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construction because they generally will not require maintenance of traffic during construction. If maintenance of traffic is required as will generally be the case for roadbed condition codes 3 and 4, the minimum percentage of incidental costs for these roadbed condition codes will be 75 percent. It is

assumed that improvement roadbed condition codes 5, 6 and 7 will primarily be paving projects with little or no earthwork involved and the minimum percentage of the total incidental construction cost for these projects will be 30 percent.

TABLE 7—PERCENT OF INCIDENTAL CONSTRUCTION COST REQUIRED

Code	Roadbed condition	New alignment (percent)	Maintenance of traffic required (percent)
0 .....	Proposed road .....	65	N/A
1 .....	Primitive trail .....	65	N/A
2 .....	Bladed unimproved earth road, poor drainage, poor alignment .....	65	N/A
3 .....	Minimum built-up roadbed (shallow cuts and fills) with inadequate drainage and alignment that generally follows existing ground.	N/A	75
4 .....	A designed and constructed roadbed with some drainage and alignment improvements required.	N/A	75
5 .....	A roadbed constructed to the adequate standards with good horizontal and vertical alignment and proper drainage. Requiring surfacing.	N/A	30
6 .....	A roadbed constructed to adequate standards with curb and gutter on one side. Requiring surfacing.	N/A	30
7 .....	A roadbed constructed to adequate standards with curb and gutter on both sides. Requiring surfacing.	N/A	30

Table 7 only accounts for those incidental construction costs normally found on a typical project. The construction items found in Table 8 may or may not be on any particular project and the cost of these items is 25 percent. Add the percentage required (from 0 to 25 percent) based on the Regional recommendation with verification. If there are no additional items required, use the default of zero.

TABLE 8—PERCENT OF ADDITIONAL INCIDENTAL CONSTRUCTION COST

Additional incidental construction item	Percent of total incidental construction cost
Fencing .....	1
Landscaping .....	9
Structural concrete .....	9
Traffic signals .....	3
Utilities .....	3

**Subpart D—Planning, Design, and Construction of Indian Reservation Roads Program Facilities**

TRANSPORTATION PLANNING

**§ 170.400 What is the purpose of transportation planning?**

The purpose of transportation planning is to fulfill goals by developing strategies to meet transportation needs. These strategies address current

and future land use, economic development, traffic demand, public safety, health, and social needs.

**§ 170.401 What is BIA’s role in transportation planning?**

Except as provided in §170.402, the functions and activities that BIA must perform for the IRR Program are:

- (a) Preparing the regional IRRTIP;
- (b) Updating the IRR Inventory from data updates;
- (c) Preparing IRR Inventory data updates as needed;
- (d) Coordinating with States and their political subdivisions, and appropriate planning authorities on regionally significant IRR projects;
- (e) Providing technical assistance to tribal governments;
- (f) Developing IRR Program budgets including transportation planning cost estimates;
- (g) Facilitating public involvement;
- (h) Participating in transportation planning and other transportation-related meetings;
- (i) Performing traffic studies;
- (j) Performing preliminary project planning;
- (k) Conducting special transportation studies;
- (l) Developing short and long-range transportation plans;
- (m) Mapping;

(n) Developing and maintaining management systems;

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

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

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

(a) All tribes must prepare a tribal TIP (TTIP) or tribal priority list.

(b) Tribes with a self-determination contract or self-governance agreement may assume any of the following planning functions:

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

(2) Preparing IRR Inventory data updates;

(3) Facilitating public involvement;

(4) Performing traffic studies;

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

(6) Mapping;

(7) Developing and maintaining tribal management systems;

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

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

(10) Developing IRR Program budgets including transportation planning cost estimates;

(11) Conducting special transportation studies, as appropriate;

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

(13) Performing preliminary project planning.

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

Funds as defined in 23 U.S.C. 204(j) are specifically reserved for a tribal government's transportation planning. Tribes may also identify transportation planning as a priority in their tribal priority list or TTIP and request the use of up to 100 percent of their IRR Program construction funds for transportation planning.

**§ 170.404 What happens when a tribe uses its IRR Program construction funds for transportation planning?**

In order for IRR Program construction funds to be concentrated on the projects within the inventory, a tribe may use up to \$35,000 or 5 percent of its IRR Program construction funds, whichever is greater, for transportation planning. If a tribe exceeds this threshold, BIA will subtract the amount over the threshold from the tribe's CTC for the following year.

**§ 170.405 Can tribal transportation planning funds be used for road construction and other projects?**

Yes, any tribe can request to have its planning funds as defined in 23 U.S.C. 204(j) transferred into construction funds for use on any eligible and approved IRR project. (Also see § 170.407.)

**§ 170.406 How must tribes use planning funds?**

(a) IRR Program funds as defined in 23 U.S.C. 204(j) are only available upon request of a tribal government and approved by the BIA Regional Office. These funds support development and implementation of tribal transportation planning and associated strategies for identifying transportation needs, including:

(1) Attending transportation planning meetings;

(2) Pursuing other sources of funds; and

(3) Developing the tribal priority list or any of the transportation functions/activities as defined in the FHWA IRR Program Transportation Planning Procedures and Guidelines (TPPG) or listed in § 170.402.

(b) A tribe may ask the BIA regional office to enter into a self-determination contract or self-governance agreement for transportation planning activities and functions under ISDEAA or it may request a travel authorization to attend transportation planning functions and related activities using these funds. (See appendix A of subpart B for use of IRR Program Funds.)

**§ 170.407 What happens to unobligated planning funds?**

Once all tribal governments' requests for tribal transportation planning

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funds have been satisfied for a given fiscal year or no later than August 15, the BIA regional office may use the remaining funds for construction after consultation with the affected tribal governments.

LONG-RANGE TRANSPORTATION  
PLANNING

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

(a) The purpose of long-range transportation planning is to clearly demonstrate a tribe's transportation needs and to fulfill tribal goals by developing strategies to meet these needs. These strategies should address future land use, economic development, traffic demand, public safety, and health and social needs.

(b) The time horizon for long-range transportation planning should be 20 years to match state transportation planning horizons. A tribe may develop a long-range transportation plan under ISDEAA or may ask BIA to develop the plan on the tribe's behalf.

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

A comprehensive long-range transportation plan may include:

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

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

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

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

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

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

(g) Scenic byway and tourism plans;

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(h) Measures that address energy conservation considerations;

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

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

**§ 170.412 How is the tribal IRR long-range transportation plan developed and approved?**

(a) The tribal IRR long-range transportation plan is developed by:

(1) A tribe working through a self-termination contract or self-governance agreement or other funding sources; or

(2) BIA upon request of, and in consultation with, a tribe. The tribe and BIA need to agree on the methodology and elements included in development of the IRR long-range transportation plan along with time frames before work begins.

(b) During the development of the IRR long-range transportation plan, the tribe and BIA should jointly conduct a midpoint review.

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

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

BIA or the tribe must solicit public involvement. If there are no tribal policies regarding public involvement, a tribe must use the procedures shown below. Public involvement begins at the same time long-range transportation planning begins and covers the range of users, from stakeholders and private citizens to major public and private entities. Public involvement may be handled in either of the following two ways:

(a) *For public meetings*, BIA or a tribe must:

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

(2) Provide at the meeting copies of the draft long-range transportation plan;

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

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

(b) *For public notices*, BIA or a tribe must:

(1) Publish a notice in the local and tribal newspapers when the draft long-range transportation plan is complete. In the absence of local public newspapers, BIA or the tribe may post notices under local acceptable practices; and

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

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

The tribal government uses its IRR long-range transportation plan in its development of a tribal priority list or TTIP. To be consistent with State and MPO planning practices, the tribe or BIA (for direct service tribes) should:

(a) Review the IRR long-range transportation plan annually; and

(b) Update the plan every 5 years.

**§ 170.415 What is pre-project planning?**

(a) Pre-project planning is part of overall transportation planning and includes the activities conducted before final project approval on the IRR Transportation Improvement Program (IRRTIP). These activities include;

(1) Preliminary project cost estimates;

(2) Certification of public involvement;

(3) Consultation and coordination with States and/or MPO's for a regionally significant projects;

(4) Preliminary needs assessments; and

(5) Preliminary environmental and archeological reviews.

(b) The BIA regional office must work cooperatively with tribal, state, regional, and metropolitan transpor-

tation planning organizations concerning the leveraging of funds from non-IRR Program sources and identification of other funding sources to expedite the planning, design, and construction of projects on the IRRTIP.

TRANSPORTATION IMPROVEMENT PROGRAM

**§ 170.420 What is the tribal priority list?**

The tribal priority list is a list of all transportation projects that the tribe wants funded. The list:

(a) May or may not identify projects in order of priority;

(b) Is not financially constrained; and

(c) Is provided to BIA by official tribal action, unless the tribal government submits a Tribal Transportation Improvement Program (TTIP).

**§ 170.421 What is the Tribal Transportation Improvement Program (TTIP)?**

The TTIP:

(a) Must be consistent with the tribal long-range transportation plan;

(b) Must contain all IRR Program funded projects programmed for construction in the next 3 to 5 years;

(c) Must identify the implementation year of each project scheduled to begin within the next 3 to 5 years;

(d) May include other Federal, State, county, and municipal, transportation projects initiated by or developed in cooperation with the tribal government;

(e) Will be reviewed and updated as necessary by the tribal government;

(f) Can be changed only by the tribal government; and

(g) Must be forwarded to BIA by resolution or by tribally authorized government action for inclusion into the IRRTIP.

**§ 170.422 What is the IRR Transportation Improvement Program (IRRTIP)?**

The IRRTIP:

(a) Is financially constrained;

(b) Must include eligible projects from tribal TTIPs;

(c) Is selected by tribal governments from TTIPs or other tribal actions;

(d) Is organized by year, State, and tribe; and

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(e) May include non-IRR projects for inclusion into the State Transportation Improvement Program (STIP).

**§ 170.423 How are projects placed on the IRRTIP?**

(a) BIA selects projects from the TTIP or tribal priority list for inclusion on the IRRTIP as follows:

(1) The tribal government develops a list of detailed tasks and information for each project from the tribal priority list or TTIP;

(2) BIA includes this project information in its region-wide control schedule without change, unless the funding required exceeds the amount available to the tribe;

(3) BIA must include projects that are scheduled in the next 3 to 5 years; and

(4) BIA develops the IRRTIP after consulting with the tribes and taking their priorities into account.

(b) A tribe that does not generate enough annual funding under the IRR Program funding formula to complete a project may either:

(1) Submit its tribal priority list to the appropriate BIA Region, which will develop the region-wide control schedule after consulting with the tribe and taking its priorities into account; or

(2) Enter a consortium of tribes and delegate authority to the consortium to develop the TTIP and tribal control schedule;

(3) Enter into agreement with other tribes to permit completion of the project; or

(4) Apply for IRRHPP funding under subpart C.

(c) In order to get a project on the IRRTIP, tribes may seek flexible financing alternatives as described in subpart C.

**§ 170.424 How does the public participate in developing the IRRTIP?**

Public involvement is required in the development of the IRRTIP.

(a) BIA or the tribe must publish a notice in local and tribal newspapers when the draft tribal or IRRTIP is complete. In the absence of local public newspapers, the tribe or BIA may post notices under local acceptable practices. The notice must indicate where a copy can be obtained, contact person

for questions, where comments may be submitted, and the deadline for submitting comments.

(b) BIA or the tribe may hold public meetings at which the public may comment orally or in writing.

(c) BIA, the tribe, the State transportation agency or MPO may conduct public involvement activities.

**§ 170.425 How does BIA update the IRRTIP?**

The IRRTIP annual update allows incorporation of transportation projects planned for the next 3 to 5 years. Each BIA regional office updates the IRRTIP for each State in its service area to reflect changes in the TTIPs or tribal project listings.

(a) During the first quarter of the fiscal year each BIA Regional Office notifies tribes of the update and provides projected IRR Program funding amounts and a copy of the previous year's regional IRRTIP.

(b) The tribe reviews any new transportation planning information, priority lists, and TTIP and forwards an updated TTIP or project listing to BIA Regional Office on or before July 15.

(c) The BIA regional office reviews all submitted information with the tribes. BIA adds agreed-upon updates, including previously approved amendments (see § 170.427), to the IRRTIP so that the Secretaries can approve the new updated IRRTIP before the start of the next fiscal year.

**§ 170.426 What is the approval process for the IRRTIP?**

The approval process for the IRRTIP is:

(a) The BIA Regional Office forwards the IRRTIP to the Secretaries for review and approval;

(b) Federal Lands Highway Office will provide copies of the approved IRRTIP to the FHWA division office for transmittal to the State transportation agency for inclusion in the State Transportation Improvement Program (STIP). The approved IRRTIP will be returned to BIA;

(c) BIA sends copies of the approved IRRTIP to BIA Regional Offices and tribal governments; and

(d) Within 10 working days of receiving the approved IRR TIP and IRR Program funds, BIA enters the projects into the Federal finance system.

**§ 170.427 How may an IRR TIP be amended?**

(a) A tribe may amend the IRR TIP by changing its TTIP on or before July 15 and submitting the changed TTIP to BIA for inclusion in the IRR TIP. BIA's regional office will review all submitted information with the tribe and provide a written response (approving, denying, or requesting additional information) within 45 days. If the proposed IRR TIP amendment contains a project not listed on the current approved IRR TIP, BIA must submit the proposed amendment to FHWA for final approval.

(b) BIA may amend the IRR TIP:

(1) To add or delete projects or reflect significant changes in scope at any time if requested by the tribe; and

(2) To reduce funding or reschedule a project after consulting with the affected tribe and obtaining its consent, if practical.

(c) The Secretary may not reduce funding for or reschedule a project that is the subject of a negotiated agreement, except under the terms of the agreement.

(d) BIA amends the IRR TIP using the same public involvement process used to develop the original IRR TIP.

**§ 170.428 How is the State Transportation Improvement Program related to the IRR TIP?**

The annual update of the IRR TIP for each State in a BIA regional office's service area should be coordinated with the State transportation agencies. This will ensure that approved IRR TIP updates and amendments are included with the STIP.

PUBLIC HEARINGS

**§ 170.435 How does BIA or the tribe determine the need for a public hearing?**

The tribe, or BIA after consultation with the appropriate tribe and other involved agencies, determines whether or not a public hearing is needed for an IRR TIP, long-range transportation

plan or project. A public hearing must be held if a project:

(a) Is a new route or facility;

(b) Would significantly change the layout or function of connecting or related roads or streets;

(c) Would cause a substantial adverse effect on adjacent property; or

(d) Is controversial or expected to be controversial in nature.

**§ 170.436 How are public hearings for IRR planning and projects funded?**

(a) Public hearings for IRR planning are funded as follows:

(1) Public hearings for TTIPS and long-range transportation plans conducted by tribes are funded using the funds defined in title 23 U.S.C. 204(j) or IRR Program construction funds; and

(2) Public hearings for a tribe's long-range transportation plan conducted by BIA at the tribe's request are funded using the tribes' funds as defined in title 23 U.S.C. 204(j) or IRR Program construction funds.

(b) Public hearings for IRR projects conducted by either tribes or BIA are funded using IRR Program construction funds.

**§ 170.437 How must BIA or a tribe inform the public when no hearing is held?**

(a) When no public hearing for an IRR project is scheduled, either the tribe or BIA must give adequate notice to the public before project activities are scheduled to begin. The notice should include:

(1) Project location;

(2) Type of improvement planned;

(3) Dates and schedule for work;

(4) Name and address where more information is available; and

(5) Provisions for requesting a hearing.

(b) If the work is not to be performed by the tribe, BIA must send a copy of the notice to the affected tribe.

**§ 170.438 How must BIA or a tribe inform the public when a hearing is held?**

When BIA or a tribe holds a hearing under this part, it must notify the public of the hearing by publishing a notice.

(a) The public hearing notice is a document containing:

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(1) Date, time, and place of the hearing;

(2) Planning activities or project location;

(3) Proposed work to be done, activities to be conducted, etc.;

(4) Where preliminary plans, designs or specifications may be reviewed; and

(5) How and where to get more information.

(b) BIA or the tribe must publish the notice:

(1) By posting and/or publishing the notice at least 30 days before the public hearing. A second notice for a hearing is optional; and,

(2) By sending a courtesy copy of the notice to the affected tribe(s) and BIA Regional Office.

**§ 170.439 How is a public hearing conducted?**

(a) *Who conducts the hearing.* A tribal or Federal official is appointed to preside over the public hearing. The official presiding over the hearing must maintain a free and open discussion of the issues.

(b) *Record of hearing.* The presiding official is responsible for compiling the official record of the hearing. A record of a hearing is a summary of oral testimony and all written statements submitted at the hearing. Additional written comments made or provided at the hearing, or within 5 working days of the hearing, will be made a part of the record.

(c) *Hearing process.* (1) The presiding official explains the purpose of the hearing and provides an agenda;

(2) The presiding official solicits public comments from the audience on the merits of IRR projects and activities; and

(3) The presiding official informs the hearing audience of the appropriate procedures for a proposed IRR project or activity, that may include, but are not limited to:

(i) Project development activities;

(ii) Rights-of-way acquisition;

(iii) Environmental and archeological clearance;

(iv) Relocation of utilities and relocation services;

(v) Authorized payments allowed by the Uniform Relocation and Real Prop-

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erty Acquisition Policies Act, 42 U.S.C. 4601 *et seq.*, as amended;

(vi) Draft transportation plan; and

(vii) The scope of the project and its effect on traffic during and after construction.

(d) *Availability of information.* Appropriate maps, plats, project plans and specifications will be available at the hearing for public review. Appropriate officials are present to answer questions.

(e) *Opportunity for comment.* Comments are received as follows:

(1) Oral statement at the hearing;

(2) Written statement submitted at the hearing;

(3) Written statement sent to the address noted in the hearing notice within 5 working days following the public hearing.

**§ 170.440 How can the public learn the results of a public hearing?**

Results of a public hearing are available as follows:

(a) Within 20 working days of the completion of the public hearing, the presiding official issues a hearing statement summarizing the results of the public hearing and the determination of needed further action.

(b) The presiding official posts the hearing statement at the hearing site. The public may request a copy. The hearing statement outlines appeal procedures.

**§ 170.441 Can a decision resulting from a hearing be appealed?**

Yes. A decision resulting from the public hearing may be appealed pursuant to 25 CFR part 2.

**IRR INVENTORY**

**§ 170.442 What is the IRR Inventory?**

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

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(b) Elements of the inventory are used in the Relative Need Distribution Factor. BIA or tribes can also use the inventory to assist in transportation and project planning, justify expenditures, identify transportation needs, maintain existing IRR transportation facilities, and develop management systems.

### **§ 170.443 How can a tribe list a proposed transportation facility in the IRR Inventory?**

A proposed IRR transportation facility is any transportation facility, including a highway bridge, that will serve public transportation needs, is eligible for construction under the IRR Program and does not currently exist. To be included in the IRR inventory, a proposed transportation facility must:

- (a) Be supported by a tribal resolution or other official tribal authorization;
- (b) Address documented transportation needs as developed by and identified in tribal transportation planning efforts, such as the long-range transportation plan;
- (c) Be eligible for IRR Program funding; and
- (d) Be open to the public when built.

### **§ 170.444 How is the IRR Inventory updated?**

The IRR Inventory data for a tribe is updated on an annual basis as follows:

- (a) Each BIA Regional Office provides the tribes in its region copies of the IRR Inventory by November 1st of each year;
- (b) The tribe reviews the data and submits changes (together with a strip map of each change) to the BIA Regional Office along with authorizing resolutions or similar official authorization by March 15;
- (c) The BIA Regional Office reviews each tribe's submission for errors or omissions and provides the tribe with its revised inventory by May 15;
- (d) The tribe must correct any errors or omissions by June 15;
- (e) Each BIA Regional Office certifies its data and enters the data into the IRR Inventory by July 15;
- (f) BIA provides each tribe with copies of the Relative Need Distribution

Factor distribution percentages by August 15; and

- (g) BIADOT approves submissions from BIA Regional Offices before they are included in the National IRR Inventory.

### **§ 170.445 What is a strip map?**

A strip map is a graphic representation of a section of road or other transportation facility being added to or modified in the IRR Inventory. Each strip map submitted with an IRR Inventory change must:

- (a) Define the facility's location with respect to State, county, tribal, and congressional boundaries;
- (b) Define the overall dimensions of the facility and the accompanying inventory data;
- (c) Include a table that provides the IRR Inventory information about the transportation facility.

## ENVIRONMENTAL AND ARCHEOLOGICAL REQUIREMENTS

### **§ 170.450 What archeological and environmental requirements must the IRR Program meet?**

- (a) The archeological and environmental requirements with which BIA must comply on the IRR Program are contained in Appendix A to this subpart.
- (b) The archeological and environmental requirements for tribes that enter into self-determination contracts or self-governance agreements for the IRR Program are in 25 CFR 900.125 and 1000.243.

### **§ 170.451 Can IRR Program funds be used for archeological and environmental compliance?**

Yes. For approved IRR projects, IRR Program funds can be used for environmental and archeological work consistent with 25 CFR 900.125(c)(6) and (c)(8) and 25 CFR 1000.243(b) and applicable tribal laws for:

- (a) Road and bridge rights-of-way;
- (b) Borrow pits and aggregate pits associated with IRR activities staging areas;
- (c) Limited mitigation outside of the construction limits as necessary to address the direct impacts of the construction activity as determined in the



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environmental analysis and after consultation with the affected tribe(s) and the appropriate Secretary(s); and

- (d) Construction easements.

### DESIGN

#### § 170.454 What design standards are used in the IRR Program?

(a) Appendix B to this subpart lists design standards that BIA may use for the IRR program.

(b) BIA may also use FHWA-approved State or tribal design standards.

(c) Tribes may propose road and bridge design standards to be used in the IRR Program that are consistent with or exceed applicable Federal standards. The standards may be negotiated between BIA and the tribe and included in a self-determination contract or self-governance agreement.

#### § 170.455 How are design standards used in IRR projects?

The standards in this section must be applied to each construction project consistent with a minimum 20-year design life for highway projects and 75-year design life for highway bridges. The design of IRR projects must take into consideration:

(a) The existing and planned future use of the IRR transportation facility in a manner that is conducive to safety, durability, and economy of maintenance;

(b) The particular needs of each locality, and the environmental, scenic, historic, aesthetic, community, and other cultural values and mobility needs in a cost-effective manner; and

(c) Access and accommodation for other modes of transportation.

#### § 170.456 When can a tribe request an exception from the design standards?

A tribe can request an exception from the design standards in Appendix B of this subpart under the conditions in this section. The tribe must submit its request for a design exception to the BIA Regional Office for approval. If the BIA Regional Office has design exception approval authority within their IRR Stewardship Plan with FHWA, they may approve or decline the request; otherwise BIA forwards the request to FHWA. The engineer of

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record must submit written documentation with appropriate supporting data, sketches, details, and justification based on engineering analysis.

(a) FHWA or BIA may grant exceptions for:

(1) Experimental features on projects; and

(2) Projects where conditions warrant that exceptions be made.

(b) FHWA or BIA can approve a project design that does not conform to the minimum criteria only after giving due consideration to all project conditions, such as:

(1) Maximum service and safety benefits for the dollar invested;

(2) Compatibility with adjacent features; and

(3) Probable time before reconstruction of the project due to changed conditions or transportation demands.

(c) FHWA or BIA have 30 days from receiving the request to approve or decline the exception.

#### § 170.457 Can a tribe appeal a denial?

Yes. If BIA denies a design exception request made by a tribe, the decision may be appealed to FHWA. Tribes may appeal the denial of a design exception to: FHWA, 400 7th St., SW., HFL-1, Washington, DC 20590. If FHWA denies a design exception, the tribe may appeal the decision to the next higher level of review within the Department of Transportation at the Office of the FHWA Administrator, 400 7th Street, SW., HOA-1, Washington, DC 20590.

### REVIEW AND APPROVAL OF PLANS, SPECIFICATIONS, AND ESTIMATES

#### § 170.460 What must a project package include?

(a) The minimum requirements for a project package are:

(1) Plans;

(2) Specifications; and

(3) Estimates.

(b) In order to receive project approval the following additional items are required:

(1) A tribal resolution or other authorized document supporting the project;

(2) Right-of-way clearances;

(3) Required environmental, archeological, and cultural clearances; and

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(4) Identification of design exceptions if used in the plans.

(c) A tribe may include additional items at its option.

**§ 170.461 May a tribe approve plans, specifications, and estimates?**

A tribe may review and approve plan, specification, and estimate (PS&E) project packages for IRR Program funded projects when:

(a) This function is included in the tribe's self-determination contract or self-governance agreement; or

(b) The tribe is the owner of the IRR transportation facility or is responsible for maintaining the facility. In this case, the tribe must have at least 30 days to review and approve the proposed PS&E package.

**§ 170.462 When may a self-determination contract or self-governance agreement include PS&E review and approval?**

(a) For a BIA or tribally-owned facility, the tribe may assume responsibility to review and approve PS&E packages under a self-determination contract or self-governance agreement if the tribe specifies in the contract or agreement that:

(1) A licensed professional engineer will supervise design and approval of the PS&E package;

(2) A licensed professional engineer will certify that the PS&E meets or exceeds the design, health, and safety standards in appendix B to subpart D for an IRR transportation facility;

(3) An additional licensed professional engineer (either a BIA engineer or, if the tribe chooses, a non-BIA engineer) will review the PS&E package when it is at least 95 percent complete; and

(4) If the project is to be performed by the tribe, the tribe will provide a copy of the certification and approved PS&E package to BIA before the solicitation of the project or notice to proceed.

(b) For a facility maintained by a public authority other than BIA or a tribe, in addition to satisfying the requirements of paragraph (a) of this section:

(1) The public authority must have a chance to review and approve the PS&E when it is between 75 percent

and 95 percent complete, unless an agreement between the tribe and the public authority states otherwise;

(2) If a licensed professional engineer performs the review and approval when the PS&E provided is at least 95 percent complete, the second level review requirement in paragraph (a)(2) of this section is satisfied; and

(3) The tribe must allow the public authority at least 30 days for review and approval. If the public authority does not meet this deadline or an extension granted by the tribe, the tribe may proceed with the review in accordance with paragraph (a)(2) of this section.

(c) If a BIA engineer does not complete a review within 30 days under paragraph (a)(2) of this section, the tribe may contract its own engineer to perform the review.

**§ 170.463 What should the Secretary do if a design deficiency is identified?**

If a review under § 170.462 identifies a design deficiency that may jeopardize public health and safety if the facility is completed, the Secretary must:

(a) For a tribally-approved PS&E package, immediately notify the tribe of the design deficiency and request that the tribe promptly resolve the deficiency in accordance with the standards in appendix B to subpart D; and

(b) For a BIA-approved PS&E package, promptly resolve the deficiency in accordance with the standards in appendix B to subpart D and notify the tribe of the required design changes.

**CONSTRUCTION AND CONSTRUCTION MONITORING**

**§ 170.470 What are the IRR construction standards?**

(a) Appendix B to this subpart lists design standards that may be used for roads and bridges.

(1) Tribes may propose road and highway bridge construction standards that are consistent with or exceed these standards.

(2) BIA may also use FHWA-approved, State or tribal road and highway bridge construction standards.

(b) For designing and building eligible intermodal projects funded by the IRR Program, tribes must use either:

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- (1) Nationally recognized standards for comparable projects; or
- (2) Tribally adopted standards that meet or exceed nationally recognized standards for comparable projects.

**§ 170.471 How are projects administered?**

- (a) When a tribe carries out an IRR project under ISDEAA, BIA will monitor performance under the requirements of 25 CFR 900.130 and 900.131(b)(9) or 25 CFR 1000.243 and 1000.249(c) and (e), as appropriate. If BIA discovers a problem during an on-site monitoring visit, BIA must promptly notify the tribe and, if asked, provide technical assistance.
- (b) BIA or the tribal government, as provided for under the contract or agreement, is responsible for day-to-day project inspections except for BIA monitoring under paragraph (a) of this section.

- (c) BIA must process substantial changes in the scope of a construction project in coordination with the affected tribe.
- (d) The tribe, other contractors, and BIA may perform quality control.
- (e) Only the licensed professional engineer may change an IRR project's plans, specifications, and estimates (PS&E) during construction.
  - (1) For substantial changes, the original approving agency must review the change. The approving agency is the Federal, tribal, State, or local entity with PS&E approval authority over the project.
  - (2) In making any substantial change, the approving agency must consult with the affected tribe and the entity having maintenance responsibility.
  - (3) A change that exceeds the limits of available funding may be made only with the approving agency's consent.

**§ 170.472 What construction records must tribes and BIA keep?**

The following table shows which IRR construction records BIA and tribes must keep and the requirements for access.

Record keeper	Records that must be kept	Access
(a) Tribe .....	All records required by ISDEAA and 25 CFR 900.130–131 or 25 CFR 1000.243 and 1000.249, as appropriate.	BIA is allowed access to tribal IRR construction records as required under 25 CFR 900.130, 900.131 or 25 CFR 1000.243 and 1000.249, as appropriate.
(b) BIA .....	Completed daily reports of construction activities appropriate to the type of construction it is performing.	Upon reasonable advance request by a tribe, BIA must provide reasonable access to records.

**§ 170.473 What happens when a construction project ends?**

- (a) At the end of a construction project, the agency or organization responsible for the project must make a final inspection. The inspection determines whether the project has been completed in reasonable conformity with the PS&E.
  - (1) Appropriate officials from the tribe, BIA, and FHWA should participate in the inspection, as well as contractors and maintenance personnel.
  - (2) All project information must be made available during final inspection and used to develop the IRR construc-

- tion project closeout report. Some examples of project information are: Daily diaries, weekly progress reports, subcontracts, subcontract expenditures, salaries, equipment expenditures, as-built drawings, etc.
- (b) An IRR construction project closeout is the final accounting of all IRR construction project expenditures. It is the closing of the financial books of the Federal Government for that construction project. Closeout occurs after:
  - (1) The final project inspection concludes; and
  - (2) The facility owner makes final acceptance of the project.

**§ 170.474 Who conducts the project closeout?**

The following table shows who must conduct the IRR construction project closeout and develop the report.

If the project was completed by . . .	then . . .	and the closeout report must . . .
(a) BIA .....	The regional engineer or designee is responsible for closing out the project and preparing the report.	(1) Summarize the construction project records to ensure compliance requirements have been met; (2) Review the bid item quantities and expenditures to ensure reasonable conformance with the PS&E and modifications; (3) Be completed within 120 calendar days of the date of acceptance of the IRR, construction project; and (4) Be provided to the affected tribes and the Secretaries.
(b) A tribe .....	Agreements negotiated under ISDEAA specify who is responsible for closeout and preparing the report.	(1) Meet the requirements of ISDEAA; (2) Comply with 25 CFR 900.130(d) and 131(b) (10) and 25 CFR 1000.249, as applicable; (3) Be completed within 120 calendar days of the date of acceptance of the project; and (4) Be provided to all parties specified in the agreements negotiated under ISDEAA.

PROGRAM REVIEWS AND MANAGEMENT SYSTEMS

**§ 170.500 What program reviews do the Secretaries conduct?**

(a) BIADOT and FHWA annually conduct informal program reviews to examine program procedures and identify improvements. BIA must notify tribes of these informal program reviews. Tribes may send representatives to these meetings at their own expense. These reviews may be held in conjunction with either a national BIA transportation meeting or an IRR Program Coordinating Committee meeting.

(b) FHWA, BIA, and affected tribes periodically conduct an IRR Program process review of each BIA regional office's processes, controls, and stewardship. The review provides recommendations to improve the processes and controls of the following activities that a BIA Regional Office performs:

- (1) Program Management and Oversight;
- (2) Transportation planning;
- (3) Design;
- (4) Contract administration;
- (5) Construction;
- (6) Financial management; and
- (7) Systems management and existing stewardship agreements.

(c) After the IRR process review, the review team must:

- (1) Conduct an exit interview during which it makes a brief oral report of findings and recommendations to the BIA Regional Director and staff; and

(2) Provide a written report of its findings and recommendations to the reviewed office, BIA, all participants, and affected tribal governments and organizations.

**§ 170.501 What happens when the review process identifies areas for improvement?**

When the review process identifies areas for improvement:

- (a) The regional office must develop a corrective action plan;
- (b) BIADOT and FHWA review and approve the plan;
- (c) FHWA may provide technical assistance during the development and implementation of the plan; and
- (d) The reviewed BIA regional office implements the plan and reports either annually or biennially to BIADOT and FHWA on implementation accomplishments.

**§ 170.502 Are management systems required for the IRR Program?**

(a) To the extent appropriate, the Secretaries must, in consultation with tribes, develop and maintain the following systems for the IRR Program:

- (1) Pavement management;
- (2) Safety management;
- (3) Bridge management; and
- (4) Congestion management.

(b) Other management systems may include the following:

- (1) Public transportation facilities;
- (2) Public transportation equipment; and

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(3) Intermodal transportation facilities and systems.

(c) All management systems for the IRR Program must meet the requirements of 23 CFR part 973.

(d) A tribe may enter into an ISDEAA contract or agreement to develop, implement, and maintain an alternative tribal management system for that tribe, provided that such systems are consistent with Federal management systems.

### § 170.503 How are IRR Program management systems funded?

BIA uses IRR Program management funds to develop the nationwide IRR Program management systems. If a tribe elects to develop its own tribal management system based on the nationwide management system requirements in 23 CFR part 973, it may use for this purpose either:

(a) The funds defined in 23 U.S.C. 204(j) for IRR Program tribal transportation planning; or

(b) IRR Program construction funds.

#### BRIDGE INSPECTION

### § 170.504 When and how are bridge inspections performed?

IRR bridge inspections must be performed at least every 2 years to update the NBI using criteria that meets or exceeds applicable Federal standards (23 CFR 650.305).

(a) Federal standards for bridge inspections are found in 23 CFR part 650, subpart C.

(b) Tribes may develop alternative bridge inspection standards, provided that these standards meet or exceed applicable Federal standards.

### § 170.505 How must bridge inspections be coordinated?

This section applies to bridge inspectors working for BIA; for tribes under an ISDEAA contract or self-governance agreement; or for State, county, or local governments. Before performing an inspection, inspectors must:

(a) Notify affected tribes and State and local governments that an inspection will occur;

(b) Offer tribal and State and local governments the opportunity to accompany the inspectors; and

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(c) Otherwise coordinate with tribal and State and local governments.

### § 170.506 What are the minimum qualifications for certified bridge inspectors?

The person responsible for the bridge inspection team must meet the qualifications for bridge inspectors as defined in 23 CFR part 650, subpart C.

### § 170.507 Who reviews bridge inspection reports?

The person responsible for the bridge inspection team must send a copy of the inspection report to the BIA regional office. The regional office:

(a) Reviews the report and furnishes a copy to the affected tribe for review, comment, and use in programming transportation projects; and

(b) Sends the report to BIADOT for quality assurance and inclusion in the National Bridge Inventory (NBI).

#### APPENDIX A TO SUBPART D—CULTURAL RESOURCE AND ENVIRONMENTAL REQUIREMENTS FOR THE IRR PROGRAM

All BIA work for the IRR Program must comply with cultural resource and environmental requirements under applicable Federal laws and regulations, including, but not limited to:

1. 16 U.S.C. 1531, Endangered Species Act.
2. 16 U.S.C. 4601, Land and Water Conservation Fund Act (Section 6(f)).
3. 16 U.S.C. 661–667d, Fish and Wildlife Coordination Act.
4. 23 U.S.C. 138, Preservation of Parklands.
5. 25 U.S.C. 3001–3013, Native American Graves Protection and Repatriation Act.
6. 33 U.S.C. 1251, Federal Water Pollution Control Act and Clean Water Act.
7. 42 U.S.C. 7401, Clean Air Act.
8. 42 U.S.C. 4321, National Environmental Policy Act.
9. 49 U.S.C. 303, Preservation of Parklands.
10. 7 U.S.C. 4201, Farmland Protection Policy Act.
11. 50 CFR part 402, Endangered Species Act regulations.
12. 7 CFR part 658, Farmland Protection Policy Act regulations.
13. 40 CFR part 93, Air Quality Conformity and Priority Procedures for use in Federal-aid Highway and Federally-Funded Transit Programs.
14. 23 CFR part 771, Environmental Impact and Related Procedures.
15. 23 CFR part 772, Procedures for Abatement of Highway Traffic Noises and Construction Noises.

16. 23 CFR part 777, Mitigation of Impacts To Wetlands and Natural Habitat.

17. 36 CFR part 800, Protection of Historic Properties.

18. 40 CFR parts 260–271, Resource Conservation and Recovery Act.

19. Applicable tribal/State laws.

20. Other applicable Federal laws and regulations.

#### APPENDIX B TO SUBPART D—DESIGN STANDARDS FOR THE IRR PROGRAM

Depending on the nature of the project, tribes may use the following design standards. Additional standards may also apply. To the extent that any provisions of these standards are inconsistent with ISDEAA, these provisions do not apply.

1. AASHTO Policy on Geometric Design of Highways and Streets.

2. AASHTO A Guide for Transportation Landscape and Environmental Design.

3. AASHTO Roadside Design Guide, latest edition.

4. AASHTO Guide for Selecting, Locating and Designing Traffic Barriers, latest edition.

5. AASHTO Standard Specifications for Highway Bridges, latest edition.

6. AASHTO Guidelines of Geometric Design of Very Low-Volume Local Roads (ADT less than or equal to 400).

7. FHWA Federal Lands Highway, Project Development and Design Manual.

8. FHWA Flexibility in Highway Design.

9. FHWA Roadside Improvements for Local Road and Streets.

10. FHWA Improving Guardrail Installations and Local Roads and Streets.

11. 23 CFR part 625, Design Standards for Highways.

12. 23 CFR part 630, Preconstruction Procedures.

13. 23 CFR part 633, Required Contract Provisions.

14. 23 CFR part 635, Construction and Maintenance.

15. 23 CFR part 645, Utilities.

16. 23 CFR part 646, Railroads.

17. 23 U.S.C. 106, PS&E.

18. 23 U.S.C. 109, Standards.

19. DOT Metric Conversion Plan, October 31, 1991.

20. MUTCD Manual of Uniform Traffic Safety Devices, latest edition.

21. Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, latest edition.

### Subpart E—Service Delivery for Indian Reservation Roads

#### FUNDING PROCESS

#### § 170.600 What must BIA include in the notice of availability of funds?

(a) Upon receiving the total fiscal year of IRR Program funding from FHWA, BIA will publish a notice of availability of funds in the FEDERAL REGISTER that includes the following:

(1) The total funding available to each region for IRR transportation planning, design, and construction projects based on each region's Relative Need Distribution Factor (RNDF) defined in subpart C;

(2) The total funding available to each tribe based on its RNDF, along with prior year information on IRR Program funding by tribe that identifies over-funded or advance-funded tribes; and

(3) A listing of FHWA-approved IRR/TIP projects for each State within each BIA region.

(b) Upon publication of the notice under this section, each BIA Regional Office must provide to each tribe within its region:

(1) A proposed project listing used to develop the region's control schedule;

(2) An offer to provide the tribe with technical assistance in preparing contract proposals;

(3) The various options available to the tribe for IRR construction projects (force account methods, direct service, self-determination contract, and self-governance agreement); and

(4) A request for a response from the tribe within 30 days.

#### § 170.601 What happens to the unused portion of IRR Program management and oversight funds reserved by the Secretary?

BIA distributes any unused IRR Program management and oversight funds to its Regional Offices using the RNDF (see subpart C). The Regional Offices use the funds for additional construction activities.

#### § 170.602 If a tribe incurs unforeseen construction costs, can it get additional funds?

Yes. To the extent feasible, the Secretary must pay for all costs incurred