

### **§ 170.3**

(3) Facilitate tribal planning, conduct, and administration of the programs;

(4) Encourage the inclusion of these programs under self-determination contracts or self-governance agreements;

(5) Make available all contractible administrative functions under self-determination contracts or self-governance agreements; and

(6) Implement policies, procedures, and practices in consultation with Indian tribes to ensure the letter, spirit, and goals of Federal transportation programs are fully implemented.

(b) Where this part differs from provisions in the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA), this part should advance the policy of increasing tribal autonomy and discretion in program operation.

(c) This part is designed to enable Indian tribes to participate in all contractible IRR and BIA Road Maintenance programs. The Secretary of the Interior will afford Indian tribes the flexibility, information, and discretion to design roads programs under self-determination contracts and self-governance agreements to meet the needs of their communities consistent with this part.

(d) The Secretaries recognize that programs, functions, services, and activities, regardless of how they are administered, are an exercise of Indian tribes' self-determination and self-governance.

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

(2) The tribe accepts responsibility and accountability to the beneficiaries under self-determination contracts and self-governance agreements for:

(i) Use of the funds; and

(ii) Satisfactory performance of all activities funded under the contract or agreement.

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

(e) The Secretary should interpret Federal laws and regulations to facilitate including programs covered by

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this part in the government-to-government agreements authorized under ISDEAA.

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

(g) The Secretary is not required to reduce funding for a tribe under these programs to make funds available to another tribe.

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

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

#### **§ 170.3 When do other requirements apply to the IRR Program?**

IRR Program Policy and Guidance Manuals and directives apply to the IRR Program only if they are consistent with this part and 25 CFR parts 900 and 1000. See 25 CFR part 900.5 for when a tribe must comply with other unpublished requirements.

#### **§ 170.4 What is the effect of this part on existing tribal rights?**

This part does not:

(a) Affect the sovereign immunity from suit enjoyed by tribes;

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

(c) Require a tribe to assume a program relating to the IRR Program; or

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

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

*AASHTO* means the American Association of State Highway and Transportation Officials.

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*Annual Funding Agreement* means a negotiated agreement of the Secretary to fund, on an annual basis, the programs, functions, services, and activities transferred to a tribe under the Indian Self-Determination and Education Assistance Act, as amended.

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

*BIA* means the Bureau of Indian Affairs of the Department of the Interior.

*BIADOT* means the Bureau of Indian Affairs, Division of Transportation.

*BIA force account* means the performance of work done by BIA employees.

*BIA Road System* means the Bureau of Indian Affairs Road System under the IRR system. It includes those existing and proposed IRR's for which BIA has or plans to obtain legal right-of-way. BIA has the primary responsibility to improve and maintain the roads on this system.

*CFR* means the United States Code of Federal Regulations.

*Construction* means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of an IRR transportation facility, as defined in 23 U.S.C. 101. This includes bond costs and other related costs of bonds or other debt financing instruments. It also includes costs incurred by the State in performing Federal-aid project related audits that directly benefit the Federal-aid highway program. The term includes—

(1) Locating, surveying, and mapping (including establishing temporary and permanent geodetic markers in accordance with specifications of the U.S. Geological Survey);

(2) Resurfacing, restoration, and rehabilitation;

(3) Acquiring rights-of-way;

(4) Providing relocation assistance; acquiring replacement housing sites; and acquiring, rehabilitating, relocating, and constructing replacement housing;

(5) Eliminating hazards of railway grade crossings;

(6) Eliminating roadside obstacles;

(7) Making improvements that facilitate and control traffic flow, such as grade separation of intersections, widening lanes, channelizing traffic, in-

stalling traffic control systems, and establishing passenger loading and unloading areas; and

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

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

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

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

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

*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.

*Contract* means a self-determination contract as defined in section 4(j) of ISDEAA or a procurement document issued under Federal or tribal procurement acquisition regulations.

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

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

*DOI* means the Department of the Interior.

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*FHWA* means the Federal Highway Administration of the Department of Transportation.

*FTA* means the Federal Transit Administration of the Department of Transportation.

*Governmental subdivision of a tribe* means a unit of a federally-recognized tribe which is authorized to participate in an IRR Program activity on behalf of the tribe.

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

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

*IRR Bridge Program* means the program authorized under 23 U.S.C. 202(d)(4) using IRR Program funds for the improvement of deficient IRR highway bridges.

*IRR Inventory* means a comprehensive database of all transportation facilities eligible for IRR Program funding by tribe, reservation, BIA agency and region, Congressional district, State, and county. Other specific information collected and maintained under the IRR Program includes classification, route number, bridge number, current and future traffic volumes, maintenance responsibility, and ownership.

*IRR Program* means a part of the Federal Lands Highway Program established in 23 U.S.C. 204 to address transportation needs of tribes.

*IRR Program construction funds* means the pool of funds BIA distributes according to the Relative Need Distribution Factor.

*IRR Program funds* means the funds covered in chapter 2 of title 23 U.S.C. and the associated program management costs. These funds are used for:

(1) Transportation planning, research, and engineering; and

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(2) Construction of highways, roads, parkways, or transit facilities within or providing access to Indian lands, communities, and Alaska Native villages.

*IRR Program management and oversight funds* means those funds authorized by Congress to pay the cost of performing IRR Program management activities.

*IRR System* means all the roads and bridges that comprise the IRR.

*IRR transportation facilities* means public roads, bridges, drainage structures, culverts, ferry routes, marine terminals, transit facilities, boardwalks, pedestrian paths, trails, and their appurtenances, and other transportation facilities as designated by the tribe and the Secretary.

*IRR Transportation Improvement Program (IRRTIP)* means a list developed by BIA of projects programmed for construction in the next 3 to 5 years.

*ISDEAA* means the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93-638, as amended.

*Maintenance* means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway.

*NBI* means the national bridge inventory, which is the database of structural and appraisal data collected to fulfill the requirements of the National Bridge Inspection Standards, as defined in 23 CFR part 650, subpart C. Each State and BIA must maintain an inventory of all bridges that are subject to the NBI standards and provide this data to the Federal Highway Administration (FHWA). The NBI is maintained and monitored by the FHWA Office of Bridge Technology.

*Office of Self-Governance (OSG)* means the office within the Office of the Assistant Secretary—Indian Affairs, Department of the Interior, that is responsible for implementing and developing tribal self-governance.

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

*Project Planning* means project-related activities that precede the design

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

*Proposed road* means a road which does not currently exist and needs to be constructed.

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

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

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

*Regionally significant project* means a project that modifies a facility that serves regional transportation needs and would normally be included in the modeling of a metropolitan area's transportation network. The term includes work on principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel. ("Regional transportation needs" includes access to and from the area outside of the region; major planned developments such as new retail malls, sports complexes, etc.; or transportation terminations, as well as most terminals themselves).

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

*Relocation* means the adjustment of transportation facilities and utilities required by a highway project. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on the new location; moving, rearranging or changing the type of exist-

ing facilities; and taking any necessary safety and protective measures. It also means constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

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

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

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

*Secretary* means the Secretary of the Interior or her/his designee authorized to act on behalf of the Secretary.

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

*State transportation agency* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" would be considered equivalent to "State transportation agency" if the context so implies.

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

*Transit* means services, equipment, and functions associated with the public movement of people served within a community or network of communities.

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

*Tribal transportation planning funds* means funds referenced in 23 U.S.C. 204(j).

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

*TTIP* means Tribal Transportation Improvement Program. It is a multi-year financially constrained list of proposed transportation projects developed by a tribe from the tribal priority list or the long-range transportation plan.

*U.S.C.* means the United States Code.

### § 170.6 Information Collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. *et seq.*, and assigned clearance number 1076-0161. This information collection is specifically found in subparts C and D of this part and represent a total reporting burden to the public of 31,470 hours or an average of 56.5 hours per respondent. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Comments and suggestions on the burden estimate or any other aspect of the form should be sent directly to the Office of Management and Budget; Attention: Interior Desk Officer; Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, Bureau of Indian Affairs, 1849 C Street, NW., Washington, DC 20240.

### Subpart B—Indian Reservation Roads Program Policy and Eligibility

#### CONSULTATION, COLLABORATION, COORDINATION

##### § 170.100 What do the terms “consultation, collaboration, and coordination” mean?

(a) *Consultation* means government-to-government communication 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.

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

(c) *Coordination* means that each party:

(1) Shares and compares in a timely manner its transportation plans, programs, projects, and schedules with the related plans, programs, projects, and schedules of the other parties; and

(2) Adjusts its plans, programs, projects, and schedules to optimize the efficient and consistent delivery of transportation projects and services.

##### § 170.101 What is the IRR Program consultation and coordination policy?

(a) The IRR Program's government-to-government consultation and coordination policy is to foster and improve communication, cooperation, and coordination among tribal, Federal, state, and local governments and other transportation organizations when undertaking the following, similar, or related activities:

(1) Identifying high-accident locations and locations for improving both vehicle and pedestrian safety;

(2) Developing State, metropolitan, regional, IRR, and tribal transportation improvement programs that impact tribal lands, communities, and members;

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

(4) Developing IRR Program transportation projects;

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

(6) Developing plans or projects to replace or rehabilitate deficient IRR bridges;

(7) Developing plans or projects for disaster and emergency relief response