Substances	Limitations
1-Hydroxyethylidene-1,1-diphosphonic acid	May be used only with peroxyacetic acid. Not to exceed 4.8 ppm in wash water.
Peroxyacetic acid	Prepared by reacting acetic acid with hydrogen peroxide. Not to exceed 80 ppm in wash water.

* * * * *

Dated: July 7, 1999.

Janice F. Oliver,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–18300 Filed 7–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 661

[FHWA Docket No. FHWA–98–4743]

RIN 2125–AE57

Indian Reservation Road Bridge Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule.

SUMMARY: Section 1115 of the Transportation Equity Act for the 21st Century establishes a nationwide priority program for improving deficient Indian reservation road (IRR) bridges and reserves $13 million of IRR funds per year to replace and rehabilitate bridges that are in poor condition. The FHWA, Federal Lands Highway (FLH), and the Bureau of Indian Affairs, Division of Transportation (BIADOT), intend to implement the IRR bridge program (IRRBP) to promptly address the deficient IRR bridges. Toward that end, the FLH and the BIADOT, in consultation with Indian tribal governments (ITG)s and other public commenters, have developed interim project selection/fund allocation procedures for uniform application of the legislation. In this document, the FHWA is announcing interim project selection/fund allocation procedures for the IRRBP.

DATES: This rule is effective on July 19, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit your comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Wade F. Casey, Federal Lands Highway, HFPD–9, (202) 366–9486; or Ms. Grace Reidy, Office of Chief Counsel, HCC–32, (202) 366–6226; Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

Section 1115 of TEA–21, amended title 23, U.S.C., to require the Secretary to establish a nationwide priority program for improving deficient IRR bridges. Of the amounts authorized to be appropriated for IRRs for each fiscal year beginning with FY1998 and continuing through FY2003, section 1115 requires the Secretary, in cooperation with the Secretary of the Interior, to reserve not less than $13 million for projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions, or install scour countermeasures for deficient IRR bridges, including multiple-pipe culverts.

The statute provides that, to be eligible to receive funding under the Nationwide Priority Bridge Program, a bridge must: (i) Have an opening of 20 feet or more; (ii) be on an IRR; (iii) be unsafe because of structural deficiencies, physical deterioration, or functional obsolescence; and (iv) be recorded in the national bridge inventory (NBI) administered by the Secretary under 23 U.S.C. 144(b). The statute further provides that the funds to carry out IRR bridge projects shall be made available only on approval of plans, specifications, and estimates (PS&E) by the Secretary.

In order to implement the IRRBP established in section 1115 of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107, codified at 23 U.S.C. 202(d)(4)(A), and in order to promptly address the deficient IRR bridges, the FHWA and the BIADOT, in consultation with Indian tribal governments (ITG)s and other interested parties, have developed project selection/fund allocation procedures which will be incorporated in the Code of Federal Regulations (CFR) as an interim final rule.

Comments Received on the IRRBP

The FHWA solicited comments through informal meetings with tribal representatives in early December, 1998. A two page summary requesting comment on interim guidance was provided to the tribal representatives and also sent out to tribes not in attendance at those meetings. The two page summary was forwarded via the tribal local technical assistance program centers and the BIA area offices to Indian tribal governments(ITG)s. Following this, the FHWA published a notice in the **Federal Register** on February 12, 1999, requesting comments on the project selection/fund allocation procedures being considered for the IRRBP. The notice provided for a 30-day public comment period ending March 15, 1999. Comments were received from five ITGs, seven Bureau of Indian Affairs (BIA) offices, one county, and one State Department of Transportation. The FHWA considered all comments

received in developing project selection/fund allocation procedures that are set forth in this notice as interim final rules for the IRRBP.

While FHWA is issuing these interim final rules to make funds available as soon as possible this fiscal year, we welcome any comments on them. As discussed subsequently in the ''RULEMAKING ANALYSES'' portion of this preamble, there exists good cause in this instance for adopting interim final rules to ensure that funds may be readily dispersed under the IRRBP. We emphasize that the rule adopted here will be ''interim'' in nature. Prior to issuance of the final rule, the FHWA will invite and actively consider comments introduced concerning this action and will assess how the IRRBP is working, including the fund allocation process based on experience with these rules. As the FHWA gathers more experience and feedback with the project selection/fund allocation process under the interim final rules, the FHWA will revisit the funding allocation process and propose appropriate changes as necessary to insure the operational effectiveness of the IRRBP. The FHWA intends to fully utilize IRRBP funds and to continually monitor the performance of the program to insure that all IRRBP funds are fully utilized. The funding allocation procedures will be influenced by our experience under these interim final rules.

Comments introduced in response to general issues concerning the IRRBP raised in the prior notice are addressed in the Section-by-Section Analysis, that follows.

Section-by-Section Analysis

1. What is the Total Funding Available for the IRR Bridge Program? (§ 661.15)

The majority of commenters made no remark on this issue. Three commenters indicated that they mostly agree, generally agree or that no comment was necessary.

FHWA Position: Total funding available for the IRR Bridge Program remains unchanged from that set forth in the prior notice since funding is that specifically prescribed by statute. The statute provides a total program funding of not less than $13 million for each fiscal year.

2. When Will These Funds Become Available? (§ 661.17)

The majority of commenters made no remark on this issue. Two commenters indicated that they mostly agree or generally agree.

FHWA Position: The statute states that these funds become available on October 1 of each fiscal year.

3. When Does an Eligible Project Receive Funding? (§ 661.19)

The majority of commenters made no remark on this issue. Two commenters indicated that they mostly agree or generally agree.

FHWA Position: The statute provides that these funds are provided after the Secretary of Transportation approves a completed PS&E.

4. How Long Will These Funds be Available? (§ 661.21)

The majority of commenters made no remark on this issue. Three commenters indicated that they mostly agree, generally agree or that no comment was necessary.

FHWA Position: The statute provides that the funds for each fiscal year are available for the year authorized plus three years (a total of four years).

5. What Can These IRR Bridge Funds be Used for? (§ 661.23)

The majority of commenters made no remark on this issue. Three commenters indicated that they mostly agree, generally agree or that no comment was necessary.

FHWA Position: The statute provides that these funds can be used to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions, or install scour countermeasures for deficient IRR bridges, including multiple pipe culverts.

6. Which Bridges are Eligible? (§ 661.25)

The majority of commenters made no remark on this issue. Five commenters indicated that they mostly agree, generally agree, agree or that no comment was necessary regarding including the provision that if a bridge has been rehabilitated or replaced in the last 10 years, its eligibility would be limited to seismic retrofit or installation of scour countermeasures.

FHWA Position: We modified our position announced in the prior notice that any bridges constructed within the last ten years be excluded from the program. This position is consistent with FHWA policy. It reads as follows. The statute provides that to be eligible to receive funding, a bridge must: (i) have an opening of 20 feet or more; (ii) be on an IRR; (iii) be unsafe because of structural deficiencies, physical deterioration or functional obsolescence; and (iv) be recorded in the NBI maintained by the FHWA. In view of the limited availability of funds, and under 23 U.S.C. 204(a), recognition of the need for all Federal roads to be treated under uniform policies that apply to Federal-aid highways, if a bridge has been constructed, rehabilitated or replaced in the last 10 years, its eligibility would be limited to seismic retrofit or installation of scour countermeasures.

7. When is a Bridge Eligible for Replacement? (§ 661.27)

The majority of commenters made no remark on this issue. Four commenters indicated that they generally agree or agree with the eligibility requirements for bridge replacement.

FHWA Position: As discussed in the previous notice, given that 23 U.S.C. 204(a) recognizes the need for all Federal roads to be treated under uniform policies that apply to Federal-aid highways, to be eligible for replacement, the bridge must be considered deficient for reasons of structural deficiency or functional obsolescence. The bridge also must have a sufficiency rating of less than 50 to be eligible for replacement.

The BIA Navajo Area Office felt that the procedures should include a provision for replacement of deficient bridges which otherwise would be only eligible for rehabilitation, in cases where a section of roadway is reconstructed to meet current roadway standards.

FHWA Response: The proposed procedures allow for a deficient bridge, which is eligible for rehabilitation, to be replaced if the total life cycle costs for rehabilitation exceed the replacement costs. Hence, when a bridge is eligible for replacement it would be upgraded to meet current standards.

Another commenter, the Eastern Band of Cherokee Indians, wanted a definition for functional obsolescence.

FHWA Response: A functional obsolete bridge is one in which the deck geometry, load carrying capacity (comparison of the original design load to the State legal load), clearance, or approach roadway alignment no longer meets the usual criteria for the system of which it is an integral part. We will include this definition in the rules at § 661.5.

8. When is a Bridge Eligible for Rehabilitation? (§ 661.29)

The majority of commenters generally agree with the eligibility requirements for bridge rehabilitation.

FHWA Position: As discussed in the prior notice, for reasons corresponding

to those addressed in item 7 concerning replacement eligibility, to be eligible for rehabilitation, a bridge must be considered deficient for reasons of structural deficiency or functional obsolescence. Also, a bridge must have a sufficiency rating of less than or equal to 80 to be eligible for rehabilitation. A bridge would be eligible for replacement if the total life cycle cost for bridge rehabilitation exceeds the costs to replace.

The BIA Phoenix Area Office commented that the IRRBP should only address bridges with sufficiency ratings (SR) under 50 at this time.

FHWA Response: The IRRBP was established to reduce the number of deficient IRR bridges. In addition to bridges with SR less than 50, the IRRBP would include IRR bridges having a sufficiency rating of 80 or less and having a status of either structurally deficient (SD) or functionally obsolete (FO), assuming that the bridge meets the other eligibility requirements of the IRRBP.

9. How Does Ownership Impact Project Selection? (§ 661.31)

The majority of commenters made no remark on this issue.

FHWA Position: As discussed in the prior notice, since the Federal government has both a trust responsibility and owns the BIA bridges on Indian reservations, primary consideration would be given to funding construction projects for deficient BIA owned IRR bridges. We emphasize that consideration could also be given to the funding of construction projects for the deficient non-BIA, IRR bridges.

On this question four commenters wanted to see all IRRBP funds going toward BIA owned IRR bridges.

FHWA Response: The IRRBP was established to reduce the number of deficient IRR bridges, not just BIA owned IRR bridges.

The Eastern Band of Cherokee Indians commented that ownership should not be an issue.

FHWA Response: ITGs do provide input as to what bridges are to be chosen for rehabilitation or replacement following eligibility requirements for the IRRBP, regardless of who owns the bridge. However, ownership is an issue since the State and counties have ownership and primary responsibility for their bridges. Therefore, a smaller percentage of available funds has been set aside for non-BIA IRR bridges, since States and counties have access to Federal-aid and other funding to replace and rehabilitate their bridges and because 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds apportioned to the State. For these reasons, the IRRBP should not fully fund non-BIA owned IRR bridges.

10. Do IRRBP Projects Have to be on a Transportation Improvement Program (TIP)? (§ 661.33)

The majority of commenters made no remark on this issue. Three commenters indicated that they agree with the discussion in our prior notice.

FHWA Position: As discussed in the prior notice, yes, all IRRBP projects have to be listed on an approved TIP. Under 23 U.S.C. 204(j), IRR bridges must appear on the BIA's IRRBP TIP and be forwarded to the State.

11. What Percent of the Contract Authority in any Fiscal Year is Available for Use on BIA Owned Bridges and non-BIA Owned IRR Bridges? (§ 661.35)

The majority of the commenters wanted to see 100 percent of the IRRBP funds going toward BIA owned IRR bridges.

FHWA Response: The statute established this program for deficient IRR bridges and did not simply prescribe the IRRBP funds for sole use on BIA owned IRR bridges.

The Eastern Band of Cherokee Indians commented that there should be no distinction in ownership. Another commenter, Isabella County in Michigan, felt that non-BIA IRR bridges serve Tribal communities and to limit the annual funding for these bridges would be a disservice to the Tribal community.

FHWA Response: While the Federal government has both a trust responsibility and ownership of the BIA bridges on Indian reservations, States and counties also have a responsibility and themselves own other IRR bridges. Therefore, the IRRBP which is funded exclusively by the Federal government, should not bear the full burden of rehabilitation and replacement costs associated with non-BIA owned IRR bridges. Ownership is relevant in determining the percentage of funding for non-BIA IRR bridges and is an issue since the States and counties have ownership and primary responsibility for their bridges.

The Saginaw Chippewa Indian Tribe of Michigan stated that the eastern tribes were being penalized.

FHWA Response: Under the former ''not less than 1 percent'' Highway Bridge Replacement and Rehabilitation Program (HBRRP), funding was State specific and the bulk of funding was provided for the tribes east of the Mississippi River. The IRRBP is correcting an inequity that the HBRRP created. Under the IRRBP, funding is not State specific, but can be used in any State. The only tribes that are penalized are ones which fail to submit PS&E packages for IRRBP funding.

The Cherokee Nation commented that the Oklahoma tribes are not treated fairly under the proposed procedures.

FHWA Response: While the 80–20 split is designed to provide the bulk of the funding for BIA bridges, it also takes into account the need to fund non-BIA owned IRR bridges. The $2.6 million provided each fiscal year (1998–2003) will enable the elimination of numerous deficient non-BIA owned IRR bridges in Oklahoma or any other State regardless of geographic location to the extent ITGs are willing to participate. Presently there is $5.2 million available for non-BIA owned IRR bridges under the 80–20 split approach (representing FY 1998 and FY 1999 available funds).

We modified our position announced in the prior notice to provide carryover funding for non-BIA owned IRR bridges from one fiscal year to the next, to provide a uniform carryover policy for both BIA and non-BIA owned IRR bridges. It reads as follows. Up to 80 percent ($10.4 million) of funding in any fiscal year would be available for use on BIA owned IRR bridges. This would leave 20 percent ($2.6 million) of funding in any fiscal year that would be available for use on non-BIA owned IRR bridges. A smaller percentage of available funds has been set aside for non-BIA IRR bridges, since States and counties have access to Federal-aid and other funding to replace and rehabilitate their bridges and that 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds apportioned to the State. The program policy will be to maximize the number of IRR bridges participating in the IRRBP in a given fiscal year regardless of ownership.

12. What Percent of a Specific Project's Construction Costs is Covered Under This Program? (§ 661.37)

The majority of commenters had no remark on this issue.

FHWA position: As discussed in our prior notice, the following funding provisions apply in administration of the IRRBP: (i) 100 percent funding would be provided for a BIA owned IRR bridge; (ii) up to 80 percent of the funding would be provided for a State, county, or locally owned non-BIA IRR bridge; (iii) States, counties, local and tribal governments would be required to provide at least 20 percent of the funds for non-BIA IRR bridges; (iv) the funding ceiling for any single non-BIA

IRR bridge project would be $1.5 million.

Addressing this question, four commenters wanted to see 100 percent of funding going towards BIA owned IRR bridges.

FHWA Response: We recognize the need to include non-BIA owned IRR bridges in this program since the statute does not exclude them.

The Pueblo of Zuni commented that they wanted to see the 80 percent for non-BIA owned IRR bridges changed to 75 percent.

FHWA Response: The 80–20 split is consistent with other FHWA programs and we believe that this allocation of funds is reasonable.

Another commenter, the BIA Great Lakes Agency, recommended changing the funding ceiling for any single non-BIA IRR bridge project from $1.5 million to $500,000.

FHWA Response: There is presently $5.2 million available in FY 1998 and 1999 funds for non-BIA owned IRR bridges. The FHWA believes the $1.5 million is a reasonable limit.

13. When are IRR Bridge Projects Eligible for Funding? (§ 661.39)

Six commenters had no remark on this issue.

FHWA position: We have modified our position announced in the prior notice by deleting ''control schedule'' and replacing with ''IRRBP TIP'' in order to reduce some of the documentation requirements. It reads as follows. The statute provides that IRR funds to carry out IRRBP projects shall be made available only on approval of the PS&E by the Secretary. Approval consists of having completed and approved bridge design, specifications and estimates. The project must be ready for construction, right of way must have been acquired, and the project must be awarded within 120 calendar days of funding. A copy of the FHWA or BIADOT PS&E approval letter, certification checklist and IRRBP TIP must be forwarded by the area office to the BIADOT/FLH for review and acceptance. Submittal of an incomplete application package would form the basis for project disapproval and the BIA area office would have to revise and resubmit the package.

Three commenters, the BIA Navajo Area Office, the Navajo Nation and the BIA Aberdeen Area Office were concerned with the 120 calendar day award period.

FHWA Response: If the BIA Area office cannot award a contract within 120 days, those funds should be made available to ones that can. The BIA Area offices in partnership with ITGs, all need to be pro-active in awarding bridge construction contracts once they receive approval and funding. It is important that obligation limitation in a given fiscal year be fully utilized so as not to impact regular IRR program obligation limitation in the next fiscal year.

The BIA Billings Area Office stated that there is no requirement in some area certification acceptance plans for FHWA approval.

FHWA Response: Based on the current BIA/FHWA Stewardship plan, there are no BIA Area offices with second level approval authority for IRR bridge projects.

The Confederated Salish and Kootenai Tribes of the Flathead Nation, wanted to know what funding can be used for project development.

FHWA Response: Regular IRR program funds can be used for project development. The IRRBP funds can only be used for construction and construction engineering (CE) and may not be used for project development. We will address this comment in § 661.13 of the rules.

The New York State DOT seemed concerned that somehow the FHWA would override State, local or ITG selection of projects. The ITG should be involved in selection of candidate bridge projects.

FHWA Response: We are not establishing the priority of which IRR bridges should be chosen but will provide a list of bridges which are in fact deficient. We do however, have approval authority via review of the application packages being submitted.

The BIA Aberdeen Area Office, was concerned with insufficient staffing levels at the FHWA Division Offices.

FHWA Response: Because of the concern for the ability of an FHWA Division Office to review a PS&E package in a timely manner, the term ''FHWA Division Office'' will be replaced with ''FHWA or BIADOT'' in § 661.39 of the rules.

14. What Does a Complete Application Package Consist of? (§ 661.41)

Six commenters had no remark on this issue. The BIA Navajo Area Office stated that the FHWA was requiring too much documentation.

FHWA Response: We have modified our position announced in the prior notice by deleting ''control schedule'' and replacing it with ''IRRBP TIP'' in order to reduce some of the documentation requirements. Aside from this, in order for the 12 BIA area offices to operate consistently and fairly with each other, we believe that it is a reasonable requirement for sufficient documentation to be supplied with each application, to ensure that the PS&E package is complete and the project is ready for construction.

FHWA Position: The FHWA has also included a requirement that non-BIA IRR bridge projects be supported with a tribal resolution. The FHWA is including this requirement to insure that public authorities confer with the ITGs on the issue of replacement and rehabilitation of deficient non-BIA owned IRR bridges if and when public authorities apply for IRRBP funding. This will be included in § 661.31, § 661.39 and § 661.41 of the rules.

The BIA Aberdeen Area Office was concerned with insufficient staffing levels at the FHWA Division Offices which may not be sufficient enough to review PS&Es.

FHWA Response: The term ''Division Office'' is deleted and ''or BIADOT'' is added. In cases where the divisions are not sufficiently staffed to review PS&Es, the review can be accomplished by the BIADOT or the FHWA Federal Lands Highway Division offices. This is delineated in the FHWA/BIADOT Stewardship plan of July 1996. Based on the preceding discussions, the response to this question is as follows: Therefore, a complete application package would consist of the following: the FHWA or BIADOT PS&E approval letter, certification checklist and IRRBP TIP. In addition to the preceding items, for non-BIA IRR bridges, the application package must also include a tribal resolution supporting the project.

15. How are the FY 1998 Projects To Be Treated? (§ 661.43)

The majority of commenters had no remark on this issue. Two commenters agreed with the discussion in our prior notice.

FHWA Position: As discussed in our prior notice, in order not to penalize any BIA area office which completed PS&E packages in FY 1998 that were not funded because the project selection/fund allocation procedures for distribution of funds for FY 1998 were not in place, the funds for approved projects would be made available to the BIA area offices on receipt and acceptance of their application packages.

Two commenters, the BIA Navajo Area Office and Navajo Nation, were concerned regarding bridge projects where the award for the construction contract occurred in FY 1998 using regular IRR program funds. These commenters wanted reimbursement from the IRRBP funds.

FHWA Response: This issue has been addressed in a FHWA policy letter

dated February 19, 1999, to allow for reimbursement on a case-by-case basis within one year of award.

The BIA Aberdeen Area Office expressed concern with obtaining ''accurate detour length.''

FHWA Response: Detour length is national bridge inventory (NBI) item number 19, which is included with each bridge file. This item should be checked along with other condition data by the bridge inspectors performing the biennial inspections for the BIA and by the BIADOT which performs oversight quality assurance/quality control checks of the inspection data.

16. How is a List of Deficient Bridges To Be Generated? (§ 661.45)

The majority of commenters had no remark on this issue.

FHWA position: As discussed in our prior notice, in consultation with the BIA, a list of deficient BIA IRR bridges would be developed each fiscal year by the FHWA based on the annual April update of the NBI. The NBI is based on data from the inspection of all bridges. Likewise, a list of non-BIA IRR bridges would be obtained from the NBI. These lists would form the basis for identifying bridges that would be considered potentially eligible for participation in the IRRBP. Two separate master bridge lists (one each for BIA and non-BIA IRR bridges) would be developed and would include, at a minimum, the following: (i) Sufficiency rating; (ii) status (structurally deficient or functionally obsolete); (iii) average daily traffic (NBI item 29); (iv) detour length (NBI item 19); and (v) truck average daily traffic (NBI item 109). These lists would be provided by the FHWA to the BIADOT for publication and notification of affected BIA area offices, ITGs, and State and local governments.

The BIA area offices in consultation with Indian tribal governments, are encouraged to prioritize the design for bridges that are structurally deficient over bridges that are simply functionally obsolete, since the former is more critical structurally than the latter. Bridges that have higher average daily traffic (ADT) should be considered before those that have lower ADT. Detour length should also be a factor in selection and submittal of bridges, with those having a higher detour length being of greater concern. Lastly, bridges with high truck ADT should take precedence over those which have lower truck ADT. Other items of note should be whether school buses use the bridge and the types of trucks that may cross the bridge and the loads imposed.

The New York State DOT was concerned that the decision of which bridge will be programmed for the IRRBP would be accomplished at the local level.

FHWA Response: There is nothing in the current language to preclude this. BIA area offices in consultation with ITGs must be involved in selection of candidate bridge projects since, as users of the facility, they are most familiar with local needs, and safety implications, as well as other factors related to priorization. The master list based on the national bridge inventory (NBI) would identify bridges which are deficient; however, prioritization would be made at the local level. We are not establishing the priority—merely providing a list of IRR bridges which are deficient.

Three commenters, the Navajo Nation, BIA Billings Area Office and BIA Fort Belknap Agency, thought only one list would be necessary, i.e., one for BIA owned IRR bridges.

FHWA Response: In order to include non-BIA owned IRR bridges two lists will need to be developed.

17. In the Event of Project Cost Overruns, How Would They be Funded? (§ 661.47)

Seven commenters had no remark and four agreed with the FHWA on this issue. The New York State DOT wanted the States to retain any ''cost savings.''

FHWA Response: The IRRBP funds are reimbursable and project specific. As such they are to be returned to the BIADOT/FLH in cases where ''under runs'' or ''savings'' occur.

The BIA Phoenix Area Office wanted to see specific language to clarify the process for handling overruns and further argued that under runs also should be considered.

FHWA Response: The question of under runs is addressed in item number 21. We have provided the following additional language to the rules: The BIA area road engineer (ARE) would request additional funding for a specific bridge project and submit a request with appropriate justification along with an explanation as to why this additional funding is necessary.

Based on the preceding discussion, the response to the question of cost overrun treatment is as follows: Because of the critical nature of this program, BIA area road engineer approved costs in excess of the project estimate could be funded out of this program depending on the availability of funds and subject to BIADOT/FLH project approval procedures. The AREs would request additional IRRBP funding for a specific bridge project and submit a request with appropriate justification along with an explanation as to why this additional IRRBP funding is necessary. Likewise, project cost over runs may be funded out of regular IRR program funds.

18. Could Regular IRR Funds be Used to Fund a Bridge Project? (§ 661.49)

Seven commenters had no comment and two agreed with the FHWA position set forth in the prior notice.

FHWA Position: Regular IRR construction funds can be used to fund a bridge project with the concurrence of the FHWA, BIADOT and the ARE.

The BIA Billings Area Office expressed concern that the IRR funds would be provided for non-BIA owned IRR bridges. The same commenter noted the desire to strike, ''Note, IRR funds may not be used to match state HBRRP funds.''

FHWA Response: In response to this comment, the ITG may elect to use their IRR funds for non-BIA IRR bridges. Title IX of Pub. L. 105–206, sec. 1115(f)(3), changed the ability to use IRR funds to match State HBRRP funds. The use of the HBRRP funds is outside the scope of this document.

The BIA Aberdeen Area Office wanted to know why the concurrence of the FHWA and the BIADOT is needed to use IRR program funds to fund a bridge construction project?

FHWA Response: The BIADOT and the FHWA have approval authority for all IRR projects which appear on a TIP, therefore concurrence is a requirement.

19. Could Bridge Maintenance Be Performed With These Funds? (§ 661.51)

Eight commenters have no comment and three agree with the FHWA position stated in the prior notice.

FHWA Position: As discussed in our prior notice, the response to this question is as follows. No, bridge maintenance type repairs would not be within the scope of funding, e.g., guard rail replacement, deck timber repair, delineators replacement, etc. There are maintenance funds available through annual Department of the Interior appropriations for use on BIA owned bridges. These Department of the Interior bridge maintenance funds would be the appropriate funding source for bridge maintenance.

20. Once Eligibility of a Bridge Project has Been Determined, how Will the Project be Funded/Programmed? (§ 661.9)

Several alternatives were set forth in the prior notice and we considered them fully in our review. For ease of

reference, the alternatives are presented in tabular form at the end of this topic.

For BIA owned IRR bridges, the Pueblo of Zuni, BIA Aberdeen Area Office and BIA Great Lakes Agency generally preferred alternative 1; the Eastern Band of Cherokee Indians preferred alternative 1 along with a modified alternative 4; the New York State DOT preferred alternative 2; the Cherokee Nation preferred a combination of alternatives 2, 3 and 5 coupled with an Indian population factor; the Navajo Nation and the BIA Navajo Area Office preferred alternative 3; the BIA Billings Area Office and BIA Fort Belknap Agency preferred alternative 4; and the Confederated Salish and Kootenai Tribes of the Flathead Nation preferred alternative 5. The BIA Phoenix Area Office wanted to see a triage approach involving funding of the ''worst first''.

Most commenters did not want to see funding for non-BIA owned IRR bridges. Four commenters, the Cherokee Nation, Eastern Band of Cherokee Indians, Saginaw Chippewa Indian Tribe of Michigan and Isabella County, desire funding for non-BIA owned IRR bridges.

FHWA Response: The purpose of the IRRBP is to optimize the number of IRR bridges rehabilitated or replaced with the intent of eliminating as many deficient IRR bridges as possible during the TEA–21 period of authorization. Alternative 4 provides a first in and first out approach to fund these projects and, as such, would meet the program objective. Alternative 5, priorization of projects, would be used in cases where application packages arrive at the same time and the procedure outlines a method to settle any issues if such a situation were to occur. Alternative 4 is believed to maximize the number of IRR bridges participating in the IRRBP in a given fiscal year. Funding for the IRRBP should be fully utilized in a given fiscal year to eliminate deficient IRR bridges which pose a potential safety problem for the Tribes and motoring public; to maximize the number of bridges participating in the IRRBP; and to reduce the impact of obligation limitation deductions on the IRR program from one fiscal year to the next by fully obligating available IRRBP funding. We realize that this whole program hinges on ITGs using their regular IRR program funds for development of PS&E packages regardless of the approach being used.

For non-BIA IRR bridges, the procedures using 20 percent of the IRRBP funds should parallel the same procedures adopted for the BIA owned IRR bridges.

While alternative 1, deficient bridge deck area percentage, provides allocation of funds to be set aside for at a specific BIA Area Office, it has the potential to tie bridge program funds up among the 12 BIA area offices for an unknown period of time. There is the likelihood of some BIA Area Offices not having PS&E packages in order to use up all of the available funding under this alternative. This being the case, it would impact the other BIA Area Offices regarding the amount of regular IRR funds available in the following fiscal year. Alternative 1 is not likely to maximize the rehabilitation and replacement of deficient IRR bridges. Alternative 2, deficient bridge deck area percentage—State specific, follows along the same line as alternative 1, but would be State specific.

Alternative 3, percentage of deficient bridges, does not reflect a true measure for programming bridges since it is based on numbers of deficient bridges. A small bridge will have the same value as a larger, more costly bridge. The costs will not be proportional and therefore not maximize the use of the IRRBP funding.

Alternatives 1, 2 and 3 essentially have similar limitations imposed on the bridge program as the previous ''not less than 1 percent'' HBRRP which many people complained about. Congress eliminated the ''not less than 1 percent'' HBRRP with the TEA–21 Restoration Act. The basis of the complaints had to do with inequities in funding with more going toward bridges east of the Mississippi River when a greater number of deficient IRR bridges are actually to the west of the Mississippi River. In some cases the HBRRP funding was not being fully utilized.

We believe that after determination of bridge project eligibility, funding and/or programming should consist of a combination of alternatives 4 and 5. Based on the preceding discussion, the response to the question of how projects will be funded/programmed is as follows: Funding and/or programming of construction projects for BIA owned IRR bridges would be based on the order of receipt of a complete application package, i.e., eligibility requirements met, PS&E package is complete, etc. All application packages would be placed in a queue upon submission to the BIADOT and date stamped. This submission queue would form the basis for prioritization during any fiscal year. After the queue for the FY is filled up, that is, the obligation limitation is used up, a queue for the following FY would be established.

In those cases where application packages have arrived at the same time, application packages would be ranked and prioritized based on: (i) Bridge sufficiency rating; (ii) bridge status with structurally deficient having precedence over functionally obsolete; (iii) bridges on school bus routes; (iv) detour length; (v) ADT; and (vi) truck ADT. Funding and approval would be based on this priority ranking.

ALTERNATIVES FOR THE IRR BRIDGE PROGRAM

	Deficient IRR Bridges			
	Alt No.	BIA	Alt No.	Non-BIA
Bridge funds to be allocated to the BIA Area Offices: Based on bridge deck area for deficient bridges.	1	Calculation made of the deficient bridges within any BIA Area Office along with percent of deficient bridge deck areas. That percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent against bridge projects regardless of State.	1	Calculation made of the deficient bridges within any BIA Area Office along with percent of deficient bridge deck areas. That percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent against bridge projects regardless of State. If no, non-BIA bridge projects are identified in any FY, those funds would be made available for BIA owned bridges

ALTERNATIVES FOR THE IRR BRIDGE PROGRAM—Continued

	Deficient IRR Bridges			
	Alt No.	BIA	Alt No.	Non-BIA
Based on bridge deck area for deficient bridges but State specific.	2	Calculation made of the deficient bridges within any BIA Area Office along with percent of deficient bridge deck areas. That percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent only against bridge projects in the specific state on which the deficient bridge funds were generated (similar to the not less than 1 percent HBRRP).	1	Intentionally left blank
Based on *number* of deficient bridges.	3	Calculation made of the number of deficient bridges within a given BIA Area Office. Based on the number of deficient bridges, a percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent against bridge projects regardless of State.		Intentionally left blank
Based on order of receipt of the PS&E package (first in first out).	4	Bridges are placed in a queue based on the order of receipt of a complete PS&E package. Funds are made available to the BIA Area Office based on the order of submission.	2	Bridges are placed in a queue based on the order of receipt of a complete PS&E package. Funds are made available to the BIA Area Office based on the order of submission. If no, non-BIA bridge projects are identified in any FY, those funds would be made available for BIA owned bridges
Based on ranking of received PS&E Packages.	5	Bridges are prioritized and ranked based on SR, status, school bus route, detour length, ADT, and truck ADT. Funds are allocated to the BIA Area Office based on the ranking.	3	Submitted complete PS&E packages are ranked and prioritized by sufficiency rating, etc. Funds are made available to the Area Office based on the priority ranking. If no, non-BIA bridge projects are identified in any FY, those funds would be made available for BIA owned bridges

21. Under Alternative Procedures Presented Above, After a Bridge Project Has Been Completed, What Happens With the Excess or Surplus Contract Authority? (§ 661.11)

The majority of commenters had no comment on this issue.

Three commenters, the BIA Navajo Area Office, the Navajo Nation and the BIA Great Lakes Agency, wanted to see excess funds reserved for use on another bridge project involving that BIA Area office. The BIA Billings Area Office and the BIA Fort Belknap Agency, wanted to see excess funds being sent back to BIADOT/FHWA for use on additional approved IRR bridge projects. The New York State DOT, wanted the funds to be reserved for use within the State.

FHWA Response: Since the funding is project specific, once a bridge construction project has been completed under this program, any excess or surplus funding would be returned to BIADOT/FHWA. These surplus funds would be for use on additional approved deficient IRR bridge projects. This is based on the need for maximizing the numbers of bridges to be either replaced or rehabilitated in a nationwide program. Since this is a cost reimbursable program, there are no savings and cost underruns shall be returned to BIADOT/FHWA.

Rulemaking Analyses and Notices

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, allows agencies engaged in rulemaking to dispense with prior notice and opportunity for comment when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to public interest. For the reasons set forth below, the FHWA has determined that prior notice to the public on this action is unnessary and contrary to the public interest.

The FHWA has determined that prior notice and opportunity for comment are unnecessary because comments regarding the project selection/fund allocation procedures proposed for the IRRBP were solicited in a February 12, 1999, **Federal Register** notice along with informal meetings on this subject that were held at various locations during December 1998. We have reviewed all comments received in response to the published notice and those introduced at the public meetings and have incorporated changes to the original document where necessary.

The criticality of having in place the project selection/fund allocation procedures for the IRRBP cannot be over emphasized since there are deficient IRR bridges which are both on and off reservation which require remedy to safety, functional and structural deficiencies. These deficient IRR bridges pose a safety threat to residents of the Indian reservation as well as the motoring public.

The agency has currently identified 163 deficient BIA owned IRR bridges where IRRBP funds can be used to alleviate the safety deficiencies identified in bridge inspection reports and subsequent data submitted to the NBI. Likewise, there are approximately 940 non-BIA owned IRR bridges which are also deficient. While the IRRBP may not be able to replace or rehabilitate all bridges which are deficient, it attempts to correct ones which have a dire need; these are ones that have been chosen for participation in the IRRBP by the Indian tribal governments.

By proceeding with implementation of the program procedures prescribed herein, the FHWA plans to fully utilize IRRBP funding by eliminating deficient IRR bridges which pose a potential safety problem for the Tribes and motoring public; maximizing the number of bridges participating in the IRRBP; and reducing the impact of obligation limitation deductions on the IRR program from one fiscal year to the next.

The IRRBP funds were available in the fourth quarter of FY 1998; however, the project selection/fund allocation procedures were not in place at that time to allow the FHWA to legally release these funds. We have essentially lost use of these funds for one year (FY1998) of the four year funding provided in TEA–21. Unless these procedures are put in place very soon, we also may not be able to provide the IRRBP funds to the BIA with enough time to obligate against the bridge projects which are waiting to be funded in the current fiscal year (FY1999).

In summary: (1) The regulations are necessary to put in place the project selection/fund allocation procedures for the IRRBP immediately; (2) the IRRBP is vitally important to alleviate deficient IRR bridges, bridges which are crucial to the well being of Native Americans living both on and off reservations, as well as the motoring public using these bridges; (3) IRR bridges play an important role in support of the transportation infrastructure on reservations; and (4) the regulations govern a program designed to alleviate safety, structural and functional deficiencies for IRR bridges of which there is a immediate and critical need.

In conclusion, any further delay in adopting the prescribed procedures may impact safety of the motoring public in general and the Tribes in particular using these deficient IRR bridges. Accordingly, we believe that imposition of notice and comment procedures prior to adoption of this rule would prove potentially detrimental to safety and, thus, contrary to the public interest.

Nevertheless, we will invite public comment in response to the interim final rule. Comments received will be carefully considered in evaluating whether any change to the interim rule adopted here is warranted.

The APA also allows agencies, upon a finding of good cause, to make a rule effective immediately upon publication, 5 U.S.C. 553(d)(3). The FHWA has determined that good cause exists in this instance to make this rule effective for the following reasons: (1) The regulations are necessary to put in place the project selection/fund allocation procedures for the IRRBP immediately; (2) the IRRBP is vitally important to alleviate deficient IRR bridges, bridges which are crucial to the well being of Native Americans living both on and off reservations, as well as the motoring public using these bridges; (3) IRR bridges play an important role in supporting the transportation infrastructure on reservations; and (4) the regulations govern a program designed to alleviate safety, structural and functional deficiencies for IRR bridges of which there is a immediate and critical need. We emphasize that making these rules effective immediately will ensure that IRRBP funds may be readily dispersed and, thus, will be responsive to the goal of fully utilizing IRRBP funding in a given fiscal year to maximize the number of bridges participating in the program.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities including Indian Tribal and local governments. The funding available under the IRRBP is thought to have a beneficial economic impact on small entities; however, the funding impact is not expected to be significant. Accordingly, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities, except in a positive manner.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Polices and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking action will be minimal; therefore, a full regulatory evaluation is not required. The $13 million in IRRBP funds comprises only 6 percent of the overall IRR program funds (FY 1999) and does not have a significant economic impact on the IRR program. Therefore, the economic impact is considered minimal.

Unfunded Mandates Reform Act of 1995

This interim rule does not impose a Federal mandate as defined by the unfunded mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Regulation Identification Number

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

List of Subjects in 23 CFR Part 661

Bridges, Highways and roads, Indian reservation roads and bridges.

Issued on: July 9, 1999.

Kenneth R. Wykle,

Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, Chapter I, as set forth below:

1. Add part 661 to read as follows:

PART 661—INDIAN RESERVATION ROAD BRIDGE PROGRAM

Sec.

661.1 What is the purpose of this regulation?
661.3 Who must comply with this regulation?
661.5 What definitions apply to this regulation?
661.7 What is the Indian Reservation Road Bridge Program (IRRBP)?
661.9 How will the bridge project be funded/programmed once eligibility has been determined?
661.11 After a bridge project has been completed what happens with the excess or surplus funding?
661.13 What restrictions are there on the use of the IRRBP funds?

661.15 What is the total funding available for the IRR Bridge Program?
661.17 When will these funds become available?
661.19 When does an eligible project receive funding?
661.21 How long will these funds be available?
661.23 What can these IRR bridge funds be used for?
661.25 What are the criteria for bridge eligibility?
661.27 When is a bridge eligible for replacement?
661.29 When is a bridge eligible for rehabilitation?
661.31 How does ownership impact project selection?
661.33 Do IRRBP projects have to be on a transportation improvement program (TIP)?
661.35 What percent of the funding in any fiscal year is available for use on BIA owned IRR bridges and non-BIA owned IRR bridges?
661.37 What percent of a specific project's construction costs is covered under this program?
661.39 When are IRR bridge projects eligible for funding?
661.41 What does a complete application package consist of?
661.43 How are the FY 1998 projects to be treated?
661.45 How is a list of deficient bridges to be generated?
661.47 In the event of project cost over runs, how would they be funded?
661.49 Could regular IRR funds be used to fund a bridge project?
661.51 Could bridge maintenance be performed with these funds?

Authority: 23 U.S.C. 120(j) and (k), 202, and 315; 49 CFR 1.48.

§ 661.1 What is the purpose of this regulation?

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

§ 661.3 Who must comply with this regulation?

Public authorities must comply to participate in the IRRBP by preparing plans, specification and estimates (PS&E) for deficient Indian Reservation Road (IRR) bridges and make application for construction funds for the replacement or rehabilitation of these bridges.

§ 661.5 What definitions apply to this regulation?

The following definitions apply to this regulation:

Construction engineering (CE) is the supervision and inspection of construction activities; additional staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates.

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

Indian reservation road means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land which 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.

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

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.

Structural deficient (SD) bridge means a bridge that has been restricted to light vehicles only, is closed or requires immediate rehabilitation to remain open.

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

§ 661.7 What is the Indian Reservation Road Bridge Program (IRRBP)?

Section 202(d)(4) of title 23, U.S.C., establishes a nationwide priority program for improving deficient Indian reservation road (IRR) bridges and reserves not less than $13 million of IRR funds per year to replace and rehabilitate bridges that are in poor condition. This program which addresses the replacement of deficient IRR bridges is referred to as the IRRBP.

§ 661.9 How will the bridge project be funded/programmed once eligibility has been determined?

(a) Funding and/or programming of construction projects for IRR bridges would be based on the order of receipt of a complete application package, i.e., eligibility requirements met, PS&E package is complete, etc. All application packages would be placed in a queue upon submission to the BIADOT and date stamped. This submission queue would form the basis for prioritization during any fiscal year (FY). After the queue for the FY is filled up, that is, the IRRBP funding is used up, a queue for the following FY would be established.

(b) In those cases where application packages have arrived at the same time, application packages would be ranked and prioritized based on the following criteria:

(1) Bridge sufficiency rating (SR);

(2) Bridge status with structurally deficient (SD) having precedence over functionally obsolete (FO);

(3) Bridges on school bus routes;

(4) Detour length;

(5) Average daily traffic; and

(6) Truck average daily traffic.

§ 661.11 After a bridge project has been completed what happens with the excess or surplus funding?

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

§ 661.13 What restrictions are there on the use of the IRRBP funds?

The IRRBP funds can only be used for construction and construction engineering (CE) and may not be used for project development.

§ 661.15 What is the total funding available for the IRR Bridge Program?

The statute provides a total program funding of not less than $13 million for each fiscal year.

§ 661.17 When will these funds become available?

These funds become available on October 1 of each fiscal year.

§ 661.19 When does an eligible project receive funding?

The statute provides that these funds are provided after the Secretary of Transportation (FHWA) approves a completed PS&E.

§ 661.21 How long will these funds be available?

The statute provides that the funds for each fiscal year are available for the year authorized plus three years (a total of four years).

§ 661.23 What can these IRR bridge funds be used for?

The statute provides that these funds can be used to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions, or install scour countermeasures for deficient IRR bridges, including multiple pipe culverts.

§ 661.25 What are the criteria for bridge eligibility?

(a) Bridge eligibility requires the following:

(1) Have an opening of 20 feet or more;

(2) Be on an IRR;

(3) Be unsafe because of structural deficiencies, physical deterioration or functional obsolescence; and

(4) Be recorded in the national bridge inventory (NBI) maintained by the FHWA.

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

§ 661.27 When is a bridge eligible for replacement?

To be eligible for replacement, the bridge must be considered deficient for reasons of structural deficiency or functional obsolescence. Also, the bridge must have a sufficiency rating of less than 50 to be eligible for replacement.

§ 661.29 When is a bridge eligible for rehabilitation?

To be eligible for rehabilitation, the bridge must be considered deficient for reasons of structural deficiency or functional obsolescence. Also, the bridge must have a sufficiency rating of less than or equal to 80 to be eligible for rehabilitation. A bridge would be eligible for replacement if the total life cycle cost for bridge rehabilitation exceeds the costs to replace.

§ 661.31 How does ownership impact project selection?

Since the Federal government has both a trust responsibility and owns the BIA bridges on Indian reservations, primary consideration would be given to funding construction projects for deficient BIA owned IRR bridges. We emphasize that consideration could also be given to the funding of construction projects for the deficient non-BIA, IRR bridges, however; these projects must be supported by a tribal resolution.

§ 661.33 Do IRRBP projects have to be on a transportation improvement program (TIP)?

Yes. All IRRBP projects have to be listed on an approved TIP. Under 23 U.S.C. 204(j), IRR bridges must appear on the BIA's IRRBP TIP and be forwarded to the State.

§ 661.35 What percent of the funding in any fiscal year is available for use on BIA owned IRR bridges and non-BIA owned IRR bridges?

Up to 80 percent ($10.4 million) of funding in any fiscal year would be available for use on BIA owned IRR bridges. This would leave 20 percent ($2.6 million) of funding in any fiscal year that would be available for use on non-BIA owned IRR bridges. A smaller percentage of available funds has been set aside for non-BIA IRR bridges, since States and counties have access to Federal-aid and other funding to replace and rehabilitate their bridges and that 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds apportioned to the State. The program policy will be to maximize the number of IRR bridges participating in the IRRBP in a given fiscal year regardless of ownership.

§ 661.37 What percent of a specific project's construction costs is covered under this program?

The following funding provisions apply in administration of the IRRBP:

(a) 100 percent IRRBP funding would be provided for a BIA owned IRR bridge;

(b) Up to 80 percent of the IRRBP funding would be provided for a State, county, or locally owned non-BIA IRR bridge;

(c) States, counties, local and tribal governments would be required to provide at least 20 percent of the funds for non-BIA owned IRR bridges;

(d) The IRRBP funding ceiling for any single non-BIA owned IRR bridge project would be $1.5 million.

§ 661.39 When are IRR bridge projects eligible for funding?

The statute provides that IRR funds to carry out IRRBP projects shall be made available only on approval of the PS&E by the Secretary (FHWA). Approval consists of having completed and approved bridge design, specifications and estimates. The project must be ready for construction, right of way must have been acquired, and the project contract must be awarded within 120 calendar days of funding. A copy of the FHWA or BIADOT PS&E approval letter, certification checklist and IRRBP TIP must be forwarded by the area office to the BIADOT/FLH for review and acceptance. For non-BIA IRR bridges, the application package must also include a tribal resolution supporting the project. Submittal of an incomplete application package would form the basis for project disapproval and the BIA area office would have to revise and resubmit the package.

§ 661.41 What does a complete application package consist of?

A complete application package would consist of the following: the FHWA or BIADOT PS&E approval letter, certification checklist and IRRBP TIP. In addition to the preceding items, for non-BIA IRR bridges, the application package must also include a tribal resolution supporting the project.

§ 661.43 How are the FY 1998 projects to be treated?

In order not to penalize any BIA area office which completed PS&E packages in FY 1998 that were not funded because the project selection/fund allocation procedures for distribution of funds for FY 1998 were not in place, the funds for approved projects would be made available to the BIA area offices on receipt and acceptance of their application packages.

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

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

(1) Sufficiency rating (SR);

(2) Status (structurally deficient or functionally obsolete);

(3) Average daily traffic (NBI item 29);
(4) Detour length (NBI item 19); and
(5) Truck average daily traffic (NBI item 109).

(b) These lists would be provided by the FHWA to the BIADOT for publication and notification of affected BIA area offices, Indian tribal governments (ITG)s, and State and local governments.

(c) BIA area offices in consultation with ITGs, are encouraged to prioritize the design for bridges that are structurally deficient over bridges that are simply functionally obsolete, since the former is more critical structurally than the latter. Bridges that have higher average daily traffic (ADT) should be considered before those that have lower ADT. Detour length should also be a factor in selection and submittal of bridges, with those having a higher detour length being of greater concern. Lastly, bridges with higher truck ADT should take precedence over those which have lower truck ADT. Other items of note should be whether school buses use the bridge and the types of trucks that may cross the bridge and the loads imposed.

§ 661.47 In the event of project cost over runs, how would they be funded?

(a) Because of the critical nature of this program, BIA area road engineer (ARE) approved costs in excess of the project estimate could be funded out of this program depending on the availability of funds and subject to BIADOT/FLH project approval procedures. The ARE would request additional IRRBP funding for a specific bridge project and submit a request with appropriate justification along with an explanation as to why this additional IRRBP funding is necessary.

(b) In addition, project cost over runs may be funded out of regular IRR program funds.

§ 661.49 Could regular IRR funds be used to fund a bridge project?

Yes. Regular IRR construction funds can be used to fund a bridge project with the concurrence of the FHWA, BIADOT and the BIA ARE.

§ 661.51 Could bridge maintenance be performed with these funds?

No. Bridge maintenance repairs would not be within the scope of funding, e.g., guard rail repair, deck repairs, repair of traffic control devices, striping, cleaning scuppers, deck sweeping, snow and debris removal, etc. There are maintenance funds available through annual Department of the Interior appropriations for use on BIA owned bridges. The Department of the Interior maintenance funds would be the appropriate funding source for bridge maintenance.

[FR Doc. 99–18308 Filed 7–16–99; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA36

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Extension of the Active Duty Dependents Dental Plan to Overseas Areas

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements statutory authority for the extension of the Active Duty Dependents Dental Plan to overseas areas.

EFFECTIVE DATE: September 1, 1997.

ADDRESSES: TRICARE Management Activity, 16401 East Centretech, Aurora, CO 80011.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Brian Grassi, TRICARE Management Activity, (303) 676–3496.

SUPPLEMENTARY INFORMATION:

I. Overview of the Final Rule

On June 25, 1997, an interim final rule regarding the benefit and operational issues associated with the implementation of the extension of the Active Duty Dependents Dental Plan to overseas areas was published (62 FR 33940).

Military force reductions in Europe, the Middle East, and the Pacific have resulted in diminished medical services for many areas, particularly those areas where the active duty end strengths have fallen below levels which would support a military medical facility. Service members and their families, particularly those in remote areas, have experienced access problems in obtaining dental services at military facilities. This rule is based on section 703 of the National Defense Authorization Act for Fiscal Year 1995, Pub. L. 103–337, and section 732 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85, which amended Title 10, United States Code, section 1076a. These laws allow the Department to extend the Active Duty Dependents Dental Plan to overseas areas and waive or reduce required cost-shares to the extent the Secretary determines appropriate for the effective and efficient operation of the Plan. Family members enrolled in the Active Duty Dependents Dental Plan will be allowed to receive dental care from host nation providers and have the dental claims processed by a dental contractor. Where applicable, host nation providers who meet accepted professional dental practice standards will be identified by the local military dental treatment facility (DTF) commander and the overseas lead agents.

Enrolled family members overseas will be eligible to obtain the same basic dental benefits offered to enrollees in the Active Duty Dependents Dental Plan (also referred to as the TRICARE Family Member Dental Plan or TFMDP) in the Continental United States subject to availability and accessibility of these services. For the purposes of this program, the Continental United States is defined as the forth-eight contiguous states, as well as Alaska, Hawaii, Guam, Puerto Rico, the District of Columbia, the U.S. Virgin Islands and Canada. Overseas is defined as those countries not previously mentioned.

In order to participate, beneficiaries must voluntarily enroll in the TFMDP and pay the standard monthly premium. In countries with a military DTF, the local military DTF commander will refer enrollees to designated host nation providers for all covered dental services. These referrals will be contingent upon the lack of availability of these dental services in the DTF and the Department's designation of qualified host nation providers.

In countries without a military DTF, enrollees can receive treatment for non-orthodontic dental care without a referral from any qualified host nation provider meeting professionally accepted standards. The Department encourages enrollees residing in these countries to first contact their respective overseas lead agent, U.S. Embassy or Consulate or other local representatives of the U.S. Government before seeking non-orthodontic care to determine if any of these agencies can assist in identifying a qualified host nation provider in their local area. For orthodontic care in these countries, the overseas lead agent will refer enrollees to designated host nation providers.

Where a referral is required, the issuing activity must complete a Non-Availability Statement (NAS) and provide this statement to the enrollee before care can be received and the claim can be processed by the dental contractor. To obtain a referral and NAS, family members are not restricted to visiting a DTF of their sponsor's branch of service, rather, they should contact their primary servicing military DTF.