribal caucus position is incorrect in that you cannot side step 25 CFR if your dispute is related to a self determination contract or agreement.							
Workgroup Text Change	still developing language.							
Workgroup Comments	Arbitration provisions. waiting for clearance on draft language from federal attorney. Update 3-24-03: no agreement on proposed language.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 126, D1	Funding	1315	9		Accept Comment	DISAGREE	AGREE
	Remove language "after takedowns", it changes consensus formula. Adding "after takedowns" substantially alters the consensus formula depending on the interpretation of where the "increase" is calculated relative to where it is taken. -Replace takedown chart of August 7, with consensus takedown chart originally agreed to.							
Workgroup Text Change								
	Reference action on C(c)6 P. 123. takedown Takedowns language in NPRM was not original language proposed by consensus of the full committee, recommend reverting to original language.							
Workgroup Comments	Workgroup accepts, refer to Exel file - takedowns.exe as part of the funding formula rationale { resident on the desktop}.Changes made to 225, 235, 247, and 265.							
Federal Comments	Takedown Issue.							
Tribal Comments	PS addressed with 225							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P 291 - Cc1	Technical Standards	1233	50	YES	Accept with Modification	AGREE	AGREE
Public Comment	170.480 - .481 Can a tribe review and approve Plans, Specification and Estimate (PS&E) packages for IRR projects? and Who must approve all PS&E packages? For the reasons stated in Part III below, we endorse the Tribal Caucus proposed regulatory text at page 51338 in lieu of the Administration's proposal for these sections.							
Workgroup Text Change	Sections 480 - 481 rewritten							
Workgroup Comments	In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	294-D1	Technical Standards	1370	27	YES	Accept with Modification	AGREE	AGREE
Public Comment	Rule - Page 51388 states: :sections; 170.480-481 "Can a tribe review and approve Plans, Specification and Estimates (PS&E) packages for IRR projects? . . . Who must approve all PS&E packages?" Comment: The Tribes request the deletion of the proposed federal caucus text and the insertion of the proposed tribal caucus text. The federal caucus proposed text flies in the face of a true Government to Government consensual agreement. The proposed Tribal Caucus text has already been proven to work in several existing agreements.							
Workgroup Text Change	Sections 480 - 481 rewritten							
Workgroup Comments	In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	P 291 - Cc2	Technical Standards	1388	10	YES	Accept with Modification	AGREE	AGREE
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Public Comment

Section :section;170.480-481, Can a tribe review and approve Plans, Specifications, and Estimate (PS&E) packages for IRR Projects? Who must approve all PS&E packages?The Quinault Indian Nation also disagrees with Federal view found in Section :section;170.481(c), which states that the tribe approves PS&E packages with the consent of the facility owner after a health and safety review by the Secretary. The Quinault Indian Nation backs the Tribal view that this is unnecessary and creates redundancy and inefficiency. Tribal concerns regarding health and safety will be obviously taken into account in the any PS&E development. There does not need to be a Secretarial Review when the BIA will retain its monitoring and final inspection authorities.

Workgroup Text Change

Sections 480 - 481 rewritten

Workgroup Comments

In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 191-192, A1 General Comments Who, small tribes or large tribes, will benefit most from the Relative Need Distribution Factor? What are the distinct differences between Relative Need Formula in comparison to Relative Need Distribution Factor? The Hopi Tribe has a population of 10,000 people. Under the Relative Needs Distribution Factor, are we considered a small or large tribe? Will the capacity building grants remain the same amount at #35,000 annually under the Relative Need Distribution Factor?	Funding	7	1		Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments	No request made, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	P. 192, A2 Page 51373 Sec. 170.278 and Sec. 170.279 Comment: These sections on VMT need to address how VMT will be derived for pedestrian and other trails, and or transit, ferry and other non-road projects.	Funding	1337	58	YES	Accept with Modification	DISAGREE	AGREE
Workgroup Text Change	Insert into the rewritten 170.299 "(g) Calculations for VMT(usage) components for all eligible transportation facilities"							
Workgroup Comments	Request to develop methods for determining VMT for pedestians trails and other facilities. The question is how you calculate usage under VMT. Workgroup is parking and sending to subworkgroup. Accept with mod and refer to IRR Coordinating Committee as a new (g) for 170.299.							
Federal Comments								
Tribal Comments	PS							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	pg. 214, C(c)1	Policy	1337	68	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Page 51374-General Comment on Flexible Financing Comment: We think the Committee should further consider the ethical/legal implications of allowing a current administration to spend funds today that otherwise would have been available to future administrations. In some cases the future administration will have different agendas than the current administration.							
Workgroup Text Change								
Workgroup Comments	want tribes to be able to do this activity. Tribes can do similar activities in other areas.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	pg. 214, A1, sections 351-353 Page 51374- Sec. 170.351 and Sec. 170.353	Policy	1337	69	YES	Reject Comment	AGREE	NO ACTION
Comment: We think these sections should be expanded to insure that it is clear that TIP, public involvement, NEPA, cultural resources, ROW, PS&E and all other requirements of IRR Program funded projects have to be in place when project financing is done as addressed in these sections.								
Workgroup Text Change								
Workgroup Comments adequately addressed								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	pg. 362, B1	Policy	392	7		Accept Comment	AGREE	AGREE
Support Sections 170.915, 170.916, 170.918, 170.919, 170.920, 170.921, 170.922, 170.923								
Workgroup Text Change								
Workgroup Comments No change requested.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	pg. 359, D1	Policy	1370	35	YES	Workgroup Disagree	NO ACTION	NO ACTION
Public Comment	Rule - Page 51400 states: :sections; 170.941-952 "Are alternative dispute resolution procedures available to self-determination and self-governance tribes and the Secretary to resolve disputes between them in performing IRR Public Law 93-638 activities? ... Are federal funds available for coordinated transportation services for a tribes's Welfare-to-Work, Temporary Assistance to Needy Families, and other quality of life improvement programs?"Comment: The Tribes request the deletion of the proposed federal caucus text and the insertion of the proposed tribal caucus text/methodology.							
Workgroup Text Change								
Workgroup Comments	same as above for the arbitration provisions. Other questions are adequately addressed in 170.952.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P. 121 A1	Funding	1377	2	YES	Workgroup Disagree	NO ACTION	NO ACTION
Public Comment	Administrative Capacity BuildingThe Administrative Capacity Building funding allocation of 35,000 dollars per tribe per annum (as outlined in the Indian Reservation Roads Program Federal Register Notices for FY2001 and FY2002) should be continued and should become a permanent part of the annual distribution. This funding has allowed the tribes in the Aleutians and Pribilofs the opportunity to add essential roads to the BIA inventory system and begin the process of developing much needed long-range transportation plans.							
Workgroup Text Change								
Workgroup Comments	The workgroup was unable to reach an agreement.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	P.122, C2	Funding	421	77		Accept Comment	AGREE	AGREE
Public Comment	<p>The current, and proposed formula in the Notice, allocates 80% of the total IRR funds to 10% of the federally recognized tribes in the nation. Historically, small tribes, especially those in California, have been grossly under funded. The IRR funding formula proposed does not promote intermodal transportation. The proposed funding formula in this Notice, will take tribes in Alaska 55 years to fund currently identified projects. Alaska is one of the fastest growing states in the nation, with more than 850,000 people. The Tribal Governments in Alaska must have adequate transportation funds to meet the challenges imposed by this growth. Alaska has the largest Number of Tribal Governments(229). Some Alaska tribes only receive as little as \$2 a year for planning, and must wait an average of 10 years for a construction project to be prioritized.</p>							
Workgroup Text Change								
Workgroup Comments	No action requested.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	P.121 - 122, C1	Funding	11	6		Accept Comment	AGREE	AGREE
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Public Comment

The current, and proposed formula in the Notice, allocates 80% of the total IRR funds to 10% of the federally recognized tribes in the nation. Historically, small tribes, especially those in California, have been grossly under funded. The IRR funding formula proposed does not promote intermodal transportation. The proposed funding formula in this Notice, will take tribes in California 55 years to fund currently identified projects. California is one of the fastest growing states in the nation, with more than 34 million people, representing 12.5 percent of the entire United States population. The Tribal Governments in California must have adequate transportation funds to meet the challenges imposed by this growth. California has the largest population of Native Americans in the nation (350,000&), and the largest number of Tribal Governments (109). California contributes 12% of the total revenue in the Federal Transportation budget. However, the tribes in California only receive approximately 2% of IRR funds; a total of \$5 million for construction projects, \$670,000 for maintenance, and \$150,000 for planning for all 109 tribes. Some tribes only receive as little as \$2 a year for planning, and must wait an average of 10 years for a construction project to be prioritized. California and Tribal Governments within California lose an estimated \$20 million each year from the inequity of the proposed Relative Need Formula outlined in this Notice

Workgroup Text Change

Workgroup Comments No action required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	pg. 373, D1 170.941-170.952	Policy	1156	29	YES	Accept with Modification	AGREE	AGREE
170.941-170.952 We recommend-General Note: you do a search and change all references to 2 percent Tribal Transportation Planning.								
Workgroup Text Change	global change. Insert "tribal" before "transportation"							
Workgroup Comments	global change							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 131, C9	Funding	17	3	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Pg51370 - Subpart c - Indian Reservations Roads Program Funding. The new funding formula differs very little from the original one and provides no additional funding to smaller less affluent tribes The High Priority Project (IRRHPP) is a slight of hand in that there will be no funds even made available to any tribe unless Congress appropriates more than #275,000,000 after takedowns. This is doubtful. This fund also appears to duplicate an existing ERFO program for emergencies and has no verbiage that limits the availability of funds to the smaller tribes with limited income streams (ie - tibes with no casino or other successful tribal business enterprises). It also requires matching funds which are usually unavailable to small tribes for capital projects and adds an additional hoop for small fianacially strapped tribes to hump thru in order to qualify for the money. The formula needs to be reworked to include information on the individual tribe's ability to pay (ie: it's income stream from non-federal and state sources in addition to its share of federal monies,) and a tribal population element. The smallest and the poorest tribes should be at the top of the list and affluent tribes (no matter how small) should not be on the list at all.

Workgroup Text Change

Workgroup Comments Commenter recommends a needs testing of the formula. Workgroup rejects as this would require a renegotiation of the funding formula.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 132, C12	Funding	1337	35		Reject Comment	AGREE	NO ACTION

Public Comment

Page 51370-Tribal Transportation Allocation Methodology for IRR Construction Comment: In the Great Plains Region we occasionally have a cooperative project with a state or county where we use IRR Program funds to fund the "matching funds" for the construction or reconstruction of a non-BIA IRR. However, more than 95% of our IRR Program funds are used to construct or reconstruct BIA roads. Comment: In the Great Plains Region we have about 1822 miles of BIA roads and about 7709 miles of IRR. Including the non-BIA in the CTC and the VMT in the TTAM increases our mileage 420% for roads that are the responsibility of others. We feel that doing this will seriously affect determining the relative need of the various Indian Tribes. We think determining the relative need this way will skew the real need to an unacceptable level.

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 130, C7	Funding	1372	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

I would like to take this opportunity to offer and lend my support to the efforts of the Indian tribal governments in California to receive a more equitable distribution of Indian Reservation Roads (IRR) Program funding than that reflected in the subject proposed rule. As the federally designated Metropolitan Planning Organization (MPO) and the state designated Regional transportation Planning Agency representing Butte County, BCAG understands the need and importance of adequate funds for transportations. California tribes suffer from a funding inequity that needs to be addressed. Regardless of size, every tribe needs, at the least, the capability to participate in continuing, collaborative and comprehensive planning enjoyed by other governing bodies in the nation. Every tribe needs the ability to match state and local funds to construct projects for which they may be eligible. With that in Mind, I fully support the position of the tribes in California, which is to recommend that the formula reflect a \$100,000 base funding per tribe off the top of the IRR authorization amount as the first take down, and then apply the final formula factors (population, cost to construct and vehicle miles traveled). An equitable distribution formula would apply a base amount of funding to meet the minimum intermodal transportation needs of a tribe, regardless of size, while leaving a substantial amount of funds to be distributed based upon the formula presented in the proposed rule.

Workgroup Text Change

Workgroup Comments Commenter recommends \$100,000 minimum based allocation. The workgroup rejects the recommendation and believes this would require a renegotiation of the formula.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 126-127, A2 General Comments	Funding	1349	2		Reject Comment	AGREE	NO ACTION
Public Comment	:continued from comment 1;In 1997, the Department established a Director's Native American Advisory Committee (Committee) to improve the government-to-government relationship between the federally recognized tribes and the Department. In working with the Committee, and the tribal governments it represents, it has become readily apparent that small tribes (especially those in California) have been under funded and will continue to be so with the proposed funding formula. There are 109 federally recognized tribes in California, the largest number in the nation. However, the tribes in California receive only 2.5 percent of IRR funding: \$5 million for construction projects, \$670,000 for maintenance, and \$150,000 for planning. Based upon the proposed formula, some of the tribes can expect \$2 per year for transportation planning purposes. In May 1999, the California Transportation Commission (CTC), as part of a ten-year assessment of California's transportation rehabilitation, maintenance and operations needs, identified \$275 million of needed road improvements on tribal lands. Using the proposed formula, it would take 55 years to fund currently identified projects.							
Workgroup Text Change								
Workgroup Comments	No change requested, no action needed.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 128, C1 Programmatic Concerns	Funding	376	32		Reject Comment	AGREE	NO ACTION
Public Comment	The funding formula should be based on identified need. The largest Indian tribe, the Navajo Nation, realizes its majority of its residents face serious transportation challenges daily due to geographic isolation, extreme difficulty in obtaining adequate funding for cost of road construction and maintaining all weather access to employment, commerce, health, safety, and educational resources; and with the recent passage of the "Leave No Child Behind" Act, Public Law 107-110, and with the urgent need to address the school improvement activities of schools, the Executive Board of Navajo Area School Board Association, Inc. is committed to advocating on behalf of their BIA-funded schools to ensure program and funding required by statute are in compliance and meeting the needs of the Navajo Nation students, which include "cost to improve roads" to ensure adequate safe standard.							
Workgroup Text Change								
Workgroup Comments	No action requested, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 131, C8	Funding	41	10	YES	Reject Comment	AGREE	NO ACTION

Public Comment

The proposed formula still allocates amounts to most tribes that are insufficient to accomplish even a single, small project. Therefore, the formula should be modified so that each small tribe is eligible to receive one lump sum allocation of at least \$1.5 million every 15-25 years on a rotational basis to accomplish a project listed in its Tribal TIP, independent of the IRR High Priority Project Program prescribed by section 170.245, and independent of the general, annual allocation.

Workgroup Text Change

Workgroup Comments Would require a complete renegotiation of the funding formula

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 131, C11	Funding	16	10	YES	Reject Comment	AGREE	NO ACTION

Public Comment The Rocky Mountain Regional Tribes recommend, if HPP and PAF remain, that a cap be placed on HPP and PAF to no more than a #75 million program level increase. For example the 25% will only apply up to #350 million authorization. Funds above #350 million will only be applied to construction.

Workgroup Text Change

Workgroup Comments Requesting a cap on the HPP and PAF funding. This was a key negotiated factor in the funding formula and would require renegotiation. Rejected.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 131, C10	Funding	35	33		Reject Comment	AGREE	NO ACTION

Public Comment Subpart C - Indian Reservation Roads Program Funding: Comment: While the "Relative Need Distribution Factor" portion of the proposed formula does have rationale and uses measurable and verifiable factors and data, the remaining portions of the formula do not. It is therefore this region's position NOT to support this type of "tribal shares" and "minimum base allocation" methodology in a formula for this program.

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 9, #3	Funding	1374	6		Reject Comment	AGREE	NO ACTION

Public Comment

The Pueblo of Zuni finds this Docket No. FHWA-2002-12229 too long, cumbersome and often times confusing, especially in the IRR High Priority Project and the Population Allocation Factor fully grasp the impact it will have to Tribes.

Workgroup Text Change

Workgroup Comments

Funding formula response:
commenter did not request a change, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 9, #4		Funding	1351	1		Reject Comment	AGREE	NO ACTION

Public Comment

The proposed rule will have dramatic impacts on the funding levels for individual tribes and BIA regions. Many tribes do not have the capability to analyze these impacts. It is unfair to publish a final rule until a preliminary analysis is provided to tribes regarding these financial impacts.

Workgroup Text Change

Funding formula response:

Workgroup Comments

No request made, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 116, C(c)1	Policy	40	6	YES	Reject Comment	AGREE	NO ACTION
Public Comment								
:pg.; 51367 LTAP-Recommend approval of tribes' ability to contract for LTAP funds.								
Workgroup Text Change								
Workgroup Comments adequately addressed in sections 181 and 183								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 113, C(c)1	Policy	1370	36	YES	Reject Comment	AGREE	NO ACTION

Public Comment

The Shoshone-Bannock Tribes believe the proposed IRR Program Coordinating Committee (IRR PCC) lacks administrative and regulatory authority over the federal BIADOT. It is evident that the federal government has stripped any tribally perceived regulatory authority contrary to the understanding of the tribal Caucus of the Committee. The Shoshone-Bannock Tribes would like to see the IRR PCC strengthened through operational criteria such as clear parliamentary and administrative guidelines and more importantly, have the necessary administrative clout to direct the activities of the BIA DOT. The Shoshone-Bannock Tribes suggest a clear definition of the IRR PCC that reviews and approves IRR transportation annual, national take downs within the proposed Rule. If this cannot be achieved then the Shoshone-Bannock Tribes cannot support this proposed "Board of Equalization".

Workgroup Text Change

Workgroup Comments coordinating committee is a mechanism to improve coordination among Indian tribes and federal agencies implementing the IRR program

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 42, #1	Policy	1369	3	YES	Accept Comment	AGREE	AGREE

Public Comment

There is no Preamble "A word search was done for the word 'Preamble" and only 2 (two) hits were found. The 2 (two) hits were not anywhere near the beginning of the proposed rule nor identify where the Preamble would start and end. There are items/sections missing in the proposed rule, there is a lot of language about how to perform functions in different programmatic areas, however there is language missing that identifies how Tribe's/Band's can perform functions identified in the proposed rule. There is no language about staffing(s), office(s), programmatic supply(s), transportation planning department(s), OMB's and other applicable ISDEAA requirements (if Tribe's/Band's Contact/Compact) that are needed to carry out the requirements which is written that Tribe's/Band's must complete under this proposed rule, less the other requirements written within current BIA Annual Funding Agreements, Self-Governance Agreements etc. that a Tribe/Band may have.

Workgroup Text Change

Workgroup Comments No change required. The commentors concerns are covered in other applicable regulations such as 25 CFR Part 900 and 1000.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 43, #3	Policy	1370	7	YES	Accept Comment	AGREE	AGREE

Public Comment

Rule - Page 51331 states: "What Is the History of the Existing Relative Need Formula? . . . This proposed Relative Need Formula was made available to all tribes for review and comment over a period of 2 years." Comment: How and when? In fact, a major item of contention for the first several meetings of the Committee was the withholding of the existing relative need formula calculations from the members of the Committee. The relative need formula calculations were even withheld from the BIA regional engineers for many years. Certainly, it is common knowledge that tribal governments, such as the Shoshone-Bannock Tribes, were not provided information regarding detailed criteria of the factors of the formula distribution. How was the procurement of an outside consultant to develop the formula done? Why was the data necessary for the proper implementation of this formula never collected? Why was a federal state by state cost publication which specifically states it is not to be used for cost comparisons (state to state) used to compare costs in this formula?

Workgroup Text Change

Workgroup Comments Process. No change required. Refer to final rule writers.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 44, #4		Policy	1370	8	YES	Accept Comment	AGREE	AGREE

Public Comment Rule - Page 51331 states: "What does the Existing Relative Need Formula Look Like?" Comment: Please include the entire formula calculation. The simplified presentation does not convey to the reader the unnecessary complexity of the existing formula. This whole section on the current formula needs to be clearly identified so that the reader is not confused as to what the proposed formula is. The Tribes request that the Steve Wilkie proposed short version of the Formula be published for national review and comment. The Tribes request that all of the "history" items be included at the end of the proposed rule.

Workgroup Text Change

Workgroup Comments Process. No change required. Refer to final rule writers.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 38, C1	Policy	422	3		Accept Comment	AGREE	AGREE

Public Comment

I support the federal government's general policy statement outlined in :sec; 170.3 but note that many sections in the proposed rule are not consistent with this concept. This includes: :sec;170.114; :sec;170.116; :sec;170.420; :sec;170.433 :sec;;sec;170.480-481; :sec;170.485-490; :sec; :sec;170.501-501; :sec;;sec;170.600-606; :sec;;sec;170.614-618; :sec;170.620; :sec;;sec;170.633-636; :sec;;sec;170.701-705; and :sec;;sec;170.941-943. These sections should be corrected in the final rule to reflect the concept outlined in :sec;170.3.

Workgroup Text Change

Workgroup Comments No specific change requested or language provided.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg.	39, A2	Policy	1376	3	YES	Accept Comment	AGREE	AGREE

Public Comment The Western Agency Roads Committee encourages: 1)Maintain the Relative Needs Formula; 2)Eliminate certain policies and procedures as proposed; 3)Eliminate the obligation limitation; 4)Increase 2% to 4% Transportation Planning Initiative in conformity with Self-Sufficiency wherein the process should promote Indian Self-Determination and Education Assistance Act.

Workgroup Text Change

Workgroup Comments This requires a statutory change. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 35, C(c)1	Policy	6	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

The County of San Diego reviewed the Proposed Rule about the Indian Reservation Roads (IRR) program dated August 7, 2002, to determine its usefulness in addressing the affects of casino traffic on County roads. The County is concerned that the Proposed Rule may preclude consideration of funding for off-reservation roads. The County proposes that the Proposed Rule be amended to allow consideration and funding of off-reservation road improvement projects under the following conditions:- The projects would involve operational and safety improvements to off-reservation roads that serve as main access routes to reservations;- The projects would provide a critical means of access to a reservation and are vital to the economic interest and well being of Tribes.- The projects have not secured federal funding through other programs targeted at rural road improvement projects; and,- Allow the use of IRR funds to match other federal funds.

Workgroup Text Change

Workgroup Comments adequately addressed in the rule.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 33, #4 Public Comment		Policy	421	96		Accept Comment	AGREE	AGREE
:Att No. 3: Letter to Sen. Stevens;								
Workgroup Text Change								
Workgroup Comments No change requested. Attachment only. No response needed.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 33, A1	Policy	366	1		Accept Comment	AGREE	AGREE

Public Comment

The Native Village of Kotzebue objects to the Juneau Regional Office's stipulation that any rural road construction not exceed \$3,000,000.00, otherwise the project will be shelved. In rural Alaska, costs are high, and material sources for roads may not exist nearby, and sometimes area hauled in, such as the case with the P.L. 638 Contract #CTEO4T26989, the Native Village of Kotzebue had with the B.I. A., in which the entire 3 3/4 mile road was hauled from 30 miles away. High costs are not the fault of Tribes, but are unavoidable due to the nature of each individual project.

Workgroup Text Change

Workgroup Comments Process. Refer to Assistant Secretary and regional office. No change requested.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 34, A3	Policy	419	2		Accept Comment	AGREE	AGREE

Public Comment

B. Eastern Navajo Agency comprises of different land status that are called the checkerboard area. Eastern Navajo Agency comprises of (31) Navajo :?; houses. Right-of-ways are hard to address due to the different land status.

Workgroup Text Change

Workgroup Comments No change requested. Reviewed and no response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg.	34, C(a)1	Policy	19	2	YES	Accept with Modification	AGREE	AGREE

Public Comment

Improving Consistency of the Rule With Other Transportation Laws The consultation requirements found in 23 U.S.C. 134 and 135 and regulations in 23 CFR part 450 are sufficient to insure that Indian tribal governments can provide input into the State planning process and do not need to be addressed by this proposed rulemaking. This proposed rulemaking should provide the Indian tribal governments with the same guidance to consultation with State DOTs and MPOs as the States and MPOs have in consulting with the Indian tribal governments. This will encourage reciprocity in relationships that will strengthen everyone's planning process. Moreover, the planning processes under the Federal highway and transit programs, as amended by ISTEA and TEA-21, are well established and have been working well throughout the country. While we deeply appreciate that the Indian Reservation Roads program is a distinct program, for the benefit of Indians and tribes, we suggest that the development of final rules in this docket should stem from a general policy of not deviating from well-established planning procedures. As set forth more fully below, our review of the proposed rule found a number of instances where new words are used to describe transportation planning requirements and relationships, without explanation or justification as to why these word choices are requirements differ from well-established TEA-21 procedures. It may be that there are additional instances in the proposal, not specifically noted below, where there are deviations from TEA-21 procedures that are not warranted. In short, established definitions and practices in planning are working well and should not be lightly changed; new formulations should be used only when required by statute and even then changed only to the extent necessitated by statute.

Workgroup Text Change

Workgroup Comments adequately addressed in new Q&A inserted after 170.108.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 35, C(b)1	Policy	20	23		Accept Comment	AGREE	AGREE

Public Comment It is important to respect and maintain Native American cultural heritage, but we should not become obstinate or use it when convenient. Tribal leaders need to be persistent and consistent in working with other tribal leaders, tribal members and congress with a sense of humility and curiosity in order that dialogue can be develop that will produce sound planning for a healthier Native American society. Congress today has a hand full of members that understand and support Native American issues, once these members are replaced, how will the issues we are contemplating be impacted?

Workgroup Text Change

Workgroup Comments Reviewed and no response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	No specific sectpg. 56, #1, under Federalism	Policy	29	4	YES	Accept Comment	AGREE	AGREE
Public Comment	With attention to Section F - Federalism (Executive Order No. 12612), Yes, it does have more than a little significant federalism effect on the role, rights, and responsibilities of states. What the federal government is to Indian tribes, the states are to on-reservation non-Indians and their fee lands. For the DOI/BIA to think otherwise, is taking an ostrich-head-in-the-sand approach to stopping conflict between tribes and non-Indians off-reservation as well as on reservations.							
Workgroup Text Change								
Workgroup Comments	Commentor's concerns are adequately addressed in rewrites of 170.120 &125. No change required.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	tipg. 56, #1 under CJR	Policy	29	5	YES	Accept Comment	AGREE	AGREE

Public Comment

I would like the DOI/BIA and the TEA-21 rulemaking committee, as well as the Tribal Caucus of the TEA-21 rulemaking committee, to focus their attention on Section G - Civil Justice Reform (Executive Order No. 12988). The text states, "This proposed rule does not unduly burden the judicial system and meets the applicable standards provided in Sections 3(a) and 3(b) (2) of Executive Order No. 12988." It is not a question of will conflict between Indian tribes and non-Indian interests arise, but when they arise. Tribal sovereign immunity does not extend to tribal government officials as individuals when they stray outside the scope of their authority. So having a cultural access road category "Use of IRR Roads," particularly 170.122, 170.125, and 170.126, is going to burden the judicial system in a large way, and no one will have the strength to unring that bell.

Workgroup Text Change

Workgroup Comments Commentor's concerns are adequately addressed in rewrites of 170.120 & 125. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg.	32, #4	Funding	384	4	YES	Reject Comment	AGREE	NO ACTION

Public Comment

The Proposed Rule's funding formula should exclude the nation-wide bridge program from the general roads' construction budget. Warm Springs believes that the funding formula should not include funding for bridge construction and repair as part of the general funds provided to tribes for road construction and maintenance. Bridge funding should be in addition to general roads funding. That would allow the current Tribal draw down on the roads' construction budget to be complete before any bridge money is provided to or subtracted from the road program.

Workgroup Text Change

Funding workgroup response:

The comment is to exclude bridge construction and repair from the funding formula.

Workgroup Comments

The workgroup agrees with the comment regarding repair and it currently isn't allowed. Regarding bridge construction it can be funded from IRR construction and specifically may be needed when match requirements exist in the IRRBP for non-BIA bridges. The workgroup rejects as it is in Statute 23 USC.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 151, C(c)3, 239	Funding	15	26	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	170.239 Is an approved IRRIP required in order for the Secretary to obligate IRR funding to a Self-Determination contract or Self-Governance Agreement? No. IRR funding must be obligated directly to the Indian tribe performing the contract or agreement. This was originally stated by the Committee but it was dropped from published NPRM. Consensus Subpart C.							
Workgroup Text Change								
Workgroup Comments	commenter is recommending new Q and As or are there dropped Q and As from the original TTAM? Workgroup has identified that the original TTAM Q and As for 8-11 are missing from the NPRM.							
Federal Comments								
Tribal Comments	PS Tribal Caucus believes these are valid questions and should be reevaluated by the Feds.							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 142, A1 General Comments	Funding	15	20	YES	Accept Comment	DISAGREE	AGREE
Public Comment	170.227 IRR Program Takedowns In what order shall the deductions for US DOT administration, BIA administration, bridges, and other statutorily authorized purposes be taken from IRR Program appropriations? The IRR Program allocations are deducted in the order shown in the following table: This section was deleted from consensus document. It leaves order and calculation of takedowns at BIA discretion. (What was the original language).							
Workgroup Text Change	Takedown -Takedowns language in NPRM was not original language proposed by consensus of the full committee, recommend reverting to original language.							
Workgroup Comments	Workgroup accepts, refer to Exel file - takedowns.exe as part of the funding formula rationale { resident on the desktop}.Changes made to 225, 235, 247, and 265.							
Federal Comments	Takedown Issue. DOI provide specific explanation to the comment.							
Tribal Comments	PS addressed with 225							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	297-Cc2	Technical Standards	1355	7	YES	Accept with Modification	AGREE	AGREE

Public Comment

PS&E Approvals and Stewardship Agreements We agree with the tribal caucus comments and language regarding PS&Es in Subpart D. Once again, the federal side is simply disregarding applicable law. Nothing in 23 USC 202(d)(3) excludes PS&E approval from the reach of PL 93-638 contracting. Even if the other sections of Title 23 that the federal side cites were otherwise on point, they have been superseded by the "notwithstanding any other provision of law" language in :sec; 202(d)(3). There is simply no policy basis for requiring the BIA rather than tribal engineers to approve PS&Es, or to think that this will do anything whatsoever to protect federal interests or the public. Tribes can employ or contract professional engineers just as easily as the BIA. Requiring tribes to jump through undefined steps with FHWA to obtain Stewardship Agreements is simply a subterfuge to avoid full compliance with PL 93-638.

Workgroup Text Change

Sections 480 - 481 rewritten

Workgroup Comments

In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 6, #3 Public Comment		Policy	357	1		Accept Comment	AGREE	AGREE
There has been no substantiate involvement by Native American transit programs nor as this been facilitated in the development of these rules.								

Workgroup Text Change

Workgroup Comments The workgroup believes that transit organizations were involved in the development of this rule.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 3, #8		Policy	1339	7		Accept Comment	AGREE	AGREE

Public Comment The existing rule best serves the tribes with large land base and roads and a further study of small land base Tribes must be completed. If the increased mileages that small land base tribes are requesting is justifiable, then a well developed Transportation Plan showing the existing system and proposed system will allow for inventory changes.

Workgroup Text Change

Workgroup Comments Reviewed and no response needed. No change requested.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 2, #7		Policy	22	1		Accept Comment	AGREE	AGREE

Public Comment To facilitate strong nations, we must work together to build a transportation infrastructure that permits safe travel and promotes the Administration's desire to see economic expansion. These comments provide suggestions for building strong nations through adequate and equitable funding and an updated Transportation program that works to support sovereignty and self-governance.

Workgroup Text Change

Workgroup Comments Reviewed and no response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 2, #6		Policy	25	1		Accept Comment	AGREE	AGREE

Public Comment I would oppose taxing or diverting funds from tribes but I would favor any measures that guarantees those funds being use for what they are intended, and can not be misdirected by tribal governments. I would favor any measure that empowers and upgrades the living situation of those Native Americans that are left out even by their own governments.

Workgroup Text Change

Workgroup Comments Reviewed and no response needed. No change requested.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 4, #13		Policy	387	1		Reject Comment	AGREE	NO ACTION

A Resolution Amending and Establishing the Native Village of Barrow Transportation Improvement Program:...; WHEREAS, the Indian Reservation Roads program requires that Native Village of Barrow's select projects for construction from a tribal "transportation improvement program" (TIP); and WHEREAS, the Native Village of Barrow has developed the Tribal TIP; and WHEREAS, the Native Village of Barrow has determined that transportation planning, route number 0003, route number 0004, and route number 1002 are the Native Village of Barrow's highest priority transportation projects, and are eligible projects, services, or activities within the IRR program, and WHEREAS, the Native Village of Barrow has not formally endorsed or agreed to the BIA Alaska Region Transportation Planning (ARTP) and Regional project selection process; and WHEREAS, the Native Village of Barrow may use IRR construction funds up to the amount of construction funds identified within the Tribe's annual IRR program construction distribution for transportation planning; and NOW THEREFORE BE IT RESOLVED, that the Native Village of Barrow Transportation Improvement Program (TIP) is amended to include transportation planning, route number 0003, route number 0004, and route number 1002 and directs the Alaska Region BIA to include Native Village of Barrow Transportation Planning in the amount of #8,813,000 into the Alaska IRR TIP; and BE IT FURTHER RESOLVED, that it is the intent of the Native Village of Barrow's Self Governance Annual Funding Agreement for the Transportation Planning function to be funded with the amount of funding identified from the Native Village of Barrow annual final distribution of IRR construction funds.

Public Comment

Workgroup Text Change

Workgroup Comments will be forwarded to Alaska BIA and Assistant Secretary.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg.	214, D1	Policy	35	111	YES	Reject Comment	AGREE	NO ACTION

Public Comment Flexible Financing: Comment: this write up assumes that the Tribe is under a 638 contract or self governance agreement with the Bureau to carry out the construction of eligible projects on an approved IRR TIP. This must be made clear in this rule. How is this applicable to direct service tribes?

Workgroup Text Change

Workgroup Comments direct services tribes can also use these procedures.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 6, #1	Policy	29	11		Accept Comment	AGREE	AGREE

Public Comment

This is an inconclusive summary of items that need to be addressed in this document. Since reservation non-Indians were left out of the proceedings leading up to the Federal Register publication of the proposed rules, an extension of the comment period would be appropriate.

Workgroup Text Change

Workgroup Comments Reviewed, already addressed. Comment period was extended. No response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 6, #5	Policy	30	3	YES	Accept with Modification	AGREE	AGREE

Public Comment

Please include a requirement that input from non-Indian fee landowners be included in the definition section of the proposed rules, and/or the Final Rules. Public roads must neve become limited to use, based upon race alone.

Workgroup Text Change

Workgroup Comments Adequately addressed in revised 170.120 and in existing 170.125.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 6, #4		Policy	374	2		Reject Comment	AGREE	NO ACTION

Public Comment The IRR proposed rule does not contain the words, non-Indian, fee lands or fee landowners, or private landowners or other non-enrolled citizens. It is a rule that, unless intentionally publicized to non-Indian media and outreach sources, likely escapes discovery by hundreds of thousands of impacted non-Indian citizens who sand at risk of being unable to access their homes, businesses and properties.

Workgroup Text Change

Workgroup Comments no change requested. Complaint about the process.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 24, #8		Policy	355	1	YES	Accept with Modification	AGREE	AGREE

Public Comment

Upon my retiremen, I purchased a rural undeveloped property in close proximity to an Indian reservation. At that time it was a beautiful, unspoiled area where I constructed a single family dwelling underneath some ancient oaks overlooking a year round stream. It was located on a two-lane paved road with a few distant neighbors, all dediicated to maintaining our country atmosphere. Only an occasional car made up the highway traffic, all related to the rural residents and an occasional vehicle entering the nearby Indian reservation. Eventually we noted that the Indians had received financial back from gambling interests to establish certain gambling enterprises, first with bngo and off track horse racing, followed by a massive explosion of construction activity to bring a big-time Las Vegas operation (now advertised as "no need to travel all the way to Las Vegas") - al without input from and concurrence from the surrounding community. The results has been catastrophic for the neighbors of the reservation. The small country road has been turned into a traffic maze rivaling and exceeding that of most freeways for every 24 hours to support the casinos which never close. There is a hazard risk in attempting to enter the roadway in front of my home. Our protests to the county Supervisors, to our State and Federal representatioves have been met with total disregard.

Workgroup Text Change

Workgroup Comments accepted and modified in 170.120 and 125

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 5, #1	Policy	374	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

I would like to comment on the public comment activity respecting the Indian Reservation Roads Program. I certainly respect every citizens' right to put his comment in his own words. However, I find that a photocopied form letter, complete with multiple signatories, repetitiously filed by numbers tribes dissolves a legitimate public comment process into not much more than a popularity contest, and a biased one at that. It is especially irritating, if the DOT/FWHA assess these comments by signature quantities, rather than by legitimate, substantive comment. The Department of Interior, having oversight over the Bureau of Indian Affairs, has a past history of doing public good in a fair public process. The proliferation of the same photocopied letter, signed in mindless lock-step and submitted in response to this IRR proposed rule, is unworthy of legitimate consideration of such great institutions as Teddy Roosevelt's Department of Interior and its Bureau of Indian Affairs, and the Department of Transportation and its FWHA. It is for these reasons, and such a proliferating abuse of genuine public comment process, that FWHA must, in order to provide equality under the law, do the following two things: 1) Extend the public comment period for an additional 90 days; 2) Enact a concerted public notice effort to ensure that non-Indian citizens, impacted by IRR proposed rule changes, receive the Same Level of notification and federally recognized tribes. To do less than the above is patently discriminatory, and is made the more so by a form letter circulating among all tribes, for signatures only - as though signatures alone - constitute valuable comment. They don't.

Workgroup Text Change

Workgroup already addressed
Comments

Federal Comments

Tribal Comments



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No specific sectpg. 29, #1		Policy	17	6	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Overall this proposed version of 25CFR 170 appears more concerned with addressing the agendas of non-Indian forest, mining, and recreational interests more so than insuring that the Federal government - thru the BIA - live up to its responsibility to improve a chronically underfunded, poorly designed, and deplorably maintained BIA road system. No where in this document does it provide for a guaranteed increase in the funding formula for IRR road construction and maintenance to levels consistant with 21st century industry standard cost estimates nor does it prohibit the expenditure of funds on new non emergency construction until all current BIA system roads are brought up to AASHTO :American Association of State Highway Transportation Officials; rural standards.

Workgroup Text Change

Workgroup Comments outside scope of rulemaking

Federal Comments

Tribal Comments



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No specific sectpg. 14, #2		Policy	20	27		Reject Comment	AGREE	NO ACTION

Public Comment

Based on the preamble, I have not seen the problem(s) that exist nor any approach to find a solution to what ever problem(s) exist. One problem that is evident at meetings, tribal leaders don't understand the rules that protect the interest of the government and the public. The preamble requested public input, based on the overall transportation system mission too many questions remain unanswered, therefore, it is my recommendation or vote to have the tribes refrain from running the program. There is no strong business rational and no base line evidence of the issues. A detail business plan is recommended for favorable consideration. To effectively run the transportation program the tribes need to develop a infrastructure of professional and technical positions and maintain that infrastructure. The small tribes will be effected the most if no qualified Native Americans can be found to staff the infrastructure. If the roads program is operated by non Natives we will be back where we started. The BIA for many years has had problems acquiring the expertise (Native Americans) to administer and procure contracts, design and construct projects. The BIA has a low turn over on employees, because federal employees feel financially secure, and are protected by the merit system protection board. Based on my observation tribes have a high employee turn over and pay less.

Workgroup Text Change

Workgroup Comments No changes requested. No response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 14, #1		Policy	22	3	YES	Accept Comment	AGREE	AGREE

Public Comment

USET also feels that it is fundamental that all staff be trained on the new final rule. It is extremely frustrating for tribes to work with federal employees that do not know the laws under which they operate. All appropriate DOT, BIA, and FHWA officials must receive adequate and timely training on the final rule. Only when federal employee know about the IRR Program requirements can they provide the kind of service needed by tribes.

Workgroup Text Change will note in preamble

Workgroup Comments No change requested. Process, refer to AS-IA.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 25, #1	Policy	394	1		Accept Comment	AGREE	AGREE

Public Comment

The Klamath Tribes Planning Department congratulates and applauds the TEA-21 Indian Reservation Roads Transportation Rulemaking Committee on accomplishing its difficult task of consensus agreement regarding the IRR Program. The committee had the arduous task of developing consensus on Regulations for and including a Distribution Formula for the Indian Reservation Roads Program. The distribution consensus was especially commendable since that agreement was made more difficult given that a method already existed. The task was further complicated by the fact that no additional funds were involved in the negotiations and given that the program is seriously under funded. This task required those Tribal Governments previously receiving an allocation amount to consider reducing their current paltry allocations further, for the greater benefit of those Tribal Governments that were not meaningfully participating in the IRR Program. The tribal representatives all agreed that five percent of the funding should be made available exclusively for those tribes without sufficient funds to complete its highest project. The tribal representatives further acknowledged the inequity with the current Relative Need Formula funding distribution, by agreeing that twenty-five percent of all increases to the IRR program have the funding distribution per tribe skewed in favor of the smaller tribes.

Workgroup Text Change

Workgroup Comments No change requested. No response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg.	13, #12	Policy	16	2	YES	Accept Comment	AGREE	AGREE

Public Comment The Tribal Council urges the United States Department of the Interior and the United States Department of Transportation to promptly reconvene the TEA-21 Committee to finalize the IRR regulations, including the non-consensus issues, consistent with the government-to-government relationship existing between the United States and sovereign Indian tribes.

Workgroup Text Change will note in preamble.

Workgroup Comments will note in preamble.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 13, #11		Policy	26	1		Accept Comment	AGREE	AGREE

Public Comment A major premise that underlies our comments today is that the IRR program, especially as reauthorized under the Transportation Equity Act for the 21st Century (TEA-21), is to be carried out as a partnership between tribes and the federal government. Since 1991, states' Surface Transportation Programs (STP) and related federal-aid highway activities have been carried out through state-federal partnerships; we feel that the design of the IRR program is such that it similarly should reflect a partnership between agencies of the federal government and the governments of our country's federally recognized tribes and Indian nations.

Workgroup Text Change

Workgroup Comments No change requested.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 13, #10	Policy	19	1		Accept Comment	AGREE	AGREE

Public Comment

Indian Tribal Governments and Their Views are of Great Importance To StatesA point that we wish to make clear at the outset is that we think it is good practice for State Departments of Transportation (DOTs) and Metropolitan Planning Organizations (MPOs) to consult with and listen to tribal officials. We consult with Indian tribal governments throughout our States beyond the extent required by Federal law. We certainly consider all comments and funding requests that we receive from them.

Workgroup Text Change

Workgroup Comments No change requested.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 50, #4	Policy	1370	14	YES	Accept Comment	AGREE	AGREE

Public Comment

Rule - Page 51335 states: "III. Key Areas of Disagreement . . . The tribal and Federal representatives did not reach a consensus on several issues." Comment: Why did the Committee not reach consensus through direct involvement of negotiations as mediated by FMS? The Tribes disagree with the presentation of the federal position of items not agreed upon as part of the Rule. This gives undue emphases to the federal position. The federal and tribal questions and answers should have been presented one after the other in the rule. The negotiated Protocols were not followed. The fact that there are items of disagreement that was not negotiated by full Committee and mediated by FMS. The Committee did not operate in accordance with 5 U.S.C.

Workgroup Text Change

Workgroup Comments No change required. No response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 52, #7	Policy	1231	2	YES	Accept Comment	AGREE	AGREE

Public Comment

I. KEY AREAS OF DISAGREEMENT There were several issues on which the Committee was unable to reach consensus. The preamble to the NPRM presents the "Key Areas of Disagreement." The tribal and federal caucuses disagreed on these important issues, and the full Committee should be allowed ample time to reconcile the differences and provide meaningful regulatory guidance to the tribal and federal officials who ultimately will be responsible for implementing the IRR Program. We were surprised to see that the Departments took the position during the compilation of the NPRM package that four issues (advance funding, savings, contractibility, and availability of contract support funding for the IRR Program) were actually "outside the scope of this rulemaking." This position is contrary to TEA-2 1, the Indian Self-Determination and Education Assistance Act, and the conduct of the Federal officials to the Committee (experienced BIA and FHWA program people accompanied by their attorneys) who negotiated the content of these proposed regulations for the 18 month period that the Committee was formally convened. During this period, no federal official claimed these issues were beyond the scope of the rulemaking. The NPRM provides absolutely no basis whatsoever in support of the position that these issues are "outside the scope of this rulemaking." Indeed, if these issues are outside the scope of the rulemaking, then the federally proposed provisions relating to these issues that are currently presented in the proposed rule cannot be a part of the Part 170 regulations and must be stricken. If these provisions are not stricken, then they are ripe for negotiation.

Workgroup Text Change

Workgroup Comments No specific change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 31, #2 Public Comment		Policy	1324	24		Reject Comment	AGREE	NO ACTION
Remove the 20 foot minimum bridge length for IRRBP funding.								
Workgroup Text Change								
Workgroup Comments	The definition of a bridge is contained in 23 CFR, it would require a regulatory change by DOT. No change required.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg.	39, A1	Policy	1337	1	YES	Accept with Modification	AGREE	AGREE

Public Comment We have a general comment on the NPRM that throughout this document the acronym "IRR" is often used in reference to funding when "IRR Program" should be used. We recommend this change be made through out this NPRM. We find there is a lack of continuity in the numbering of the sections throughout this NPRM. We think this will create confusion to the users of this document We recommend this be changed or addressed in the preface of this document.

Workgroup Text Change Change IRR funding to "IRR Program Funding", wherever it occurs.

Workgroup Comments Global change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 33, #3 Public Comment		Policy	421	95		Accept Comment	AGREE	AGREE
:Att. No. 2: Letter to Rep. Young;								
Workgroup Text Change								
Workgroup Comments No change requested. Attachment only.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 53, #11	Policy	1231	4		Accept Comment	AGREE	AGREE

Public Comment

A. General Issues
 A fundamental problem in the negotiation process was the federal representatives' interpretation of TEA-2 1 and the Indian Self-Determination and Education Assistance Act, as amended ("ISDEAA"). The federal representatives often championed contorted readings of statutory language from TEA-2 1 and the ISDEAA to advance a policy position that was inconsistent with the plain words of the acts and the underlying purposes of the statutory provisions themselves. As the Committee reconvenes to review the comments and negotiate a result of the issues raised, the Committee should approach this with an eye towards ensuring that the regulations respect Indian tribal self-government and sovereignty; grant Indian tribes the maximum flexibility and discretion possible; increase accountability and responsiveness on the part of the Bureau of Indian Affairs ("BIA") and the Federal Highway Administration ("FHWA"); and, eliminate unnecessary bureaucratic requirements that complicate the IRR Program or create unnecessary redundancies.

Workgroup Text Change

Workgroup Comments Process. No change requested.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 31, #4		Policy	1376	2	YES	Accept Comment	AGREE	AGREE

Public Comment The Federal Register regardless the ISDEAA and other self-governance maintains that tribes are limited authority with the process/protocol of IRR funding. The authority, regardless memorandum of agreements establish between the FHWA and BIA-DOT asserts more powers that needs to be re-established.

Workgroup Text Change

Workgroup Comments No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 31, #1	Policy	421	61		Accept Comment	AGREE	AGREE

Public Comment

Clarify that the IRR Bridge program includes the cost of research, planning, project engineering, and construction for new and existing IRR bridges. Correct problems in IRR Bridge Program interim regulations through a Negotiated Rulemaking process.

Workgroup Text Change

Workgroup Comments Outside the scope. Requires a statutory change. No change requested.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 40, #C(c)2	Policy	6	2	YES	Reject Comment	AGREE	NO ACTION

Public Comment Off-reservation Roads. The proposal includes certain guidelines that Tribes must follow in selection of roads that may be considered for Indian Reservation Roads (IRR) Program funding. These guidelines state that roads must, among other criteria, be on the Indian Reservation Road system and not belong to, or be the responsibility of, other governments (i.e., states or counties). The guidelines, as written, may preclude consideration of funding for off-reservation road improvements through the IRR Program.

Workgroup Text Change Insert in preamble, "Non-BIA public roads can be eligible for IRR funds if they provide access to Indian reservations, tribes, or communities and are added to the inventory by tribes. Tribes may elect to use IRR funds to improve these roads by placing these projects in the inventory and on the TIP. IRR funds are to be used to supplement in lieu of other funds available for use on these roads."

Workgroup Comments Adequately addressed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section Public Comment	P. 194, A1 General Comments. What is the definition of the Relative Need Distribution Factor? a. This seems to suggest that a revised method is going to be developed, what does that mean, another version of the proposed formula that has not been presented in this Proposed Rule.	Funding	16	9	YES	Reject Comment	AGREE	NO ACTION
Workgroup Text Change								
Workgroup Comments	Request is to define RNDF. Workgroup rejects as the term is defined at 170.270.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 195, C(c) 3	Funding	392	9	YES	Reject Comment	AGREE	NO ACTION
Public Comment								
Population the total tribal population submitted by each region should be used.								

Workgroup Text Change

Workgroup Comments Request is to change the population factor such that each Region develops the population number. The workgroup rejects as this would require renegotiation, and is impracticable.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 194 - 195, C(c)1 Sec. 276	Funding	375	4	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Based on a preliminary analysis of the proposed distribution methodology, the Tribes in the BIA Western Region could potentially lose from about #2.8 million to #7 million at the present #275 million IRR Program authorization level. All of the information provided to the Community in regard to the Proposed Rule indicated that as a "small tribe", we would benefit from the Proposed Rule. However, based on the preliminary analysis, if the Western Region is decreased in its funding, there will be minimal if any funding for the Ak-Chin Indian Community. We recommend that the new Relative Needs Distribution Factor (RNDF) methodology for distribution construction funds be implemented until the new factors have been calculated and Tribes have a chance to review the results. We also recommend that the provision permitting states, municipalities, counties and other federal agencies to certify that they cannot fund projects, resulting in the increase of the IRR share for Cost-to- Construct (CTC) and Vehicle Miles of Travel (VMT) from 20% to 100%.

Workgroup Text Change

Request is to section 276, removing certification by other agencies. Workgroup rejects as this was a significant factor in the negotiation.

Workgroup Comments

Request to not implement new formula until it can evaluate impact of the formula. Workgroup rejects as this was considered during the negotiation and the time constraints for the negotiation did not allow an analysis.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 195, C(c)2	Funding	394	11	YES	Reject Comment	AGREE	NO ACTION

Public Comment The Cost to Improve (CTI) factor and Vehicle Miles of Travel (VMT) factor reflect existing transportation systems. These variables should be used in the maintenance funding distribution and not so heavily weighted in the "NEEDS" formula. New projects should have a greater influence on the formula distribution.

Workgroup Text Change

Workgroup Comments Request is to change percentages in the formula. Workgroup rejects as the formula was negotiated based on these percentages. Any change would required renegotiation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 29, #7		Policy	384	8	YES	Accept with Modification	AGREE	AGREE

Public Comment

Warm Springs supports strengthening the role of the Joint Committee of Federal and Tribal representatives. Warm Springs wants this committee to have real authority and power. The Proposed Rule should provide for a meaningful role for the Joint Committee.

Workgroup Text Change

Workgroup Comments committee has done everything it could to ensure it has a meaningful role.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 25, #11	Policy	421	70	YES	Accept with Modification	AGREE	AGREE

Public Comment IRR Coordinating Committee: The task force recommends that reauthorization legislation statutorily endorse a Tribal Transportation Coordinating Committee, using the same structure developed by the Tribal Caucus during the IRR Negotiated-Rulemaking process. This tribally- administered Committee should be funded with BIA Program Management Funds (i.e. BIA 6% funds). Many of tribal governments have become dissatisfied with the BIA and FHWA's direct administration of the IRR Program. Our experience has shown that only direct tribal involvement will ensure that the Program properly serves the interests of Indian nations and Indian people, not the interests of the federal bureaucracy.

Workgroup Text Change

Workgroup Comments adequately addressed in 170.176

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 25, #10		Policy	1370	38		Reject Comment	AGREE	NO ACTION

Public Comment

The Shoshone-Bannock Tribes are concerned about the lack of annual administrative reporting from the FHWA/FLHP and BIA DOT, to congress and Tribal governments, from the statutory percentage for federal Program, Management and Oversight.

Workgroup Text Change

Workgroup Comments No specific change requested. Commentor concerned over reporting requirements and Policy and DOS workgroup agreed that there was enough reporting oversight already for the BIA.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 25, #9		Policy	361	5		Accept Comment	AGREE	AGREE

Public Comment

What is wrong with this picture? What has happened to our civil rights as tax paying US Citizens? We just found out if we call 911 the fire department that is three miles away will no longer be sent to our home, because we live within the reservation boundaries. The fire department (Tribal) that is 10 miles away will respond to our 911 call. No one asked us which we preferred; the Tribe just took jurisdiction over us. When we built our home ten years ago it was the closest one to us.

Workgroup Text Change

Workgroup Comments No change requested. No response required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 4, #12		Policy	1365	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Southwest Alaska including the Kuskokwim and the Yukon Rivers have more problems with the IRR programs than any tribes I know :of;. The cost for road construction in this area can be as high as \$2.5 million to \$4.0 per mile. We live in an area filled with thousands of lakes and streams, beautiful wetlands surround the coastal areas. Alaska Department of Transportation and Public Facilities research report put out in March, 2002 simply says building roads in the Y-K Delta is not cost effective. I am not asking for road construction between villages, only that our Village roads out here are the worst in the Nation. In looking through the comment I see that the larger Tribes have an advantage over smaller Tribes. We in Alaska Transportation know that Alaska continues to be ignored in many different ways. California says they have the largest number of Tribes at 109. Sorry, Alaska has 229 Tribes, small and unique Tribes way out in bush Alaska, don't you think that Alaska should have it's own Indian Reservation Roads Program?

Workgroup Text Change

Workgroup Comments outside the scope of the Committee

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	No specific sectpg. 3, #10	Policy	421	69	YES	Reject Comment	AGREE	NO ACTION
Public Comment								
Change the name of the ERR Program to the Tribal Transportation Program to reflect the intermodal nature of Indian transportati on needs.								
Workgroup Text Change								
Workgroup Comments outside the scope of the Committee								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 3, #11		Policy	393	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Since Alaska contains 586,412 square miles and is one-fifth the size of the lower 48 states, 488 times larger than Rhode Island, Two and a half times larger than Texas, and larger than the next three largest states in the U.S. combined, I feel that Alaska should have it's own IRR program. The diversity in climate and geography coupled with the distance between rural communities provides tremendous logistical difficulties in basic infrastructural needs throughout the State. Providing services common to communities throughout the lower 48 States, become extremely cost intensive and difficult to engineer. Every day many Alaskans face scenarios where their nearest major health care facility may be over 1,000 miles form their community, or where transportation access limited to chartered air service and may cost the equivalent of a flight from New York to Los Angels; Alaska has 229 tribes, therefore I think that Alaska Should have their own IRR Program.

Workgroup Text Change

Workgroup Comments outside the scope of the Committee

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 212, D1 Proposed Language Sec 300-303	Funding	35	106	YES	Accept with Modification	AGREE	AGREE
Public Comment	Long Range Transportation Planning: Comment: there is already a subsection covering this subject matter at the end of :sec; 170.288. Recommend either move this under Subpart D or the previous subsection under this subpart.							
Workgroup Text Change	Move before 170.300 the header "Long-Range Transportation Planning" to subpart D before new number 170.408 and the Q and As to 170.301 and 170.302 and place into subpart D after new number 170.409							
Workgroup Comments	comment is to move 300 - 303 to subpart D . Subpart D has been renumbered. Reference in 170.300 will need to be check for consistency. Workgroup accepts with modification							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 22, #5	Policy	29	12	YES	Accept with Modification	AGREE	AGREE

Public Comment

The threat to non-Indian fee landowners is real and ongoing on a current basis. I would like to cite a well-documented situation that has been going on for twenty-five years. This involves the Yakama Tribe and myself, over fee land access, via BIA system roads and the loss to Yakama Tribe of millions of Federal funding through the federal Highway Administration (FHWA). The Yakama Tribe's government, through the BIA Area Office, and the BIA Yakama Indian Agency, lied to the FHWA about the public open roads status of the whole BIA road system, which is all the roads on this reservation under the authority and jurisdiction of the BIA Field Office. The FHWA investigated and documented the status of these hundreds of miles of federally funded roads and determined these roads were closed to public use by tribal gates and tribal gate guards, "Closed To Public" signs, and in order to get through the gate, a non-Indian fee land owner had to purchase a #25 tribal entry permit, in order to access his/her fee land. Despite Washington D.C. Office of DOI/BIA Orders to follow 25 CFR 17.8 (a) addressed to the Area Office Director (Portland, OR), and the BIA Superintendent at Toppenish, WA, and a Federal District Court Order issued by a Court in the E.D. Washington State, this whole BIA Road System has remained closed to public use and non-Indian fee landowner's use, except under restrictions that renders these roads not public use roads.

Workgroup Text Change

Workgroup accepted and modified in 170.120 and 125

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 22, #4	Policy	30	1	YES	Accept with Modification	AGREE	AGREE

Public Comment

Roads on the Yakama Indian Reservation are used by the general public, primarily maintained by Yakima County Public Works and Washington State, and should be maintained at all times, as open to the general public. Even though BIA system roads and other eligible roads on this reservation are to be maintained as public roads, Yakama Indian Nation exercises inappropriate control of certain roads. For example, the Yakama Indian Tribe is at this time (illegally, and out of compliance with 25 CFR Part 170) requiring entry permits, which cost \$25 per year for fee land owners to use current BIA system roads (public roads) to access their fee properties. These roads should not become Indian Reservation Roads (IRR), as and when designated as "cultural access roads," in the proposed rule, denying non-Indian fee landowners access to their properties, and denying access to members of the general public. We would point out that, with the exception of the Navajo Nation, most federally recognized Indian Reservation constitutes over 92 percent of roadway users. We are specifically concerned with two points regarding the proposed rule; 1. We don't believe that any public road should be designated as a "cultural access road" and therefore unavailable to the general public; 2. We disagree with a federal agency permitting a tribal government to define and determine that a public roadway is a "cultural access road." To allow this determination to be made, absent input from state, county, municipal entities, and local citizens is completely discriminatory and violates basic principles of public involvement policies maintained by federal agencies.

Workgroup Text Change

Workgroup Comments accepted and modified in 170.120 and 125

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 21, #3	Policy	372	1	YES	Accept with Modification	AGREE	AGREE

Public Comment

I am currently a fee landowner on an Indian Reservation and was shocked to learn of the following proposed rule changes to 25 CFR Part 170. My land is only accessible by using a BIA system road :public road;. These changes will control my ability to access my property and decrease its value to potential buyers. My rights as an American citizen are being violated and I am obviously very angry. You would be too"Currently all BIA system roads which are eligible for funding must be open to public use. Most reservations are checkerboarded with substantial fee land and non-Indian populations that rely upon use of BIA system roads :public roads;. This little change in the rule opens a door of opportunity that tribes can use to further restrict businesses and the non-Indian economy on reservations.The Yakima Indian Tribe is at this time requiring entry permits for fee landowners :illegally and out of compliance with 25 CFR Part 170; to use current BIA system roads :public roads; to access their fee properties. These permits cost #25.00 a year for each fee landowner to use the BIA roads. These roads will become Indian Reservation Roads :IRR; when designated as "cultural access roads" in the proposed rule. This rule denies non-Indian fee landowners access to their properties and will also deny access to members of the general public. These are roads built with public funds and they should be left open to the public at no cost.

Workgroup Text Change

Workgroup accepted and modified in 170.120 and 125
 Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 194, C1	Funding	20	8		Reject Comment	AGREE	NO ACTION

Public Comment

Vehicle miles traveled (VMT) is presently used to express the need and develop a design for a twenty year life span. If only current ADT data is used as expressed by the tribal caucus, tribes that have been planning and following the planning process will be unfairly treated, because pre-engineering data has been collected and paid. The rules for planning and design must be consistent. Wasn't the renegotiation established on the principle of fairness?

Workgroup Text Change

Workgroup Comments No request made, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 194, A2	Funding	20	11	YES	Reject Comment	AGREE	NO ACTION

Public Comment Geographical regions and the cost of living influence the cost to do work in different regions in the U.S. as per Davis Bacon labor rates. Please explain how a tribe will justify costs associated with projects on their reservation if different from the (Davis Bacon Wage Rate) and how will the other Indian Tribes react?

Workgroup Text Change

Workgroup Comments Request to explain how a tribe will justify cost associated with projects. Workgroup rejects as this outside the scope of the committee.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section Public Comment	P. 195, D1 Proposed Language	Funding	392	5	YES	Reject Comment	AGREE	NO ACTION
Relative Need Distribution Factor change to .60 CTC + .20 VMT + .20 POP the cost to construct has ADT calculated into already.								
Workgroup Text Change								
Workgroup Comments Request is to change the factor percentages. The workgroup rejects as this was a key factor in the negotiation and would require reopening the negotiations.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 129 C3	Funding	1369	44		Reject Comment	AGREE	NO ACTION

Public Comment

ACB "Administrative Capacity Building and other Eligible Transportation Activities" At the TEA-21 Negotiated Rulemaking for the IRR Program, held in Minneapolis MN Public Information and Education Meeting on September 25, 2002; it was told to the attendee's that this proposed rule does not have any ACB "Administrative Capacity Building" language in it and that the ACB, will become non-existent in the future, and a thing of the past. These distribution(s) of monies allowed a Tribe/Band to get more involved with the Transportation Planning Process's at Their level, BIA level, and in some cases at State(s) level, and minimal FHWA level. If this proposed rule becomes interim final or final and the TEA-21 Reauthorization stays at the #275 million then the Pg 51372 Sec 170.266 What is the Minimum Base Allocation (MBA) will be an mute issue/item. This will leave only the amounts of 2% Transportation Planning funds, that Tribe's will have to Carry Out this IRR Program (must do's) requirements in this proposed rule, let alone the other BIA requirements and goings on, an lest not forget, the Tribe's/Band's daily/monthly/yearly transportation planning; construction projects etc.; and roads maintenance operations" The bottom line is, there will very small Tribal/Band participation in any Transportation Planning Processes using what current Federal/BIA monies are available and will be available in FY 2003 to do what is tasked in this proposed rule if it may become Interim or Final"

Workgroup Text Change

Workgroup Comments No action requested, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No special Public Comment	P. 128, C2 Section 109	Funding	42	9	YES	Reject Comment	AGREE	NO ACTION

**Workgroup
Text Change**

**Workgroup
Comments** Request would require a full renegotiation of the funding formula.

**Federal
Comments**

**Tribal
Comments**



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg.	14, #14	Policy	1335	10		Accept Comment	AGREE	AGREE

Public Comment

On behalf of the Tanana Tribal Council and its membership, I commend the negotiating rule making process. It is also believe that it needs to be applied in the reevaluation of the existing Indian Reservation Roads Building Program and the emergency Relief for Federally Owned Roads. Neither of these regulations were developed with adequate tribal consultation and need to be revised. Thank you for this opportunity to comment on NPRM. Tribal input is critical in the development of effective tribal programs and regulations. I thank and commend Congress for requesting tribal input on the NPRM. I would also note that this Council would also support Alaska's Tribes positions on the proposed regulations to 25 CFR Part 170. These comments I am talking about were developed in conjunction with Tribal representatives from Alaska with assistance from Northwest Alaska TTAP.

Workgroup Text Change

Workgroup Comments No change requested. No response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 50, #3	Policy	1369	20		Accept Comment	AGREE	AGREE
Public Comment								
Pg 51336 - Key Areas of Disagreement A. General Issues Comments We accept the Tribal Caucus View								
Workgroup Text Change								
Workgroup Comments Commentor supports tribal caucus view. No specific change required.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 37, C(d)1	Policy	421	86		Accept Comment	AGREE	AGREE

Public Comment

Transportation infrastructure is absolute vital to the tribes to further their economic development: yet even existing infrastr ucture that by law is IRR eligible has not been included in the IRR Inventory. The lack of funding to the villages to develop their transportation infrastructure is having a direct negative impact to the people and our way of life. Our young people are being forced to move away in search of a way to support themselves, and our cultural values and way of life is directly threatened.

Workgroup Text Change

Workgroup Comments Reviewed and no change requested.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 38, D1	Policy	352	1	YES	Accept Comment	AGREE	AGREE

Public Comment

Since tribal governments are not currently subject to the Highway Beautification Act and the FHWA's outdoor advertising control program, as set out in 23 CFR Part 750, some tribes are allowing billboards along otherwise controlled routes (such as Interstates) which pose safety hazards. They are allowing sign companies to erect signs, such as electronic message billboards, which are not otherwise allowed under Federal and State requirements. To correct this, I recommend an amendment to 23 U.S.C 204 (b) which would add the following sentence between the 2nd and 3rd sentences of the current law: "The Secretary may withhold ten percent of the funds available to any tribe which does not adopt outdoor advertising sign control ordinances consistent with 23 U.S.C. 131."

Workgroup Text Change

Workgroup Comments This requires statutory change. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 6, #3		Policy	1193	1		Accept Comment	AGREE	AGREE

Public Comment

The Blackfeet Tribe requests a 60 day extension to Docket No. FHWA-2002-12229, Notice of Proposed Rule Making, Indian Reservation Roads Program. . . . The 60 day comment period is not sufficient to allow Tribes the time they need to review, analyze, and comment on a Proposed Rule that is so voluminous, complex and which will have a long term impact on the Indian Reservation Roads Program. This is a very complex and complicated document and we feel it is going to take considerable time to review and make comments.

Workgroup Text Change

Workgroup Comments Reviewed, already addressed. Comment period was extended.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 50, #2	Policy	1337	2	YES	Accept Comment	AGREE	AGREE

Public Comment

Page 51335-III. Key Areas of Disagreement
 General Issues Comment: The Tribal view is not realistic on making all funds available to Tribes. The Indian Reservation Roads Program is a Federal transportation program and the Federal agencies charged with the management of this program have Federal inherent responsibilities. The BIA and the FHWA are these responsible agencies and have operational costs to implement Federal inherent responsibilities. To think differently is totally irresponsible.

Workgroup Text Change

Workgroup Comments No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 47, #16		Policy	1369	9	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Since there is/are; no meaning(s), no definition(s) for these "Bullets" within the proposed rule, the proposed rule in itself has very little written about how Tribes/Bands will carry out the administ requirements of this proposed rule. Meaning>If Tribe's/Bands, so desire to apply for Federal Monies via the BIA and are awarded such, it is nor written in the proposed rule that the monies may be used for Staff (person/persons) to carry out what Tribe's/Band's the (MUST DO's) as written in this Proposed Rule. Instead> the answer of the proposed rule is: NO Tribes/Bands, may not, use the Federal Monies allocated to them under this proposed rule to Staff arid carry out the Tribe's/Band's (MUST DO's sections) as written in this Proposed Rule. Q. Is this 1 (one) correct assumption of the proposed rule? Suggestions Have the NEG REG Committee re-read and revisit to include written language that would enable Tribe's/Band's to use IRR Federal Program Fundings for Staffing(s) person/person(s), Office etc.

Workgroup Text Change

Workgroup Comments Commentor's concerns are adequately addressed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 44, #6		Policy	1370	10	YES	Accept Comment	AGREE	AGREE

Public Comment

Rule - Page 51332 states: "What Is the Proposed Method of Distributing IRR Program Construction Funds? . . . The Tribal Caucus of the TEA-21 Negotiated Rulemaking Committee developed the Tribal Transportation Allocation Methodology (TTAM) as a consensus compromise."Comment: What is a "consensus compromise"? The Tribes did not find any written statement in this section of the Rule that states the federal Caucus of the Committee agreed to this TTAM as provided for in accordance with 5 U.S.C. The federal Caucus sat on their laurels while the tribal Caucus fought it out. The TEA-21 Negotiated Rulemaking Committee did not follow the negotiated Protocols and reach consensus in plenary session and on the record. The fact is that there are items of disagreement that was not negotiated by the full Committee and mediated by FMS.

Workgroup Text Change

Workgroup Comments Process. Refer to final rule writers. No response needed. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 45, #8	Policy	1370	12		Accept Comment	AGREE	AGREE

Public Comment

Rule - Page 51333 states: "Why did the Tribal Caucus Develop TTAM? . . ." Comment: This section is misleading and incorrect. The fact is the tribal Caucus tried to let out two (2) different formulas for national comment. One tribal Caucus formula proposed to benefit larger land based tribal governments and one :benefited; smaller tribal governments. The BIA, FHWA and FMS sat on their laurels during the development of these two proposed formulas. After a lot of unnecessary time the BIA rejected these proposed formulas and :publicly; proclaimed it would draft a single formula for the federal register process under a proposed Rule. Only after tribal leaders testified in opposition at a national meeting, did the BIA allow the tribal Caucus to generate a single formula. Federal Caucus did not participate in development, FMS did not mediate, and the Committee did not reach consensus as identified in Protocols. The proposed distribution formula and Rule was changed by the federal government after the tribal Caucus of the Committee requested that the work be submitted for national comment "word for word".

Workgroup Text Change

Workgroup Comments No change requested. No response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 46, #10	Policy	7	4		Accept Comment	AGREE	AGREE

Public Comment

Page 51329: The last column, second paragraph, fourteen lines down it states, "Roads included on the Indian Roads System shall not be on any Federal-aid system for which financial aid is available under 23 U.S.C. 104". Check to see if this is a correct statement.

Workgroup Text Change

Workgroup Comments Reviewed and no response needed. This statement is correct when taken in context with this part of the history of the IRR program.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 46, #13	Policy	1369	4	YES	Accept Comment	AGREE	AGREE

Public Comment

Issue Pg 51329 Background - What is the purpose of the IRR Program? The purpose of the IRR Program is to provide safe and adequate transportation and public road access to and within Indian reservations, Indian lands, and communities for Indians and Alaska Natives, Visitors, recreational users, resource users, and others, while contributing to economic development, self-determination, and employment of Indians and Alaska Natives. Comments/Suggestions What is written here, is for the purposes of Roads Maintenance and nothing else. This section needs further refining to say what this potential IRR Program exactly entails and is "Lets say for instance " What make up an IRR Program?; what it would/may consist of; the likes of maybe: (carrying out the requirements of this proposed rule, inter-agency coordination(s) and programmatic element(s), construction element(s), transportation planning element(s), roads maintenance element(s), environmental element(s), historical element(s), Other element(s), Tribe's/Band's Constitutions and their Codes of Laws or what their individual Laws/Regulations, are written as. The way this purpose is written and who knows its intent, Tribe's/Band's/Other's may interpret in their own minds, what this futuristic IRR Program actually is and its regulatory meaning"We also find and see, that if a layman reads this purpose, they will have to be good interpreting and very good at assumptions "Please consideration our view of what would make up an IRR Program.

Workgroup Text Change

Workgroup Comments Subject is adequately addressed. Refer to Preamble writers. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 21, #2	Policy	28	1		Accept Comment	AGREE	AGREE

Public Comment

In the August 7, 2002 Federal Register is a proposed rule change that dramatically changes 25 CFR Part 170, regarding Indian Reservation Roads (IRR) Programs. Currently, all BIA systems roads which are eligible for funding must be open to the public use. Since most reservations are checker boarded with substantial fee-simple land and non-Tribal populations that rely upon use of public roads on reservations, this sneaky little change in the rule, opens a door of opportunity that tribes can use to further harass and squeeze off non-Tribal persons, businesses and the non-Tribal economy on reservations.

Workgroup Text Change

Workgroup Comments No change requested, adequately addressed

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 46, #14	Policy	1369	5	YES	Accept Comment	AGREE	AGREE

Public Comment Pg 51330 Background - What is the Purpose of the TEA-21 Negotiated Rulemaking Committee? Rule Clarity issues. Excerpt of paragraph #1 and to establish a funding formula for fiscal year 2000 and each subsequent year based on factors that reflect: Q. Does this sentence mean that Tribes/Bands will have monies DUE THEM?, Q. And/or will Tribe's/Band/s owe the US Treasury; starting in year 2000 and subsequent FY's once this proposed rule becomes final? Suggestions: We suggest that this be eliminated and/or more light shed on this potential monies owed or are due"

Workgroup Text Change

Workgroup Comments Reviewed and no response needed. Refer to Preamble writers. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 54, #13	Policy	421	71	YES	Reject Comment	AGREE	NO ACTION

Public Comment 12) Other IRR Neg-Reg Preamble Issue: The task force recommends that the TEA-21 reauthorization legislation resolve the "disagreement" items raised during the IRR Negotiated- Rulemaking process in a manner that supports the Tribal Caucus positions. For example, the "advance funding" position of the Tribal Caucus makes economic sense and will save taxpayers money by growing these federal funds for the benefit of tribal transportation. The Emergency Relief of Federally Owned Roads eligibility issue can also be resolved in favor of the tribal position since the current federal members of the IRR Negotiated-Rulemaking Committee seem unwilling to correct this problem through the rulemaking process.

Workgroup Text Change

Workgroup Comments Outside the scope of this rulemaking.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 56, #1 under RFA	Policy	29	2	YES	Accept Comment	AGREE	AGREE

Public Comment Under the Regulatory Flexibility Act, the Department of the Interior, at IV Procedural Requirements, Section B of the Notice of Proposed Rules document, certifies that said document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 USC, Sec. 601 et seq.). "Indian Tribes are not considered to be small entities for purposes of this act." So what? Thousands of non-Indians, fee landowners, each of whom are served by these tribal owned roads (formerly BIA system roads), need to have their landowner rights pre-addressed, before moving to publish the proposed rules document.

Workgroup Text Change

Workgroup Comments Commentor's concerns are adequately addressed in rewrites of 170.120 & 125.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 24, #7		Policy	349	1	YES	Accept with Modification	AGREE	AGREE

Public Comment

As a person whose family and many others live within the boundaries of an Indian Reservation, I strongly object to the proposed rule change to make public roads Indian controlled roads. These roads were built with public funds and have been open to the public to serve Indian and non-Indian lands. They must not be arbitrarily closed to the public and prevent fee land owners from reaching their lands with free egress. Tribal actions on many fronts recently have been hostile with the aim at taking full control of all lands within the boundaries of reservations. In Whatcom County, the Lummi Tribe made threats of closing county roads to the reservation. Fortunately, the Whatcom County Sheriff said his deputies would keep the roads open. Please respect the Freedom of Movement on BIA roads and keep them open to the public without the threats of tribal closures, fees or permits.

Workgroup Text Change

Workgroup Comments accepted and modified in 170.120 and 125

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 23, #6	Policy	382	1	YES	Accept with Modification	AGREE	AGREE

Public Comment

All BIA ::IRR;; systems Roads that are eligible for funding must be open to public use. Since most reservations are checkerboard with substantial freeland and non-Indian populations that rely upon use of public roads on reservations. These little changes in the rule :open; a door of opportunity that tribes can use to further harass and intimidate ::just another way they are trying to get us off our property;; non-Indian persons, businesses and the non-Indian economy on reservations. These roads must be kept open for the benefit of all citizens who need access to their homes and property and businesses without coercion from a tribe.The tribe on the reservation where I live has threatened to close the roads to our homes, and let only Indians in. They sold the land and now they are trying to get us off, we have a new issue to face constantly. This is just another attempt to regulate non-Indians and our property, which is under the jurisdiction on the county or state where we live; not the tribe. There is no due process for non-Indians dealing with the tribe; we have no voice in their decision making.Come and walk in our shoes and you will find out. We have the right of enjoyment of our homes and property. As citizens of this state and country we have the right to be treated equally under the law. Segregation and special rights are against the law yet our government :endorses; it with :current; Indian policies, such as this proposed change.There needs to be public hearings and the voices of non-tribal residents must be heard and their rights to use these public roads protected.

Workgroup Text Change

Workgroup accepted and modified in 170.120 and 125
 Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 127-128, C1	Funding	3	11	YES	Accept Comment	AGREE	AGREE

Public Comment Additional Definitions. Comment: Subpart C of the NPRM, which sets out the consensus allocation formula for the IRR Program, contains a number of new terms which may require definition to facilitate Federal and tribal use of the IRR Program regulations. The Committee should give some thought to developing definitions for such terms as "Tribal Transportation Allocation Methodology," ";High Priority Projects," "Population Adjustment Factor," other terms used in Subpart C, as well as other terms used, but not defined, in the NPRM (e.g., "National IRR Inventory Database" (referenced in 170.295)).

Workgroup Text Change

Workgroup Comments Commenter recommends definitions for: 1) Tribal Transportation Allocation Methodology
2) High Priority Projects
3) Population adjustment factor
4) National IRR Inventory Database
The workgroup accepts the comment and recommends that the committee assure that definitions are consistent throughout the entire rule.

Federal Comments Writers need to verify that there are definitions which are consistent throughout the rule.

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 130, C6	Funding	1378	6	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

The Federal Lands Highways Program states, "Notwithstanding any other provision of this title, Indian reservation roads under the jurisdiction of the Bureau of Indian Affairs of the Department of the interior shall be eligible to expend not more than 15 percent funds apportioned for Indian reservation roads from the highway Trust Fund for the purpose of road sealing projects." Because many tribes have a small amount of roads, or do not have a transportation plan in place, or because formula-driven criteria do not allow some projects to rank high enough in national or regional competition to get funding, those tribes and projects are essentially precluded from 15% of the total construction allocations. A Capacity Building set-aside would mitigate some of those inequities. Capacity Building made available to all tribes, regardless of size, would also help level the playing field in these areas as well:- The current, and proposed formula in the Notice, allocates 80% of the total IRR funds to 10% of the federally recognized tribes in the nation.- Historically, small and medium size tribes have been grossly under funded.- The IRR funding formula proposed does not promote inter-modal transportation planning or projects.- All tribal governments should have the capability to address transportation and infrastructure needs; in order to encourage the social and economic success of their respective communities and reservations.

Workgroup Text Change

Workgroup Comments Commenter recommends continuing the administrative capacity building funds. The workgroup was unable to come to consensus on a recommendation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 128-129, C2	Funding	1237	1		Reject Comment	AGREE	NO ACTION

Public Comment

The Proposed Rule for allocating Indian Reservation Roads (IRR) Program funding does not provide adequate funding for the transportation and road improvement needs of the Yurok Tribe. Many years of neglect of the transportation system has perpetuated extreme hardship, economic stagnation, and serious hazards for Tribal members, staff, and the general public. The proposed funding does not adequately address the needs of smaller tribes, and tribes with reservations with multiple ownerships of land, or a limited land base. When population is used as a heavily-weighted rating factor for allocating construction funds, the tribes with higher populations will continually garner the bulk of the funding. Approximately 80% of the IRR funds are allocated to 10% of the federally recognized tribes. Tribes with low population and few road miles have been last to receive needed improvements, and are systematically relegated to the bottom of the priority list. Important factors, such as deteriorated facilities and hazardous road conditions, have been subordinated to support a priority system based on population and road miles. Due to lack of past funding, many facilities are past basic repairs, and now require large construction projects to bring the roads up to standard. This paradigm has created a situation where construction dollars for small tribes are insufficient to finance a project that will produce noticeable improvements, while tribal facilities continue to decline with each year's lack of funds. The cost for improvements to roads and bridges will continue to increase as these facilities deteriorate, with no proposed legislative solution to the problem.

Workgroup Text Change

Workgroup Comments No action requested, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P127, A2	Funding	1315	2		Reject Comment	AGREE	NO ACTION

Public Comment

The old Relative Need Formula (RNF) funding distribution procedure was difficult to understand, required maintaining a cumbersome inventory database, included complicated calculations and was described in Indian Country as "The Black Box". One goal of the Negotiated Rulemaking process was to develop a less complicated funding distribution method. Although the proposed formula does not simplify the formula calculations, the proposed formula does incorporate an improved system of determining costs and applying costs to a project inventory that must be developed from the Tribe's long-range planning. These two improvements will go a long way toward improving the IRR funding "Cost to Construct" component of the formula. However, these changes do not solve all problems with the system, and it may make some problems worse. There must be enough funding for all tribes to do the requisite planning and inventory development necessary to implement the new formula. Very few, if any, tribes have done long-range planning in accordance with the Tribal Transportation Procedures and Guidelines (TTPG) published October 1999 by US DOT and FHWA. Consequently, tribally approved transportation plans are virtually non-existent. The permanent formula must fund each Tribe's program requirements that are legally or practically mandated in TEA-21. The allocation system must provide enough funding for each tribe (or the BIA through direct service) to accomplish at a minimum the following three responsibilities: -Interagency coordination that all tribes must do in order to participate in the system. -Maintain the comprehensive "management systems" required by statute. -Perform continuous annual planning, inventory and project updates necessary to reflect the Tribe's current transportation needs.

Workgroup Text Change

Workgroup Comments No change requested, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 129, C4	Funding	375	7	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

The Ak-Chin Indian Community like many other small tribes has participated in the Administrative Capacity Building program since FY 2000. This funding has allowed the Community to not only move forward with much needed transportation planning, but has been provided the opportunity to stay abreast if transportation issues that affect the Community and our transportation system. Through this program the Community has participated in technical training sessions, local and regional transportation meetings to express the concern and needs for transportation improvement on our reservation and has completed transportation planning associated with our long-term comprehensive land use plan. We urge that continuation of this program be continued since the 2% planning funds will not be readily available to all tribes with the Proposed Rule.

Workgroup Text Change

Workgroup Comments The commenter request the continuation of administrative capacity building funds. The workgroup was unable to come to consensous on the requested change.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 130, C5	Funding	1355	10	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment Continuation of Administrative Capacity Building Funds. Although Kawerak concurred with the funding formula developed at the Negotiated-Rulemaking, we have encountered overwhelming support in Alaska and elsewhere for continuing the #35,000 per tribe Administrative Capacity Building funds. We urge that this issue be reconsidered.

Workgroup Text Change

Workgroup Comments Commenter recommends continuing the administrative capacity building funds. The workgroup was unable to come to consensus on a recommendation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 132, C13	Funding	1370	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

It is the Tribes express request that the FY2003 IRR construction funding be programmed as in the last three (3) fiscal years annual distribution. We support a mid-November 2002 federal register notice that lets out this year's fiscal year distributive allocation.

Workgroup Text Change

Workgroup Comments The request is beyond the scope as it impacts 2003 funding and not the NPRM.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectip	296 A2	Technical Standards	20	3	YES	Accept with Modification	AGREE	AGREE

Public Comment The tribes caucus demands to have authority to review and approve all plans, specifications, and estimates (PS&E) and by-pass the BIA. If tribes are given the authority to review/approve the PS&E package, it would be mandatory to maintain a qualified staff equivalent to BIA's. If architect and engineering services are acquired for tribal expertise the modification and certification process will bottle neck the project/contract completion. The modification(s) that are needed on the project will need to go back to the designer/approving official to be approved. The license Professional Engineer's certification will only be valid if the process is followed and a complete audit is performed to demonstrate contract compliance.

Workgroup Text Change Sections 480 - 481 rewritten

Workgroup Comments In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 52, #9		Policy	22	4	YES	Accept Comment	AGREE	AGREE

Public Comment

USET noticed in reviewing the proposed rule that several areas of non-consensus were mentioned. These comments focus on those non-consensus issues. USET was disappointed to find that the Tribal views were only printed in the "preamble" section, while the federal views were the only views printed in the actual proposed rule. USET feels that this practice unfairly promoted the federal views on the proposed rule and attempted to diminish the Tribal concerns.

Workgroup Text Change

Workgroup Comments The commentor is correct. The federal view of the Disagreement items were inserted into the rule, but the rule clearly identified them as such, and encouraged public comment on all of the disagreement items. No change required based on this comment.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 37, C(c)5	Policy	1373	8	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Need to remove the obligation limitation from the formula. 100% should be able to be used to construction of projects in Indian Country.

Workgroup Text Change

Workgroup Comments This requires a statutory change. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 14, #13		Policy	4	10		Accept Comment	AGREE	AGREE

Public Comment

Finally, we commend the negotiated rulemaking process. We believe it needs to be applied in the reevaluation of the existing Indian Reservation Roads Bridge Program and the Emergency Relief for Federally Owned Roads (ERFO). Neither of these regulations were developed with adequate tribal consultation and need to be revised. Thank you for this opportunity to comment on these critical issues. Tribal input is essential in the development of effective tribal programs and regulations, we commend Congress for requiring tribal participation in the process.

Workgroup Text Change

Workgroup Comments Outside the scope of this rulemaking and requires statutory change. No response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 32, #6	Policy	357	2		Accept Comment	AGREE	AGREE

Public Comment

The BIA IRR :Indian Reservations Roads Program; program focuses and allocates funds for the planning, development and construction of bridges, airports, roads and highways. Transit activities and projects take a back seat to the present BIA IRR delivery of service in terms of priority,allocation of funds, advocacy and etc.BIA IRR funding streams and funding amounts establishes and continues the competitive environment where limited funding are allocated based on competition between IRR and transit projects. Transit projects would take away monies normally used for IRR projects and BIA IRR's emphasis is roads, bridges and airports. FTA :Federal Transit Administration; grantees would be burden with another layer of bureaucratic red tape and paperwork in securing funds, contract administration and adherence. The role and importance of FTA is diminished and the interest of local FTA programs would be negatively effected even thought FTA does not necessarily see a distinction between mainstream transit issues and the needs of Native American communities and governments.

Workgroup Text Change

Workgroup Comments Adequately addressed. No response required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 15, #1	Funding	1362	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

The permanent formula must fund each Tribe's program requirements that are legally or practically mandated in TEA-21. The allocation system must provide enough funding for each tribe to accomplish at a minimum the following responsibilities: -Exercise meaningful participation in the transportation improvement process with interagency collaboration.-Maintain the "management systems" required by statute.-Perform ongoing annual planning, community review and prioritizing, inventory and project updates necessary to reflect the Tribe's current transportation needs.

Workgroup Text Change

Funding Workgroup response:

The commenter is asking that funding be provided to address minimum requirements of the IRR program, and that the funding formula needs to be modified. The request also includes elsewhere in its letter a minimum funding of \$100,000 per tribe.

Workgroup Comments

The workgroup has attempted to address these things through the PAF, however, it also recognizes that this only goes into affect if additional funding is provided to the program beyond \$275 million. Regarding the \$100,000 the workgroup considers this a major renegotiation. The workgroup rejects.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 44, #5	Funding	1370	9	YES	Reject Comment	AGREE	NO ACTION

Rule - Page 51332 states: "What Is the Proposed Method of Distributing IRR Program Construction Funds? . . . IRR High Priority Project Program. . ." Comment: The Tribes disagree with the diversion of 5% & 12.5% of the scarce IRR funds or any funding increase to a High Priority Project Program pork barrel fund. The proposed rule fails to show how the Tribes will receive a fair distribution of this 17.5% of IRR program funds. Our program is grossly under funded with our existing IRR inventory of roads projected to take in excess of 200 years to improve to an adequate standard at current funding levels. To divert funding from known needs to a perceived need by the smaller tribes with little present or potential road inventory is unconscionable. All tribes have an equal ability to receive funding under the relative need distribution factor because proposed roads receive the same treatment as an existing unimproved road therefore the argument that a small tribe without any roads cannot fund a road is untrue. Funding is based upon need if there is no need why provide funds? This is a program directed by Congress to develop the transportation infrastructure of tribes, not a program to develop small tribal governments. Let all tribes receive the scarce funding on an equal basis. The Tribes request that the Secretary of Interior and Secretary of Transportation explain why a small tribal community on a small reservation should receive critically necessary road improvements before a small community on a large Reservation. The Shoshone-Bannock Tribes will realize a substantial decrease of IRR funding under this pork barrel initiative, unless Congress can guarantee that there will be adequate increases of funding for all to invest in transportation infrastructure.

Public Comment

Workgroup Text Change

The funding workgroup response:

The commenter does not like the IRRHPP or PAF programs and would like them removed.

Workgroup Comments

The workgroup considers these key issues in the negotiation as well as ways of meeting the requirements of 23 USC in addressing the transportation needs of all tribes. The workgroup rejects.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 16, #3	Funding	1240	1	YES	Reject Comment	AGREE	NO ACTION

Pursuant to California Senate Resolution 8 (Burton) in 1999, the APC participated with the California Department of Transportation, the California Transportation Commission, other regional agencies, cities, counties, and Native American tribes in the development of a document entitled "Inventory of Ten-Year Funding Needs for California's Transportation Systems". In addition to the 10-Year #235 million funding shortfall identified for local streets and roads in Lake County alone, the inventory also indicated that there is a backlog of unfounded reservation and rancheria roadway needs that amount to an additional #225 million statewide. Some of those roadway needs exist on a number of the rancherias here in Lake County. It is our understanding that California tribal governments have historically received only about 2% of the funding available through the Indian Reservation Roads Program, although our state comprises over 12% of the national population. We are also told that California has the largest Native American population in the nation, and that California also has the largest number of tribal governments (109). Since funding is the key to meeting existing needs as well as providing for future transportation needs, it is essential that California tribal governments receive a more equitable distribution of funds through the Indian Reservation Roads Program. Although the Area Planning Council is not aware of the full array of Indian Reservation Roads Program (IRRP) funding distribution proposals that have been submitted, we are fully supportive of proposals that would establish a funding base for each tribal government (with roadway needs/responsibilities) and that would ensure a distribution to California tribal governments that is much more in proportion with California's (and our Native American tribes) prominence in this nation.

Public Comment

Workgroup Text Change

The funding workgroup response:

Workgroup Comments

The commenter is asking for a more equitable level of funding.

The workgroup believes that the expansion of the IRR Inventory will address these needs. Comment is considered a non-action item.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 47, #15	Funding	1369	6	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Pg 51330 Background - What is the Purpose of the TEA-21 Negotiated Rulemaking Committee? Rule Clarity issues. Partial paragraph of # 2 excerpt as written says: 2. The relative needs of the Indian tribes, and reservations or tribal communities, for transportation assistance; and Comments Key words in the above sentence is Transportation assistance. Suggestions These 2 (two) words needs separating and/or one/two definition(s).These 2 (two) word are not in the pg 51359 sec 170.6 Definitions. Separate the words, and/or provide one/two definitions and insert into the pg 51359 sec 170.6 Definitions. This should also be an eligible activity on and for pg 51368 Appendix A to Subpart B Allowable uses of IRR Program Funds and inserted as such.(cont comment 7)

Workgroup Text Change

need to make terminology consistent. (global change).

Workgroup Comments

Commentor's concern on eligibility in the first paragraph is adequately addressed in the rule. Funding needs to define terms mentioned in the remaining paragraphs.

The commenter is making a recommendation to define terms laid out by Congress in the 23 USC. and discussed in the preamble.

The workgroup rejects the comment as the change is to the preamble and does not affect the proposed regulation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 55, #2	Funding	29	6		Reject Comment	AGREE	NO ACTION

Public Comment

Under the Federal Data Quality Act, effective October 1, 2002, this rule should include a database for each reservation that identifies Indian vehicular use and non-Indian vehicular use of roads (currently BIA system roads) proposed for IRR designation. In addition, for each federally recognized tribe and associated reservation, there should clear demographic data that identifies the population of enrolled tribal members actually residing on a reservation, and non-enrolled citizens that also reside on a reservation. Where there is a predominantly non-Indian population residing and using BIA system roads, the road cannot receive IRR designation. An accurate database, and technology for continuously monitoring data, is essential for this determination. The Federal Data Quality Act of 2002 must be included with the list of procedural requirements.

Workgroup Text Change

Funding formula workgroup response:

Commenter the rule should provide for a data base for each reservation for Indian and Non-Indian vehicular use. Associated with a Federal data quality act.

Workgroup Comments

The workgroup believes this is covered under the data sets being used for the population component of the formula, no specific request to the proposed regulation and the comment needs to be forwarded to the Solicitor for review.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 7, #5	Funding	375	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

On behalf Community and other tribes throughout the country we respectfully request that the comment period be extended until January 7, 2003. The proposed rules will have dramatic impacts on the funding levels for individual tribes and the twelve BIA regions. Based on the comments at the public meetings and those posted to your site, it is quite obvious that there is a lack of knowledge and understanding of the proposed rules. Many of the tribes do not have the capability to determine the impact (positive or negative) based on the complexity of the rules or lack of current data to complete the formulas. It is unfair to publish the final rule until a preliminary analysis is provided to tribes regarding these financial impacts.

Workgroup Text Change

refer last 2 sentences to Funding

The funding formula response:

Workgroup Comments

The commenter indicates that an analysis of the impact should have been done and issued with the NPRM.

The workgroup rejects.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 45, #7	Funding	1370	11		Reject Comment	AGREE	NO ACTION

Public Comment

Rule - Page 51333 states: "Population Adjustment Factor . . ." Comment: The Tribes disagree with the diversion of 12.5% of the scarce IRR funds or any funding increase to a "Population Adjustment Factor". Our program is grossly under funded with our existing IRR inventory of roads projected to take in excess of 200 years to improve to an adequate standard at current funding levels. To divert funding from known needs to a perceived need by the smaller tribes with little present or potential road inventory is unconscionable. All tribal governments have an equal ability to receive funding under the relative need distribution factor because proposed roads receive the same treatment as an existing unimproved road therefore the argument that a small tribe without any roads cannot fund a road is untrue. Funding is based upon need if there is no need why provide funds? This is a program directed by Congress to develop the transportation infrastructure of tribal governments, not a program to develop small tribal governments. Let all tribal governments receive the scarce funding on an equal basis.

Workgroup Text Change

Funding formula response:

Workgroup Comments

The commenter does not like the PAF factor.
There is no request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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No specific secti	P. 151, D1 Proposed Language	Funding	35	35	YES	Accept with Modification	DISAGREE	AGREE
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Public Comment

Many of the Q&As shown in this Subpart were not as approved by the full tribal caucus in that words and sentences were revised or completely left out leading the reader to come to a different conclusion. This is truly an unprecedented task to be placed on 564 tribes to come up with a formula when Congress instead increased funding to the 50 States after these states could not come up with a formula. The results here reflect this impossible task.

insert original TTAM Q and As after 170.236:

Q.8 When are the IRR Program funds available for distribution to the tribes?

A.8 The IRR Program funds shall be distributed to Regional Offices and/or tribes with contracts or agreements as expeditiously as possible but no later than 30 days from the date such funds are available to the Federal Lands Highway Program.

Q.9 May a Tribe receive its full annual IRR Program funding allocation under a self-determination contract or self-governance agreement?

A.9 Yes. Tribes may elect to receive IRR program and project services directly from the BIA or they may administer the IRR program and projects under a self-determination contract or self-governance agreement.

Workgroup Text Change

revert to original negotiated TTAM- accept with modification

There are 4 missing Q&As 170.236 is where missing Qand As would have been deleted. The workgroup has determined that these Q and As are significant and need to be placed back into the proposed regulation with modification.

The following Q and A is recommended by the tribal members of the workgroup. Workgroup disagreement item

Workgroup Comments

Q.10 Is an approved IRRTIP required in order for the Secretary to obligate IRR Program funding to a Self-Determination contract or Self-Governance Agreement?

A.10 No. However, a tribe may only expend IRR Program funds for a project on an approved IRRTIP or for planning activities.

Federal Comments

Q&A's are adressed elsewhere in the rule.



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**Tribal PS Disagreement
Comments**



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 151, C(c)4 sec 240	Funding	15	27	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	170.240 Is an approved IRRTIP required in order to expend obligated IRR funds? Yes. A tribe may expend obligated IRR funds on any project on any approved IRRTIP. This was originally stated by the Committee but it was dropped from published NPRM. Consensus Subpart C.							
	Insert after A.9 inserted Q and As after 170.236							
	Q.11 Is an approved IRRTIP required in order to expend IRR funds?							
Workgroup Text Change	A.11 Yes. A tribe may expend IRR funds on any project on any approved IRRTIP.							
Workgroup Comments	revert to original negotiated TTAM Q and A 11. Accept with modification							
Federal Comments	Q&A's are adressed elsewhere in the rule.							
Tribal Comments	PS Disagreement							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 143, C(c)2	Funding	384	7	YES	Accept with Modification	DISAGREE	AGREE

Public Comment

Warm Springs believes that the Proposed Rule should provide for an oversight body comprised of regional tribal representatives to assist the BIA Regional Office regarding prioritization and distribution of roads money among tribes within the region.

Insert into 170.299 new (h) Tracking of funds distributed among tribes within a region.

Workgroup Text Change

Recommendation to setup a regional oversight committees. Refer to discussion under 170.299 parked

Workgroup Comments

The workgroup recommends that the development of Regional Coordinating committees be considered by the IRR Program Coordinating Committee.

Federal Comments

Tribal PS Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 7, #4 Public Comment		Policy	385	3	YES	Accept Comment	AGREE	AGREE
I am asking for a 90-day extension on the comment period.								
Workgroup Text Change								
Workgroup Comments	Workgroup reviewed comment and has already addressed it.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg.	13, #9	Policy	1239	1	YES	Accept Comment	AGREE	AGREE

Public Comment

This preface to our comments is intended to define the nature of the State's relationship(s) with the Indian governments located in the State. To point out that these relationships exist, not because of federal laws and regulations, but rather because of the mutual respect between the State and the Indian governments that has developed over time. We would ask the federal government, including its branches and agencies, to recognize and respect these relationships whenever changes, such as this NPRM, are considered. The balance between state and tribal interests, resources, political, cultural and legal matters is delicate, every effort should be taken to assure that changes in federal regulations seek to strengthen the relationships and avoid creating any obstacle to the State's ability to better coordinate activities and to cooperate as solutions to common issues are sought.

Workgroup Text Change

Workgroup Comments Is good guidance.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 12, #7	Policy	392	10	YES	Accept Comment	AGREE	AGREE

Public Comment I support the Negotiated Rule Making Process but request that a participant from FHWA Office of Governmental Affairs and a participant from Office of Management and Budget be included in the Federal Caucus as it would be a true negotiation process and may provide a better product and shorten the process.

Workgroup Text Change

Workgroup Comments No change required. No response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 12, #6		Policy	20	24		Accept Comment	AGREE	AGREE

Public Comment Tribes and their respective BIA Regional Offices need to develop a dialogue by selecting teams that are intellectually diverse and skilled in business, technology, and leadership, and that these members are characterized by mental flexibility, adaptiveness, and are self-motivated. That way the team can tackle issues, search for solutions, and determine short and long term ripple effects of the solutions.

Workgroup Text Change

Workgroup Comments No changes requested. No response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 9, #2	Policy	378	1	YES	Accept Comment	AGREE	AGREE

Public Comment

Over many months of negotiations, the unresolved disputes over the Proposed Rule have generally come down to the right of Indian tribes to self-determination and the fundamental principle that the federal-tribal relationship is a government-to-government relationship between sovereigns. During negotiations, this principle sometimes conflicted with the tendency of federal agencies and executive branch departments to retain the maximum possible oversight as well as the greatest possible control over funding and programs that might be read into federal law. At the heart of these controversies, then, has been the tribal desire for the Department of the Interior (?DOI?), its Bureau of Indian Affairs (?BIA?), and the Department of Transportation ("DOT") to implement the clear mandates of the United States Congress in its support for maximum tribal self-determination through self-determination contracts, self-governance compacts, and other means already embodied in federal statutes, regulations, and other positive law. In these key areas of disagreement, the Tohono O'odham Nation must join other Indian tribes in calling upon the federal representatives to incorporate key principles developed by the Tribal Caucus into a Final Rule that will- maximize flexibility and discretion of Indian tribal governments in the manner in which tribes resolve transportation problems;- honor and respect tribal sovereignty and further the federal policy of tribal self-determination and self-governance;

Workgroup Text Change

Workgroup Comments No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 8, #2		Policy	1369	1		Accept Comment	AGREE	AGREE

Public Comment The rule in itself is very confusing to the reader, there are areas that aren't where they should be, but located elsewhere within the rule. To navigate thru the proposed rule, the layman would need more than 1 (one) person to assist in going thru this proposed rule. As these comments are written, we will identify rule clarity issue(s) as they are found to be of rule clarity interest

Workgroup Text Change

Workgroup Comments Reviewed and no response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 8, #1		Policy	1376	1		Accept Comment	AGREE	AGREE

Public Comment The Western Navajo Agency has reviewed the context of the proposed rules and finds that: the format of the Federal register is inconsistent. The arrangement of numbers are not properly formatted. There appears to be missing questions/answers in various areas. The understanding is that the submittal is not the original submittal by the Negotiated Rule Making Committee.

Workgroup Text Change

Workgroup Comments Reviewed and no response needed, but need to be aware of the commentor's concerns regarding the format of the Rule and inconsistent numbering. Refer to final rule writers.

Federal Comments

Tribal Comments



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No specific sect	pg. 8, #8	Policy	1198	1		Accept Comment	AGREE	AGREE

Public Comment

Request for fax number for Tribes unable to submit comments via e-mail or postal mail service on deadline of today with further request of courtesy extension of five days for tribe to submit said comments via fax.

Workgroup Text Change

Workgroup Comments Reviewed and no response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 7, #7		Policy	14	5		Accept Comment	AGREE	AGREE

Regardless of whether new thinking regarding the IRR Program will come about through open minded thinking by all parties involved, or through legislative amendment to TEA-21 by the Congress during its reauthorization, we urge the Secretaries of Interior and Transportation to act swiftly to reconvene the Committee, commit the full personnel and resource of their respective departments, implement in intent of Congress, clear and promptly publish the final IRR regulations for use by their respective agencies and Indian tribes. The benefits to be gained through new regulations serve no users of the IRR systems until they are implemented. It is unfortunate that final regulations may not be in place as Congress takes up the reauthorization of TEA-21. It would have been of great benefit to the Department of the Interior, Department of the transportation, Congress and Indian tribes to have experienced actual operations of the IRR Program Under final regulations implementing the 1997 amendments to TEA-21 so as to better inform the Congress as it considers reauthorization of TEA-21

Public Comment

in 2003. Far too much time has been spent by Interior Department officials in vetting the proposed rule. We urge the Secretaries not to repeat these delays when finalizing the IRR regulations. Honor the Federal government's trust obligation to the Indian nations by providing the personnel and resources required to complete the regulations in a timely manner to ensure that Indian communities and the people who live here can travel in safely to their jobs, schools, health facilities, and centers of tribal life.

Workgroup Text Change

Workgroup Comments Process. No response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 7, #6	Policy	30	2	YES	Accept with Modification	AGREE	AGREE

Public Comment

Please consider a 90 day extension on the public comment period of this rule, so that impacted local road-users may be made aware of this significant proposed rule change, and be provided opportunity to comment.

Workgroup Text Change

Workgroup Comments Workgroup reviewed and the comment has been already addressed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 46, #11		Technical Standards	7	5	YES	Referred to Funding	NO ACTION	NO ACTION

Public Comment

Page 51334: First column questions: "How Does the Relative Need Distribution Factor Meet the Needs of Small, Medium, and Large Tribes"? In this column it states for an answer. By expanding the inventory to include all IRR-eligible projects, the Relative Need Distribution Factor will benefit all tribes by allowing all of their actual IRR transportation needs to be counted for funding purposes. Does this mean non-system roads which are part of inventory for funding purposes are required to be maintained?

Workgroup Text Change

Workgroup Comments

All roads in the IRR inventory are considered to be part of the IRR system. Those roads owned by the Secretary of the Interior and those roads on which federal funds were used for their construction or improvement must be maintained. TS comment: This pertains to the limitation of how the inventory generates funding.

Federal Comments

Tribal Comments

Though not noted, this was a workgroup disagreement item. No Action by Tribal Caucus.



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 318, C1	Policy	1369	22	YES	Reject Comment	AGREE	NO ACTION

ISSUE Pg 51345 - Key Areas of DisagreementK. Contractibility and Compactibility of TEA-21 Programs - Subpart E Tribal View - No Comments/Suggestions with the Tribal View Pg 51348 Key Areas of Disagreement Federal View - Federal Proposal is as follows: question and answer excerpt. What IRR Program Functions may be assumed by a Tribe in a Self-Determination Contract or Self-Governance Agreement?All IRR functions and activities that are otherwise contractible may be included in a Self-determination or Self-Governance Agreement. (23 USC 202(d)3)(B). CommentsThis is the first page we find, that really identifies that somehow a Tribe/Band can have and employ IRR Program Staff fund an Office and/or, Transportation Department, etc. Functions and Activities are not defined and have no meanings within the proposed rule.Functions is in the question, but the answer has functions and activities Suggestions Write language in the proposed rule, that will allow Tribe's/Band's to use IRR Program Funds to employ staff, have an basic office, etc. and insert the language into the applicable Part(s)/Subpart(s)/Section(s). Clarify why Functions is in the question, but, the answer has functions and activities? Define Functions and Insert into definitions on Pg 51359 sec 170.6.Define Activities and Insert Activities definitions on Pg 51359 sec 170.6. Insert Functions and Activities into Pg 51368 Appendix A to Subpart B. Allowable uses of IRR Program Funds and other applicable Part(s)/Subpart(s)/Section(s).Federal View - Federal Proposal is as follows: question and answer excerpt. What IRR Project and Program Functions are not Otherwise Contractible? The following IRR functions or activities are non-contractible.The list is extensive and covers (a) thru (r)(cont comment #23)

Public Comment

Workgroup Text Change

First, second and third paragraph: reject because the tribal transportation sections of this rule (170.939) and other sections of the rule adequately address the commentor's concerns regarding which activities and functions a tribe can perform. The committee does not believe it is necessary to define "activities" and "functions". The Transporation Planning Procedures and Guideline Manual is a manual and is not to be considered regulatory, but only as guidance.

Workgroup Comments

Fourth paragraph: reject because in the definition of "program", programs, services, functions, and activities, or portions thereof are included and this definition addresses the commentor's concerns.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 41, D1	Policy	27	59	YES	Accept with Modification	AGREE	AGREE

Public Comment

General Note: 2 percent transportation planning is identified numerous ways throughout the document. Recommend you do a search and change all references to 2 percent Tribal Transportation Planning.

Workgroup Text Change need to make language consistent.

Workgroup Comments Global change needed. Correct all references to 2% planning, tribal transportation planning to "2% Tribal Transportation Planning" . Refer to final rule writers to make language consistent.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 6, #2	Policy	1188	1		Accept Comment	AGREE	AGREE

Public Comment USET would like to suggest that the comment period for the IRR Proposed Rule be extended 30 days, with the new ending date set for November 7, 2002. It took three years to develop the proposed rule, nine months to have the proposed rule published, and Tribal leaders now need adequate time to review the impact of the proposed rule and make comments.

Workgroup Text Change

Workgroup Comments Comment period extended 30 days. Reviewed, already addressed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 52, #8	Policy	1369	19	YES	Accept Comment	AGREE	AGREE

Public Comment ISSUE > Pg 51335 - Key Areas of Disagreement CommentsLast paragraph on the page> Where Federal questions and answers are inserted into the rule. We disagree with the Federal questions and answers being inserted into the rule. Q. Why isn't the Tribal Caucus's Views inserted into the proposed rule? If this proposed rule becomes interim final of final, then most likely the Federal View will prevail and the Tribal Caucus who represents Tribe's/Band's will go to the sidelines and a waste of a lot of Indian Time" Suggestions Please answer our question and appropriately elaborate and respond.

Workgroup Text Change

Workgroup Comments The commentor is correct. The federal view of the Disagreement items were inserted into the rule, but the rule clearly identified them as such, and encouraged public comment on all of the disagreement items. No change required based on this comment.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 9, #1	Policy	390	1	YES	Accept with Modification	AGREE	DISAGREE
Public Comment	The consultation requirements found in 23 U.S.C. 134 and 135 and regulations in 23 CFR part 450 are sufficient to insure that Indian tribal governments can provide input into the State planning process and do not need to be addressed by this proposed rulemaking. This proposed rulemaking should provide the Indian tribal governments with the same guidance to consultation with State DOTs and MPOs :Metropolitan Planning Organizations; as we do in consulting with the Indian tribal governments. This type of exchange will strengthen everyone's planning process.							
Workgroup Text Change	Add new 170.108 Q- Should Indian tribes and the BIA consult with States' planning organizations and local governments in the development of their IRR TIP? A - Yes, all regionally significant Indian Reservation Roads program projects a) shall be developed in cooperation with states and metropolitan planning organizations; and b) shall be included in appropriate federal lands highways program, state, and metropolitan plans and transportation improvement programs. The BIA and tribes are also encouraged to consult with States, metropolitan planning organizations, rural planning organizations, local governments, and municipal governments on transportation matters of common concerns. [will need to redesignate all other questions]							
Workgroup Comments	adequately addressed because we developed a new 170.108 or 109							
Federal Comments	Federal Caucus disagrees with Tribal Caucus modification. 23 USC 204(a) requires more than consultation.							
Tribal Comments	Accept with modification. Delete the answer and replace with " The BIA and tribes are encouraged to consult with state and local govemments on regionally significant transporation matters."							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
	No specific sectip 296 Ca1	Technical Standards	40	1	YES	Accept with Modification	AGREE	AGREE
	Public Comment							
	:pg.; 51339 :ISDEAA; 93-638 Contract may serve as a stewardship agreement.							
	Workgroup Text Change	Sections 480 - 481 rewritten						
	Workgroup Comments	In response to comments the T/S work group developed q's and a's to deal with PS&E and address tribal and federal concerns. Permits tribes to assume PS&E review and approval authority and protects the interests of public authorities with responsibility for maintaining the IRR facility and for the Sec's oversight role to protect public health and safety.						
	Federal Comments							
	Tribal Comments							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 35, C(c)2	Technical Standards	421	87		Referred to Funding	NO ACTION	NO ACTION

Public Comment

Over the past two years Alaska tribes received the first significant level of transportation planning funds ever provided. This included the Special Planning funds (#32,589) from FY2000 and Administrative Capacity Building I from FY2001. The majority of tribes in Alaska applied for and received these funds with the explicit intent to correct our IRR Inventory and develop transportation plans. We are astounded to learn that the BIA has applied a 2% limitation to our submissions. If the major goal of providing funds was to accurately identify our transportation need, what is the justification of applying a limitation to the submissions? Is the data not used in the implementation of a relative need formula? How can a true relative need be ascertained if the data used to identify the need has been arbitrarily limited? The basis of the existing Alaska IRR Inventory was a consultant/BIA Juneau Area Transportation Plan: a document which is riddled with errors and omissions. At the times that plan was developed (1990 and 1993) over 70 Alaska Native Villages were left out. This wasn't because they didn't have need: they were just left out by the methods used by the consultant/BIA in gathering data. In addition, there were arbitrary limitations to the data requested. The BIA requested tribes to submit their one priority project instead of asking them to identify their actual transportation needs.

Workgroup Text Change

Workgroup Comments Comment pertains limitation on how inventory generates funding.

Federal Comments

Tribal Comments This was a workgroup disagreement item. No action taken by Tribal Caucus



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectip	296 A1	Technical Standards	20	17		Reject Comment	AGREE	NO ACTION

Public Comment The BIA will assume the monitoring of construction projects inspections. If the BIA isn't allowed to review/approve the PS&E package, but assumes responsibility of monitoring and inspecting. What happens to enforcement? Procedures and methods are for non compliance issues and consequences from the tribal judicial system, need to be express. Do the tribe(s) have a judicial system with expertise to enforce non compliance issues and the consequences to outside reservation companies? What happens during the audit process if substandard workmanship or material is discovered or if overpayment was made to the contractor?

Workgroup Text Change No Change

Workgroup Comments No specific recommendations made in comment

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 49, #18	Funding	17	1		Reject Comment	AGREE	NO ACTION

Public Comment Pg51332-2nd column-Which roads are included in the cost to improve calculatins? Included in the guidelines for the selection of roads is the requirement that the roads be vital to the economic development of Indian tribes. This item effectively eliminates any BIA system roads that serve primarily residential areas which are most of the existing and planned BIA roads. This restriction needs to be eliminated from the CFR 170 rewrite.

Workgroup Text Change

The funding workgroup response:

Workgroup Comments The commenter is commenting on the background portion of the NPRM. There is no request for change to the NPRM.
The workgroup considers the comment to the existing system not the NPRM. Rejects as it has no impact on the proposed reg.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 47, #17	Funding	1369	10	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Pg 51334 - Background -Relative Administrative Capacities of Indian Tribes.Refer to 1. partial excerpt, which as written says For this reason, 12.5% of future funding increases will be allocated by the Population Adjustment Factor so that all tribes receive at least some funding. If the TEA-2; Reauthorization appropriations for Year 2004 does not increase the current yearly Appropriation Authorization levels of #275 million, then this item is mute and should be treated as such. Suggestion Some of this background explanation(s)/summary language should be inserted in issue> Pg 1330 Background - What is the Purpose of the TEA-21 Negotiated Rulemaking Committee?

Workgroup Text Change

Funding Workgroup response:

The commenter is stating that for tribes without significant inventories they will not be funded at a level to participate adequately in the program. The indicate the the 2% planning funds should have a seperate section and be seperate from the IRR Construction with its own index. They are also asking that \$275 million threshold level for PAF and HPP be lowered.

Workgroup Comments

The workgroup believes the comments to be addressed would require a renegotiation of the funding formula which includes the 2% planning.. The comment is somewhat unclear on some of its issues. The workgroup rejects the comment.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 209, A1 General Comments	Funding	421	91		Accept Comment	AGREE	AGREE
Public Comment	We learned that the BIADOT has done nothing with the IRR Inventory Submission from Alaska beyond the 2% limitation. We were advised that the routes would be put in the Inventory as non-construction-need routes. But upon review of the IRR Inventory final for FY20", we found that no other routes had been added to the Inventory. Other than comments from BIADOT for routes submitted by September 15, 2001, we have no information regarding the status of routes that were submitted by the deadline of September 30, 2001. As the deadline for submission for FY2002 was June 1, 2002 we are at risk of having another year go by without accurate information in the IRR Inventory.							
Workgroup Text Change								
Workgroup Comments	No request, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 177, A2	Funding	20	9		Reject Comment	AGREE	NO ACTION

Public Comment

What will be consider to be inclusive in the equation for the variable population, will it be the number of people enrolled in the tribe or the number of Indian people that live within the proximity of the project, or the amount of people the project will serve?

Workgroup Text Change

Workgroup Comments Commenter is questioning what population figures are being used. No request, no action required. The commenter's question is answered in 170.282.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	Pg. 1, #1	Policy	1358	1		Accept Comment	AGREE	AGREE

Public Comment

The Citizen Potawatomi Nation is located in central Oklahoma where access to employment, education, and healthcare is often at great distances and where road conditions are often unimproved and unsafe. According to the 2000 census, the Native American population in the Tribe's jurisdictional area is 10,617 and the non-Indian population totals 96,007. While the State provides some funding for rural collectors, it is not enough to address the rural road improvement needs for our community. Further, neither the State nor the counties provide any funds for road construction on trust property. Therefore, the federal government's IRR funding for roads serving our Indian community is critical to the public welfare.

Workgroup Text Change

Workgroup Comments Reviewed and no response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 177, B1 Support for the Proposed Rule	Funding	392	4	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Support Population Adjustment Factor (PAF) in TTAM this provides participation by all tribes in the IRR Program this should be included if the funding availability is not above \$275,000,000.							
Workgroup Text Change								
Workgroup Comments	Request is to extend PAF below the \$275 million authorization level. This was a key factor of the negotiation and is rejected as it would require reopening the negotiation for the funding formula.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 33, #7		Policy	357	3		Accept Comment	AGREE	AGREE

Public Comment

The use of BIA IRR funds as matching funds for FTA and other federal grants such as WtW or TANF transportation oriented grants is language needed. The transfer of BIA IRR funds designated for transit projects e.g. operating and administration should be allowed to be transfer and combined with FTA funds where FTA Native American Transit Program would facilitate direct a one-to-one contracting with Native American Nations and Tribes.

Workgroup Text Change

Workgroup Comments Adequately addressed in 170.170. Operation and administrative use requires a statutory change. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg.	11, #4	Policy	1369	42		Reject Comment	AGREE	NO ACTION

Public Comment

General Comments for the IRR Program Proposed Rule Within the Rule, there is references made to have approvals from both the BIA and FHWA "Does this not conflict with the duplicative services (in spending) mentioned in the OMB's and the Paperwork Reduction Act (increased paperwork)? Not to mention, learning the FHWA way of doing things, when not much information is submitted to Tribe's/Band's from the FHWA" The way the system works now, is that Tribes/Bands deals with the BIA Agencies and RO's (Regional Offices), if you add another burden on the underfunded Tribes/Bands, this is against any type of cost analysis and adds more costs and time to produce an desired effect of the products. We suggest leaving what exists with the BIA and let that Executive Agency (BIA) deal with the another, and leave the little man to deal with the BIA as has been. With the way the proposed rule is written, before it becomes interim final or final, they needs to be much coordination between the BIA and FHWA to get their acts together before this proposed rule should be enacted and become apart of 25 CFR Part 170.To include the USC and CFR's that the FHWA is governed by, also needs to be re-written to include this 25 CFR Part 170 proposed rule.

Workgroup Text Change

Workgroup Comments

Congress directed the Secretary of the Interior to conduct this rulemaking and issue this final rule, thus the rule will be located only in title 25 CFR. Rulemaking Committee does not have authority to enact statutes. Commentor's concerns regarding which agency tribes deal with have been examined and modified in other parts of the rule.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 55, #14	Policy	3	1	YES	Accept Comment	AGREE	AGREE

Public Comment

In short, we fully support the Tribal Caucus position on the non-consensus issues. We find the Tribal Caucus's position to be reasonable and in keeping with the Federal Government's general policy to support Indian self-determination and self-governance.

Workgroup Text Change

Workgroup Comments No specific change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 55, #1	Policy	29	1	YES	Accept Comment	AGREE	AGREE

Public Comment

We word-searched the Indian Reservation Road Program (IRR) Proposed Rule document. There is no mention of non-Indians, fee lands, or private property. Access to such properties may or may not become IRR with some Indian tribe empowered with sole jurisdiction and road use authority, which could be adverse to the best interest of non-Indians with fee land holdings. If this proposed rule for IRR Programs proceeds without including this large non-Indian, fee-land population, which often exceeds reservation Indian populations by 5 to 1, the IRR Program would be in conflict with the Administrative Procedures Act, Regulatory Flexibility Act, Taking Implication Assessment, (Executive Order No. 12630); Federalism (Executive Order No. 12612); Civil Justice Reform (Executive Order No. 12988), and the Federal Data Quality Act, effective October 1, 2002. The Administrative Procedures Act requires notice to parties that have a vested interest that would be substantially and adversely impacted by Federal rule changes. This notice should be more direct than publishing it in the Federal Register. This is the epitome of form over substance by the agency of the federal government.

Workgroup Text Change

Workgroup Comments Commentor's concerns are adequately addressed in rewrites of 170.120 and 125.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 12, #5	Policy	350	1		Accept Comment	AGREE	AGREE

Public Comment

The Iliamna Village Council has been sending a resolution to Juneau and Washington D.C. road people stating they want to contract their own Tribal Road Construction Program and feel that they should have the opportunity to do so. The mechanism that is currently used in Alaska for tribes does not work for our Tribe, we would like the chance to do our own projects without having to try to get on a priority list. Our Tribe already seen the amount that is contractable for our own Tribe and would like to contract this program. Our tribe would like a more government to government working relationship with BIA road people. Our Tribe has the CDL drivers, an engineer firm they work with, a road priority list for Iliamna, equipment and the administrative staff. Our Tribe needs an opportunity and there has been no technical assistance whatsoever from Juneau Area Office. The BIA Juneau Area Office Roads did not even want to work with our Tribe. This is disturbing that all we want is to contract the program and no response until the very end of our fiscal year that we cannot contract our roads by the Juneau Area Office. Our Tribe is not getting heard and hopefully these comments will be heard. Since our Tribe lives in an isolated area in Alaska, the resources are limited.

Workgroup Text Change

Workgroup Comments Referred to Assistant Secretary and Alaska Regional Office

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 150, A3	Funding	20	7		Reject Comment	AGREE	NO ACTION

Public Comment

A percentage of the funds will be deposited into the Indian Reservation Roads High Priority Program (IRRHPP), which financial institution will the funds be deposited (for accrued interest), and where is the bank located. Who will administer the funds and interest? Who will determine the issuance of these funds? What about modifications that exceed the project ceiling? What kind of window will be set for use? How will it effect the year end final close out/audit? How are the funds going to be accounted for?

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 144, C(c)5	Funding	1336	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

The proposed formula outlined in the Federal Register will benefit the larger Tribes having large populations on or near their Tribal Land. They also have had funding in the past to appropriately inventory their road system that is included in their data of vehicle miles traveled. The proposed formula in the Federal Register will benefit large Tribes: 50% Construction costs & 30% Vehicle miles traveled & 20% Population = Relative Need. California Tribes benefit when the percentage of the cost of construction is higher than the factors assigned population and behicle miles traveled; California construction costs are higher. Comment: Take #100,000 base funding Tribe off the top, and distribute the remainder of the funds using the following relative need formula: 70% Construction costs & 15% Vehicle miles traveled & 10% Population = Relative Need.

Workgroup Text Change

Workgroup Comments No action taken because it would require renegotiation of the formula

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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No specific secti	P. 150-151, C(c)2 Sec 238	Funding	15	25	YES	Accept with Modification	DISAGREE	AGREE
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Public Comment 170.238 May a Tribe receive its full annual IRR funding allocation to administer all IRR program and project activiteis under a single self-determination contract it self-governance compact? The answer to this question was YES. Tribes may elect to receive IRR program and project services and the funds associated with them directly from the BIA or they may administer the IRR program, projects and funds tehmselves under a self-determination contract or self-governance compact. This was originally stated by the Committee but it was dropped from published NPRM. Consensus Subpart C required compliance with ISDEAA allowing full contractibility and compactability of all IRR allocations.

Workgroup Text Change

Workgroup Comments revert to original negotiated TTAM-
There are 5 missing Q&As Accept with mod, addresses with 3 additional Q and As

Federal Comments

Tribal Comments PS Disagreement



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 150, C(c)1 Programmatic Concerns sec. 237	Funding	15	24		Accept with Modification	DISAGREE	AGREE
Public Comment	170.237 When are the IRR funds available for distribution and payment to the tribes? This was originally stated by the Committee but it was dropped from published NPRM. Consensus Subpart C defined an expedited process for making appropriate funds available at the earliest reasonable date. This part is not in the federal register as intended by the Negotiated Rule-Making Committee							
Workgroup Text Change								
Workgroup Comments	revert to original negotiated TTAM- Workgroup accepts and has made changes to all specific sections. The diagram is still being considered.							
Federal Comments								
Tribal Comments	PS addressed with 225							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 149, A2	Funding	421	90		Reject Comment	AGREE	NO ACTION

Public Comment

A few Alaska Native representatives invited by the Alaska Regional Office participated in a training session July 11 and 12 in Anchorage on the Modified Simplified Road Inventory System. Changes in the inventory/funding system were presented as somehow stemming from the Negotiated-Rulemaking process, even though not even a proposed rule has been published. We learned during that session that the construction need data used in the implementation of the relative need formula is missing values. For instance, there are geopolitical regions that don't have a value for paving even in the future surface type of the road in the ERR inventory is to be paved. The result is that the cost to improve that particular route is low. We can only ask. if the BIADOT is aware this problem exists, and has known for years, why hasn't it been fixed? Once again, the "Relative Need Formula" is equitable only if the necessary data for all tribes is included.

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 177, C1 Concerns with the Proposed Rule Population Adjustment Factor (PAF) only the very small tribes do.	Funding	415	44		Reject Comment	AGREE	NO ACTION
Public Comment								
Workgroup Text Change								
Workgroup Comments	No request made, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 170, D1 Proposed Language - IRRHPP	Funding	35	50	YES	Workgroup Disagree	NO ACTION	NO ACTION
Public Comment	IRR High Priority Project (IRRHPP) Program: Comment: This subsection implies that the IRRHPP is a program which is not the case and is inconsistent with 170.225 & 170.235. It is questionable as to whether the law specifically allows the creation of another "program" under IRR Program. Strike the word "Program".							
Workgroup Text Change								
Workgroup Comments	Request is to strike the word "Program" The workgroup does not agree on the change. Is a program only defined by statute? If the term program is only for statutorial defined areas, then an option is to use "funding pool' or some other term.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 169-170, C(c)2 -IRRHPP	Funding	1337	38	YES	Workgroup Disagree	NO ACTION	NO ACTION

Page 51371-IRR High Priority Project (IRRHPP) Program Comment: The word "Program" should be deleted since there is no such program, Section 170.225 states there is a "discretionary pool" for IRR High Priority Projects. Comment: The Emergency Repair for Federally Owned Roads Program (ERFO) is in place to deal with emergency/disaster situations. We feel it would be prudent to remove emergency/disaster projects as priority IRRHPP candidates. If they stay in the rule, there needs to be clarification of the emergency declaration and approval process and eligibility criteria. Comment: There is nothing in the rule to provide guidance on overruns. Once applications are approved and funds are transferred to Regions, contracts must be awarded and construction must be completed. Both of those activities often create cost overruns. The rule needs to deal with how the overruns will be handled. The IRRHPP fund will be depleted and most involved tribes will be without recourse to find additional funds. Comment: The timeframe is too tight at the end. It would be better to deadline acceptance of applications at December 1 (3 months earlier); December 1 through February 1 for ranking; March 1 for notification of awards; and April 1 for transfer of funds to Regions. Funds can be obligated to the completed PS&E fairly rapidly. The time frame for awarding construction contracts depends on whether the contract is Buy Indian or P.L. 93-638 and other factors. It can go quickly or take a long time either way. Comment: It appears that for many small tribes a two-application approach would be advantageous. The first application could fund development of PS&E package and the second application could fund construction. Construction funding applications will score higher if the PS&E is complete. We would like to see clarification if this is something that can be done.

Public Comment

Workgroup Text Change

Commenter disputes the term of the "program" - parked
 Commenter indicated that ERFO funds should be used for emergency/disasters, the original TTAM negotiated required that if ERFO funds were received that the funds used for the project for the IRRHPP emergency/disaster project were to be reimbursed with ERFO funds \$ for \$ upto the \$1 million. - parked
 Commenter identified concerns with the timeframes should be reconsidered. - Will be addressed by subworkgroup
 Commenter has addressed concerns with cost overruns, over \$1. - The comment is rejected covered in 170.249 because the IRRHPP projects are capped at \$1 from the IRRHPP, other sources of funds can be used including IRR.
 Commenter recommend projects should be ranked higher by having a PS&E already approved. Workgroup comment is that it is in the matrix.
 Comment rejected as it is already covered in the rule.

Workgroup Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 169, C(c)1 Programmatic Concerns - IRRHPP	Funding	16	4	YES	Reject Comment	AGREE	NO ACTION
Public Comment	The tribes within the Rocky Mountain Region are opposed to the implementation of the HPP Program.a. In lieu of elimination of the HPP Program it is recommended that each regions contribution to HPP be maintained and administered within each respective region. b. The Rocky Mountain Regions review of the proposed HPP Programs indicates a contribution of approximately #750k, due to the proposed criteria for the HPP Projects the tribes in the Rocky Mountain Region would not be eligible to participate.c. The fatality and injury rate within the Rocky Mountain Region is ranked among the highest in the nation, due to this fact we feel that the funds would be better utilized towards safety improvements.							
Workgroup Text Change								
Workgroup Comments	Commenter believes the IRRHPP should be Regional. The workgroup believes this recommendation is a significant change to the negotiated formula. It was specifically negotiated as a national program and not meant to be based on any form of formula distribution Workgroup rejects.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 178, C(c)2	Funding	415	45	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Population Adjustment Factor (PAF)The PAF concept is not explained other than a statement in :Sec;170.263 that it is a special distribution calculated annually that provides for broader participation in the IRR Program based on population ranges and distribution factors. What is the rationale, statistical analysis, or scientific approach used to determine the factors? The methodology appears to be purely arbitrary absent of supporting data or testing applied to the distribution. Above all, where and how is the relative need requirement applied?

Workgroup Text Change

Workgroup Comments Request is to delete the PAF. Workgroup considers the PAF was a key factor in the negotiation and comment is rejected as this would required reopening the funding formula negoation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 149, A1	Funding	20	26		Reject Comment	AGREE	NO ACTION

Public Comment

The Tribal Transportation Allocation Methodology contains to many variables that will create disputes, create grid locks and hold projects back, people that need roads will be the only ones deprived. The only people that will come out of this as winners are the legal representatives.

Workgroup Text Change

Workgroup Comments No change requested, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 143, C(c)4	Funding	392	8	YES	Reject Comment	AGREE	NO ACTION

Public Comment

I disagree with the 2% inventory growth policy as a tribe with 0 inventory will never be able to generate funds to address transportation needs as the inventory impacts the 50% CTC and the 30% ADT in the Relative Need Distribution Factor.

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 143, C(c)3	Funding	1355	16		Reject Comment	AGREE	NO ACTION

Public Comment

2% Limit on Additions to the Indian Roads Needs Inventory. The Funding Workgroup that drafted the funding portions of the NPRM intentionally omitted the BIA's current policy of limiting increases to the IRR inventory for funding to 2% of the Region's total. Further, the 2% limit is directly contrary to the provisions of the TTAM that provide for an expanded inventory. It was the Committee's intent that the 2% limit no longer apply; if it was to apply it would have to be written into the NPRM. (Regulations are not written in the negative.) Kawerak strongly supports the omission of the 2% rule. The rule as currently applied is blatantly discriminatory against tribes that have historically received little or no IRR services from the BIA. Congress required the Committee to generate a relative need formula based on actual transportation needs, not simply to track 80% of the funding according to where BIA roads were built in the past. If limiting factors are applied to the inventory, they must be fairly applied to all tribes and only after each tribe's basic inventory of surface transportation needs is included in the national IRR inventory for funding purposes.

Workgroup Text Change

Workgroup Comments No request, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 142-143, C(c)1 Programmatic Concerns	Funding	1370	39	YES	Reject Comment	AGREE	NO ACTION
Public Comment	The Shoshone-Bannock Tribes are more than concerned about the current IRR funding distribution for FY2003. We do not know how and when the national and regional funding is to be promulgated via the federal register process. Tribal governments like the Shoshone-Bannock Tribes do not receive timely authorized levels of funding for obligation into our IRR Program contracts. The Shoshone-Bannock Tribes request statutory and regulatory language to contractually obligate funding into 638 contracts/compacts in the first quarter of each Fiscal year.							
Workgroup Text Change								
Workgroup Comments	Outside the scope, does not address NPRM.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 3, #9		Policy	1369	2	YES	Accept Comment	AGREE	AGREE

Public Comment

The word Program should be eliminated, as this rule in itself is not a program, but many different subsidiaries of the Federal Department of Transportation "RR Program Funding that's available or will be available To include nowhere is it defined that a IRR Program exists within the Proposed Rule" If the word Program shall stay, then somewhere in this proposed rule, shall some language be inserted to show the allowable programs that currently exists, what will exist with this proposed rule. I believe the readers will be confused as we are, this IRR Program proposed rule, is not in itself, a program, as there are different subsidiaries that can be considered a program under this proposed rule and should be clarified and identified somewhere in this proposed rule.

Workgroup Text Change

Workgroup Comments Already defined "progam". A proposed change to the definition of Program has been recommended.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 21, #1		Policy	1389	1	YES	Accept with Modification	AGREE	AGREE

Public Comment

We have been contacted by several of our constituents who live within Wisconsin reservation boundaries. They express concern that the proposal may allow for road closure even in circumstances when such roads are needed to access homes on non-tribal fee lands. We do not believe that this is the intent of this proposal, and we respectfully request that the final version include language to make clear that right of landowners and emergency personnel to access non-tribal fee lands is preserved.

Workgroup Text Change

Workgroup Comments accepted and modified in 170.120 and 125

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 10, #3		Policy	3	2	YES	Accept Comment	AGREE	AGREE

Public Comment

The BIA and DOT must accept key principles in finalizing the TEA-21 IRR regulations. We fully supports and endorses the Tribal Caucus view that regulations for the IRR Program must be developed and guided by certain key principles. These principles are: maximize flexibility and discretion of Indian tribal governments to allow tribes the ability to resolve their transportation problems; honor and respect tribal sovereignty and further the federal policy of tribal self-determination and self-governance; increase accountability and responsiveness of the BIA and FHWA to the Indian tribal governments; promote sensible economic practices and facilitate sensible and innovative financing mechanisms to build and maintain the IRR system; improve communication, consultation and collaboration among tribal, federal, state and local transportation agencies; streamline, simplify and make more uniform BIA and FHWA management of the IRR Program to ensure consistent treatment of all Indian tribes regardless of location or region; eliminate unnecessary bureaucratic requirements that complicate the IRR Program or create unnecessary redundancies; build on and promote positive examples of successful transportation projects, programs, ideas and strategies so that these "best practices" may be implemented, modified and adapted throughout the IRR system.

Workgroup Text Change

Workgroup Comments Supports the tribal view. Commentor wants training to be done for the federal employees. Process, refer to AS-IA. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 18, #12		Policy	1355	14	YES	Accept Comment	AGREE	AGREE

Public Comment

Distribution of the 6% PM&O Funds. This was not addressed by the IRR Neg-Reg Committee. All BIA Regions should be able to provide the same level of service to their tribes. The distribution of PM&O funds should be based on an actual cost analysis rather than the formula for construction funds. The method of distributing 6% funds should take into account the number of tribes served, geographic isolation, and costs associated with traveling to provide services to the tribes. All tribes have the right to expect a comparable level of service as other tribes. Because of an inequitable distribution of 6% funds some BIA Regions have fallen behind or have used construction funds to perform program management activities.

Workgroup Text Change

Workgroup Comments No change required. Adequately addressed in 170.604. The Regions must submit a budget to address these needs.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg.	18, #11	Policy	421	60	YES	Reject Comment	AGREE	NO ACTION

Public Comment Require an appropriate percentage of discretionary funds provided to States from the Highway Trust Fund (Federal Aid, NHTSA, and FTA) be used on IRR transportation facilities. (This is meant to encourage States to develop federally-funded transportation projects that provide critical access to Indian communities.)

Workgroup Text Change

Workgroup Comments Outside scope of rulemaking. Requires statutory change. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 93, D1	Policy	1337	20	YES	Reject Comment	AGREE	NO ACTION

Public Comment Page 51363-Use of IRR and Cultural Access Roads Comment: We suggest adding the following Question and Answer: Can IRR Program funds be used to build or improve a cultural access road?Yes, if it is a public road with defined ownership of an Indian tribal government, the BIA or a local government.

Workgroup Text Change

Workgroup Comments Covered in Appendix B of Eligibility list.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 93, C(c)1	Policy	2	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

The proposed rule change to 25 CFR Part 170, regarding Indian Reservation Roads (IRR) Programs, needs further review and amendment. Currently, all BIA systems roads, which are eligible for funding, must be open to public use. At this time, most Indian reservations are checkerboarded with substantial fee land and non-Indian populations that rely on the use of the public roads for access to such property. The proposed rule change will open the door of opportunity for Tribes to harass and squeeze non-Indian persons, businesses and the non-Indian economy on the reservation. For example, the Yakama Tribe, in eastern Washington, is requiring entry permits, at a cost of \$25 per year, for fee land owners to use current BIA system (i.e. public) roads, although this is currently illegal and out of compliance with CFR Part 170. Under the proposed rule change, these roads will become Indian Reservation roads and, if the Indians choose to designate such roads as "cultural access roads", non-Indians could be denied access to their property. Public roads, built with public funds (i.e. taxpayer dollars) should remain open to the general public.

Workgroup Text Change

Workgroup Comments Previously addressed. These roads are not public roads.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	Pg. 70, D1	Policy	417	3	YES	Accept with Modification	AGREE	AGREE

Public Comment

Subpart B, Indian Reservation Roads Program Policy and Eligibility....."IRR's must generally be open and available to public use." (The existing rule requires that IRR's must be left open and available to public use). We ask that you strike the word "generally". For all fee land owners that live on a reservation and have access to their property via a BIA roadway, and to have that roadway become under the sole jurisdiction of the a tribe would be a travesty. All BIA roads eligible for government funding must be open to public use.

Workgroup Text Change

Workgroup Comments Also addressed in section 120. Agreed to delete word "generally".

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 150, C1 Concerns with the Proposed Rule	Funding	27	21	YES	Accept with Modification	DISAGREE	AGREE
Public Comment	Comments regarding the Tribal Transportation Allocation Methodology (TTAM) General: There have been changes made to the TTAM some significant some minor. These changes were made without consultation of the tribal caucus. The preamble of the NPRM has significant discussion of Tribal-Federal disagreement items. The recommended Tribal questions and answers are stated in the preamble along with a detailed discussion. The Federal questions and answers as well as detailed discussion are also identified within the preamble, and then the Federal questions are included within the body of the proposed regulation. The TTAM portion of the document did not go through this process. We are concerned that by not identifying within the preamble changes made to the TTAM gives the impression that these were consensus items. In addition, without tribal consultation the tribal caucus was unable to explain or justify their intent for proposed questions and answers.							
Workgroup Text Change								
Workgroup Comments	revert to original negotiated TTAM-Workgroup accepts and has made changes to all specific sections. The diagram is still being considered.							
Federal Comments								
Tribal Comments	PS addressed with 225							



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	P. 151, D2	Funding	35	43	YES	Accept with Modification	DISAGREE	AGREE

Public Comment

Tribal Transportation Allocation Methodology for IRR Construction: The title of this subsection is again misleading. Strike the words "for IRR Construction".

Workgroup Text Change

Workgroup Comments Previously Addressed

Federal Comments

Tribal Comments PS



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 176-177, A1 General Comments	Funding	22	18	YES	Reject Comment	AGREE	NO ACTION
Public Comment	<p>Tribal Transportation Allocation Methodology (TTAM): USET recognizes that many hours of work went into the new funding formula for the IRR Program, but we still see some problem areas that are of concern to the USET Tribes. TTAM still allocates amounts to most Tribes that are inadequate to allow the Tribes to accomplish even minimal projects. More funding is needed for the IRR Program. The current proposed formula has 368 tribes getting less than \$75,000 each. This is extremely minimal for Tribes to be able to care for all of the transportation needs. The population factor seems to give more to large tribes even though the small tribes may have the same, or greater, amount of relative need. The PAF also uses Census data as a base for determining the population of a tribe, but what happens if that information is wrong. If the Census data has a tribal population less than the actual number, that Tribe starts at a lower base. This is unfair when Census data can only be updated every 10 years and there is no guarantee that all tribal members are being counted. The number will theoretically always be flawed. This formula also needs to take into account the numbers submitted by the tribes and needs to standardize those numbers so everyone turns in the same data (ie: enrollment numbers or service population numbers).</p>							
Workgroup Text Change								
Workgroup Comments	<p>Commenter is concerned with the use of census data and recommends taking into account population numbers submitted by the tribes. The workgroup believes this is addressed in the appeals process. The population data set is not a census stand alone, but also includes the labor force report.</p>							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 37, C(c)8	Funding	1373	7	YES	Reject Comment	AGREE	NO ACTION

Public Comment

The sun-set clause that was in place during :ISDEEA; needs to be obeyed for Alaska and Oklahoma. The Steven's Bill gave an advantage to Alaska by allowing all roads to be placed on the inventory but enough time has :passed; and they should have built up enough miles to hold their own. Oklahoma does not have reservation lands per se but allowing state and county roads to count in the system hurts other regions. In all regions only BIA roads should generate funds for the tribes.

Workgroup Text Change

Funding workgroup response:

Workgroup Comments

The commenter is requesting that only BIA roads generate funding.

The workgroup believes the statute 23 USC 202 (d) is clear in not limiting the IRR program to BIA roads only and rejects the comment.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 17, #7		Funding	360	1	YES	Workgroup Disagree	NO ACTION	NO ACTION

Public Comment

We, in Alaska, experience very unique travel problems. It is very expensive and time consuming to travel in the state of Alaska. Most travel from the outlying villages is by air. We would like to see this problem addressed, with more travel monies and more roads in rural areas.

Workgroup Text Change

The funding workgroup response:

Workgroup Comments

The commenter is commenting on the high cost of travel within Alaska as most of it is by air and the need for more funds for rural roads.

The funding workgroup agrees with the comment but considers any remedy as a disagreement item.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 17, #6	Funding	1363	1		Reject Comment	AGREE	NO ACTION

Public Comment

The Cherokee Nation is one of the largest Indian tribes in the United States with populations exceeding 200,000 members. Our jurisdictional area encompasses the once known Cherokee Reservation in Oklahoma and is recognized by the federal, state, and other local governments alike. Even though this area was opened up to private ownership after the Cherokee allotments in 1906, more than 100,000 acres of Indian lands still exist today. Much of this land is occupied by Cherokees living in remote rural areas where travel to employment, and basic necessities is at great distances and where road conditions tend to be the worst. Through the IRR program, the Cherokee Nation has been able to make a positive impact in some of these communities but we have a long way to go in terms of addressing the balance of a transportation system that is overwhelmingly unimproved and unsafe. Without the benefit of the IRR program, rural Cherokee communities would otherwise be underserved. This is because the availability of other funding sources for rural Cherokee road and bridge improvement is virtually non-existent. The combined state and county rural road and bridge programs have severe resource limitations not to mention a very limited capacity to maintain these facilities. For all these reasons, I believe it is the federal government's responsibility to provide IRR funding for roads and bridges that serve Cherokee communities.

Workgroup Text Change

The funding workgroup response:

Workgroup Comments

The commenter is requesting additional funds overall for road and bridge construction.

The funding formula workgroup agrees with the comment but it is beyond the scope of our activities.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 2, #5		Policy	20	25		Accept Comment	AGREE	AGREE

Public Comment

The concept of money is easy to grasp, but psychologically and emotionally it is hard to accept, because by nature it's our impulse to solve and not to think. My question to the tribal caucus is have you answered the shoulds or is this a strive of the coulds? Is there any discipline to attain the solution. Is the solution going to give a good rate of return?The problem(s) or opportunity have to match the solution. If these don't match, crucial issues will remain uncovered. Don't mistake activity for productivity or progress, because if chronic problems are not solved cost will eventually increase. Premeditated, predetermined, premature solutions have no inherent values. Solutions prevent problems, invent new results that a business/service needs otherwise a solution is only an event and events cost.

Workgroup Text Change

Workgroup Comments Reviewed and no response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 1, #4		Policy	1367	2		Accept Comment	AGREE	AGREE

Public Comment

The Tribe is pleased to submit comments on these long anticipated proposed regulations. The roads, bridges, and other transportation systems serving Indian reservations throughout the country are in serious despair and will continue to deteriorate until the Interior Department requests and Congress appropriates adequate funds to the IRR Program. Transportation systems of the IRR Program fair far worse than State, country or other Federal transportation systems in terms of dollars appropriated and spent per road mile. It is no surprise that a commuter is four times more likely to be killed on an IRR system road or bridge than on another road and bridge system. Federal regulations must simplify the process by which the BIA, DOT and Indian Tribes carry out the IRR Program to maximize the effectiveness of the limited IRR dollars available. The regulations should ensure that more funds are used for the design and construction of safe roads and bridges and less needlessly spent on paperwork and duplication of review by both tribal and Federal transportation officials. All Indians tribes, and especially large land based Indian tribes, must receive their fair share of IRR funding to construct and maintain our growing transportation system of roads, bridges and other intermodel operations. Without adequate funding for the entire IRR program., however, advances and improvements in the administration of the IRR Program, whether by Indian tribes under P.L. 93-638, or directly by the BIA, will eventually slow as the enormous backlog of unmet transportation needs overtakes even the best operated IRR Program.

Workgroup Text Change

Workgroup Comments Reviewed and no response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 13, #8 Public Comment		Policy	421	63	YES	Reject Comment	AGREE	NO ACTION
Create a tribal liaison position directly under the Assistant secretary for Governmental Affairs in the U.S. DOI.								
Workgroup Text Change								
Workgroup Comments	Outside the scope of this rulemaking.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 1, #3		Policy	362	1		Accept Comment	AGREE	AGREE

Public Comment

This rule is very important to Cherokee Nation, tribal members, as well as anyone who utilizes roads in Oklahoma. The reality of this rule is if it should get implemented as is there could be a large shift of funds from the Cherokee Nation and many other Tribes in Oklahoma. There are problems within the rule that could impact tribes that have compacted the Roads program such as budget reporting, and giving back functions to the BIA that are currently delegated to the Tribes.

Workgroup Text Change

Workgroup Comments Reviewed and no response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 178, C(c)1 Programmatic Concerns	Funding	16	8	YES	Reject Comment	AGREE	NO ACTION
Public Comment	Tribes within the Rocky Mountain Region would prefer that PAF be eliminated. a. These funds can be better utilized for a quality construction program.							
Workgroup Text Change								
Workgroup Comments	request that PAF be deleted. Workgroup considers the PAF was a key factor in the negotiation and comment is rejected as this would required reopening the funding formula negoation.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 1, #2		Policy	364	1		Accept Comment	AGREE	AGREE

Public Comment We, the Board of Stephens County Commissioners, would like to express our concern on the Indian Reservation Roads Highway Trust Fund. We feel that any tribes in Oklahoma should be treated equal to the tribes in other states. Any funding loss for the roads and bridges could be crucial to the safety of the people of Oklahoma.

Workgroup Text Change

Workgroup Comments Reviewed and no response needed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 212, A1 General Comments Sec 300-303	Funding	20	10		Reject Comment	AGREE	NO ACTION
Public Comment	Long range planning will be based on current population and current average daily traffic (ADT), explain how the current ADT will influence the twenty year long term plan, and how will this effect the needs when expressed to top government officials? How will this compare and compete with other government agencies i.e. State Highway Departments. Funding is based on need and needs are expressed by the traffic and population. Currently all transportation departments are under funded and compete from the same source for funding. How will this effect tribal needs verses other government needs to congress? If projection needs are not as aggressive as state DOTs the IRR funding might be reduced. Was the current appropriation of #275 million based on current needs or needs that were presented from inflated ADT, VMT and population? If negative impact(s) result from the variables in the equation what will the impact(s) be, is there a contingency plan?							
Workgroup Text Change								
Workgroup Comments	No request, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 209, D1 Proposed Language	Funding	35	92		Reject Comment	AGREE	NO ACTION
Public Comment	IRR Inventory and Long Range Transportation Planning (LRTP): Comment: Wouldn't this subsection be more appropriately addressed under Subpart D? Also the acronym (LRTP) as used in this program and the highway industry refers to a Long Range Transportation Plan and not "Planning".							
Workgroup Text Change								
Workgroup Comments	Commenter is requesting placing all Inventory and LRTP Q and As to one section of the Reg. The workgroup rejects as these Q and As are vital to the CTC portion of the NPRM, and need to remain in this section.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	P. 214, D1 Proposed Language	Funding	35	111		Reject Comment	AGREE	NO ACTION
Public Comment	Flexible Financing: Comment: this write up assumes that the Tribe is under a 638 contract or self governance agreement with the Bureau to carry out the construction of eligible projects on an approved IRR TIP. This must be made clear in this rule. How is this applicable to direct service tribes?							
Workgroup Text Change								
Workgroup Comments	Request for clarification for direct service tribes that they qualify for the flexible financing section. No request, no action taken.							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 16, #4	Funding	1312	1		Reject Comment	AGREE	NO ACTION

Public Comment The Alabama-Quassarte Tribal Town is a Federally Recognized tribal government. Our headquarters are located in Wetumka, Oklahoma which is a remote rural area. Access to employment, education, and health care can be a challenge as great distances must be traveled and road conditions are for the most part inadequate and unsafe. The same can be said for the bridges. Oklahoma has a high percentage of deficient bridges. Many were built during the WPA Project days of the 1930's. I support and request that the federal government provide adequate funding for roads and bridges serving Indian country.

Workgroup Text Change

The funding workgroup response:

Workgroup Comments

The commenter is stating that the federal government is not spending enough funds for roads and bridges.
 The workgroup agrees, but considers any change to the NPRM outside the scope of our activities.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 18, #10		Policy	6	5		Accept Comment	AGREE	AGREE

Public Comment

Other Federal Funds. Any revisions to the proposed Rule would have off-reservation road improvement projects competing with on reservation road projects for the same funds. Comparing and allocating funding to different types of projects may be difficult. Disparities may occur between gaming and non-gaming tribes. This may be especially problematic if off-reservation improvement projects are significantly more expensive to implement and construct than on-reservation improvement projects. State and local governments should pursue other funding sources for off-reservation improvement projects before they seek funding from the Indian Reservation Roads program. For example, in May 1999, the United States Department of Transportation (USDOT) announced the Rural Transportation Initiative to ensure rural communities share in the benefits USDOT programs provide. One such joint effort could be to allow consideration of IRR Program funding for local matching money needed to obtain any other federal funding requiring local matching funds.

Workgroup Text Change

Workgroup Comments No change requested, but comment adequately addressed in 170.952, 170.168, and 170.170.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	(c)1 pg. 342	Delivery of Services	40	2		Parking Lot	NO ACTION	NO ACTION
Public Comment								
:pg.; 51344 Recommend advance funding on design contractors under #100,000.								

Workgroup Text Change

Workgroup Comments This comment relates to a tribal caucus position in the preamble on a disputed item. Commentor recommends adopting tribal position on the contract support issue. (commentor specifically request exception on advance pay for design projects under \$100k). Government believes this issue is outside the scope of this rule making.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg.	19, #13	Policy	421	67		Accept Comment	AGREE	AGREE

Public Comment

Obligation Limitation Deduction: The obligation limitation deduction has so far diverted over #150 million from the IRR Program to State transportation programs. The task force recommends that the IRR Program be restored to 100% funding authorization and that it also be held harmless during periods of negative RABA (i.e. when federal gas tax receipts are lower than Congress anticipated). The task force supports the approach used in :sec;.344 and Senator Bingaman's bill. :Sec;2971, to correct the obligation limitation problem and also recommends that the negative RABA protection be addressed in this legislation.

Workgroup Text Change

Workgroup Comments Reviewed, no response needed because this is a statutory change.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 38, C2	Policy	1358	2	YES	Accept with Modification	AGREE	AGREE

Public Comment

I fully support the federal government's general policy statement outlined in :sec;170.3. I recommend the following be added as :sec;170.3(c)(3); "To the extent that the IRR regulations differ in any respect from the provisions in ISDEAA, the IRR regulations should serve to advance-rather than retard-the Federal Government's policy of increasing Tribal autonomy and discretion in the operation of this federal Indian program." Further, I note that many sections in the proposed rule are not consistent with this concept. This includes: :sec;170.433; :sec;;sec;170.480-481; :sec;;sec;170.485-490; :sec;170.501; :sec;;sec;170.600-606; :sec;170.620; :sec;;sec;170.633-636; :sec;;sec;170.701-705; and :sec;;sec;170.941-943. These sections should be corrected in the final rule to reflect the concept outlined in :sec;170.3.

Workgroup Text Change

add to end of 170.3(a)(3), "to the extent that the IRR regulations differ in any respect from the provisions in the ISDEAA, the IRR regulations should serve to advance -- rather than retard -- the federal government's policy of increasing tribal autonomy and discretion in the operation of this federal Indian program."

Workgroup Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 37, C(c)7	Policy	1374	8	YES	Reject Comment	AGREE	NO ACTION

Public Comment

Next Highway Reauthorization Bill consider the following: The obligation limitation must be removed from the next highway reauthorization bill. Reduce the present PM&O of six percent to five percent for the regionals offices' to carryout the program responsibilities. Provide a flat funding cost of #3.75 million for FHWA oversight. Increasing the current Nationwide Priority Program Bridges from #13 million to #17 million. Make provisions to include surveys for bridges, as well as designs using the Nationwide Bridge program.

Workgroup Text Change

Workgroup Comments This requires a statutory change. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 37, C(c)6	Policy	384	11	YES	Reject Comment	AGREE	NO ACTION

Public Comment The Proposed Rule should eliminate the "obligation limitation" draw down on the IRR Program. Application of the "obligation limitation" to withheld amounts actually increases the percentage of funds turned over to the states. This method significantly reduces the availability of construction funds for road developments for all Native American tribes.

Workgroup Text Change

Workgroup Comments This requires a statutory change. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 33, #2 Public Comment		Policy	421	94		Accept Comment	AGREE	AGREE
:Att No. 1: Letter to Sen. Murkowski;								
Workgroup Text Change								
Workgroup Comments No comment, but attachment. No response needed.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 31, #3	Policy	1367	3	YES	Accept Comment	AGREE	AGREE

Public Comment

While the proposed regulations go great distance to increase the flexibility required by the sometimes unique transportation needs, conditions and challenges faced by Indian Tribes, they do not go far enough. The Interior Department and Department of Transportation (DOT) can and must do more to facilitate new approaches to IRR Program administration that respect the tribal prerogative to assume the Secretary's responsibility to perform programs, functions, services, services, and activities (PFSAs) of the IRR Program in accordance with the Indian Self-Determination and Education Assistance Act, P.L.93-63 8, as amended ("the ISDA"). In some key instances, tribal representatives and Federal officials to the Committee could not reach consensus in the proposed rule on regulatory that would facilitate increased flexibility in tribal administration on the IRR Program or expand the scope of PFSAs, and the Federal funds associated with them, which Indian tribes may lawfully assume under the ISDA.

Workgroup Text Change

Workgroup Comments Comment refers to the process. need to address "process" comments in preamble. Refer to final rule writers. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 30, #2		Policy	394	2		Accept Comment	AGREE	AGREE

Public Comment

To the extent that the IRR regulations differ from the provisions in the P.L. 93-638 Indian Self-Determination and Education Assistance Act (ISDEAA), as amended, the Klamath Tribes of Indians believes that the IRR regulations should serve to advance rather than obstruct the Federal Government's avowed policy of increasing tribal autonomy and discretion in the operation of all federal Indian programs. See Executive Order 13084, Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000) (mandating that executive agencies develop federal policies that "respect Indian tribal self-government and sovereignty" and that "grant Indian tribal governments the maximum discretion possible" with respect to Federal statutes and regulations).

Workgroup Text Change

Workgroup Comments No change requested.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 19, #14	Policy	421	62		Reject Comment	AGREE	NO ACTION

Public Comment

Require full annual disclosure of federal administrative functions and program costs, (BIA 6%, FHWA 1.5%). takedowns, and clarify those Functions that Tribes may contract or compact under P.L. 93-638. :covered in ::sec;;344;

Workgroup Text Change

Workgroup Comments Adequately covered in existing language. The workgroup feels a list is too constraining.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	Cc1	Technical Standards	415	1	YES	Accept with Modification	AGREE	AGREE

Public Comment

Comment: Under Tribal View - Disagree with the comment that "The tribal Caucus believes that the IRR regulations should only address IRR construction project closeout reports and omit discussion of IRR project audits." Current standard engineering practice requires audits of project material quantities that have been incorporated into the project. These audited quantities are the basis for progress payments to the contractor. Also disagree with the statement at the bottom of the page that reads "... closeout of an IRR project, which the regulations define as the final accounting of all IRR construction project expenditures and closing of financial books of the Federal Government for the project, occurs once the final inspection has been completed and the IRR construction project has been accepted by the signatory authority for the project, which is the entity with final authority to sign the PS&E package." In reality final inspection occurs whereupon punch items are identified for completion and/or correction before the project can be accepted. Final acceptance occurs, in many cases, long after the final inspection and final quantities for payment are determined.

Workgroup Text Change Sections 483-495, see changes provided in external document (Bob Sparrow's computer)
See changes proposed by MUL 295-D5.

Workgroup Comments Clarification.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg.	15, #2	Funding	394	4	YES	Reject Comment	AGREE	NO ACTION

Public Comment

There must be enough funding for all tribes to do the requisite planning and inventory development necessary to implement the new formula. Very few, if any, tribes have done long-range planning in accordance with the Tribal Transportation Procedures and Guidelines (TTPG) published October 1999 by US DOT and FHWA. Consequently, tribally approved transportation plans are virtually non-existent. The permanent formula must fund each Tribe's program requirements that are legally or practically mandated in TEA-21. The allocation system must provide enough funding for each tribe (or the BIA through direct service) to accomplish at a minimum the following three responsibilities: Interagency coordination that all tribes must do in order to participate in the system. Maintain the comprehensive "management systems" required by statute. Perform continuous annual planning, inventory and project updates necessary to reflect the Tribe's current transportation needs.

Workgroup Text Change

The funding workgroup response:

Workgroup Comments

Request is to essentially the same as comment 1362 - 1 (P. 15 #1) previously addressed as a workgroup reject as it would require a renegotiation of the key factors of the funding formula.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg.	49, #19	Funding	367	1		Reject Comment	AGREE	NO ACTION

Public Comment

To provide a more clear understanding for a new distribution methodology the I. Background should include the current distribution effects for fiscal year 2002 as:-368 tribes computed to get less than \$75,000.00 each-80 tribes to get between \$100,000.00 and \$200,000.00-37 tribes to bet between \$200,000.00 and \$300,000.00-31 tribes to get between \$300,000.00 and \$500,000.00-13 tribes to get between \$500,000.00 and \$700,000.00-14 tribes to get between \$700,000.00 and \$900,000.00-4 tribes to get between \$900,000.00 and \$1,000,000.00-27 tribes to get between \$1,000,000.00 and \$2,000,000.00-15 tribes to get between \$2,000,000.00 and \$4,000,000.00-3 tribes to get between \$4,000,000.00 and \$6,000,000.00-1 tribe to get between \$7,000,000.00 and \$8,000,000.00 and-1 tribe to get between \$55,000,000.00 and \$57,000,000.00

Workgroup Text Change

The funding workgroup response:

Workgroup Comments

The commenter is requesting that a change be made to the NPRM in providing more background information.
The workgroup considers this a no action comment.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 26, #2	Policy	1231	1		Accept Comment	AGREE	AGREE

Public Comment

The Red Lake Band of Chippewa Indians has been very active in IRR Program administration activities, and participated directly in the negotiated rulemaking called for under the Transportation Equity Act for the 21st Century ("TEA-21"). Through our participation, we have full knowledge of the difficulties the TEA-21 IRR Negotiated Rulemaking Committee ("Committee") faced over the past in performing their task. However, many of the difficulties the Committee faced were attributable in large part to the unwillingness of some of the federal representatives on the Committee to negotiate fairly and fully. Indeed, the federal approach to the "Key Areas of Disagreement" reveals that the federal representatives were not willing to engage in a discussion on all issues; engaged in discussions about some areas and reached agreement, only to withdraw that agreement after negotiations concluded; and, simply refused to address the issues raised by the tribal representatives in favor of the tribal position.

Workgroup Text Change

Workgroup Comments Forward to the Assistant Secretary. No changes required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 26, #3	Policy	3	4		Accept Comment	AGREE	AGREE

As a general observation, it is evident that the Administration has made many substantive, unilateral changes to the consensus regulations developed by the Committee since December 2000, when it adjourned after completing its work on the IRR Program regulations. If, as noted by the BIA in the preamble to the NPRM, "TEA-21, Section 1115(b) mandates that the Federal Government ... enter into negotiated rulemaking with tribal governments to develop IRR Program procedures and a funding formula to allocate IRR funds" (67 Fed. Reg. 51330), it should follow that the Administration must honor Congress' intent that the draft regulation reflect the consensus regulation negotiated by the Committee rather than unilateral agency decision making. Too often, important concessions made during the negotiated rulemaking process by both tribal and Federal officials have been undone by Department officials not as informed on the nuances of an issue and who fail to appreciate the consensus position. In negotiated rulemaking, both sides benefit from participating in an open dialogue which explores every aspect of an issue and the consensus proposal developed reflects the appropriate balance between competing interests. This is one of the many purposes of negotiated rulemaking - to inform agency decision making during the rulemaking process and to make final regulations less likely to be challenged by those whom it regulates. It is unfortunate that Federal officials in the agency clearance process failed to support the negotiated consensus position negotiated during the rulemaking.

Public Comment

Workgroup Text Change

Workgroup Comments The commentor is correct. Some changes were made in the rule after final committee action on the NPRM. This is consistent with the rulemaking process.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 28, #4	Policy	1370	2	YES	Accept Comment	AGREE	AGREE

Public Comment

The Shoshone-Bannock Tribes (the Tribes) wish to point out that the format of the entire Notice of Proposed Rulemaking (the Rule) is deceptive in nature. Specifically the construct of the Rule would lead the reader to believe that almost none of the proposed Rule is in dispute by the various members of the TEA-21 Negotiated Rulemaking Committee (the Committee). The Tribes know this in fact to not be the case with much of the Rule as presented, to be opposed by members of the Committee. The Tribes understand the Committee is made up of the Federal Caucus and the Tribal Caucus and should have reached consensus according to the established Protocols of the Committee. Issues of non-agreement should have been set-aside or more important - equally and fairly negotiated by the Federal Mediation Service (the FMS). The Tribes believe the FMS has not required federal and tribal negotiation as specified in statutes of the Transportation Equity Act for the 21st Century (the TEA21), Pub. L. 105-178, 112 Stat. 107. The Tribes suggest that the proposed rule be declared in dispute. The Tribes believe that the FMS should engage in a formal dispute resolution process with the goal of establishing an Indian Reservation Roads Program - The Proposed Rule that is acceptable to the Federal Government and the Tribal governments. The Tribes believe that a significant cost savings would be realized by following this process rather than leaving the control of the rule making in the hands of the Bureau of Indian Affairs (the BIA).

Workgroup Text Change

Workgroup Comments Forward to Assistant Secretary's office. Comment will be noted in preamble. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 28, #5		Policy	1370	37	YES	Accept Comment	AGREE	AGREE

Public Comment

The Shoshone-Bannock Tribes are concerned regarding the federal changes that are not agreed to according to the established Protocols of the TEA-21 NegotiatedMediation Service. The Shoshone-Bannock Tribes suggest that the proposed rule be declared in dispute.The Shoshone-Bannock Tribes recommend that the tribal and federal representatives who have vacated their positions on the TEA-21 Negotiated Rulemaking Committee be identified and those vacant positions be re-appointed by the Secretary before the convening of the Committee.

Workgroup Text Change

Workgroup Comments Process. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 28, #6	Policy	371	1		Accept Comment	AGREE	AGREE

Public Comment

Whereas, Improving and developing transportation systems which serve our reservation community is critical to the future well being of our members; and Whereas, maximizing tribal flexibility and discretion in the administrating of the IRR Program, honoring tribal sovereignty and furthering the policy of self-determination and self governance, increasing federal accountability and responsiveness to the Indian governments they serve, eliminating unnecessary bureaucratic requirements which burden the operation of the IRR Program, promoting sensible economic practices and innovative thinking, and improving communication, consultation and collaboration in performance of the IRR Program, are tribal goals which will ensure that tribal transportation priorities are addressed and the health and safety of our members are protected; and Whereas, The Federal and Tribal Caucuses of the Negotiated Rulemaking Committee could not reach agreement on a number of important issues relating to the IRR Program, and requires the comments of effected Indian tribes to better inform the Committee, Be It Further Resolved, that the Tribal Council urges the Department of the Interior and Department of Transportation to promptly reconvene the TEA-21 Committee to finalize the IRR regulations, including the non-consensus issues, and develop and promptly publish an FY 2003 Interim funding formula to distribute IRR funds, consistent with the government-to-government relationship existing between the United States and sovereign Indian Tribes.

Workgroup Text Change

Workgroup Comments No change requested. Commentor's concerns have already been addressed. The committee was finally reconvened.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg.	29, #2	Policy	421	85		Accept Comment	AGREE	AGREE

Public Comment

This letter is in regard to long-standing problems with the IRR program in Alaska, and particularly the way BIA Central Office interacts with Alaska. Alaska tribes can no longer accept the arbitrary decisions regarding the IRR program made by the BIA Central Office, and its casual disregard of gaps in data and mistakes in the implementation of the funding formula. Too often, when problems are brought to the BIA attention the result is either silence (no response) or finger pointing at other BIA staff within Alaska. The BIA provides almost the entire program on a direct service basis. The BIA is one agency: it is non-responsive and simply irresponsible for Central Office staff to blame problems on the Region.

Workgroup Text Change

Workgroup Comments Process. No change requested.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectip	258 - A1	Technical Standards	20	13	YES	Reject Comment	AGREE	NO ACTION

Public Comment Eligibility inquiry, if a timely response is not received by the requesting tribe, the tribe assume that the project is allowed until notified. How will this effect the Tribal Transportation Improvement Plan (TTIP), budget, or the expenditure of funds? If the tribe(s) do not receive information on time and expends funds on a project that is determine not eligible, then what?

Workgroup Text Change

Workgroup Comments Refer to 434, Expenditures cannot occur until the TIP is approved. Timing issues will be addressed in the rewrite of 420. Remainder of question is unclear.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	357-D1	Technical Standards	35	149		Reject Comment	AGREE	NO ACTION

Public Comment Subpart G- BIA Road Maintenance:Comment: Since road maintenance is a part of the IRR Program requirements, all references to BIA maintenance being a "Program" should be stricken form this subpart. Just because the road maintenance is funded out of Interior appropriations does NOT make it a program unto itself.Because the funds are so scarce in the road maintenance side of the program, it is appropriate for the tribes to provide the BIA with a list of their maintenance priority needs. This will also help to avoid tort liability on the part of both the tribes and Bureau. It is recommended that a section be added to address this in this Subpart of the rule.

Workgroup Text Change No Change

Workgroup Comments It is a program

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	357-Cc3	Technical Standards	421	66		Reject Comment	AGREE	NO ACTION

Public Comment

IRR Bridge Program Fund to the IRR Bridge Program at #50 million annually from the Highway Trust Fund. Expand the authorized use of IRR bridge program funds to include new bridges and clarify that such funds can also be used for planning, construction engineering, and design of new and existing bridges. Provide for tribal contracting/compacting of the IRR bridge inspection program under P.L. 93-638 by region. The current system of a single national bridge inspector, now based in Florida, does not allow sufficient opportunity for tribal governments to monitor and use this vital service. Bridge inspection by region serves the goal of tribal self-determination and self-governance, without compromising the integrity of this important safety function.

Workgroup Text Change No Change

Workgroup Comments Outside scope

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	357-Cc2	Technical Standards	1326	59		Accept Comment	AGREE	AGREE

Public Comment

An example is a gravel road that leads to a bridge 10 miles east of the village; The road is pocked with potholes and four locations are eroded to the bedding material due to water run-offs. Driving conditions for ATV's and trucks are so bad that speeds cannot exceed 10 mph as drivers weave between potholes and ruts. The north river bridge has been neglected for repairs and is in danger of collapse due to spring breakup when the ice flows down river. Because of melting snow in the mountains and ice jams the water reaches above flood stage and poses a threat to the bridge as ice flows batter the center pier and bottom of the bridge. The east abutment is eroded almost entirely clean of supporting gravel and concrete to where there is no supporting structure for the bridge to maintain its structural integrity. Without the piecemeal fixes that different organizaitons perform in cooperation with each other, the bridge would have collpased into the river where salmon (king, chums, pink and cohos) spawn, as well as whitefish, dolly varden, fresh water burbot and grayling.

Workgroup Text Change No Change

Workgroup Comments Outside scope

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	356-Cc1	Technical Standards	38	34		Accept Comment	AGREE	AGREE
Public Comment	Subpart G-BIA Road Maintenance While the NPRM provides considerable guidance regarding road maintenance, the regulations provide no mechanism for the fair and equitable distribution of maintenance funds. Road maintenance is severely under-funded. The regulations should provide a mechanism for allocating those limited maintenance funds in a fair and equitable manner.							
Workgroup Text Change	No Change							
Workgroup Comments	Outside scope							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	356-B1	Technical Standards	3	60		Accept Comment	AGREE	AGREE

Public Comment

The NPRM's proposed regulations (subpart G) addressing maintenance needs under the IRR Program are a significant improvement over the four sentences currently found at 25 C.F.R. 170.6. The NPRM marks a significant departure from current regulations by devoting an entire subpart of the proposed rule to IRR transportation facility maintenance requirements. Indian tribes, as well as the Department of the Interior and Department of Transportation should point to subpart G of the NPRM as further justification to increase the Department of the Interior's and Department of Transportation's budgets for transportation maintenance activities carried out on IRR roads, bridges and other eligible transportation facilities. Without adequate funding for facility maintenance needs, Federal funding for new construction has less impact because the useful life of such improvements is shortened by inadequate maintenance. Adequate maintenance funding will extend the useful life of the IRR transportation system.

Workgroup Text Change No Change

Workgroup Comments Outside scope

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	356-A5	Technical Standards	421	93		Reject Comment	AGREE	NO ACTION

Public Comment

On a related topic, we urge you to request an increase in funding to the IRR Road Maintenance program. At a minimum, we believe the program should be increased by \$100,000,000 annually from its current level. The maintenance situation in Alaska is dire. All tribes need the opportunity to keep their roads safe. Our quality of life is harmed by the condition of our transportation systems. In most of our communities our primary access is by small air carriers. Dust from gravel runways and dust within our community street system is a great concern for both health and safety. We invite you to come and spend some time in Alaska to learn about our very unique transportation concerns.

Workgroup Text Change No Change

Workgroup Comments Outside scope

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	355-A4	Technical Standards	421	65		Reject Comment	AGREE	NO ACTION

Public Comment

Maintenance Funding TEA-2 I mandates that roads and bridges constructed with Highway Trust Fund dollars be adequately maintained to protect the public investment. The IRR system has historically received only \$26 million per year in Department of interior (DOI) maintenance funding, less than 1/10 of the funding per lane mile that States have available to maintain their roadways. This funding inequity causes tribal roads and bridges to deteriorate years before their time. Based on available data, the Task Force has determined that a minimum of \$527 million (\$127 million from DOI and \$400 million from DOT) per year is required to maintain the existing IRR system. The Task Force recommends that such increases to the BIA road maintenance program not be to the detriment of other BIA funded programs.

Workgroup Text Change No Change

Workgroup Comments Outside scope

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	355-A3	Technical Standards	20	12		Reject Comment	AGREE	NO ACTION

Public Comment

Difficulty in maintaining all-weather. Are the tribes given the option of rating these roads themselves? This is another proposed event that needs clarification.

Workgroup Text Change

No Change

Workgroup Comments

Outside scope of this section

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section	355-A2	Technical Standards	421	64		Reject Comment	AGREE	NO ACTION
Public Comment	Clarify that the IRR Maintenance funds are to be made available for IRR transportation facilities regardless of ownership.							
Workgroup Text Change	No Change							
Workgroup Comments	Comment is addressed in 805, 806							
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific section Public Comment	P 355 - A1	Technical Standards	20	1		Reject Comment	AGREE	NO ACTION
Workgroup Text Change No Change								
Workgroup Comments No section specified								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectiD3		Technical Standards	35	146	YES	Accept with Modification	AGREE	AGREE

Public Comment Subpart F - Program Oversight and Accountability: Comment: Sections 170.705, 707, and 708 relate to pre-construction activities and should be moved to the subsection on "Design" under Subpart D. This way it is very clear to the reader all the requirements under pre-construction and P.S.&E. requirements.

Workgroup Text Change Move 707 and 708 to Subpart D. And possibly 705 after it is determined what 705 is supposed to be.

Workgroup Comments clarification

Federal Comments covered in the PS&E re-write

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	348-A2	Technical Standards	20	18		Reject Comment	AGREE	NO ACTION

Public Comment Senate report 106-406, "Retaining a bureaucratic check on every detail of IRR planning and construction is unnecessary and creates redundancy and inefficiency" BIA follows checks that coincide with the stewardship agreement with the FHWA for planning and construction. Was the statement based on studies or surveys?

Workgroup Text Change

Workgroup Comments Outside Scope

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	348-A1	Technical Standards	20	16		Reject Comment	AGREE	NO ACTION

Public Comment

Which organization is the tribal caucus inferring to have a Stewardship Agreement with for the review/approval process of PS&E, Bureau of Indian Affairs Department of Transportation or Federal Highway Administration. Please clarify?

Workgroup Text Change

Workgroup Comments Already answered in Preamble

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 18, #9	Technical Standards	421	59		Referred to Funding	NO ACTION	NO ACTION

Public Comment The Task Force recommends that annual funding for the ERR Program and other tribal transportation programs be calculated by identifying the actual transportation needs of all Indian tribes and spreading this unmet needs cost over the years of the next reauthorization, taking into account the actual funds available in the Highway Trust Fund and the proportion of roads and bridges on the national highway system. As trustee for Indian tribes, the Bureau of Indian Affairs (BIA) must provide technical support, data and other assistance to tribal governments in this effort since many Tribes may have insufficient planning funds to perform this vital needs assessment before the next reauthorization.

Workgroup Text Change

Workgroup Comments TS recommends rejecting this comment. Refer to Funding for concurrence.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 5, #2		Technical Standards	8	2		Reject Comment	AGREE	NO ACTION

Public Comment

We believe that all tribal entities conducting transportation improvements should be held to the same degree of accountability that state and local governments are for public scoping, the NEPA process, and other public involvement issues. Lack of concrete requirements in these arenas will lead toward degradation of the IRR roadway network, just as it would our state highway system. Accountability toward these environmental and public involvement issues will prove mutually beneficial.

Workgroup Text Change

Workgroup Comments Tech standards is addressing. TS comment: Tribes are held to a standard as established by FHWA.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg.	32, #5	Technical Standards	351	1	YES	Accept with Modification	AGREE	AGREE

Public Comment I am not clear on the relationship of the IRR TIP when some or all of the projects it contain are located in a "large" MPO area; that is, an MPO also designated as a "transportation management area" (TMA) under federal regulations. So my question: Please identify how projects in a "IRRTIP" are to be included in the STIP when the IRR TIP-identified proposed projects are located inside the metropolitan area boundary of a TMA metropolitan planning organization. For example, must the IRR TIP proposed projects be in both the TMA's MPO TIP and the STIP to be in compliance with federal regulations, or to federal regulations allow such proposed projects to be only in the STIP?

Workgroup Text Change Add to new 170.425 - BIA Regional Offices will provide copies of the approved IRR TIP to affected MPO's for their reference.

Workgroup Comments Included in the rewrite of sections 400-436.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 36, C(c)3	Technical Standards	1377	7	YES	Referred to Funding	NO ACTION	NO ACTION

Public Comment

Two Percent Inventory Limitation (not in the NPRM)Discontinue the BIA policy that limits the expansion of the Indian Roads Need Inventory to two percent for funding purposes. This administrative policy unfairly penalizes tribes that have not had the administrative capacity to update their BIA road inventories. There are a number of tribes in Alaska which have no mileage in the BIA inventory and the current policy disallows current tribal efforts to add roads for the BIA's Alaska Region Inventory for funding purposes.

Workgroup Text Change

Workgroup Comments Comment pertains to limitation on funding generation.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 37, C(c)4	Technical Standards	1335	7	YES	Referred to Funding	NO ACTION	NO ACTION

Public Comment

2% Inventory Limitation Discontinue (not in the NPRM) The BIA policy that limits the expansion of the Indian Roads Need Inventory to 2% for funding purposes. This is an unfair policy that benefits tribes that have updated inventories and harms those that don't. We note that this limitation is not in the proposed regulation, and should not be. Concerning the Tanana Tribe, this tribe was recognized as have one (1) mile of road inventory in 1993, when in reality the tribe had over 35 miles of actual roads. That is not including old transportation routes that qualify, and proposed roads. Tanana Tribe completed their BIA IRR inventory only to be excluded in the Alaska Region BIA 20 year IRR inventory of actual and proposed roads.

Workgroup Text Change

Workgroup Comments Comment pertains to limiting how inventory can generate funding.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 39, C(c)1	Delivery of Services	384	3	YES	Parking Lot	NO ACTION	NO ACTION

Public Comment

The Proposed Rule should allow tribes to work directly with the Federal Highway Administration (FHWA) on reservation transportation road construction matters, rather than requiring tribes to work through the BIA. The Proposed Rule should require that the Indian Reservation Roads (IRR) Program be fully funded at the beginning of each fiscal year so that reservation road construction does not lag behind off-reservation construction. Our experience in the past has been that construction funds have been provided late in the fiscal year, with the consequence that the tribes lose valuable construction time and projects become more costly. The Proposed Rule should require that a national "Indian Roads Condition and Needs Study" be undertaken with a near-term deadline so that tribes and Congress can properly assess the progress of TEA-21 toward upgrading the condition of reservation roads. The backlog of construction projects on reservation roads should be included in this study. The Proposed Rule should require that the entire Federal budget allocation of \$275 million (fiscal year 2003) for reservation roads construction be applied to projects. Funds for non-project activities should be supplemental to the \$275 million appropriation. The Proposed Rule should provide that the TEA-21 IRR Program Coordinating Committee (page 51374, 25 CFR :sec; 170.299) sll be left in place and will be authorized as an oversight committee to hold the BIA and FHWA accountable for the requirements and procedures of the Proposed Rule.

Workgroup Text Change

Workgroup Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 34, A2	Delivery of Services	20	5	YES	Parking Lot	NO ACTION	NO ACTION

Public Comment

The tribes expect BIA to retain the responsibility of liability, public health and safety. If a logical thought is employed, why would any organization federal government, local government or private accept liability and fiduciary responsibility on something they do not own?

Workgroup Text Change

Workgroup Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 50, #3		Delivery of Services	16	1	YES	Parking Lot	NO ACTION	NO ACTION

Public Comment The Tribal council of the Northern Cheyenne Tribe hereby authorizes the submission of the Tribe's public comments to the proposed IRR rule and does hereby endorse the views of the Tribal Caucus to the Committee regarding non-consensus issues generally, except as specifically noted for the reasons stated in the letter, attached hereto, to the Committee submitting this resolution and our comments on the proposed rule.

Workgroup Text Change

Workgroup Comments

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	B1 pg. 341	Delivery of Services	35	7		Reject Comment	AGREE	NO ACTION

Public Comment

G. Self Governance Compacts - Subpart E: Comment: This is a "project based" program in which there are activities (within each project) that are required that a tribe under a self governance agreement can perform subject to the IRR TIP process approved by FHWA and BIADOT (before funds can be expended). Therefore, these activities go hand in hand within the "Project" and cannot be separated out as the tribal caucus implies here. Therefore, if a tribe wants to "compact" for a project or projects or just certain activities (as reflected on the IRR TIP) they can provided these activities are reflected in the agreement and IRR TIP for the tribe in question and would still be subject to the requirements of 25 CFR 1000, Subpart K. These regulations cannot change the requirements of existing self governance laws or regulations as also implied here by the tribal caucus. The bottom line is you cannot expend funds on activities for a project that is not on an approved TIP.

Workgroup Text Change

Workgroup Comments No specific change is requested. Commentor is merely expressing support of the Federal View regarding contractibility.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	A4 pg. 341	Delivery of Services	20	21		Reject Comment	AGREE	NO ACTION

Public Comment What happens to unexpended year end funds? The tribes need to make clear what will happen if the funds are not completely used. How do tribes intend to improve on the program? Please give examples in the argument as to where the program has been (history) the planned improvements and the future projections of the program?

Workgroup Text Change

Workgroup Comments Issue already adequately addressed in the rule.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	A3 pg. 341	Delivery of Services	20	4		Reject Comment	AGREE	NO ACTION

Public Comment If tribes are going to contract professional services and services are not rendered in accordance to the scope of work, how will the tribe(s) pursue or prosecute non reservation owned businesses? States that issue professional license have a licensing board that consists of expert members who determine the issuance of licence and the degree of penalty for unethical practice of the license.

Workgroup Text Change

Workgroup Comments Comment is beyond the scope of this rule.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	A2 pg. 341	Delivery of Services	20	2		Reject Comment	AGREE	NO ACTION

Public Comment The tribal caucus demands to receive money up front for the accumulation of interest and utilize the interest as seen fit by the tribe. If the funding is dispersed to the tribe. Will the funds go directly to the tribe from the Federal Highway Administration (FHWA) or from the Department of Treasury.

Workgroup Text Change

Workgroup Comments Comment unclear

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	A1 pg. 341	Delivery of Services	40	4		Reject Comment	AGREE	NO ACTION

Public Comment

:pg.; 51350 Public Hearing-Fed proposal is for costs of hearing to be taken from constructions funds. Will the tribes be allowed to list as a new pay item on 93-638 contracts? :ISDEAA;

Workgroup Text Change

Workgroup Comments Commentor is not requesting any specific change, but rather asking the question "Will the tribes be allowed to list as a new pay item on 93-638 contracts. The workgroup determined that this is a allowable project related cost. Refer Appendix A to Subpart B (a) no. 25 page 51368.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	1 pg. 50	Delivery of Services	35	1		Reject Comment	AGREE	NO ACTION

Public Comment A. General Issues:Issue: Availability of "all IRR funds" to tribes:Comment: We would agree that all funds for IRR functions and activities that are not an inherent responsibility of the Secretaries is contractible. It seems that this issue has been resolved in the writeup under Subpart B & E where these inherent functions are identified.

Workgroup Text Change

Workgroup Comments No specific change is requested. Commentor is merely expressing support of the Federal View regarding contractibility.

Federal Comments

Tribal Comments



NPRM COMMENT REVIEW PROGRESS REPORT

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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	6 pg. 51	Delivery of Services	22	6		Reject Comment	AGREE	NO ACTION

Public Comment

USET strongly objects to the BIA conclusion, on page 51335, in which the four areas of disagreement are said to be outside the scope of this rulemaking. The DOI institutes obstacles to improving the IRR Program by placing issues of importance outside the scope of rulemaking. This is unacceptable and these issues clearly are within the scope of this committee. This is a bold attempt by the department to get rid of the tribal concerns so that they no longer have to deal with the issues. This Committee has gone through 2 years of drafting this document and working through these issues, yet during that time not one federal official stepped forward with the suggestion that this work was beyond the scope. If in fact these are outside of the scope of rulemaking, all of the time and money spent on the process was wasted federal resources and those officials participating in the process should be held accountable for the time and money lost. USET believes that these issues fall within the purview of the Committee and should be resolved in a way that supports the efficient operation of the IRR Program.

Workgroup Text Change

Workgroup Comments No specific change requested. Commentor is merely expressing support of the Triball View regarding a disagreement item.

Federal Comments

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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	5 pg. 51	Delivery of Services	378	4		Reject Comment	AGREE	NO ACTION

Public Comment

The Tohono O'odham Nation objects to the BIA's conclusion (p.51335) that four areas of disagreement - advance funding, savings, contractibility, and availability of contract support cost funding - are outside the scope of this rulemaking. These issues are at the very heart of the IRR Program and cannot be separated from the rule that will govern it. These, again, are issues of sovereignty and self-determination. The suggestion to remove these central issues from the negotiated rulemaking is inconsistent with intent of the rulemaking process itself.

Workgroup Text Change

Workgroup Comments No specific change requested. Commentor is merely expressing support of the Triball View regarding a disagreement item.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 17, #8	Funding	1384	1	YES	Reject Comment	AGREE	NO ACTION

Public Comment

The Tribes in California are in danger of losing much needed funding for transportation through the Bureau of Indian Affairs, Indian Reservation Roads Program. We have found several issues that could erode tribal sovereignty and dim the strides tribes made over the years to enforce the Indian Self-Determination Act through Public Law 93-638 contracting. The Tribes in California historically have received inadequate funding in all areas of Tribal Operations. Including the Indian Reservation Roads Program, which results in serious health and safety concerns for each Tribe in California. We request that the U.S. Department of Transportation take these comments to the heart and make the moral obligation to the Tribes of California by appropriating the necessary funding.

Workgroup Text Change

The funding workgroup response:

Workgroup Comments

The commenter is asking DOT to appropriate funding.

The workgroup agrees with the comment, but considers it outside the scope of our activities.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 16, #5	Funding	42	1		Reject Comment	AGREE	NO ACTION

Public Comment

The State of Oklahoma has one of the largest Indian populations in the United States not to mention a vast amount of Indian land that is tax exempt. Most Indian communities are located in remote rural areas where access to employment, education, and healthcare is at great distances and where road conditions are unimproved and unsafe. Even though the state provides an annual sum of #6 million in STP funding for rural collectors, it is not enough to address the rural road improvement needs of Indian communities for all 77 counties in Oklahoma. The same can be said about bridge funding. The number of deficient bridges in Oklahoma is among the highest in the nation. For these reasons, I believe it is the federal government's responsibility to provide IRR funding for roads and bridges serving Indian communities.

Workgroup Text Change

The funding workgroup response:

The commenter is requesting more funding in general.

Workgroup Comments

The workgroup agrees with the observation but identifies this as outside the scope of our activities...reject comments.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	12 pg. 54	Delivery of Services	38	2		Reject Comment	AGREE	NO ACTION

A. General Issues
 The federal and tribal caucuses fundamentally disagreed over the interpretation of the Transportation Equity Act for the 21st Century (TEA-21) provision that makes funding related to the Indian Reservation Road (IRR) program eligible for contracts and agreements under the Indian Self-Determination and Education Assistance Act (ISDEAA). We endorse the tribal view, which interprets the provision to provide tribes that assume roads-related program functions with sufficient flexibility and discretion to enhance service delivery and to fulfill the purposes of the IRR program "to provide safe and adequate transportation and road access . . . while contributing to economic development, self-determination and employment of Indians and Alaska Natives." 67 Fed. Reg. at 51329. The tribal view seeks to interpret TEA-21 and the ISDEAA liberally, for the benefit of tribes as required by the general canons of construction for laws related to Indian tribes. In the negotiations, the federal caucus frequently interpreted those laws narrowly to limit tribal discretion and to unnecessarily bureaucratize program services and delivery in ways that will likely hinder the achievement of the IRR program objectives. Many sections of the NPRM reflect this fundamental disagreement. The tribes view the statutes as providing them with flexibility, empowering them to redesign programs and prioritize spending and enhancing decision making at the local level where such decisions are subject to the greatest level of accountability-by the tribal members who use the transportation services and roadways. We believe that the tribal perspective is consistent with Congress's intent and purpose in enacting section 1115(b) of TEA-21.

Public Comment

Workgroup Text Change

Workgroup Comments No specific change requested. Commentor is merely expressing support of the Tribal View regarding a disagreement item.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific secti	10 pg. 53	Delivery of Services	34	1		Reject Comment	AGREE	NO ACTION

Public Comment

Key Areas of Disagreement
 General Issues
 TEA-21 requires that all IRR Program funds be made available to Indian tribes that choose to administer IRR projects, or the entire IRR Program, "in accordance with the Indian Self-Determination and Education Assistance Act," the avowed purpose of which is to respect Indian tribal self-government and sovereignty, and to grant Indian tribal governments the maximum discretion possible with respect to Federal Statutes and regulation. There is no TEA-21 regulation referenced in the Proposed Rule that prohibits Tribes from receiving IRR Program funds directly from the FHWA for IRR projects, nor a statute that requires IRR funds to be administered by and contracted through the BIA. The only statutory reference states "in accordance with the ISDEAA." The definition of "accordance" is "in agreement with or in conformity with." The regulation does not specify using the ISDEAA as the only vehicle to acquire IRR Program funds.

Workgroup Text Change

Workgroup Comments No specific change requested. Commentor is merely expressing support of the Tribal View regarding a disagreement item.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 45, #9	Funding	1370	13		Reject Comment	AGREE	NO ACTION

Public Comment

Rule - Page 51334 states: "How Does the Relative Need Distribution Factor Comply With Congressional Intent? . . . Relative Administrative Capacities of Indian Tribes." Comment: The Tribes :find; this interpretation of Congressional intent interesting and believe that the interpretation that Congress intended that Tribal governments that do not have the basic administrative capacity to administrator the IRR program be served by the existing BIA roads division equally valid. The statement regarding "interim funding allocations used in FY 2000, 2001, 2002" should be clarified to state that there will be annual set-asides for all tribal governments to conduct sustained annual administrative capacity building through transportation planning pursuant to P.L. 93-638.

Workgroup Text Change

Workgroup Comments

Funding Workgroup response:
Comment is unclear, the workgroup rejects.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 46, #12	Funding	7	6		Reject Comment	AGREE	NO ACTION

Public Comment

Page 51334: Second Column, Fourth paragraph it states, "Difficulty in Maintaining All-Weather Access". Does this apply to dirt or asphalt paved surface?

Workgroup Text Change

The funding formula response:

Workgroup Comments

The commenter is asking a question about all-weather access and whether it applies to dirt or asphalt roads.

The workgroup believes all-weather access applies to all surfaces. No change requested, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 39, A3	Funding	7	3		Reject Comment	AGREE	NO ACTION

Public Comment

The Hopi Agency receives very limited maintenance funds. Will Total Cost to Improve as part of the factor increase maintenance funds? Or, does the Total Cost to Improve apply strictly to construction?

Workgroup Text Change

The funding formula reponse:

Workgroup Comments

The commenter is asking for clarification regarding the impact of maintenance funds on the Cost to Improve.

Road maintenance is provided only through DOI appropriations. The comment is rejected.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 34, C1	Funding	1374	7		Reject Comment	AGREE	NO ACTION

Public Comment

The Pueblo of Zuni is overly compelled to not support this proposed rule; as stated in the docket. There are several indicators throughout the docket that suggest the benefactors will be the Alaskan Tribes.

Workgroup Text Change

Workgroup Comments

The funding workgroup response:
The commenter is not requesting a change, no action taken.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg. 30, #1		Policy	373	2		Accept Comment	AGREE	AGREE

Public Comment We support the Indian Self-Determination and Education Assistance Act (Public Law 93-638, as amended) and its full implementation throughout Indian country. This law not only creates greater tribal control, it also contributes to the local economy through employment, education and health care. The federal government's policy should serve to advance Indian self-determination and tribal rights to self-government.

Workgroup Text Change

Workgroup Comments No change requested.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 33, #1 Public Comment		Policy	375	8		Accept Comment	AGREE	AGREE
:Atth 1: National Analysis of Miles of IRR Roads by Jurisdiction;								
Workgroup Text Change								
Workgroup Comments No comment, but attachment. No response needed.								
Federal Comments								
Tribal Comments								



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 42, #2	Policy	1370	3	YES	Accept Comment	AGREE	AGREE

Public Comment

Rule - Page 51329: "What Is the Indian Reservation Roads Program? . . . The duties and responsibilities of BIA and FHWA are described in a Memorandum of Agreement between the two agencies which can be found at the section on joint administration. "Comment: This key document as to how the program will be administrated should have Tribal representation in its construct and development. The Tribes request that in the spirit of a Government-to-Government relationship and partnership this Memorandum of Agreement should be a three way document between the FHWA, BIA and Tribal governments. Rule - Page 51329 states: "What Is the Indian Reservation Roads Program? . . . BIA works with tribal governments and tribal organizations to develop an annual priority program of construction projects which is submitted to FHWA for approval based on available funding. FHWA allocates funds to the BIA which distributes them to IRR projects on or near Indian reservations according to the annual approved priority program of projects. BIA distributes funds using the relative need formula."

Workgroup Text Change refer to final rule writers.

Workgroup Comments

reject first paragraph becuase it would be impracticable for each tribe to enter into a Memorandum of Agreement. The commentor's concerns are adequately addressed in the sections describing ISDEAA government-to-government agreements. No changes can be made to the old preamble, but the commentor's concerns will be considered in the drafting of the preamble for the final rule. Refer comments to final rule writers for consideration in drafting final preamble.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	pg. 32, #3	Policy	394	25		Reject Comment	AGREE	NO ACTION

Public Comment

Indian Reservation Roads Bridge Program (IRRI~P) (Title 23, Section 661) Funding should be allowed for planning and design of bridges on the IR/RBP. Remove the #1.5 Million IR_R p~rticipation limit for non-IRR bridges.

Workgroup Text Change

Workgroup Comments The definition of a bridge is contained in 23 CFR, it would require a regulatory change by DOT. No change required.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectipg. 19, #1		Policy	421	68		Reject Comment	AGREE	NO ACTION

Public Comment

Establish Funding for Tribal Governments in all U. S. DOT modal administrations:A major goal in the next reauthorization is to establish that tribal governments are the most appropriate and efficient government providers of federal transportation services on tribal lands. Indian tribes should comprehensively perform this function on tribal lands just as State transportation departments (State DOTs) perform this function on State lands. To accomplish this important change in the way tribal governments are used to deliver federal transportation services, the task force recommends appropriate funding set-asides within all U.S. DOT modal administrations. To promote a more efficient system. Indian tribes should have direct access to these federal funding sources and should not be required to use the current inefficient system of requesting such funds from State DOTs.

Workgroup Text Change

Workgroup Comments No response needed because statutory changes are requested.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sectpg.	19, #2	Policy	10	1		Accept Comment	AGREE	AGREE

Public Comment

I am writing you this letter regarding Nevada State Route 445. This route begins at Interstate 80 in Sparks, Nevada and continues north for approximately 70 miles. 30 miles S north of Sparks this route enters the Pyramid Lake Paiute Indian Reservation and continues through the reservation for an additional 25 miles and then leaves the reservation boundary and continues to the California State line. This route is paved from Sparks for approximately 40 miles at which point it turns into a gravel road. This gravel road is not maintained. We have contacted the Nevada State Highway Department, Washoe County Road Department and the Paiute Tribe, and cannot get a straight answer as to whose responsibility it is to maintain this portion of the road. Washoe County maintains the portion of this gravel road after it leaves the reservation boundary until it reaches the California State Line. Several years ago Washoe County used to have an agreement with the Tribe to maintain the road, but for whatever reason that agreement has ended, and they have never done any maintenance to the road since. Art Wilson Trucking Company has been maintaining the road for the past several years, and he has been doing this strictly for the benefit of his trucks. This road is severely rough and extremely rocky. He has been maintaining the portion of this road that his trucks travel over so as to save himself repair costs, with absolutely no help from the Tribe at all, they wouldn't even give him the dirt, materials or water need to do the work, even when he supplied all the manpower. We have been informed that he will cease his trucking operations and will no longer be maintaining the road. The Tribe has also been informed of this decision as well. The road has not been touched in the past 6 months. The Tribe has no made no effort in maintaining this road just as they have done for the past 20 years.

Workgroup Text Change

Workgroup Process. No change requested.

Federal Comments

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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
No specific sect	ipg. 20, #3	Policy	37	1		Reject Comment	AGREE	NO ACTION

Public Comment

I am referring specifically to changes to 25 CFR Part 170, regarding Indian Reservation Roads (IRR) Programs that gives tribes broad authority to restrict the use of roads on their reservations. This is a very hot issue with me, expansion of Indian control beyond the tribe and reservation. As a former County Commissioner in a county with two small Indian Reservations, I found it frustrating to deal with the federal bureaucracy on all issues in all areas where the tribes were concerned. These regulations are a continuation of this insanity because there is a patch-work pattern of jurisdiction between fee and trust lands. The courts have made it clear that tribes don't have control over non-Indians and rightfully so. Thanks to the inaction of Congress to address ongoing injustice, American citizens find themselves treated like crap by tribal courts, whose rules don't follow our laws and judicial precedents. These same innocent American citizens lack voice and vote in the Indian government that is harming their interests. Expansion of this petty tyranny by federal bureaucrats creates deep wells of ill will. We don't need two governments to rule the same piece of land. The states of the union are the duly constituted governments and should be given precedence.

Workgroup Text Change

Workgroup Comments No change requested, adequately addressed.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
Public Comment	297-D1	Technical Standards		134		Accept Comment		AGREE

Workgroup Text Change

Workgroup Comments Section on right of way will be rewritten.

Federal Comments

Tribal Comments



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NPRM Section	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
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	p. 272-Ca1	Technical Standards	1337	11	YES	Accept with Modification		AGREE
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Page 51359-Section 170.6Comment- These definitions should be redone since many are not used in the Notice of Proposed Rulemaking. Also, many of the definitions are too long and become policy rather than definitions. Definitions should be clear and concise which is what many of these definitions are not. We have the following specific comments on these definitions: Act- This definition should be deleted from these definitions since it is not used throughout the proposed rule. Compact- The second sentence of this definition is difficult to understand and for a definition this is not needed so recommend deletion. Construction- This definition needs to be shortened since it is policy rather than a definition. This definition should be re-written to be for transportation facilities and not just highways by changing "highway" to "transportation facility" in the first sentence. Construction does not include all of the eight items listed in this definition. Items 1, 3 and 4 are project development activities. If this definition is kept as is, we recommend replacing "State" with "Tribal Government". Consultation- This item could be deleted from definitions because it is repeated verbatim in Sec. 170.100 (page 51361). Sec. 170.100 also defined the words collaboration and coordination that are not repeated in definitions. Construction contract- A construction contract is not a project. Items (1), (2) and (3) are inaccurate and unneeded. This definition needs to be rewritten, Contract- We use contracts other than PL 93-638 contracts in the IRR Program. This definition needs to be re-written. Design- Suggest deleting part of this definition - "as well as services provided by or for licensed design professionals during the bidding/negotiating, construction, and operational phases of the project" since this unneeded for a definition.

Public Comment

Workgroup Text Change Change as rewritten for the PS&E approval.

Workgroup Comments Covered under the rewrite of sections 480 - 481.

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NPRM Section Public Comment	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
		Technical Standards				Accept Comment		NO ACTION
Workgroup Text Change								
Workgroup Comments								
Federal Comments								
Tribal Comments								



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NPRM Section Public Comment	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
						Accept Comment		NO ACTION
Workgroup Text Change								
Workgroup Comments								
Federal Comments								
Tribal Comments								



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NPRM Section Public Comment	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
						Accept Comment		NO ACTION
Workgroup Text Change								
Workgroup Comments								
Federal Comments								
Tribal Comments								



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NPRM Section Public Comment	Reference to Public Comment	Workgroup	Letter Number	Comment Number	Change Req	Workgroup Action	Federal Caucus Action	Tribal Caucus Action
						Accept Comment		NO ACTION
Workgroup Text Change								
Workgroup Comments								
Federal Comments								
Tribal Comments								



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	pg. 60, A4	Technical Standards	1231	36	YES	Referred to Policy		DISAGREE
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Public Comment

{Sec;170.6 What are the definitions used in this part?The Committee was not provided with an opportunity to review all of the definitions set forth in subpart A. Rather, most of the definitions were proposed by one of the members of the federal caucus and the Committee simply did not have sufficient time to return to them before the close of December 2000. We believe that the tribal and federal representatives likely would have reached substantial agreement on most of the definitions presented, but for the rush at the end of calendar year 2000 to get a proposed rule presented to then-Assistant Secretary Kevin Gover on his commitment to get the proposed rule published prior to the change in Administrations. The Committee should carefully review each of the proposed definition to determine whether it is consistent with TEA-21, other provisions of the proposed regulation, the ISDEAA, and other relevant laws and regulations.

Definition of "Annual Funding Agreement" -- Insert "(AFA)" after "Annual Funding Agreement."

Definition of "Construction", in (1) change the word "markets" to "markers".

Definition of "Construction Contract" -- replace second "or" in first paragraph with "contract for a".

Definition of "Departments" -- change "Departments" to "Department(s)"; change the "and" to "or" and add ",or both" at the end.

Delete the definition for "Funding Year" because it does not occur any place else in the proposed rule.

Definition of "IRR bridge program" -- add "or replacement" after "improvement".

Definition of "NBI" -- spell out "NBI" as "National Bridge Inventory" and put "NBI" in parathensis. We spell out in 170.818. In last sentence, put a period (.) after FHWA and delete everything after that since it does not add anything to the definition. Delete second sentence because it does not add anything to the definition.

Definition of "Indian" -- insert period (.) after "tribe" and delete all after. The reference to 25 USC 250b is incorrect because that section has been repealed. We believe the reference may be to 25 USC 450b which says "member of an Indian tribe."

Workgoup later decided to change definition of "program" to "program means any program, service, function, or activity, or portion thereof." This is the definition used in 25 CFR Part 1000.

Definition of "Public Road" -- Delete second sentence stating that "an indian reservation road is a public road."

Definition of "Secretaries" -- add "or their designees".

Add a definition for "Tribal Organization" -- use definition from 25 CFR 900.6, which is "means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided, that in any case where a contract is let or a grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

Definition of "Transportation Improvement Program" -- Delete it.

Definition of "Transportation planning" -- "means developing strategies to meet current and future transportation needs based on land use, economic development, traffic demand, public safety, and health and social needs."

Definition of "Transit facility" -- add a definition that states "means those facilities such as, but not limited to, bus terminals, bus stops, adjacent parking areas, and maintenance areas and buildings associated with the public movement of people served within a community or a network of communities.

Not defining "ferry terminals".

Workgroup
Comments
Text Change



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Define "Housing Cluster means three or more housing units."

Define "rural planning organization" the same as in the FHWA rural consultation regulations.

The workgroup reviewed all definitions in the proposed rule.

Definition of "IRR inventory" -- Refer to technical standards workgroup to rewrite. T/S response: IRR Inventory is defined in definitions section and in 170.446. Same definition. Change first sentence to "The IRR Inventory is a comprehensive database of all transportation facilities eligible for IRR Program funding by tribe, reservation, BIA region, congressional district, State and county." Recommend that definition be deleted and leave in 170. 446.

Definitioin of "Real Property" -- refer to Technical Standards because is involved in rights-of-way activities. Tech Standards response: Real property term appears in rule only in 170.438(c). No need to define.

These changes were not made in the Policy presentation. Disagree is noted to bring to the attention of the Tribal Caucus.
