(5) *Evaluation requirements.* In order to ensure the quality of student internship programs, sponsors must develop procedures for evaluating all student interns. All required evaluations must be completed prior to the conclusion of a student internship program, and the student interns and their immediate supervisors must sign the evaluation forms. For programs exceeding six months' duration, at a minimum, midpoint and concluding evaluations are required. For programs of six months or less, at a minimum, concluding evaluations are required. Sponsors must retain student intern evaluations (electronic or hard copy) for a period of at least three years following the completion of each student internship program.

(6) *Employment, wages, or remuneration.* A student intern is permitted to engage in full-time employment during the student internship program as outlined on their T/IPP, with or without wages or other compensation. Employment is not required for participation in the program. In those cases where the student intern is employed, all employment activities must be approved by the home institution's dean or academic advisor, and the responsible officer.

(7) *Training/Internship Placement Plan (Form DS–7002).* (i) Sponsors must fully complete and obtain requisite signatures for a Form DS–7002 for each student intern before issuing a Form DS–2019. Sponsors must provide each signatory an executed copy of the Form DS–7002. Upon request, student interns must present their fully executed Form DS–7002 to a Consular Official during their visa interview.

(ii) To further distinguish between work-based learning for student interns, which is permitted, and ordinary employment or unskilled labor which are not, all T/IPPs must:

(A) State the specific goals and objectives of the student internship program (for each phase or component, if applicable);

(B) Detail the knowledge, skills, or techniques to be imparted to the student intern (for each phase or component, if applicable); and

(C) Describe the methods of performance evaluation and the frequency of supervision (for each phase or component, if applicable).

(8) *Program Exclusions.* Sponsors designated by the Department to administer student internship programs must not:

(i) Place student interns in unskilled or casual labor positions, in positions that require or involve child care or elder care, positions in the field of aviation, or in clinical or any other kind of work that involves patient care or contact, including any work that would require student interns to provide therapy, medication, or other clinical or medical care (*e.g.*, sports or physical therapy, psychological counseling, nursing, dentistry, veterinary medicine, social work, speech therapy, or early childhood education);

(ii) Place student interns in positions, occupations, or businesses that could bring the Exchange Visitor Program or the Department into notoriety or disrepute; or

(iii) Engage or otherwise cooperate or contract with a staffing/employment agency to recruit, screen, orient, place, evaluate, or train student interns, or in any other way involve such agencies in an Exchange Visitor Program student internship program.

(iv) Designated sponsors must ensure that the duties of student interns as outlined in the T/IPPs will not involve more than 20 percent clerical work, and that all tasks assigned to student interns are necessary for the completion of student internship program assignments.

(v) Sponsors must also ensure that all ''Hospitality and Tourism'' student internship programs of six months or longer contain at least three departmental or functional rotations.

Dated: May 18, 2007.

Stanley S. Colvin,

Director, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E7–10606 Filed 6–4–07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 661

[FHWA Docket No. FHWA–2007–27536]

RIN 2125–AF20

Indian Reservation Road Bridge Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: Section 1119 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144) makes changes to the Indian Reservation Road Bridge Program (IRRBP). It amends the existing IRRBP by establishing new policies and provisions. In addition, it authorizes $14 million of IRRBP funds per year for the replacement or rehabilitation of structurally deficient or functionally obsolete Indian Reservation Road (IRR) bridges. In accordance with these changes, the FHWA, with input and recommendations from the Bureau of Indian Affairs (BIA) and the Indian Reservation Roads Coordinating Committee (IRRCC), is proposing funding distribution procedures for BIA owned and non-BIA owned IRR bridge projects. The proposed changes allow funding for preliminary engineering (PE), construction engineering (CE), and construction for the replacement or rehabilitation of structurally deficient or functionally obsolete IRR bridges.

DATES: Comments must be received on or before August 6, 2007. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dms.dot.gov/submit* or fax comments to (202) 493–2251.

Alternatively, comments may be submitted to the Federal eRulemaking portal at *http://www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sparrow, Federal Lands Highway, (202) 366–9483; or Ms. Vivian Philbin, Federal Lands Highway Counsel, (720) 963–3445; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to

4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit.* 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 also be downloaded by accessing the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

The Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107), established the IRRBP, codified at 23 U.S.C. 202(d)(4)(B), under which a minimum of $13 million of IRR Program funds was set aside for a nationwide priority program for improving deficient IRR bridges. On May 8, 2003, the FHWA published a final rule for the IRRBP at 68 FR 24642 (23 CFR 661). This present rulemaking is necessary due to recent legislative changes in section 1119 of SAFETEA–LU (Pub. L. 109–59, 119 Stat. 1144).

Section 1119 of SAFETEA–LU authorizes $14 million per year for fiscal years 2005 through 2009 from the Highway Trust Fund for the IRRBP to carry out PE, CE, and construction to replace or rehabilitate structurally deficient or functionally obsolete IRR bridges. Pursuant to these new statutory requirements, the FHWA developed proposed amendments to the existing IRRBP regulation. These amendments were distributed to the IRRCC for its review and comment prior to this publication. The IRRCC was established under 25 CFR part 170 by the Secretaries of the Interior and Transportation, to provide input and recommendation to BIA and FHWA in developing IRR Program policies and procedures and to supplement government-to-government consultation by coordinating and obtaining input from Tribes, BIA, and FHWA. The IRRCC consists of a primary and alternate Tribal representative from each of the 12 BIA Regions, along with 2 non-voting Federal representatives (one each from BIA and FHWA). The proposed changes were discussed at several IRRCC meetings and in detail with the IRRCC Funding Workgroup.

The following information highlights the major issues in the discussion at several IRRCC meetings:

1. *First Come, First Serve Basis*—This is the present funding methodology of the IRRBP. The IRRCC's position is that this method only works if there are sufficient funds. The IRRCC recommends using the scoring matrix method similar to the IRR High Priority Project (HPP) program in prioritizing the applications for bridge funding as an alternate method. Although the IRRCC believes this method would provide IRRBP funds to the project that has been rated as having the greatest need, the FHWA believes that its current practice has worked well in equitably addressing bridge rehabilitation and replacement projects in the past.

2. *PE and Construction Costs*—The IRRCC recommends that the set-aside for PE funds should be up to 15 percent of the annual IRRBP allocation. It further recommends that the cost contribution for BIA owned and non-BIA owned IRR bridges should be up to $150,000 for each project. The FHWA agrees with this recommendation, and proposes to make these changes.

For construction, the IRRCC recommends that the funding ceiling for non-BIA owned bridge projects should be retained at $1,500,000 per project to meet the rising cost of construction. After reviewing the regulations and the past history and project size of non-BIA owned bridge projects funded under this program, the FHWA proposes to limit the funding for those construction projects to $1,000,000 in order to maximize the number of bridge projects funded.

3. *The use of IRR Construction Funds on IRRBP Projects*—The IRRCC requests a clear explanation as to how a Tribe may reimburse its IRR construction funds if said funds are used to finance IRRBP projects in advance of receipt of IRRBP funds. This has been included in the proposed changes to the regulation.

4. *Removal of historic bridges*—The FHWA proposes to clarify that existing IRR bridges replaced under the IRRBP must be taken completely out of service and removed from the IRR inventory. This is done so that in the future only the new bridge will be eligible for IRRBP fund consideration. However, the IRRCC requests and the FHWA agrees to propose to allow a Tribe the ability to request a special exemption, from BIADOT, regarding the ''removal from service'' requirement if the bridge is considered historic.

Section-by-Section Discussion of the Proposed Amendments

Descriptions of the regulatory changes proposed in this part are set forth below. All members of the public who are affected by the amendments to the regulation are encouraged to submit comments in writing. Comments from interested Tribal members are particularly requested. We have made several minor grammatical changes, such as shortening sentences for clarity, which will not change the meaning or intent of the regulation. These minor changes are not addressed in the Section-by-Section discussion.

Who must comply with this regulation? (661.3)

The requirement for a set of plans, specifications, and estimates from a public authority has been moved to 661.27 for clarification purposes. We propose to include preliminary engineering (PE) as an eligible activity, as established in the section 1119(g) of SAFETEA–LU.

What definitions apply to this regulation? (661.5)

We propose to add the following definitions in this section:

Approach Roadway—the FHWA proposes to add this definition in order to clarify what is eligible in section 661.51.

Life Cycle Cost Analysis (LCCA)—the FHWA proposes to add this definition in order to clarify eligibility for rehabilitation in section 661.21.

National Bridge Inventory (NBI)—the FHWA proposes to add this definition in order to clarify eligibility requirements in section 661.17.

Plans, Specifications, and Estimate (PS&E)—the FHWA proposes to add this definition in order to clarify what is required for a complete application package as set forth in section 661.27.

Preliminary Engineering—the FHWA proposes to add this definition because this is now an eligible activity for this program as set forth in section 1119(g) of SAFETEA–LU.

Structure Inventory and Appraisal (SI&A)—the FHWA proposes to add definition in order to clarify what is required for a complete application package as set forth in sections 661.25 and 661.27.

What is the IRRBP? (661.7)

This section has been modified to delete obsolete language about the annual funding of the IRRBP program. Section 1119(g) of SAFETEA–LU changed the annual funding amount provided to this program. However, the FHWA proposes to delete mention of specific funding amounts in this section, and has instead stated the total funding available in section 661.9.

What is the total funding available for the IRRBP? (661.9)

The FHWA proposes to modify this section to reflect the most recent funding amounts authorized by section 1119(g) of SAFETEA–LU.

What are the eligible activities for IRRBP funds? (661.15)

The FHWA proposes to consolidate the eligibility activities for IRRBP funds into one section. This section also proposes to add preliminary engineering and the demolition of old bridges as new eligible items.

What are the criteria for bridge eligibility? (661.17)

The FHWA proposes to modify this section to eliminate physical deterioration as a criteria for eligibility for this program. This term does not appear in section 1119(g) of SAFETEA–LU and as such we are proposing to delete it from the regulation.

When is a bridge eligible for replacement? (661.19)

The FHWA proposes to clarify in this section that existing IRR bridges replaced under the IRRBP must be taken completely out of service and removed from the IRR inventory. This is done so that in the future, only the new bridge will be eligible for IRRBP fund consideration. However, the IRRCC requests and the FHWA agrees to propose to allow a Tribe the ability to request a special exemption, from BIADOT, regarding the ''removal from service'' requirement if the bridge is considered historic.

When is a bridge eligible for rehabilitation? (661.21)

The FHWA proposes to remove the word ''would'' from the criteria to clarify eligibility for bridge replacement.

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

This section explains the priority process for both BIA and non-BIA owned bridges as well as the separate queues for both construction and preliminary engineering within both categories of bridges.

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

This is a new section that we propose to include in the regulation, which describes the requirements for submitting a complete application package for PE. The complete application packages would be placed in the queues (BIA or non-BIA owned bridges) after receipt by FHWA. Incomplete application packages would be disapproved and returned for revision and resubmission along with a notation providing the reason for disapproval.

Funding for the approved eligible projects on the queues will be made available to the Tribes or the Secretary of the Interior upon availability of program funding at FHWA.

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

We propose to include in this section that all complete application packages would be placed in the queues (BIA or non-BIA owned bridges). All environmental and archeological clearances and complete grants of public rights-of-way must be acquired prior to submittal of the construction application package. Incomplete application packages would be disapproved and returned for revision and resubmission along with a notation providing the reason for disapproval. Funding for the approved eligible projects on the queues will be made available to the Tribes or the Secretary of the Interior upon availability of program funding at FHWA.

How does ownership impact project selection? (661.29)

The FHWA proposes to maximize the use of IRRBP funds for BIA owned bridges. Up to 80 percent of the available funding made available for PE and construction in any fiscal year will be eligible for use on BIA owned IRR bridges. The remaining 20 percent of IRRBP funding in any fiscal year will be made available for PE and construction for use on non-BIA owned IRR bridges. Each fiscal year the FHWA will review the projects awaiting funding and may shift funds between BIA owned and non-BIA owned bridge projects so as to maximize the number of projects funded and the overall effectiveness of the program.

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

The FHWA proposes to change the language of this section to properly identify which Transportation Improvement Program (TIP) is used for the approved bridge projects.

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

FHWA proposes to include this section in order to identify the amount of funding that will be made available for the new eligible item of preliminary engineering. The amount recommended was developed in consultation with the IRRCC and represents the average costs of preliminary engineering on bridge projects. The remaining funding is made available for construction.

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

The FHWA proposes to utilize the same funding distribution, *i.e.*, up to 80 percent of the available annual funds, for BIA owned bridge projects with the remaining funds utilized for non-BIA owned bridges. After consultation with the IRRCC, FHWA is proposing that the FHWA have the ability to review the queue of projects awaiting funding at various times during the fiscal year, and shift funds between BIA owned and non-BIA owned bridge projects in order to maximize the number of projects funded.

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

The FHWA proposes to reduce the funding ceiling for construction on non-BIA owned bridge projects to $1,000,000. The FHWA reviewed the history of the IRRBP and determined that since 1998, over 100 non-BIA owned bridge projects have been funded with this program. For these non-BIA owned bridge projects, the average project size was less than $600,000 and more than 75 percent were funded at a level below the proposed $1,000,000 threshold. In addition, other sources of funds are available for non-BIA owned bridge projects.

Additionally, FHWA proposes to limit the amount of funding available for preliminary engineering to $150,000 per project. This recommendation is based on the historical size of the bridge projects previously funded under this program and assumes a typical PE cost of around 15 to 20 percent of a project's construction cost.

The IRRCC recommends, and FHWA is proposing, a revision that allows a Tribe to request additional funds above the referenced thresholds by submitting a written justification for consideration to FHWA. The approval of the requests would be considered on a case-by-case basis.

How are project cost overruns funded? (661.39)

The FHWA proposes that if a request for additional funding is approved by the FHWA, the request would be placed at the top of the appropriate queue. Because an ongoing construction project

would be costly to stop and then remobilize, a request to fund a contract modification will have a higher priority than a request for additional funding for a project award. Additional funds could also be made available from a Tribe's existing IRR Program share.

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

The FHWA proposes to change the phrasing of this section for clarification purposes and to identify that if IRR Program construction funds are used for this purpose, the funds must be identified on an FHWA approved IRR TIP prior to their expenditure.

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

In this new section we propose that IRRBP funds provided to a project and not obligated at the end of the fiscal year must be returned to the FHWA. The funds will be re-allocated to BIA the following fiscal year and would require a justification for the failure to obligate in the previous year.

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

The FHWA proposes to add this section in order to clarify that bridges on all types of routes that are included in the IRR Inventory are eligible for funding under this program.

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

The FHWA proposes to include the cost associated with the approach roadway work to be eligible for IRRBP funds. The limit of approach roadway work would be limited to a nominal amount of work, sufficient to connect the new facility to the existing roadway or to return the gradeline to an attainable touchdown point in accordance with good design practice. Long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive structures, when constructed beyond an attainable touchdown point, would not be eligible for IRRBP funds.

What standards should be used for bridge design? (661.53)

The FHWA proposes to include this new section in order to clarify the design standards that must be met in the design of bridges being funded under this program.

How are BIA and Tribal owned bridges inspected? (661.55)

The FHWA proposes to include this new section in order to clarify the procedures that must be followed when formal bridge inspections are carried out.

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

The FHWA proposes to include this new section in order to clarify the actions that should be taken when a deficient bridge is identified and not scheduled for improvement.

Distribution Table

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

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

Derivation Table

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

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

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

The FHWA has determined preliminarily that this action would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and

would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132 (Federalism Assessment)

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

Executive Order 13175 (Tribal Consultation)

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

The proposed regulation was first distributed to the IRRCC at the Tulsa meeting referenced above. The IRRCC then met in a special meeting in Denver, Colorado, specifically to review the regulation and develop recommendations for the FHWA rulemaking. The funding workgroup of the IRRCC was assigned the task of carrying forth the recommendations to FHWA. In Hinckley, Minnesota, the FHWA met with the funding workgroup and together they reviewed the comments. This regulation reflects the results of the IRRCC input. All aspects of the regulation were reviewed by the IRRCC and the major items of discussion are listed in the background section of this regulation.

Executive Order 13211 (Energy Effects)

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

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

National Environmental Policy Act

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

Regulation Identification Number

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

List of Subjects in 23 CFR Part 661

Indian Reservation Road Bridge Program.

Issued on: May 15, 2007.

J. Richard Capka,

Federal Highway Administrator.

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

PART 661—INDIAN RESERVATION ROAD BRIDGE PROGRAM

Sec.

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

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

§ 661.1 What is the purpose of this regulation?

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

§ 661.3 Who must comply with this regulation?

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

§ 661.5 What definitions apply to this regulation?

The following definitions apply to this regulation:

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

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

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

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

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

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

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

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

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

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

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

Structurally deficient (SD) bridge means a bridge that has been restricted to light vehicles only, is closed, or

requires immediate rehabilitation to remain open.

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

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

§ 661.7 What is the IRRBP?

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

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

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

§ 661.11 When do IRRBP funds become available?

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

§ 661.13 How long are these funds available?

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

§ 661.15 What are the eligible activities for IRRBP funds?

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

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

§ 661.17 What are the criteria for bridge eligibility?

(a) Bridge eligibility requires the following:

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

(2) Be located on an Indian Reservation Road that is included in the IRR inventory;

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

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

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

§ 661.19 When is a bridge eligible for replacement?

To be eligible for replacement, the bridge must be considered structurally deficient or functionally obsolete and have a sufficiency rating less than 50. If bridge replacement occurs under this program, it is required that the original bridge be taken completely out of service and removed from the inventory. If the original bridge is considered historic, it must still be removed from the inventory, however the Tribe is allowed to request an exemption from the BIA Division of Transportation (BIADOT) to allow the bridge to remain in place.

§ 661.21 When is a bridge eligible for rehabilitation?

To be eligible for rehabilitation, the bridge must be considered structurally deficient or functionally obsolete and have a sufficiency rating less than or equal to 80 and greater than 50. The work eligible for a bridge rehabilitation project includes the activities required to improve the sufficiency rating to 80 or greater. A bridge eligible for rehabilitation is eligible for replacement if a life cycle cost analysis shows the cost for bridge rehabilitation exceeds the replacement cost.

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

(a) All projects will be programmed for funding after a completed application package is received and accepted by the FHWA. At that time, the project will be acknowledged as either BIA or non-BIA owned and placed in either a PE or construction queue, listed by date received. These queues form the basis for prioritization for funding. After the IRRBP funding for the FY 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, the packages will be ranked and prioritized based on the following criteria:

(1) Bridge sufficiency rating (SR);

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

(3) Bridges on school bus routes;

(4) Detour length;

(5) Average daily traffic; and

(6) Truck average daily traffic.

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

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

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

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

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

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

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

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

(c) Funding for the approved eligible projects on the queues will be made

available to the tribes or the Secretary of the Interior upon availability of program funding at FHWA.

§ 661.29 How does ownership impact project selection?

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

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

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

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

Up to 15 percent of the funding made available in any fiscal year will be eligible for PE. The remaining funding in any fiscal year will be available for construction.

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

(a) Up to 80 percent of the available funding made available for PE and construction in any fiscal year will be eligible for use on BIA owned IRR bridges. The remaining 20 percent of funding in any fiscal year will be made available for PE and construction for use on non-BIA owned IRR bridges.

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

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

The following funding provisions apply in administration of the IRRBP:

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

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

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

§ 661.39 How are project cost overruns funded?

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

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

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

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

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

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

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

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

§ 661.47 Can bridge maintenance be performed with IRRBP funds?

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

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

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

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

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

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

§ 661.53 What standards should be used for bridge design?

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

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

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

BIA and Tribal owned IRR bridges are inspected in accordance with 25 CFR 170.504–507.

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

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

(1) Sufficiency rating (SR);

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

(3) Average daily traffic (NBI item 29);

(4) Detour length (NBI item 19); and

(5) Truck average daily traffic (NBI item 109).

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

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

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

The BIA should notify the tribe and encourage the tribe to develop and submit an application package to FHWA for replacement of the bridge. For safety of the motoring public, if the tribe decides not to pursue the replacement of the bridge, the BIA shall work with the tribe to close the bridge, demolish the bridge and remove it from the IRR inventory in accordance with 25 CFR part 170 (170.813).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–123365–03]

RIN 1545–BC94

Guidance Regarding the Active Trade or Business Requirement Under Section 355(b); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–123365–03) that was published in the **Federal Register** on Tuesday, May 8, 2007 (72 FR 26012) providing guidance on issues involving the active trade or business requirement under section 355(b), including guidance resulting from the enactment of section 355(b)(3).

FOR FURTHER INFORMATION CONTACT: Russell P. Subin, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 355(b) of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–123365–03) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of proposed rulemaking (REG–123365–03), which was the subject of FR Doc. 07–2269, is corrected as follows:

1. On page 26014, column 2, in the preamble, under the paragraph heading ''1. SAG Rule Applicable During the Pre-Distribution Period'', second paragraph of the column, fourth line, the language ''members are disregarded and all assets'' is corrected to read ''members is disregarded and all assets''.

2. On page 26014, column 2, in the preamble, under the paragraph heading ''1. SAG Rule Applicable During the Pre-Distribution Period'', second paragraph of the column, eleventh line, the language ''a five-year active trade or businesses.'' is corrected to read ''a five-year active trade or business.''.

3. On page 26015, column 1, in the preamble, under the paragraph heading ''3. Acquisitions of Stock in Subsidiary SAG Members'', fifth line of the column, the language ''in sections B.4 and C.3.a.ii. of this'' is corrected to read ''in sections B.4. and C.3.a.ii. of this''.

4. On page 26015, column 1, in the preamble, under the paragraph heading *''C. Acquisitions of a Trade or Business''*, second line of the paragraph, the language ''provide that a trade or business'' is corrected to read ''provides that a trade or business''.

5. On page 26015, column 3, in the preamble, under the paragraph heading ''1. Purpose of Section 355(b)(2)(C) and (D)'', second paragraph of the column, fourth line, the language ''using it assets—instead of its stock, or'' is corrected to read ''using its assets—instead of its stock, or''.

6. On page 26016, column 2, in the preamble, under the paragraph heading ''i. Certain Acquisitions by the DSAG or CSAG'', last line of the first paragraph, the language ''assets to acquire the trade or business'' is corrected to read ''assets to acquire the trade or business.''.

7. On page 26016, column 3, in the preamble, under the paragraph heading ''ii. Certain Acquisitions by a Distributee Corporation'', tenth line of the paragraph, the language ''section A.1 of this preamble, section'' is corrected to read ''section A.1. of this preamble, section''.

8. On page 26017, column 2, in the preamble, under the paragraph heading ''i. Acquisitions in Exchange for Assets'', third paragraph of the column, first line, the language ''As discussed in section C.1 of this'' is corrected to read ''As discussed in section C.1. of this''.

9. On page 26018, column 1, in the preamble, under the paragraph heading ''i. Acquisitions in Exchange for Assets'', fourth paragraph of the column, sixth line, the language ''and (D) are satisfied. Such an'' is corrected to read ''and (D) is satisfied. Such an''.

10. On page 26019, column 3, in the preamble, under the paragraph heading ''c. Application of Section 355(b)(2)(C) and (D) to Predecessors'', second paragraph of the column, third line, the language ''singly-entity for purposes of section'' is corrected to read ''single-entity for purposes of section''.

11. On page 26025, column 1, in the preamble, under the paragraph heading *''J. Additional Requests for Comments''*, eleventh line of the column, the language ''sections D.1.b. and D.2.c of this'' is corrected to read ''sections D.1.b. and D.2.c. of this''.

12. On page 26025, column 2, in the preamble, under the paragraph heading *''J. Additional Requests for Comments''*, fourth line from the bottom of second paragraph, the language ''example, § 1.355–3(c) *Example* (*9*)'' is corrected to