

Subpart A--Policies, Applicability, and Definitions

Sec. 170.1 What does this part do?

This part provides rules and a funding formula for the Department of the Interior (DOI), in cooperation with the Department of Transportation (DOT), to implement the Tribal Transportation Program (TTP). Included in this part are other Title 23 and Title 25 transportation programs administered by the Secretary of the Interior and the Secretary of Transportation (Secretaries) and implemented by tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act of 1975, as amended (ISDEAA) and other appropriate agreements.

Sec. 170.2 What are the Secretaries' policies with respect to the Tribal Transportation Program and BIA Road Maintenance Program?

(a) It is the policy of the Secretaries to do the following in relation to the TTP and BIA Road Maintenance Programs:

- (1) Provide a uniform and consistent set of rules;
- (2) Foster knowledge of the programs by providing information about them and the opportunities that they create;
- (3) Facilitate tribal planning, conduct, and administration of the programs;
- (4) Encourage the inclusion of these programs under self-determination contracts, self-governance agreements, FHWA Program Agreements, and other appropriate agreements;
- (5) Make available all contractible non-inherently Federal administrative functions under self-determination contracts, self-governance agreements, FHWA Program Agreements; and other appropriate agreements.
- (6) Carry out policies, procedures, and practices in consultation with Indian tribes to ensure the letter, spirit, and goals of Federal transportation programs are fully implemented.

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

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

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

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

(2) The tribe accepts responsibility and accountability to the beneficiaries under self-determination contracts, self-governance agreements, FHWA Program Agreements, and other appropriate agreements for:

(i) Use of the funds; and

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

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

(e) The Secretary should interpret Federal laws and regulations to facilitate including programs covered by this part in the government-to-government agreements authorized under ISDEAA.

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

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

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

(i) Any ambiguities in this part must be construed in favor of the tribes so as to facilitate and enable the transfer of programs authorized by 23 U.S.C. §§201 and 202 and title 25 U.S.C.

Sec. 170.3 When do other requirements apply to the TTP?

TTP policies, guidance, and directives apply, to the extent permitted by law, only if they are consistent with this part and 25 CFR parts 900 and 1000. See 25 CFR 900.5 for when a tribe must comply with other unpublished requirements.

Sec. 170.4 What is the effect of this part on existing tribal rights?

This part does not:

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

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

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

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

Sec. 170.5 What definitions apply to this part?

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

Agreement means a self-determination contract, self-governance agreement, FHWA Program Funding Agreement, or other appropriate agreement to fund the programs, functions, services, and activities transferred to a tribe.

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

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

BIADOT means the Bureau of Indian Affairs, Indian Services, Division of Transportation, Central Office.

BIA Force Account means the performance of work done by BIA employees.

BIA Road System means the Bureau of Indian Affairs Road System under the National Tribal Transportation Facility Inventory (NTTFI) and includes only those existing and proposed facilities for which the BIA has or plans to obtain legal right-of-way.

BIA System Inventory means Bureau of Indian Affairs System Inventory under the NTTFI that included the BIA road system, tribally owned public roads, and facilities not owned by an Indian tribal government or the BIA in the States of Oklahoma and Alaska that were used to generate road mileage for computation of the funding formula in the Indian Reservation Roads Program prior to October 1, 2004.

CFR means the United States Code of Federal Regulations.

Construction, as defined in 23 U.S.C. 101(a)(4), means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a tribal transportation facility, as defined in 23 U.S.C. 101(a)(31). The term includes--

- (1) preliminary engineering, engineering, and design-related services directly relating to the construction of a highway project, including engineering, design, project development and management, construction project management and inspection, surveying, mapping (including the establishment of temporary and permanent geodetic control in accordance with specifications of the National Oceanic and Atmospheric Administration), and architectural-related services;
- (2) reconstruction, resurfacing, restoration, rehabilitation, and preservation;
- (3) acquisition of rights-of-way;
- (4) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;
- (5) elimination of hazards of railway-highway grade crossings;
- (6) elimination of roadside hazards;

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(7) improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and

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

Construction contract means a fixed price or cost reimbursement self-determination contract for a construction project or an eligible TTP funded road maintenance project, except that such term does not include any contract--

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

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

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

Consultation means government-to-government communication in a timely manner by all parties about a proposed or contemplated decision in order to:

(1) Secure meaningful tribal input and involvement in the decision-making process; and

(2) Advise the tribe of the final decision and provide an explanation.

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

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

Design means services related to preparing drawings, specifications, estimates, and other design submissions specified in a contract or agreement, as well as services during the bidding/negotiating, construction, and operational phases of the project.

DOI means the Department of the Interior.

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

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

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

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

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

Maintenance means the preservation of the tribal transportation facilities, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the facility as 23 U.S.C. 202.

National Tribal Transportation Facility Inventory means at a minimum, transportation facilities that are eligible for assistance under the tribal transportation program that an Indian tribe has requested, including facilities that—

- (1) were included in the Bureau of Indian Affairs system inventory prior to October 1, 2004;
- (2) are owned by an Indian tribal government;
- (3) are owned by the Bureau of Indian Affairs;
- (4) were constructed or reconstructed with funds from the Highway Trust Fund under the Indian reservation roads program since 1983;
- (5) are public roads or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities (including communities in former Indian reservations in the State of Oklahoma) in which the majority of residents are American Indians or Alaska Natives;
- (6) are public roads within or providing access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian or Alaska Native villages, groups, or communities in which Indians and Alaska Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians; or
- (7) are primary access routes proposed by tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal terminals, such as airports, harbors, or boat landings.

As used in (b) and (c) above, "owned" means having the authority to finance, build, operate, or maintain the facility. See 23 U.S.C. 101(a)(20).

NBTI means the national bridge and tunnel inventory, which is the database of structural and appraisal data collected to fulfill the requirements of the National Bridge and Tunnel Inspection Standards, as defined in 23 U.S.C. 144. Each State and the BIA must maintain an inventory of all bridges and tunnels that are subject to the NBTI standards and provide this data to the Federal Highway Administration (FHWA).

Office of Self-Governance (OSG) means the office within the Office of the Assistant Secretary--Indian Affairs, Department of the Interior that is responsible for implementing tribal self-governance under Title IV of the Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended.

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

Program Agreement means an agreement between the tribe and Bureau of Indian Affairs or the Federal Highway Administration that transfers all but the

inherently federal program functions, services and activities of the Tribal Transportation Program to the tribe.

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

Proposed road or facility means a road or facility that will serve public transportation needs, meets the eligibility requirements of the TTP, and does not currently exist.

Public Authority as defined in 23 U.S.C. 101(a)(20) means a Federal, State, county, town, or township, Indian tribe, municipal, or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

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

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

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

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

Relocation means the adjustment of transportation facilities and utilities required by a highway project. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on the new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It also means constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

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

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

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

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

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

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

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

Transit means services, equipment, and functions associated with the public movement of people served within a community or network of communities provided by a tribe or other public authority using Federal funds.

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

Tribal Road System - means the tribally owned roads under the National Tribal Transportation Facility Inventory (NTTFI). For the purposes of fund distribution as defined in 23 U.S.C. 202(b), the tribal road system includes only those existing and proposed facilities for are approved and included in the NTTFI as of fiscal year 2012.

Tribal Transportation Program (TTP) means a program established in Section 1119 of MAP-21 and codified in 23 U.S.C. 201 and 202 to address transportation needs of tribes.

TTP formula funds means the pool of funds made available to tribes in accordance with 23 U.S.C. 202(b)(3).

TTP funds means the funds authorized under 23 USC 201 and 202.

TTP planning funds means funds referenced in 23 U.S.C. 202(c)1.

TTP program management and oversight funds means those funds authorized by 23 U.S.C 202(a)(6) to pay the cost of carrying out inherently Federal program management and oversight, and project-related administrative activities (PM&O).

TTP System means all of the facilities eligible for inclusion in the National Tribal Transportation Facility Inventory.

Tribal Transportation Facility means a public highway, road, bridge, trail, or transit system that is located on or provides access to tribal land and appears on the national tribal transportation facility inventory described in 23 U.S.C. 202(b)(1).

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

Tribal Transportation Facility Bridge Program means the program authorized and defined under 23 U.S.C. 202(d) and set forth in 23 CFR 661 that uses TTP funds for the improvement of deficient bridges.

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

TTPTIP means Tribal Transportation Program Transportation Improvement Program. It is a financially constrained prioritized list of transportation projects and activities eligible for TTP funding covering a period of 4 years that is developed by BIA and FHWA based on the TTIP or tribal priority list. It is required for projects and activities to be eligible for funding under Title 23 USC and Title 49 USC Chapter 53. The Secretary of Transportation reviews and approves the TTPTIP and distributes copies to each State for inclusion in their respective STIPs without further action.

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

Sec. 170.6 Information Collection.

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

Subpart B--Tribal Transportation Program Policy and Eligibility

Consultation, Collaboration, Coordination

Sec. 170.100 What do the terms "consultation, collaboration, and coordination" mean?

(a) Consultation means government-to-government communication in a timely manner by all parties about a proposed or contemplated decision in order to:

(1) Secure meaningful tribal input and involvement in the decision-making process; and

(2) Advise the tribe of the final decision and provide an explanation.

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

(c) Coordination means that each party:

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

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

Sec. 170.101 What is the TTP consultation and coordination policy?

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

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

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

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

(4) Developing TTP transportation projects;

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

(6) Developing plans or projects to carry out the Tribal Transportation Facility Bridge Program identified in 23 U.S.C. 202(d);

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(7) Developing plans or projects for disaster and emergency relief response and the repair of eligible damaged TTP transportation facilities;

(8) Assisting in the development of State and tribal agreements related to the TTP;

(9) Developing and improving transit systems serving Indian lands and communities;

(10) Assisting in the submission of discretionary grant applications for State and Federal funding for TTP transportation facilities; and

(11) Developing plans and projects for the Safety funding identified in 23 U.S.C. 202(e).

(b) Tribes and State and Federal Government agencies may enter into intergovernmental Memoranda of Agreement (MOA) to streamline and facilitate consultation, collaboration, and coordination.

Sec. 170.102 How do the Departments consult, collaborate, and coordinate with tribal governments?

The Department of the Interior and the Department of Transportation operate within a government-to-government relationship with federally recognized tribes. As a critical element of this relationship, these agencies should assess the impact of Federal transportation policies, plans, projects, and programs on tribal rights and interests to ensure that these rights and concerns are appropriately considered.

Sec. 170.103 What goals and principles guide the Secretaries?

When undertaking transportation activities affecting tribes, the Secretaries should, to the maximum extent permitted by law:

(a) Establish regular and meaningful consultation and collaboration with affected tribal governments, including facilitating the direct involvement of tribal governments in short- and long-range Federal transportation planning efforts;

(b) Promote the rights of tribal governments to govern their own internal affairs;

(c) Promote the rights of tribal governments to receive direct transportation services from the Federal Government or to enter into agreements to directly operate any tribally related transportation programs serving tribal members;

(d) Ensure the continuation of the trust responsibility of the United States to tribes and Indian individuals;

(e) Reduce the imposition of unfunded mandates upon tribal governments;

(f) Encourage flexibility and innovation in the implementation of the TTP;

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(g) Reduce, streamline, and eliminate unnecessarily restrictive transportation policies, guidelines, or procedures;

(h) Ensure that tribal rights and interests are appropriately considered during program development;

(i) Ensure that the TTP is implemented consistent with tribal sovereignty and the government-to-government relationship; and

(j) Consult with, and solicit the participation of, tribes in the development of the annual BIA budget proposals.

Sec. 170.104 Must the Secretary consult with tribal governments before obligating TTP funds?

Yes. Before obligating TTP funds on any project that is for direct service activities, the Secretary must consult with the affected tribe to determine the tribal preferences concerning the program, project, or activity. The Secretary must provide information in accordance with Sec. 170.600 within 30 days of the notice of availability of funds.

Sec. 170.105 Are funds available for consultation, collaboration, and coordination activities?

To fund consultation, collaboration, and coordination of TTP activities, tribes may use:

(a) The tribes' TTP allocations;

(b) Tribal Priority Allocation (TPA) funds;

(c) Administration for Native Americans (ANA) funds;

(d) Economic Development Administration (EDA) funds;

(e) United States Department of Agriculture (USDA) Rural Development funds;

(f) Community Development Block Grant (CDBG) funds;

(g) Indian Housing Block Grant (IHBG) funds;

(h) Indian Health Service Tribal Management Grant (IHSTMG) funds;

(i) General funds of the tribal government; and

(j) Any other funds available for the purpose of consultation, collaboration, and coordination activities.

Sec. 170.106 When must State governments consult with tribes?

As identified in 23 U.S.C. 134 and 135, States shall develop their State Transportation Improvement Program (STIP) in consultation with tribes and the Secretary in those areas under Indian tribal jurisdiction. This includes providing for a process that coordinates transportation planning efforts

carried out by the State with similar efforts carried out by tribes. Regulations can be found at 23 CFR Part 450.

Sec. 170.107 Should planning organizations and local governments consult with tribes when planning for transportation projects?

Yes. The Department's policy is to foster and improve communication, cooperation, and coordination among metropolitan planning organizations (MPOs), regional planning organizations (RPOs), local governments, municipal governments, and tribes on transportation matters of common concern. Accordingly, planning organizations and local governments should consult with tribal governments when planning for transportation projects.

Sec. 170.108 Should Indian tribes and BIA consult with States' planning organizations and local governments in the development of their TTPTIP?

Yes.

(a) All regionally significant TTP projects must be:

(1) Developed in cooperation with State and metropolitan planning organizations; and

(2) Included in appropriate Federal Lands Highway Program transportation improvement programs for inclusion in state and metropolitan plans.

(b) BIA and tribes are encouraged to consult with States, metropolitan and regional planning organizations, and local and municipal governments, on transportation matters of common concern.

Sec. 170.109 How do the Secretaries prevent discrimination or adverse impacts?

In administering the TTP, the Secretaries ensure that non-discrimination and environmental justice principles are integral program elements. The Secretaries consult with tribes early in the program development process to identify potential discrimination and to recommend corrective actions to avoid disproportionately high and adverse effects on tribes and Native American populations.

Sec. 170.110 How can State and local governments prevent discrimination or adverse impacts?

(a) Under 23 U.S.C. 134 and 135, and 23 CFR part 450, State and local government officials shall consult and work with tribes in the development of programs to:

(1) Identify potential discrimination; and

(2) Recommend corrective actions to avoid disproportionately high and adverse effects on tribes and Native American populations.

(b) Examples of adverse effects include, but are not limited to:

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- (1) Impeding access to tribal communities or activities;
- (2) Creating excessive access to culturally or religiously sensitive areas;
- (3) Negatively affecting natural resources, trust resources, tribal businesses, religious, and cultural sites;
- (4) Harming indigenous plants and animals; and
- (5) Impairing the ability of tribal members to engage in commercial, cultural, and religious activities.

Sec. 170.111 What can a tribe do if discrimination or adverse impacts occur?

If discrimination or adverse impacts occur, a tribe should take the following steps in the order listed:

- (a) Take reasonable steps to resolve the problem directly with the State or local government involved;
- (b) Contact BIA, FHWA, or the Federal Transit Authority (FTA), as appropriate, to report the problem and seek assistance in resolving the problem.

Eligible Uses of TTP Funds

Sec. 170.115 What activities may be carried out using TTP funds?

- (a) TTP funds may be used:
 - (1) For all of the items listed in Appendix A to this subpart;
 - (2) For other purposes identified in this part; or
 - (3) For other purposes proposed by a tribe or the TTP Coordinating Committee and approved by FHWA or BIA pursuant to § 170.117 and § 170.156.
- (b) Each of the items listed in Appendix A must be interpreted in a manner that permits, rather than prohibits, a proposed use of funds.

Sec. 170.116 What activities are not eligible for TTP funding?

TTP funds cannot be used for any of the following:

- (a) Structures and erosion protection unrelated to transportation and roadways;
- (b) General or tribal planning not involving transportation;
- (c) Landscaping and irrigation systems not involving transportation programs and projects;

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(d) Work or activities that are not listed on an FHWA-approved TTP Transportation Improvement Program (TTPTIP);

(e) Purchase of construction and maintenance equipment unless approved by BIA and FHWA; or

(f) Condemnation of land for recreational trails.

Sec. 170.117 How can a tribe determine whether a new use of funds is allowable?

(a) A tribe that proposes new uses of TTP funds must ask BIA or FHWA in writing whether the proposed use is eligible under Federal law.

(1) In cases involving eligibility questions that refer to 25 U.S.C., BIA will determine whether the new proposed use of TTP funds is allowable and provide a written response to the requesting tribe within 45 days of receiving the written inquiry. Tribes may appeal a denial of a proposed use by BIA under 25 CFR part 2. The address is: Department of the Interior, BIA, Division of Transportation, 1849 C Street, NW., MS 4513MIB, Washington, DC 20240.

(2) In cases involving eligibility questions that refer to the TTP or 23 U.S.C., BIA will refer an inquiry to FHWA for decision. FHWA must provide a written response to the requesting tribe within 45 days of receiving the written inquiry from the tribe. Tribes may appeal denials of a proposed use by the FHWA to: FHWA, 1200 New Jersey Ave, SE, Washington, DC 20590.

(b) To the extent practical, the deciding agency must consult with the TTP Coordinating Committee before denying a request. BIA and FHWA will send copies of all eligibility determinations to the TTP Coordinating Committee and BIA Regional offices.

(c) BIA and FHWA will coordinate all responses and if the requested agency fails to issue the requesting tribe within the required time, the proposed use will be deemed to be allowable for that specific project.

Use of TTP and Cultural Access Roads

Sec. 170.120 What restrictions apply to the use of a Tribal Transportation Facility?

All tribal transportation facilities listed in the approved National Tribal Transportation Facility Inventory must be open and available for public use per 23 USC 101(a)(31). However, the public authority having jurisdiction over these roads or the Secretary, in consultation with a tribe and applicable private landowners, may restrict road use or close roads temporarily when:

(a) Required for public health and safety, including but not limited to tribal or Federal law enforcement, fire prevention or suppression, natural disasters, fish or game protection, low load capacity bridges, prevention of damage to unstable roadbeds, or as provided in §§ 170.122 and 170.813;

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(b) Conducting engineering and traffic analysis to determine maximum speed limits, maximum vehicular size, and weight limits, and identify needed traffic control devices; and

(c) Erecting, maintaining, and enforcing compliance with signs and pavement markings.

(d) Consultation is not required whenever the above conditions involve immediate safety or life-threatening situations.

(e) Certain TTP transportation facilities owned by the tribes or BIA may be permanently closed when the tribal government and the Secretary agree. Once this agreement is reached, BIA must remove the facility from the TTP System.

Sec. 170.121 What is a cultural access road?

(a) A cultural access road is a public road that provides access to sites for cultural purposes as defined by individual tribal traditions, which may include, for example:

(1) Sacred and medicinal sites;

(2) Gathering medicines or materials such as grasses for basket weaving;
or

(3) Other traditional activities, including, but not limited to, subsistence hunting, fishing and gathering.

(b) A tribal government may unilaterally designate a tribal road as a cultural access road. A cultural access road designation is an entirely voluntary and internal decision made by the tribe to help it and other public authorities manage, protect, and preserve access to locations that have cultural significance.

(c) In order for a tribal government to designate a non-tribal road as a cultural access road, it must enter into an agreement with the public authority having jurisdiction over the road.

(d) Cultural access roads may be included in the National Tribal Transportation System Inventory if they meet the definition of a TTP facility.

Sec. 170.122 Can a tribe close a cultural access road?

(a) A tribe with jurisdiction over a cultural access road can close it. The tribe can do this:

(1) During periods when the tribe or tribal members are involved in cultural activities; and

(2) In order to protect the health and safety of the tribal members or the general public.

(b) Cultural access roads designated through an agreement with a public authority may only be closed according to the provisions of the agreement. See § 170.121(c).

Seasonal Transportation Routes

Sec. 170.123 What are seasonal transportation routes?

Seasonal transportation routes are non-recreational transportation routes in the national tribal transportation facility Inventory that provide access to Indian communities or villages and may not be open for year-round use. They include snowmobile trails, ice roads, and overland winter roads.

Sec. 170.124 Can TTP funds be used on seasonal transportation routes?

Yes. A tribe may use TTP funds on seasonal transportation routes that are included in the national tribal transportation facility inventory.

(a) Standards for seasonal transportation routes are found in the design standards identified in appendix B to subpart D. A tribe can also develop or adopt standards that are equal to or exceed these standards.

(b) To help ensure the safety of the traveling public, construction of a seasonal transportation route requires a right-of-way, easement, or use permit.

TTP Housing Access Roads

Sec. 170.127 What terms apply to access roads?

(a) TTP housing access road means a public road on the TTP System that provides access to a housing cluster.

(b) TTP housing street means a public road on the TTP System that provides access to adjacent homes within a housing cluster.

(c) Housing cluster means three or more existing or proposed housing units.

Sec. 170.128 Are housing access roads and housing streets eligible for TTP funding?

Yes. TTP housing access roads and housing streets on public rights-of-way are eligible for construction, reconstruction, and rehabilitation funding under the TTP. Tribes, following the transportation planning process as required in subpart D, may include housing access roads and housing street projects on the Tribal Transportation Improvement Program (TTIP).

Toll, Ferry and Airport Facilities

Sec. 170.130 How can tribes use Federal highway funds for toll and ferry facilities?

(a) A tribe can use Federal-aid highway funds, including TTP funds, to study, design, construct, and operate toll highways, bridges, and tunnels, as well as ferry boats and ferry terminal facilities. The following table shows how a tribe can initiate construction of these facilities.

To initiate construction of a	A tribe must.....
(1) Toll highway, bridge, or tunnel..	(i) Meet and follow the requirements set forth in 23 U.S.C. 129; and (ii) If TTP funds are used, enter into a self-governance agreement, self-determination contract, or BIA or FHWA Program Agreement.
(2) Ferry boat or ferry terminal	Meet and follow the requirements set forth in 23 U.S.C. 129(c).

(b) A tribe can use TTP funds to fund 100 percent of the conversion or construction of a toll facility.

(c) If a tribe obtains non-TTP Federal funding for the conversion or construction of a toll facility, the tribe may use TTP funds to satisfy any matching fund requirements.

Sec. 170.131 How can a tribe find out more about designing and operating a toll facility?

Information on designing and operating a toll highway, bridge or tunnel is available from the International Bridge, Tunnel and Turnpike Association. The Association publishes a variety of reports, statistics, and analyses. The Web site is located at <http://www.ibtta.org>. Information is also available from FHWA.

Sec. 170.132 When can a tribe use TTP funds for airport facilities?

(a) A tribe can use TTP funds for construction of airport and heliport access roads, if the access roads are open to the public.

(b) A tribe cannot use TTP funds to construct or improve runways, airports or heliports. Funds for these uses are available under the Airport Improvement Program (AIP) from the Federal Aviation Administration (FAA). Tribes can use TTP funds for maintaining airport runways, heliport pads and lighting in accordance with Appendix A to Subpart G.

Recreation, Tourism and Trails

Sec. 170.135 Can a tribe use Federal funds for its recreation, tourism, and trails program?

Yes. A tribe, tribal organization, tribal consortium, or BIA may use TTP funds for recreation, tourism, and trails programs if the programs are

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included in the TTPTIP. Additionally, the following Federal programs may be possible sources of Federal funding for recreation, tourism, and trails projects and activities;

- (a) Federal Lands Access Program (23 U.S.C. 204);
- (b) Tribal High Priority Projects Program (Section 1123 of MAP-21)
- (c) National Highway Performance Program (23 U.S.C. 119);
- (d) Transportation Alternatives (23 U.S.C. 213)
- (e) Surface Transportation Program (23 U.S.C. 133);
- (f) Other funding from other Federal departments; and
- (g) Other funding that Congress may authorize and appropriate.

Sec. 170.136 How can a tribe obtain funds?

(a) To receive funding for programs that serve recreation, tourism, and trails goals, a tribe should:

(1) Identify a program meeting the eligibility guidelines for the funds and have it ready for development; and

(2) Have a viable project ready for improvement or construction, including necessary permits.

(b) Tribes seeking to obtain funding from the states under the programs identified in §170.135(c)-(g) should contact the state directly to determine eligibility, contracting opportunities, and project administration requirements. A tribe may ask:

(1) To administer these programs under the State's locally administered project program; or

(2) That for projects that are otherwise contractible under Public Law 93-638 (25 U.S.C. 450 et seq.), that the State return the funds to FHWA and have them transferred to BIA and made available for tribal self-determination contracts, self-governance agreements, or other appropriate agreements.

(c) In order to expend any Federal transportation funds, a tribe must ensure that the eligible project/program is listed on an FHWA approved TIP or STIP.

Sec. 170.137 What types of activities can a recreation, tourism, and trails program include?

(a) The following are examples of activities that tribes and tribal organizations may perform under a recreation, tourism, and trails program:

(1) Transportation planning for tourism and recreation travel;

(2) Adjacent public vehicle parking areas;

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- (3) Development of tourist information and interpretative signs;
- (4) Provision for non-motorized trail activities including pedestrians and bicycles;
- (5) Provision for motorized trail activities including all-terrain vehicles, motorcycles, snowmobiles, etc.;
- (6) Construction improvements that enhance and promote safe travel on trails;
- (7) Safety and educational activities;
- (8) Maintenance and restoration of existing recreational trails;
- (9) Development and rehabilitation of trailside and trailhead facilities and trail linkage for recreational trails;
- (10) Purchase and lease of recreational trail construction and maintenance equipment;
- (11) Safety considerations for trail intersections;
- (12) Landscaping and scenic enhancement (see 23 U.S.C. 319);
- (13) Bicycle Transportation and pedestrian walkways (see 23 U.S.C. 217); and
- (14) Trail access roads.

(b) The items listed in paragraph (a) of this section are not the only activities that are eligible for recreation, tourism, and trails funding. The funding criteria may vary with the specific requirements of the programs.

(c) Tribes may use TTP funds for any activity that is eligible for Federal funding under any provision of title 23 U.S.C.

Sec. 170.138 Can roads be built in roadless and wild areas?

Under 25 CFR Part 265, no roads can be built in roadless and wild areas on Indian reservations.

Highway Safety Functions

Sec. 170.141 What funds are available for a tribe's highway safety activities?

Funds are made available for a tribe's highway safety activities through a TTP set-aside established in 23 USC 202(e). The funds are to be allocated based on an identification and analysis of highway safety issues and opportunities on tribal lands. Tribes may also use their TTP funds made available through 23 USC 202(b) for highway safety activities as well as seek grant and program funding from appropriate state and local agencies and private grant organizations.

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In addition, the following programs may make funds available to tribes for safety projects and activities:

- (a) FHWA Highway Safety Improvement Program (HSIP) 23USC148;
- (b) Elimination of Hazards Relating to Railway Highway Crossings (23 USC 130, 23 CFR 924);
- (c) State and Community Highway Safety Grant Program;
- (d) State Traffic Safety Information System Improvement Grants Program;
- (e) NHTSA - Alcohol-Impaired Driving Countermeasures Incentive Program;
- (f) NHTSA - Occupant Protection Incentive Grant Program;
- (g) NHTSA - Child Safety and Child Booster Seat Incentive Program; and
- (h) BIA - Indian Highway Safety Program 25 CFR 181;
- (i) Funding for highway safety activities from the U.S. Department of Health and Human Services (HHS); and
- (j) Other funding that Congress may authorize and appropriate.

A project that utilizes TTP funds made available under 23 USC 202(b) or TTP set-aside funding established in 23 USC 202(e) must be identified on a FHWA-approved TTPTIP prior to any funds being expended.

Sec. 170.142 What activities are eligible for the TTP safety funds?

- (a) Funds made available in 23 USC 202(e) may be used for projects and activities that improve safety in one or more of the following categories:
 - (1) Planning activities:
 - (A) Development of tribal transportation safety plans;
 - (B) Collection, analysis, and improvement of safety data; and
 - (C) Road safety assessments
 - (2) Enforcement and emergency management:
 - (A) The conduct of a model traffic enforcement activity at a railway-highway crossing;
 - (B) Installation of a priority control system for emergency vehicles at signalized intersections; and
 - (C) Planning integrated interoperable emergency communications equipment, operational activities, or traffic enforcement activities (including police assistance) relating to work zone safety.
 - (3) Education:
 - (A) Safety Management System Implementation Plan activities;
 - (B) Public service announcements; and
 - (C) Programs implemented to inform the public or address behaviors that effect transportation safety.
 - (4) Engineering projects:
 - (A) Intersection safety improvements;
 - (B) Pavement and shoulder widening (including addition of a passing or turning lane to remedy an unsafe condition);
 - (C) Installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists and pedestrians, including persons with disabilities;
 - (D) Installation of a skid-resistant surface at an intersection or other location with a high frequency of crashes;
 - (E) Improvements for pedestrian or bicyclist safety or safety of persons with disabilities;
 - (F) Construction and improvement of a railway-highway grade crossing safety feature;
 - (G) Installation of protective devices;

- (H) Construction of a traffic calming feature;
- (I) Elimination of a roadside hazard;
- (J) Installation, replacement, and other improvement of highway signage and pavement markings, or a project to maintain minimum levels of retroreflectivity, that addresses highway safety;
- (K) Installation of a traffic control or other warning device at a location with high crash potential;
- (L) Installation of guardrails, barriers, and crash attenuators;
- (M) The addition or retrofitting of structures or other measures to eliminate or reduce crashes involving vehicles and wildlife;
- (N) Installation of yellow-green signs and signals at pedestrian and bicycle crossings and in school zones;
- (O) Construction and operational improvements on high risk rural roads;
- (P) Geometric improvements to a road for safety purposes that improve safety;
- (Q) Roadway safety infrastructure improvements consistent with the recommendations included in the FHWA publication 'Highway Design Handbook for Older Drivers and Pedestrians';
- (R) Truck parking facilities eligible for funding under section 1401 of the MAP-21;
- (S) Systemic safety improvements; or
- (T) Transportation related safety projects for modes such as trails, docks, boardwalks, ice roads and others that are eligible for TTP funds.

(b) Other activities proposed by tribes must be requested from BIA or FHWA in accordance with § 170.117.

(c) Other safety program funding such as the BIA Indian Highway Safety Program may be used for impaired driver initiatives and child safety seat programs.

Sec. 170.143 How will the funds identified in 23 USC 202(e) be made available to the tribes?

Funds made available to tribes may be included in the tribe's self-determination contracts, self-governance agreements, FHWA Program Agreements, and other appropriate agreements.

Sec. 170.144 How can tribes obtain non-TTP funds to perform highway safety projects?

There are two methods to obtain National Highway Traffic Safety Administration (NHTSA) and other, non-TTP, FHWA safety funds for highway safety projects:

(a) FHWA provides safety funds to BIA under 23 U.S.C. 402. BIA annually solicits proposals from tribes for the use of these funds. Proposals are processed under 25 CFR Part 181. Tribes may request an ISDEAA contract or agreement, or other appropriate agreement for these projects.

(b) FHWA provides funds to the States under 23 U.S.C. 402 and 405. States annually solicit proposals from tribes and local governments. Tribes seeking to obtain funding from the states under these programs should contact the state directly to determine eligibility, contracting opportunities, and project administration requirements. Tribes may request:

(1) To administer these programs under the State's locally administered project program; or

(2) That for projects that are otherwise contractible under Public Law 93-638 (25 U.S.C. 450 et seq.), that the State return the funds to FHWA and have them transferred to BIA for tribal self-determination contracts or self-governance agreements under ISDEAA or other appropriate agreement

Transit Facilities

Sec. 170.148 What is a tribal transit program?

A tribal transit program is the planning, administration, acquisition, and operation and maintenance of a system associated with the public movement of people served within a community or network of communities on or near tribal lands.

Sec. 170.149 How do tribes identify transit needs?

Tribes identify transit needs during the tribal transportation planning process (see subpart D). Transit projects using TTP funds must be included in the FHWA-approved TTPTIP.

Sec. 170.150 What Federal funds are available for a tribe's transit program?

Title 23 U.S.C. authorizes the use of TTP funds for transit facilities as defined in this part. Additionally, there are many sources of Federal funds that may help support tribal transit programs. These include the Federal programs listed in this section. Note that each program has its own terms and conditions of assistance. For further information on these programs and their use for transit, contact the FTA Regional Transit Assistance Program at www.nationalrtap.org.

(a) U.S. Department of Transportation (DOT): Formula Grants for Public Transportation on Indian Reservations under (49 U.S.C. 5311).

(b) U.S. Department of Agriculture (USDA): community facilities loans; rural development loans; business and industrial loans; rural enterprise grants; commerce, public works and economic development grants; and economic adjustment assistance.

(c) U.S. Department of Housing and Urban Development (HUD): community development block grants, supportive housing, tribal housing loan guarantees, resident opportunity and support services.

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(d) U.S. Department of Labor: Native American employment and training, welfare-to-work grants.

(e) DOT: Welfare-to-Work, Tribal Transportation Program, transportation and community and systems preservation, Federal transit capital improvement grants, public transportation for non-urbanized areas, capital assistance for elderly and disabilities transportation, education, and Even Start.

(f) HHS: programs for Native American elders, community service block grants, job opportunities for low-income individuals, Head Start (capital or operating), administration for Native Americans programs, Medicaid, HIV Care Grants, Healthy Start, and the Indian Health Service.

Sec. 170.151 May a tribe or BIA use TTP funds as matching funds?

(a) TTP funds may be used to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program.

Sec. 170.152 What transit facilities and activities are eligible for TTP funding?

Transit facilities and activities eligible for TTP funding include, but are not limited to:

(a) Acquiring, constructing, operating, supervising or inspecting new, used or refurbished equipment, buildings, facilities, buses, vans, water craft, and other vehicles for use in public transportation;

(b) Transit-related intelligent transportation systems;

(c) Rehabilitating, remanufacturing, and overhauling a transit vehicle;

(d) Preventive maintenance;

(e) Leasing transit vehicles, equipment, buildings, and facilities for use in mass transportation;

(f) Third-party contracts for otherwise eligible transit facilities and activities;

(g) Public transportation improvements that enhance economic and community development, such as bus shelters in shopping centers, parking lots, pedestrian improvements, and support facilities that incorporate other community services;

(h) Passenger shelters, bus stop signs, and similar passenger amenities;

(i) Introduction of new public transportation technology;

(k) Provision of fixed route, demand response services, and non-fixed route paratransit transportation services (excluding operating costs) to enhance access for persons with disabilities;

(k) Radio and communication equipment to support tribal transit programs;

(l) Transit capital project activities authorized by 49 U.S.C. 5302 (a)(1); and

(m) Any additional activities authorized by 49 U.S.C. 5311.

TTP Coordinating Committee

Sec. 170.155 What is the TTP Coordinating Committee?

(a) Under this part, the Secretaries will establish a TTP Coordinating Committee that:

(1) Provides input and recommendations to BIA and FHWA in developing TTP regulations, policies and procedures; and

(2) Supplements government-to-government consultation by coordinating with and obtaining input from tribes, BIA, and FHWA.

(b) The Committee consists of 24 tribal regional representatives (two from each BIA Region) and two non-voting Federal representatives (FHWA and BIA).

(c) The Secretary must select the regional tribal representatives from nominees officially submitted by the region's tribes.

(1) To the extent possible, the Secretary must make the selection so that there is representation from a broad cross-section of large, medium, and small tribes.

(2) Tribal nominees must be tribal governmental officials or tribal employees with authority to act for the tribal government.

(d) For purposes of continuity, the Secretary will appoint tribal representatives from each BIA region to 3-year terms and in a manner so that only one-third of the tribal representatives change every year.

(e) The Secretary of the Interior will provide guidance regarding the replacement of representatives should the need arise.

Sec. 170.156 What are the TTP Coordinating Committee's responsibilities?

(a) Committee responsibilities are to provide input and recommendations to BIA and FHWA during the development or revision of:

(1) BIA/FHWA TTP Stewardship Plan;

(2) TTP policy and procedures;

(3) TTP eligible activities determination;

(4) TTP transit policy;

(5) TTP regulations;

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- (6) TTP management systems policy and procedures; and
- (7) National tribal transportation needs.

(b) The Committee may establish work groups to carry out its responsibilities.

(c) The Committee also reviews and provides recommendations on TTP national concerns (including the implementation of this part) brought to its attention.

(d) Committee members are responsible for disseminating TTPCC information and activities to tribes within their respective BIA Regions.

Sec. 170.157 How does the TTP Coordinating Committee conduct business?

The Committee holds at least two meetings a year. Additional Committee meetings may be called with the consent of one-third of the Committee members or by BIA or FHWA. The Committee conducts business at its meetings as follows:

- (a) A quorum consists of representation from eight BIA Regions.
- (b) The Committee will operate by consensus or majority vote, as determined by the Committee in its protocols.
- (c) Any Committee member can submit an agenda item to the Chair.
- (d) The Committee will work through a committee-approved annual work plan and budget.
- (e) Annually, the Committee must elect from among the Committee membership a Chair, a Vice-Chair, and other officers. These officers will be responsible for preparing for and conducting Committee meetings and summarizing meeting results. These officers will also have other duties that the Committee may prescribe.
- (f) The Committee must keep the Secretary and the tribes informed through an annual accomplishment report provided within 90 days after the end of each fiscal year.
- (g) The Committee's budget will be funded through the TTP management and oversight funds, not to exceed \$150,000 annually.

Tribal Technical Assistance Centers

§§ 170.161 through 170.176 are provided for information only.

Sec. 170.161 What are Tribal Technical Assistance Centers?

Tribal Technical Assistance Centers (TTAC), which are also referred to as the Tribal Technical Assistance Program (TTAP) Centers are authorized under 23 U.S.C. 504(b)(3). The centers assist tribal governments and other TTP participants in extending their technical capabilities by providing them

greater access to transportation technology, training, and research opportunities.

Sec. 170.162 How are the TTACs funded?

FHWA uses Highway Trust Funds to fund the TTACs. BIA may reserve amounts from the administrative funds identified in 23 U.S.C. 202(a)(6) to fund the TTACs. These funds may be used to operate the TTACs and to develop training materials and products for these centers. The TTACs should apply for supplemental funding from other sources to accommodate their needs.

Sec. 170.163 How are TTACs selected?

(a) FHWA announces TTAC grant, cooperative agreement, and contracting opportunities in the Federal Register. The announcements state that tribal governments, a consortium of tribal governments, State transportation departments, or universities are eligible for these awards; indicate the amount of funds available; and provide eligibility criteria.

(b) A selection committee of Federal and tribal representatives (see Sec. 170.164) reviews the proposals of eligible applicants and recommends award recipients. FHWA selects and notifies award recipients consistent with applicable law.

Sec. 170.164 How are tribal representatives nominated and chosen for the selection committee?

In its written notice to tribal governments, FHWA requests nominations within each TTAC's service area for representatives to serve on the selection committee. Forty-five days after receiving the request for nominations, FHWA will notify tribal governments of the nominees for the service area. Each tribe then has 30 days to notify FHWA of its selection from the nominees.

Sec. 170.165 May a tribe enter into a contract or agreement for TTAC funds?

Yes. If selected for an award as a TTAC, a tribe will enter into a cooperative agreement with the FHWA and be subject to the guidelines of the agreement.

Sec. 170.166 What services do TTACs provide?

(a) TTACs provide transportation technology transfer services, including education, training, technical assistance and related support services to tribal governments and TTP participants. TTACs will:

- (1) Develop and expand tribal expertise in road and transportation areas;
- (2) Improve TTP performance;
- (3) Enhance tribal transportation planning, project selection, transit and freight programs;

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(4) Develop transportation training and technical resource materials and present workshops;

(5) Improve tribal tourism and recreational travel programs;

(6) Help tribes deal more effectively with transportation-related problems by developing and sharing tribal transportation technology and traffic safety systems and information with other transportation agencies;

(7) Operate Indian technical centers in cooperation with State transportation departments and universities;

(8) Provide technical assistance on transportation technology and enhance new technology implementation in cooperation with the private sector;

(9) Develop educational programs to encourage and motivate interest in transportation careers among Native American students; and

(10) Act as information clearinghouses for tribal governments and Indian-owned businesses on transportation-related topics.

(b) Unless otherwise stated in a TTAC agreement, a tribal technical assistance center must, at a minimum:

(1) Maintain a current mailing list including, at a minimum, each tribe and TTP Program participant within the service area;

(2) Publish a quarterly newsletter and maintain a Web site;

(3) Conduct or coordinate 10 workshops per year;

(4) Maintain a library of technical publications and video tapes;

(5) Provide technical assistance to TTP participants;

(6) Hold two advisory committee meetings a year;

(7) Develop a yearly action plan in consultation with the advisory committee;

(8) Coordinate with State Local Technical Assistance Centers, other tribal technical assistance centers, Rural Technical Assistance Program (RTAP) centers, tribal governments, and local planning and transportation agencies to share and exchange publications, videotapes, training material, and conduct joint workshops;

(9) Consult with tribes and TTP participants concerning technical assistance and training desired; and

(10) Prepare an annual report and distribute this report to service area tribes.

Sec. 170.167 How does a tribe obtain services from a TTAC?

A tribe that wants to obtain services should contact the TTAC serving its service area, the Office of Federal Lands, or the BIA regional road engineer. Information about the centers and the services provided can be found at the following address: <http://www.ltap.org>.

Sec. 170.168 Do TTACs offer services similar to those of State Local Technical Assistance Centers?

Yes. However, TTACs are primarily responsible for increasing the capacity of tribal governments to administer transportation programs. State centers also provide services to local and rural governments, including tribal governments. TTACs should coordinate education and training opportunities with State centers to maximize resources.

Sec. 170.169 What can a tribe do if TTAC services are unsatisfactory?

A tribal government can address concerns over quality of services to the TTAC Director, FHWA, and BIA. If the center does not adequately address these concerns in writing within 30 calendar days, the tribal government may request any or all of the following:

- (a) A special meeting with the Center's Director and staff to address the concern;
- (b) A review of the Center's performance by FHWA and BIA or;
- (c) Services from other TTACs.

Sec. 170.170 How are TTACs managed?

(a) Each TTAC is managed by its Center Director and staff, with the advice of its technical panel under the TTAC agreements. FHWA, BIA, and tribes review the performance of the TTACs.

(b) Each TTAC has a technical panel consisting of one BIA Regional Road Engineer, one FHWA representative, one state DOT representative, and at least five tribal representatives from the service area. The technical panel may, among other activities:

- (1) Recommend center policies;
- (2) Review and approve the annual action plan for submission to FHWA for approval;
- (3) Provide direction on the areas of technical assistance and training;
- (4) Review and approve the annual report for submission to FHWA for approval;
- (5) Develop recommendations for improving center operation services and budgets; and
- (6) Assist in developing goals and plans for obtaining or using supplemental funding.

(c) The technical panel must meet at least twice a year. Tribal representatives may request TTP funding to cover the cost of participating in these committee meetings.

Sec. 170.171 How are tribal advisory technical panel members selected?

(a) The TTAC requests nominations from tribal governments and consortia within the service area for tribal transportation representatives to serve on the technical panel.

(b) Tribes from the service area select tribal panel members from those nominated.

TTAC-Sponsored Education and Training Opportunities

Sec. 170.175 What TTAC-sponsored transportation training and educational opportunities exist?

There are many programs and sources of funding that provide tribal transportation training and education opportunities. Each program has its own terms and conditions of assistance. For further information on these programs and their use for tribal transportation education and training opportunities, contact the regional TTAC, the Office of Federal Lands, or BIA regional road engineer. Appendix B to this subpart contains a list of programs and funding sources.

Sec. 170.176 Where can tribes get scholarships and tuition for TTAC-sponsored education and training?

Tribes may get tuition and scholarship assistance for TTAC-sponsored education and training from the following sources:

(a) TTACs;

(b) BIA-appropriated funds (for approved training); and

(c) TTP funds (for education and training opportunities and technical assistance programs related to developing skills for performing TTP activities).

Appendix A to Subpart B--Allowable Uses of TTP Funds

A. TTP funds can be used for the following planning and design activities:

1. Planning and design of TTP transit facilities eligible for TTP funding.

2. Planning and design of Tribal Transportation Facilities.

3. Transportation planning activities, including planning for tourism and recreational travel.

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4. Development, establishment, and implementation of tribal transportation management systems such as safety, bridge, pavement, and congestion management.
5. Tribal transportation plans and transportation improvement programs (TIPS).
6. Coordinated technology implementation program (CTIP) projects.
7. Traffic engineering and studies.
8. Identification and evaluation of accident prone locations.
9. Tribal transportation standards.
11. Preliminary engineering studies.
12. Interagency program/project formulation, coordination and review.
13. Environmental studies and archeological investigations directly related to transportation programs and projects.
14. Costs associated with obtaining permits and/or complying with tribal, Federal, state, and local environmental, archeological and natural resources regulations and standards.
15. Development of natural habitat and wetland conservation and mitigation plans, including plans authorized under the Water Resources Development Act of 1990, 104 Stat. 4604 (Water Resources Development Act).
16. Architectural and landscape engineering services related to transportation programs.
17. Engineering design related to transportation programs, including permitting activities.
18. Inspection of bridges and structures.
19. Tribal Transportation Assistance Centers (TTACs).
20. Safety planning, programming, studies and activities.
21. Tribal employment rights ordinance (TERO) fees.
22. Purchase or lease of advanced technological devices used for transportation planning and design activities such as global positioning units, portable weigh-in-motion systems, hand held data collection units, related hardware and software, etc.
23. Planning, design and coordination for Innovative Readiness Training projects.
24. Transportation planning and project development activities associated with border crossings on or affecting tribal lands.
25. Public meetings and public involvement activities.

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26. Leasing or rental of equipment used in transportation planning or design programs.

27. Transportation-related technology transfer activities and programs.

28. Educational activities related to bicycle safety.

29. Planning and design of mitigation of damage to wildlife, habitat, and ecosystems caused by a transportation project.

30. Evaluation of community impacts such as land use, mobility, access, social, safety, psychological, displacement, economic, and aesthetic impacts.

31. Acquisition of land and interests in land required for right-of-way, including control of access thereto from adjoining lands, the cost of appraisals, cost of surveys, cost of examination and abstract of title, the cost of certificate of title, advertising costs, and any fees incidental to such acquisition.

32. Cost associated with relocation activities including financial assistance for displaced businesses or persons and other activities as authorized by law.

33. On the job education including classroom instruction and pre-apprentice training activities related to transportation planning and design.

34. Other eligible activities as approved by FHWA.

35. Any additional activities identified by TTP Coordinating Committee guidance and approved by the appropriate Secretary (see Sec. 170.156).

36. Indirect general and administrative costs; and

37. Other eligible activities described in this part.

B. TTP funds can be used for the following construction and improvement activities:

1. Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements for tribal transportation facilities.

2. Construction or improvement of tribal transportation facilities necessary to accommodate other transportation modes.

3. Construction of toll roads, highway bridges and tunnels, and toll and non-toll ferry boats and terminal facilities, and approaches thereto (except when on the Interstate System) to the extent permitted under 23 U.S.C. 129.

4. Construction of projects for the elimination of hazards at railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings.

5. Installation of protective devices at railway-highway crossings.

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6. Transit facilities, whether publicly or privately owned, that serve Indian reservations and other communities or that provide access to or are located within an Indian reservation or community (see Sec.'s 170.148 through 170.152 for additional information).

7. Engineered pavement overlays that add to the structural value and design life or increase the skid resistance of the pavement.

8. Tribally-owned, post-secondary vocational school transportation facilities.

9. Road sealing.

10. Double bituminous surface and chip seals that are part of a predefined stage of construction or form the final surface of low volume roads.

11. Seismic retrofit, replacement, rehabilitation, and painting of road bridges.

12. Application of calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions on road bridges, and approaches thereto and other elevated structures.

13. Installation of scour countermeasures for road bridges and other elevated structures.

14. Special pedestrian facilities built in lieu of streets or roads, where standard street or road construction is not feasible.

15. Interpretive signs, standard traffic regulatory and guide signs that are culturally relevant (native language, symbols, etc.) that are a part of transportation projects.

16. Traffic barriers and bridge rails.

17. Engineered spot safety improvements.

18. Planning and development of rest areas, recreational trails, parking areas, sanitary facilities, water facilities, and other facilities that accommodate the traveling public.

19. Public approach roads and interchange ramps that meet the definition of an Indian reservation road.

20. Construction of roadway lighting and traffic signals.

21. Adjustment or relocation of utilities directly related to roadway work, not required to be paid for by local utility companies.

22. Conduits crossing under the roadway to accommodate utilities that are part of future development plans.

23. Restoration of borrow and gravel pits created by projects funded from the TTP.

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24. Force account and day labor work, including materials and equipment rental, being performed in accordance with approved plans and specifications.

25. Experimental features where there is a planned monitoring and evaluation schedule.

26. Capital and operating costs for traffic monitoring, management, and control facilities and programs.

27. Safely accommodating the passage of vehicular and pedestrian traffic through construction zones.

28. Construction engineering including contract/project administration, inspection, and testing.

29. Construction of temporary and permanent erosion control, including landscaping and seeding of cuts and embankments.

30. Landscape and roadside development features.

31. Marine facilities and terminals as intermodal linkages.

32. Construction of visitor information centers, kiosks, and related items.

33. Other appropriate public road facilities such as visitor centers as determined by the Secretary of Transportation.

34. Facilities adjacent to roadways to separate pedestrians and bicyclists from vehicular traffic for operational safety purposes, or special trails on separate rights-of-way.

35. Construction of pedestrian walkways and bicycle transportation facilities, such as a new or improved lane, path, or shoulder for use by bicyclists and a traffic control device, shelter, or parking facility for bicycles.

36. Facilities adjacent to roadways to separate modes of traffic for safety purposes.

37. Acquisition of scenic easements and scenic or historic sites provided they are part of an approved project or projects.

38. Debt service on bonds or other debt financing instruments issued to finance TTP construction and project support activities.

39. Any project to encourage the use of carpools and vanpools, including provision of carpooling opportunities to the elderly and individuals with disabilities, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use for preferential parking for carpools.

40. Fringe and corridor parking facilities including access roads, buildings, structures, equipment improvements, and interests in land.

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41. Adjacent public parking areas.
42. Costs associated with obtaining permits and/or complying with tribal, Federal, state, and local environmental, archeological, and natural resources regulations and standards on TTP projects.
43. Seasonal transportation routes, including snowmobile trails, ice roads, overland winter roads, and trail markings. (See §§ 170.123 - 170.124.)
44. Tribal fees such as employment taxes (TERO), assessments, licensing fees, permits, and other regulatory fees.
45. On the job education including classroom instruction and pre-apprentice training activities related to TTP construction projects such as equipment operations, surveying, construction monitoring, testing, inspection and project management.
46. Installation of advance technological devices on TTP transportation facilities such as permanent weigh-in-motion systems, informational signs, intelligent transportation system hardware, etc.
47. Tribal, cultural, historical, and natural resource monitoring, management and mitigation for transportation related activities.
48. Mitigation activities required by tribal, state, or Federal regulatory agencies and 42 U.S.C. 4321, et seq., the National Environmental Policy Act (NEPA).
49. Purchasing, leasing or rental of construction equipment. All equipment purchase request submittals must be accompanied by written cost analysis and approved by FHWA.
50. Coordination and construction materials for innovative readiness training projects such as the Department of Defense (DOD), the American Red Cross, the Federal Emergency Management Agency (FEMA), other cooperating Federal agencies, states and their political subdivisions, Tribal governments, or other appropriate non-governmental organizations.
51. Emergency repairs on tribal transportation facilities.
52. Public meetings and public involvement activities.
53. Construction of roads on dams and levees.
54. Transportation alternative activities as defined in 23 U.S.C. 101(a).
55. Modification of public sidewalks adjacent to or within tribal transportation facilities.
56. Highway and transit safety infrastructure improvements and hazard eliminations.
57. Transportation control measures such as employer-based transportation management plans, including incentives, shared-ride services, employer sponsored programs to permit flexible work schedules and other activities, other than clause (xvi) listed in section 108(f)(1)(A) of the Clean Air Act, (42 U.S.C. 7408(f)(1)(A)).

58. Necessary environmental restoration and pollution abatement.

59. Trail development and related activities as identified in §§ Sec. 170.135 - 138.

60. Development of scenic overlooks and information centers.

61. Natural habitat and wetlands mitigation efforts related to TTP road and bridge projects, including:

a. Participation in natural habitat and wetland mitigation banks, including banks authorized under the Water Resources Development Act, and

b. Contributions to tribal, statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetland, including efforts authorized under the Water Resources Development Act.

62. Mitigation of damage to wildlife, habitat and ecosystems caused as a result of a transportation project.

63. Construction of permanent fixed or moveable structures for snow or sand control.

64. Cultural access roads (see Sec. 170.121).

65. Other eligible items as approved by the Federal Highway Administration (FHWA).

66. Any additional activities identified by TTP Coordinating Committee and approved by the appropriate Secretary (see Sec. 170.156).

67. Other eligible activities described in this part.

Appendix B to Subpart B--Sources of Tribal Transportation Training and Education Opportunities

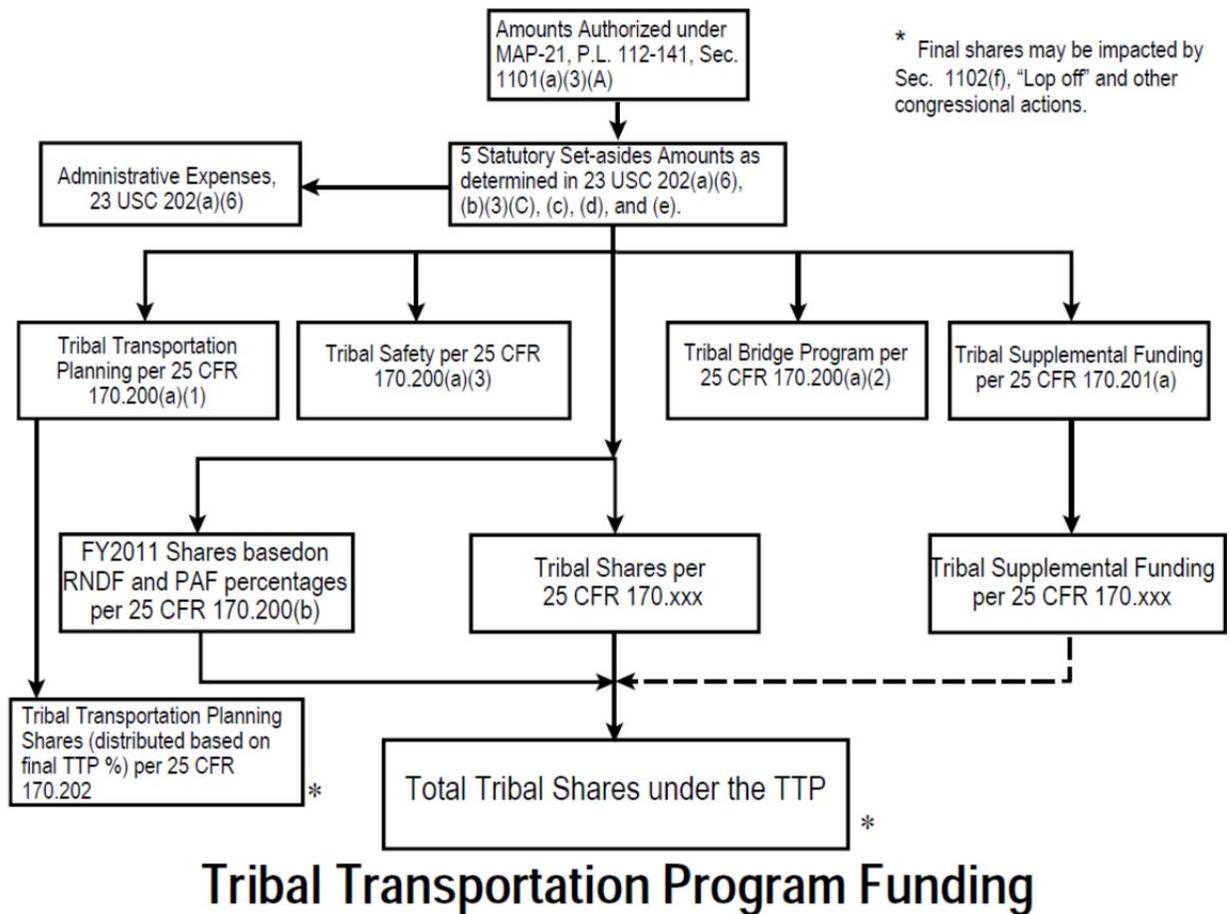
The following is a list of some of the many governmental sources for tribal transportation training and education opportunities. There may be other non-governmental, tribal, or private sources not listed here.

1. National Highway Institute training courses and fellowships
2. State and local technical assistance center workshops
3. Tribal technical assistance centers (TTAC) workshops
4. FHWA and FTA Research Fellowships
5. Dwight David Eisenhower Transportation Fellowship (23 U.S.C. 504)
6. Intergovernmental personnel agreement assignments
7. BIA transportation cooperative education program
8. BIA force account operations

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9. Federal Transit Administration workshops
10. State Departments of Transportation
11. Federal-aid highway construction and technology training including skill improvement programs under 23 U.S.C. 140 (b) and (c)
12. Other funding sources identified in Sec. 170.150 (Transit)
13. Department of Labor work force development
14. Indian Employment, Training, and Related Services Demonstration Act, Public Law 102-477
15. Garrett Morgan Scholarship (FHWA)
16. NTRC--National Transit Resource Center
17. CTER--Council for Tribal Employment Rights
18. BIA Indian Highway Safety Program
19. FHWA/STIPDG and NSTISS Student Internship Programs (Summer Transportation Internship Program for Diverse Groups and National Summer Transportation Institute for Secondary Students)
20. Environmental Protection Agency (EPA)
21. Department of Commerce (DOC)
22. Department of Housing and Urban Development Community Planning and Development
23. Training program for bridge and tunnel inspectors.
24. Transportation Research Board (TRB).

Subpart C--Tribal Transportation Program Funding



Tribal Transportation Program Funding

Sec. 170.200 How do BIA and FHWA determine the annual TTP funding amount available for distribution?

The annual TTP funding amount available for distribution is determined as follows:

- (a) The following set-asides are applied to the tribal transportation program prior to the determination of final tribal shares:
 - (1) tribal transportation planning (23 U.S.C. 202(c));
 - (2) tribal transportation facility bridges (23 U.S.C. 202(d));
 - (3) tribal safety (23 U.S.C. 202(e));
 - (4) administrative expenses (23 U.S.C. 202(a)(6)); and
 - (5) tribal supplemental program (23 U.S.C. 202(b)(3)(C)).
- (b) After deducting the set asides identified in (a)(1) through (a)(5), on October 1 of each fiscal year, the Secretary shall distribute the remainder authorized to be appropriated for the tribal transportation program among Indian tribes as follows:
 - (1) For fiscal year 2013–
 - (A) for each Indian tribe, 80 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and

- (B) the remainder using tribal shares as described in § 170.201 and tribal supplemental funding as described in § 170.202.
- (2) For fiscal year 2014–
 - (A) for each Indian tribe, 60 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and
 - (B) the remainder using tribal shares as described in § 170.201 and tribal supplemental funding as described in § 170.202.
- (3) For fiscal year 2015–
 - (A) for each Indian tribe, 40 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and
 - (B) the remainder using tribal shares as described in § 170.201 and tribal supplemental funding as described in § 170.202.
- (4) For fiscal year 2016 and thereafter–
 - (A) for each Indian tribe, 20 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and
 - (B) the remainder using tribal shares as described in § 170.201 and tribal supplemental funding as described in § 170.202.

Sec. 170.201 What is the statutory distribution formula for tribal shares?

Tribal shares are determined by using the national tribal transportation facility inventory as calculated for fiscal year 2012, and the most recent data on American Indian and Alaska Native population within each Indian tribe's American Indian/Alaska Native Reservation or Statistical Area, as computed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.), in the following manner:

- (a) 27 percent in the ratio that the total eligible road mileage in each tribe bears to the total eligible road mileage of all American Indians and Alaskan Natives. For the purposes of this calculation, eligible road mileage shall be computed using only facilities identified in §170.226(a), (b), and (c);
- (b) 39 percent in the ratio that the total population in each tribe bears to the total population of all American Indians and Alaskan Natives; and
- (c) 34 percent shall be initially divided equally among each BIA Region. The share of funds shall be distributed to each Indian tribe within the region in the ratio that the average total relative need distribution factors and population adjustment factors from fiscal years 2005 through 2011 for a tribe bears to the average total of relative need distribution factors and population adjustment factors for fiscal years 2005 through 2011 in that region.

Sec. 170.202 How do BIA and FHWA determine and distribute the Tribal Supplemental Program funds identified in § 170.200(a)(5)?

- (a) The total amount of funding made available for the tribal supplemental program is determined as follows:
 - 1. If the amount made available for the tribal transportation program is less than or equal to \$275,000,000, the tribal supplemental funding amount will equal 30 percent of such amount.
 - 2. If the amount made available for the tribal transportation program exceeds \$275,000,000, the tribal supplemental funding will equal:
 - i. \$82,500,000; plus
 - ii. 12.5 percent of the amount made available for the tribal transportation program in excess of \$275,000,000.
- (b) The tribal supplemental program funds shall be distributed as follows:
 - 1. Initially, the tribal supplemental program funding determined in (a) will be designated among the BIA Regions in proportion to the regional total of tribal shares based on the cumulative tribal shares of all Indian tribes within the region under §170.201.
 - 2. After (b)(1) is completed, the tribal supplemental program funding designated for each region will be distributed among the tribes within the region as follows:
 - i. The Secretary shall determine which tribes would be entitled under §170.200 to receive in a fiscal year less funding than they would receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in 25 CFR Part 170, Subpart C (in effect as of July 5, 2012); and
 - ii. the combined amount that such Indian tribes would be entitled to receive in fiscal year 2011 pursuant to such relative need distribution factor and population adjustment factor in excess of the amount that they would be entitled to receive in the fiscal year under §170.200.
- (c) Subject to (d), the Secretary shall distribute a combined amount to each tribe that meets the criteria described in item (b)(2)(i) a share of funding in proportion to the share of the combined amount determined under item (b)(2)(ii) attributable to such Indian tribe.
- (d) A tribe may not receive under (b)(2) and based on its tribal share under §170.200 a combined amount that exceeds the amount that such Indian tribe would be entitled to receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in 25 CFR Part 170, Subpart C (in effect as of July 5, 2012).
- (e) If the amount made available for a region under (b)(1) exceeds the amount distributed among Indian tribes within that region under (b)(2), the Secretary shall distribute the remainder of such region's funding under (b)(1) among all tribes in that region in proportion to the combined amount that each such tribe received under § 170.200 and (b), (c), and (d).

Sec. 170.203 How does BIA and FHWA allocate and distribute tribal transportation planning funds?

Upon request of a tribal government and approval by the BIA Regional Office or FHWA, BIA or FHWA provides tribal transportation planning funds described in Sec. 170.200(a)(1) pro rata in accordance with the tribe's final percentage as determined under §170.200 - 202. The tribal transportation

planning funds will be distributed to the tribes in accordance with BIA and FHWA procedures.

Sec. 170.204 What restrictions apply to TTP funds provided to tribes?

All TTP funds provided to tribes can only be expended on eligible activities identified in Appendix A to Subpart B and included in an FHWA approved TIP per 23 U.S.C. 202(b)(4)(B).

TTP Inventory and Long-Range Transportation Plan (LRTP)

Sec. 170.225 How does a LRTP relate to the National Tribal Transportation Facility Inventory (NTTFI)?

A LRTP is developed utilizing a uniform process that identifies the transportation needs and priorities of a tribe. The NTTFI is derived from transportation facilities identified through a LRTP. It is also a means for identifying projects and activities for the TTP and the Tribal High Priority Projects Program (THPPP) described in Subpart I.

Sec. 170.226 What facilities are included in the National Tribal Transportation Facility Inventory (NTTFI)?

The NTTFI as defined by 23 USC is a comprehensive national inventory of tribal transportation facilities that are eligible for assistance under the tribal transportation program. It includes, at a minimum, facilities that:

- a. were included in the Bureau of Indian Affairs system inventory prior to October 1, 2004;
- b. are owned by an Indian tribal government;
- c. are owned by the Bureau of Indian Affairs;
- d. were constructed or reconstructed with funds from the Highway Account of the Transportation Trust Fund under the Indian reservation roads program since 1983;
- e. are public roads or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities (including communities in former Indian reservations in the State of Oklahoma) in which the majority of residents are American Indians or Alaska Natives; or
- f. are public roads within or providing access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian or Alaska Native villages, groups, or communities in which Indians and Alaska Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians; or
- g. are primary access routes proposed by tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal terminals, such as airports, harbors, or boat landings.

As used in (b) and (c) above, "owned" means having the authority to finance, build, operate, or maintain the facility. See 23 U.S.C. 101(a)(20).

Sec. 170.227 How does BIA develop the NTTFI?

The NTTFI as defined in §170.226 identifies the transportation needs in Indian Country and is developed through the planning processes as described in §§ 170.410 through 170.415. The BIA Regional offices maintain, certify, and enter the data for their region's portion of the NTTFI database. Only transportation facilities are included in the NTTFI.

Sec. 170.228 Are all facilities included in the NTTFI used to calculate tribal shares?

No. Only those facilities identified in §170.226(a), (b), and (c) may be used in the calculation of tribal shares identified in §170.201(a).

Formula Data Appeals

Sec. 170.231 What data used in the determination of tribal shares may be appealed?

For the purposes of determining tribal shares, 23 U.S.C. 202(b)(3)(B) requires the use of the most recent data on American Indian and Alaska Native population within each Indian Tribe's American Indian/Alaska Native Reservation or Statistical Area, as computed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.). Any appeal of a tribe's population figure must be directed to Department of Housing and Urban Development (HUD).

As required by 23 U.S.C. 202(b)(3)(B), the remaining factors used in determining tribal shares are based upon specific prior year data and may not be appealed.

Flexible Financing

Sec. 170.300 May tribes use flexible financing to finance TTP transportation projects?

Yes. Tribes may use flexible financing in the same manner as States to finance TTP transportation projects, unless otherwise prohibited by law.

(a) Tribes may issue bonds or enter into other debt financing instruments under 23 U.S.C. 122 with the expectation of payment of TTP funds to satisfy the instruments.

(b) Under 23 U.S.C. 183, the Secretary of Transportation may enter into an agreement for secured loans or lines of credit for TTP projects meeting the requirements contained in 23 U.S.C. 182. Tribes or BIA may service Federal

credit instruments. The secured loans or lines of credit must be paid from tolls, user fees, or other dedicated revenue sources.

(c) Tribes may use TTP funds as collateral for loans or bonds to finance TTP projects. Upon the request of a tribe, a BIA region will provide necessary documentation to banks and other financial institutions.

170.301 Can a tribe use TTP funds to leverage other funds or pay back loans?

(a) A tribe can use TTP funds to leverage other funds.

(b) A tribe can use TTP funds to pay back loans or other finance instruments that were used for a project that:

(1) The tribe paid for in advance of the current year using non-TTP funds;

(2) Was included in FHWA-approved TTPTIP; and

(3) Was included in the NTTFI at the time of construction.

Sec. 170.303 Can a tribe apply for loans or credit from a State infrastructure bank?

Yes. Upon the request of a tribe, BIA region will provide necessary documentation to a State infrastructure bank to facilitate obtaining loans and other forms of credit for a TTP project. A state infrastructure bank is a state or multi-state fund that can offer loans and other forms of credit to help project sponsors, such as tribes, pay for transportation projects.

Subpart D--Planning, Design, and Construction of Tribal Transportation Program Facilities

Transportation Planning

Sec. 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.

Sec. 170.401 What is BIA's and FHWA's role in transportation planning?

Except as provided in § 170.402, the functions and activities that BIA and/or FHWA must perform for the TTP are:

- (a) Preparing and approving the TTPTIP;
- (b) Oversight of the NTTFI;
- (c) Performing quality assurance and validation of NTTFI data updates as needed;
- (d) Coordinating with States and their political subdivisions, and appropriate planning authorities on regionally significant TTP projects;
- (e) Providing technical assistance to tribal governments;
- (f) Developing TTP budgets;
- (g) Facilitating public involvement;
- (h) Participating in transportation planning and other transportation-related meetings;
- (i) Performing quality assurance and validation related to 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.

Sec. 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 operating with a FHWA Program Agreement or BIA self-determination contract, TTP Agreement, 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 TTP projects;
 - (2) Preparing NTTFI 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 TTP 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.

Sec. 170.403 What TTP funds can be used for transportation planning?

Funds as defined in 23 U.S.C. 202(c) are allocated to an Indian tribal government to carry out transportation planning. Tribes may also identify transportation planning as a priority use for their TTP tribal share formula funds. In both cases, the fund source and use must be clearly identified on a FHWA approved TTPTIP .

Sec. 170.405 Can the tribal transportation planning funds identified in 23 U.S.C 202(c) be used for road construction and other activities?

Yes. After completion of a tribe's annual planning activities, any of these funds that remain unexpended may be used for use on eligible projects or activities identified on a FHWA approved TTPTIP. (Also see §170.407.)

Sec. 170.406 How must tribes use planning funds?

- (a) TTP Program funds as defined in 23 U.S.C. 202(c) are available to a tribal government to 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 planning functions/activities listed in § 170.402.

Sec. 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. The planning process should result in a long range transportation plan (LRTP).

(b) The time horizon for a LRTP should be 20 years to match state transportation planning horizons.

Sec. 170.411 What should a long-range transportation plan include?

A long-range transportation plan should 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;
- (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.

Sec. 170.412 How is the tribal TTP long-range transportation plan developed and approved?

- (a) The tribal TTP long-range transportation plan is developed by:
 - (1) A tribe working through a self-determination contract, self-governance agreement, FHWA Program Agreement; and other appropriate agreement; or
 - (2) BIA or FHWA upon request of, and in consultation with, a tribe. The tribe and BIA or FHWA need to agree on the methodology and elements included in development of the TTP long-range transportation plan along with time frames before work begins. The development of a long-range transportation plan on behalf of a tribe will be funded from the tribe's share of the TTP program funds.
- (b) During the development of the TTP long-range transportation plan, the tribe and BIA or FHWA should jointly conduct a midpoint review.
- (c) The public reviews a draft TTP 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 TTP long-range transportation plan.

Sec. 170.413 What is the public role in developing the long-range transportation plan?

BIA, FHWA, 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, FHWA 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, FHWA, or the tribe may post notices under local acceptable practices;

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(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, FHWA, 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, FHWA, 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).

Sec. 170.414 How is the tribal long-range transportation plan used and updated?

The tribal government uses its TTP long-range transportation plan in its development of a tribal priority list or TTIP and to identify and justify the tribe's updates to the NTTFI. To be consistent with State, MPO and/or RPO planning practices, the TTP long-range transportation plan should be reviewed annually and updated not less than every 5 years.

Sec. 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 TTP Transportation Improvement Program (TTPTIP). 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) BIA and/or FHWA, upon request of the tribe, will work cooperatively with tribal, state, regional, and metropolitan transportation planning organizations concerning the leveraging of funds from non-TTP Program sources and identification of other funding sources to expedite the planning, design, and construction of projects on the TTPTIP.

Sec. 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) Is not financially constrained; and

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

Sec. 170.421 What is the Tribal Transportation Improvement Program (TTIP)?

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The TTIP:

- (a) Must be consistent with the tribal long-range transportation plan;
- (b) Is not financially constrained;
- (c) Must contain all TTP funded projects and eligible activities programmed in the next 4 years and identify the implementation year of each project or activity;
- (d) May include other Federal, State, county, and municipal, transportation projects initiated by or developed in cooperation with the tribal government;
- (e) Is reviewed and updated as necessary by the tribal government;
- (f) Can be changed only by the tribal government; and
- (g) After approval by the tribal government, it must be forwarded to BIA or FHWA by resolution or by tribally authorized government action.

Sec. 170.422 What is the TTP Transportation Improvement Program (TTPTIP)?

The TTPTIP:

- (a) Is financially constrained;
- (b) Includes eligible projects and activities selected by tribal governments from TTIPs or other tribal actions;
- (d) Is organized by year, State, and tribe; and
- (e) May include projects and activities predominately funded with other funding sources. In these cases all fund sources are to be identified on the TTPTIP.

When approved by FHWA, the TTPTIP authorizes the eligibility of projects or activities for expenditure of TTP funds. However, all other requirements associated with that project or activity must be satisfied before expenditure actually occurs.

Sec. 170.423 How are projects placed on the TTPTIP?

- (a) BIA or FHWA coordinates with the tribe to select projects from the TTIP or tribal priority list for inclusion on the 4 year TTPTIP as follows:
 - (1) Tribe, or Tribe with assistance from BIA or FHWA, submits project and activity information (within the financial constraints identified above), designating estimated dollar amounts for each project and activity.
 - (2) Tribe submits a certification of public involvement back to BIA or FHWA along with as a tribal resolution requesting approval.
 - (3) BIA/FHWA enters submitted data into the federal system developing the tribe's proposed TTPTIP.
 - (4) Proposed TTPTIP goes through BIA/FHWA approval process
 - (5) A copy of the approved final TTPTIP is returned to Tribe.
- (b) A tribe that does not generate enough annual funding under the TTP Program funding formula to complete a project may either:
 - (1) Enter a consortium of tribes and delegate authority to the consortium to develop the TTIP and tribal control schedule;
 - (2) Enter into agreement with other tribes to permit completion of the project; or
 - (3) Apply for TTPHPP funding under subpart I.
- (c) In order to get a project on the TTPTIP, tribes may seek flexible financing alternatives as described in subpart C.

Sec. 170.424 How does the public participate in developing the TTPTIP?

Public involvement is required in the development of the TTPTIP.

- (a) The tribe must publish a notice in local and/or tribal newspapers when the draft tribal or TTPTIP 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. A copy of the notice shall be made available to the BIA or FHWA upon request.
- (b) The tribe may hold public meetings at which the public may comment orally or in writing.
- (c) The tribe, the State transportation agency or MPO may conduct public involvement activities.

Sec. 170.425 How does BIA/FHWA conduct the annual update the TTPTIP?

The TTPTIP annual update allows for modifications to the schedules and amounts of projects and activities that are on the previously approved TTPTIP and the incorporation of additional transportation projects and activities which are planned for the next 4 years.

- (a) During the first quarter of the fiscal year, tribes are notified of the annual update of the TTPTIP and provided with the estimated funding amounts, copies of the previous year TTPTIP, and instructions for submitting required data.
- (b) The tribe reviews any new transportation planning information, priority lists, and TTIP, utilizes the procedures outlined in §170.423, and forwards the documentation to BIA Regional Office or FHWA.
- (c) The BIA regional office or FHWA reviews all submitted information with the tribes, and adds agreed-upon updates, including all previously approved amendments (see § 170.427), to the TTPTIP so that the Secretaries can approve the new updated TTPTIP before the start of the next fiscal year.

Sec. 170.426 What is the approval process for the TTPTIP?

The approval process for the TTPTIP is:

- (a) The BIA Regional Office and FHWA work together to review and concur on the TTPTIPs and then forward the documentation to the Secretaries for review and approval;
- (b) When approved, copies of the approved TTPTIP are made available back to the FHWA, BIA Regional Offices, and tribal governments.
- (c) FHWA provides copies of the approved TTPTIP to the FHWA division office for transmittal to the State transportation agency for inclusion in the State Transportation Improvement Program (STIP).

Sec. 170.427 How may an approved current fiscal year TTPTIP be amended?

- (a) The current year TTPTIP may be amended to reflect new proposed projects and activities or a significant change in available fiscal year TTP funding. All tribal requests to BIA or FHWA for TTPTIP amendments must be accompanied by an amended TTIP and a tribal resolution requesting the amendment. BIA's regional office or FHWA 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 TTPTIP amendment contains a

project not listed on the current approved TTPTIP, BIA must submit the proposed amendment to FHWA for final approval.

(b) An amendment to a previously approved TTPTIP must still use the same public involvement process that was used to develop the original TTPTIP.

Sec.170.428 How is the State Transportation Improvement Program related to the TTPTIP?

FHWA will annually provide each State's transportation agency with the most current TTPTIP for the Tribes within that State. This will ensure that approved TTPTIP updates and amendments are included with the STIP.

Sec.170.435 How is the need for a public hearing determined?

The tribe, or BIA or FHWA after consultation with the appropriate tribe and other involved agencies, determines whether or not a public hearing is needed for a TTPTIP, long-range transportation plan or a 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.

Sec.170.436 How are public hearings for TTP planning and projects funded?

Public hearings for a Tribe's TTIP or long-range transportation plan are funded using the tribe's funds as described in §170.403.

Sec.170.437 How must BIA, FHWA, or a tribe inform the public when no hearing is held?

(a) When no public hearing for a TTP project is scheduled, the BIA, FHWA, or a Tribe 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.

Sec. 170.438 How must BIA, FHWA, or a tribe inform the public when a hearing is held?

When BIA, FHWA, 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:
 - (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.

Sec.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 TTP projects and activities; and
 - (3) The presiding official informs the hearing audience of the appropriate procedures for a proposed TTP 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 Assistance and Real Property 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.

Sec. 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.

Sec. 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

TTP Inventory

Sec. 170.442 What is the National Tribal Transportation Facility Inventory (NTTFI)?

(a) The NTTFI, as defined by 23 USC, is a comprehensive national inventory of tribal transportation facilities that are eligible for assistance under the tribal transportation program. For purposes of identifying the tribal transportation system and determining the relative transportation needs among Indian tribes, the NTTFI shall include, at a minimum, transportation facilities that are eligible for assistance under the TTP that an Indian tribe has requested, including facilities that:

- (1) were included in the Bureau of Indian Affairs system inventory prior to October 1, 2004;
- (2) are owned by an Indian tribal government;
- (3) are owned by the Bureau of Indian Affairs;
- (4) were constructed or reconstructed with funds from the Highway Account of the Transportation Trust Fund under the Indian reservation roads program since 1983;
- (5) are public roads or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities (including communities in former Indian reservations in the State of Oklahoma) in which the majority of residents are American Indians or Alaska Natives; or
- (6) are public roads within or providing access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian or Alaska Native villages, groups, or communities in which Indians and Alaska Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians; or
- (7) are primary access routes proposed by tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal terminals, such as airports, harbors, or boat landings.

(b) BIA, FHWA, or tribes can also use the NTTFI to assist in transportation and project planning, justify expenditures, identify transportation needs, maintain existing TTP facilities, and develop management systems.

Sec. 170.443 What is required to successfully include a proposed transportation facility in the NTTFI?

(c) A proposed transportation facility is any transportation facility, including a highway bridge that will serve public transportation needs, is eligible for construction under the TTP, and does not currently exist. It must meet the eligibility requirements of the TTP and be open to the public when built/completed.

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In order to have a proposed facility placed on the NTTFI, a tribe must submit the following to BIADOT/FHWA Quality Assurance Team (QA Team) for consideration:

- a. A Tribal Resolution identifying support for the facility and its placement on the NTTFI;
- b. A copy of the Tribe's Long Range Transportation Plan (LRTP) containing:
 - (1) A description of the current land use and identification of land ownership within the proposed road's corridor;
 - (2) A description of need and outcomes for the facility including a description of the project's termini; and
 - (3) The funding sources identified for the construction of the facility.
- (c) If the landowner is a public authority, documentation indicating that the proposed road has been identified in their LRTP, Statewide Transportation Improvement Program approved by FHWA, or other published transportation planning documents;
- (d) A certification that a public involvement process was held for the proposed road;
- (e) Documentation that the proposed road is feasible from a cost, environmental, and engineering perspective; and
- (f) Documentation identifying responsible entity for maintenance of the facility after construction is completed.

Sec. 170.444 How is the NTTFI updated?

- (a) Submitting the data into the NTTFI for a new facility is carried out on an annual basis as follows:

- (1) BIA Regional Offices provide each tribe within its region with a copy of the tribe's own NTTFI data during the first fiscal quarter of each year;

- (2) Tribes must review the data and either enter the changes/updates into the database or submit changes/updates back to the BIA Regional Office by March 15. The submittals should include, at a minimum, all required minimum attachments (see §170.446) and authorizing resolutions or similar official authorizations.

- (3) The BIA Regional Office reviews each tribe's submission. If any errors or omissions are identified, the BIA Regional Office must return the submittals along with a request for corrections to the tribe no later than May 15. If no errors or omissions are found, the BIA Regional Office validates the data and forwards it to BIADOT for review and approval;

- (4) The tribe must correct any errors or omissions in the data entries or return the corrected submittals back to the BIA Regional Office by June 15;

- (5) Each BIA Regional Office must validate its regional data by July 15;

- (6) BIADOT approves the current inventory year submissions from BIA Regional Offices by August 15 or returns the submittals to the BIA Regional Office if additional work is required.

- (b) Updating the data within the NTTFI for an existing facility is carried out as follows:

- (1) At any time, a tribe may submit a request to the BIA Region asking for the NTTFI data of an existing facility to be updated. The request must include the tribe's updated data and background information on how and why the data was obtained.

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(2) The BIA Region must review the submitted data and respond back to the tribe within 30 days of its receipt.

(i) If approved, the BIA Region validates the data and forwards it to BIADOT for review and approval;

(ii) If not approved, the BIA Region must return the submittals to the tribe along with a detailed written explanation and supporting documentation of the reasons for the disapproval. The tribe must correct the data entries and return the corrected submittals back to the BIA Region.

(3) BIADOT approves the current inventory year submissions from BIA Regional Offices or returns the submittals to the BIA Regional Office if additional work is required.

Sec. 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 NTTFI. Each strip map submitted with an NTTFI 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

(c) Include a table that provides the facility's data information needed for the NTTFI.

Sec. 170.446 What are the required minimum attachments for a data submittal into the NTTFI?

The minimum attachments required for a facility to be added into the NTTFI includes:

(a) A long range transportation plan

a. Provide cover sheet, page or pages containing description of route that support classification, and signature sheet.

(b) Tribal resolution or official authorization

a. Must refer to the route number(s), name(s), location(s), length(s), construction need(s), and ownership(s).

(c) Strip Map

a. Defines or illustrates the facility's location with respect to State, County, Tribal, and congressional boundaries. Define the overall dimensions of the facility and the accompanying inventory data. The map will provide a positive route location (which may include section, township, range or beginning and ending latitude and longitude, and scale). See §170.445

(d) ADT Backup Documentation

a. This applies only when a request to change or update the ADT for a section(s) in the official inventory. The request will contain raw traffic data (backup data), method and calculations for adjustment of raw data, map showing traffic counter locations or location of traffic counter can be provided within the strip map, and derived ADT values. If the road is proposed, the ADT impractical to acquire, or a current ADT does not exist, then BIADOT will assign a default values within the NTTFI database.

(e) If possible, a typical or representative section photo or bridge profile photo

- (f) Incidental cost verification
 - a. Provide an estimate, analysis and justification to verify the need of additional incidental items required to improve the road to an adequate standard. The analysis and justification must be specific to the route/facility being submitted.
- (g) Acknowledgement of Public Authority responsibility
 - a. This document can be a letter or similar notification by the public authority (other than the Tribe or the BIA) of acknowledgement of responsibility for maintenance of the IRR facility. This document will identify the route/facility by region, agency, reservation, route and section. It will identify ownership and the entity that will be responsible for the maintenance of the route after construction, and that the route will be open to the public.

Environmental and Archeological Requirements

Sec. 170.450 What archeological and environmental requirements must the TTP meet?

The archeological and environmental requirements with which BIA, FHWA, and the tribes must comply for the TTP are contained in Appendix A to this subpart.

Sec. 170.451 Can TTP funds be used for archeological and environmental compliance?

Yes. For approved TTP projects, TTP funds can be used for environmental and archeological work consistent with Appendix A to this subpart and applicable tribal laws for:

- (a) Road and bridge rights-of-way;
- (b) Borrow pits and aggregate pits and water sources associated with TTP 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 environmental analysis and after consultation with the affected tribe(s) and the appropriate Secretary(s); and
- (d) Construction easements.

Design

Sec. 170.454 What design standards are used in the TTP?

(a) The design standards that must be used for TTP projects are listed in Appendix B to this subpart.

(b) If a tribe proposes the use of a design standard that is not listed in (a) above, the proposed standard must be consistent with or exceed applicable Federal standards and submitted to FHWA for approval.

Sec. 170.455 How are design standards used in TTP 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 TTP projects must take into consideration:

(a) The existing and planned future use of the TTP 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.

Sec. 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 or FHWA for approval. If the BIA Regional Office has design exception approval authority within their Business Plan, they may approve or decline the request; otherwise BIA forwards the request to FHWA. The engineer of 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.

Sec. 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 Office of Federal Lands Highway, 1200 New Jersey Ave, SE, HFL-1, Washington, DC 20590. If FHWA denies a design exception, the tribe may appeal the decision Office of the FHWA Administrator, 1200 New Jersey Ave., SE, HOA-1, Washington, DC 20590.

Review and Approval of Plans, Specifications, and Estimates

Sec. 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 for a project to proceed to construction, the following additional items are required to complete the project package:

- (1) A tribal resolution or other authorized document supporting the project;
- (2) Certification of the required right-of-way, easement, or public taking documentation clearances;
- (3) Required environmental, archeological, and cultural clearances; and
- (4) Identification of design exceptions if used in the plans.

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

(d) All project documentation identified above is to be provided to BIA or FHWA prior to commencement of construction.

Sec. 170.461 May a tribe approve plans, specifications, and estimates?

An Indian tribal government may approve plans, specifications, and estimates and commence road and bridge construction with funds made available from the tribal transportation program through a contract or agreement under Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), if the Indian tribal government—

- (a) provides assurances in the contract or agreement that the construction will meet or exceed applicable health and safety standards;
- (b) obtains the advance review of the plans and specifications from a State-licensed civil engineer that has certified that the plans and specifications meet or exceed the applicable health and safety standards; and
- (c) provides a copy of the certification under subparagraph (A) to the Deputy Assistant Secretary for Tribal Government Affairs, Department of

Transportation, or the Assistant Secretary for Indian Affairs, Department of the Interior, as appropriate.

Sec. 170.463 What should the Secretaries do if a design deficiency is identified?

If the Secretaries identify a design deficiency that may jeopardize public health and safety if the facility is completed, they must:

(a) 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-prepared 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

Sec. 170.470 What are the TTP 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) FHWA-approved, State or tribal road and highway bridge construction standards may also be used.

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

(1) Nationally recognized standards for comparable projects; or

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

Sec. 170.471 How are projects administered?

(a) When a tribe carries out a TTP 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) When a tribe carries out a TTP PFSA under a FHWA Program Agreement or another appropriate agreement with the BIA, FHWA and BIA will monitor performance in accordance with this part.

(f) Only the licensed professional engineer of record may change a TTP 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.

Sec. 170.472 What construction records must tribes and BIA keep?

The following table shows which TTP 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 TTP constructions and approved project specifications 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.

Sec. 170.473 What happens when a construction project ends?

(a) At the end of a construction project, the public authority 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, public authority responsible for the project 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 TTP construction 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) A TTP construction project closeout is the final accounting of all TTP 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.

(c) A project is considered as substantially complete when all work is completed and accepted (except for punch list) and the project is open to traffic.

(d) If 25 CFR Part 169 applies to the project, an affidavit of completion must be completed as required by 25 CFR 169.16. Failure to file an affidavit of completion shall subject the right of way to cancellation.

Sec. 170.474 Who conducts the project closeout?

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

If the project was completed by ...	then ...	and the closeout report must ...
(a) BIA.....	The region engineer or designee is responsible for closing out the project and preparing the report.	<ul style="list-style-type: none"> (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 TTP 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.	<ul style="list-style-type: none"> (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.

Management Systems

Sec. 170.502 Are nation-wide management systems required for the TTP?

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

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

(b) Other management systems may include the following:

- (1) Public transportation facilities;
- (2) Public transportation equipment; and
- (3) Intermodal transportation facilities and systems.

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

(d) The development, implementation, and maintenance of an alternative tribal management system is an eligible TTP activity, provided that such systems are consistent with Federal management systems.

Sec. 170.503 How are alternative tribal TTP management systems funded?

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. 202(c) for TTP tribal transportation planning; or
- (b) TTP formula funds.

Bridge Inspection

Sec. 170.504 When and how are bridge inspections performed?

All bridges identified on the NTPPF must be inspected in accordance with 23 USC 144.

Sec. 170.505 How must bridge inspections be coordinated?

Personnel carrying out inspections as defined under §170.504 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

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

Sec. 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 USC 144.

Sec. 170.507 Who reviews bridge inspection reports?

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

(a) Reviews the report for quality assurance and works with FHWA to ensure the requirements of 23 USC 144 are carried out; and

(b) Furnishes a copy of the report to the BIA Regional Office which will forward to the affected tribe.

Appendix A to Subpart D--Cultural Resource and Environmental

Requirements for the TTP

All BIA, FHWA, and tribal work for the TTP 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, commonly referred to as 4(f).
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.

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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 TTP

Depending on the nature of the project, tribes must use the following design standards as applicable. Additional standards may also apply. In addition, tribes may develop design standards that meet or exceed the standards listed in this appendix. 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.

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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.
22. FHWA-approved State standards
23. FHWA-approved tribal design standards.

Appendix C to Subpart D—Cost to Construct

Cost to Construct

(Appendix C includes Tables 1- 8)

This method utilizes the concepts of the Bureau of Indian Affairs' "Simplified Approach to Compute the Cost to Construct" and includes computing costs for High Capacity Roads (multi-lane roads), non-road projects (snowmobile trails, boardwalks, footpaths, etc.) and other eligible transportation facility projects.

The theory behind this concept is based on the procedure that information gathered during any inventory update can be used to compare the existing conditions to defined Adequate Standard Characteristics. This comparison can then be used to determine the total cost required to bring the transportation facility road up to a necessary Adequate Standard. The IRR Inventory database is used to determine the costs of a new transportation facility or in the case of an existing facility, the costs that will be necessary to improve the facility from its existing condition to an adequate standard. Therefore, the Cost to Construct for a particular facility is the cost required to improve the facility's existing condition to a condition that would meet the Adequate Standard Characteristics (see Table 1). For roadways, the recommended design of the geometrics and surface type vary based on the road's functional classification and average daily traffic and will use four categories of cost. The four categories are Grade and Drain Costs, Aggregate Costs, Pavement Costs, and Incidental Costs. For bridges, costs are derived from costs in the National Bridge and Tunnel Inventory as well the National Bridge Construction unit cost data developed by FHWA. For other transportation NTTFI facilities, an inventory of needs must be developed with associated costs for new and existing TTP facilities based on long range transportation planning. The BIA Regions and tribes must ensure that the NTTFI is sufficiently updated to provide all the necessary information indicating the need, the condition, and the construction cost data to compute the cost to construct of any proposed or existing facility.

BASIC PROCEDURES

The facilities of the NTTFI, based on transportation planning, must be developed for those tribes without data and updated for those tribes that have existing facilities within the NTTFI. Once the NTTFI database is current and all TTP facilities needs are identified and verified, the Cost to Construct for those TTP transportation facilities can be developed.

The procedure for determining the cost to construct of a transportation facility is computed through the following step-by-step process:

- (a) Determine the Future ADT of the transportation facility as applicable, based upon tribal transportation planning or set default future ADT (see Table 2);
- (b) Determine the Class of transportation facility e.g., rural local, rural major collector, or other transportation facility, utilizing future ADT and based upon tribal transportation planning (see Table 1);
- (c) Identify, if appropriate, transportation facility terrain as flat, rolling, or mountainous;
- (d) Set Adequate Standard based on Class, and/or future ADT, and Terrain (see Table 1);
- (e) Identify the transportation facility's construction cost per unit (e.g., cost per mile, cost per linear foot) for the applicable components of construction: Aggregate, Paving, Grade/Drain, Incidental, or other costs associated with the transportation facility;

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(f) Multiply the construction cost per unit for each component of construction by the length of the proposed road or other appropriate unit of the transportation facility to determine the cost for each component of construction; and

(g) Calculate the cost for the proposed road or transportation facility by adding together the costs for each component of construction.

The procedure for determining the cost to reconstruct or rehabilitate an existing transportation facility is determined in the same manner as a proposed transportation facility, except that the existing condition of the project is evaluated to determine the remaining percentage of cost of each applicable component of construction that will be included in the cost for reconstruction. The steps are:

(1) Evaluate existing condition of road or transportation facility in accordance with applicable management systems, guidelines or other requirements;

(2) Identify the percentage of required cost for each component of applicable construction costs for the transportation facility by determining the Adequate Standards Characteristics (see Table 1) and existing condition of the transportation facility and by applying the applicable percent cost requirement tables for aggregate, paving, grade/drain, incidental, and bridge (see Tables 4-8);

(3) Multiply the construction cost per unit for each component of construction by the corresponding percent of cost required (see Tables 4-8) and by the length of the road or other appropriate unit of the transportation facility to determine the reconstruction cost for each component; and

(4) Calculate the reconstruction cost for the transportation facility by adding together the reconstruction costs for each component of construction.

Average daily traffic (ADT) is acquired through actual traffic counts on the roadway sections. Where current ADT is practical to acquire, it should be acquired and future ADT calculated by projecting the current ADT at 2 percent per year for 20 years. If the facility is proposed, the ADT impractical to acquire, or a current ADT does not exist, then a default current ADT is assigned and future ADT calculated by projecting the default current ADT at 2 percent per year for 20 years to form the basis of the Adequate Standard (see Table 1). Table 2 summarizes the default current and default future ADT by class of road.

Functional Classification: Functional classification means an analysis of a specific transportation facility taking into account current and future traffic generators, and their relationship to connecting or adjacent BIA, state, county, Federal, and/or local roads and other intermodal facilities. Functional classification is used to delineate the difference between the various road and/or intermodal transportation facility standards eligible for funding under the IRR Program. As a part of the IRR Inventory system management, all IRR transportation facilities included on or added to the IRR Inventory must be classified according to the following functional classifications:

(a) Class 1: Major arterial roads providing an integrated network with characteristics for serving traffic between large population centers, generally without stub connections and having average daily traffic volumes of 10,000 vehicles per day or more with more than two lanes of traffic.

(b) Class 2: Rural minor arterial roads providing an integrated network having the characteristics for serving traffic between large population centers, generally without stub connections. Class 2 routes may also link smaller towns and communities to major resort areas that attract travel over long distances and generally provide for relatively high overall

travel speeds with minimum interference to through traffic movement. Generally provide for at least inter-county or inter-State service and are spaced at intervals consistent with population density. This class of road will have less than 10,000 vehicles per day.

(c) Class 3: Streets that are located within communities serving residential areas.

(d) Class 4: Rural Major Collector Road is a collector to rural local roads.

(e) Class 5: Rural Local Road that is either a section line and/or stub type roads that collect traffic for arterial type roads, make connections within the grid of the IRR System. This class of road may serve areas around villages, into farming areas, to schools, tourist attractions, or various small enterprises. Also included are roads and motorized trails for administration of forest, grazing, mining, oil, recreation, or other use purposes.

(f) Class 6: City Minor Arterial Streets that are located within communities, and serve as access to major arterials.

(g) Class 7: City Collector Streets that are located within communities and serve as collectors to the city local streets.

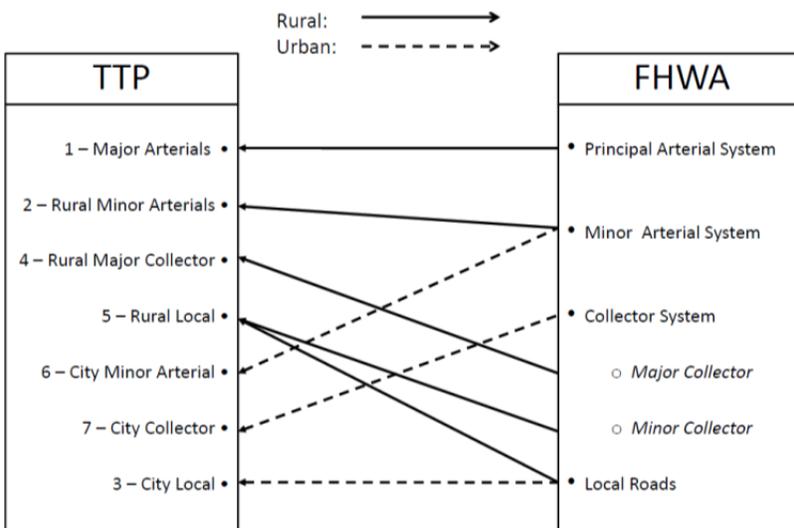
(h) Class 8: This classification encompasses all non-road projects such as paths, trails, walkways, or other designated types of routes for public use by foot traffic, bicycles, trail bikes, snowmobile, all terrain vehicles or other uses to provide for the general access of non-vehicular traffic.

(i) Class 9: This classification encompasses other transportation facilities such as public parking facilities adjacent to IRR routes and scenic byways, rest areas, and other scenic pullouts, ferry boat terminals, and transit terminals.

(j) Class 10: This classification encompasses airstrips that are within the boundaries of the IRR System grid and are open to the public. These airstrips are included for inventory and maintenance purposes only.

(k) Class 11: This classification indicates an overlapping of a previously inventoried section or sections of a route and is used to indicate that it is not to be used for accumulating needs data. This class is used for reporting and identification purposes only.

Classification Assessment (Rural & Urban)



Construction Need: All existing and proposed transportation facilities in the NTTFI must have a Construction Need (CN) which is used in the Cost to Construct calculations. These transportation facilities are assigned a CN by the tribe during the long-range transportation planning and inventory update process using certain guidelines which are: ownership or responsibility of the facility, whether it is within or provides access to reservations, groups, villages and communities in which the majority of the residents are Indian, and whether it is vital to the economic development of Indian tribes. As part of the NTTFI management, all facilities included on or added to the NTTFI must be designated a CN which are defined as follows:

- (a) Construction Need 0: Transportation facilities which have been improved to their acceptable standard.
- (b) Construction Need 1: Existing BIA facilities needing improvement.
- (c) Construction Need 2: Existing non-BIA or non-tribal facilities needing improvement.
- (d) Construction Need 3: Existing facilities that are substandard for which no improvements are planned, regardless of ownership (maintenance only).
- (e) Construction Need 4: TTP facilities which do not currently exist and need to be constructed (proposed facilities).
- (f) Construction Need 5: Existing tribal facilities needing improvement

TABLE 1 - ADEQUATE STANDARD CHARACTERISTICS

The cost to construct of a particular transportation facility is defined as the cost required to improve the transportation facility from its existing condition to a condition that would meet the Adequate Standard Characteristics. Table 1 presents the Adequate Standard Characteristics.

ADEQUATE STANDARD NUMBER	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21		
TERRAIN***	(1)(2)(3)	(1)(2)(3)	(1)(2)(3)	(1)(2)(3)	(1)(2)(3)	(1)(2)(3)	(1)(2)(3)	(1)(2)(3)	(1)(2)(3)	(1)(2)(3)	(1)(2)(3)	(1)(2)(3)	(1)(2)(3)	(1)(2)(3)	(1)(2)(3)	N/A							
FUTURE ADT used in ADS assignment	N/A	FADT<=400	FADT<=400	FADT<=400	FADT<=400	FADT<=400	FADT<=400	FADT<=400	FADT<=400	N/A													
BIA CLASS	1	2								4			5		6	6	7	3*	8	9	10	11	
	MAJOR ARTERIAL	RURAL MINOR ARTERIALS								RURAL MAJOR COLLECTOR			RURAL LOCAL		CITY MINOR ARTERIAL		CITY COLLECTOR	CITY LOCAL	MOTORIZED/ NON-MOTORIZED TRAILS	OTHER TRANSPORTATION FACILITIES	AIRSTRIPS	Overlapping Routes	
CALCULATED VALUES																							
FUTURE SURFACE TYPE (EXISTING)	PAVED	PAVED	PAVED	PAVED	PAVED	PAVED	PAVED	PAVED	PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	
FUTURE SURFACE TYPE (PROPOSED)	PAVED	PAVED	PAVED	PAVED	PAVED	PAVED	PAVED	PAVED	PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	FADT UNDER 50 - EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED	
DEFAULT CURRENT ADT /DEFAULT FUTURE ADT**	must exist	ADT 100 FADT 149								ADT 50 FADT 74	ADT 25 FADT 37	ADT 20 FADT 30	N/A										
RECOMMENDED DESIGN																							
MINIMUM ROADWAY WIDTH (INCLUDING SHOULDERS)	66'	36'	32'	32'	32'	32'	32'	32'	32'	32'	32'	32'	28'	28'	28'	28'	28'	28'	28'	28'	28'	28'	28'
SHOULDER WIDTH	6'	6'	6'	6'	6'	6'	6'	6'	6'	4'	4'	4'	4'	4'	4'	4'	4'	4'	4'	4'	4'	4'	4'
SHOULDER TYPE	PAVED	PAVED	PAVED	PAVED	PAVED	PAVED	PAVED	PAVED	PAVED	PAVED/GRAVEL/EARTH	PAVED/GRAVEL/EARTH												

* Local Class 3 roads may be earth, gravel or paved, depending on tribal customs, economics, or environmental considerations.
 ** Use default future ADT for proposed roads or where impractical to acquire ADT or ADT does not exist. (See Table 2 Default ADT and Default Future ADT). Where current ADT is practical to acquire, it should be acquired and projected to a future ADT at 2 per cent per year for 20 years.
 *** (1)=Flat, (2)=Rolling, (3)=Mountainous

TABLE 2 - DEFAULT CURRENT ADT and DEFAULT FUTURE ADT

Table 2 summarizes the default current and default future ADT by class of road. Default future ADT is calculated by projecting default current ADT at 2 percent per year for 20 years. 2 percent per year for 20 years yields a factor of 1.485.

TABLE 2 - Default Current ADT and Default Future ADT

Class No.	Default Current and Default Future ADT*
1	N/A, Must Exist
2	100 * 1.485 = 149
3	25 * 1.485 = 37
4	50 * 1.485 = 74
5	50 * 1.485 = 74
6	50 * 1.485 = 74
7	50 * 1.485 = 74
8	20 * 1.485 = 30
9	N/A**
10	N/A**
11	N/A**

* Default Future ADT is used for proposed roads or when impractical to acquire current ADT or when current ADT does not exist.

** Class 9, 10, and 11 are point features in the inventory and do not have an ADT. All multiplication is rounded

TABLE 3 - FUTURE SURFACE TYPE

Table 3 summarizes all possible scenarios of the future surface type either required or based on the various future ADT thresholds for each type or class of road in the inventory.

TABLE 3 - Future Surface Type

Const. Need	Class No.	Future ADT	Future Surface Type
0,1,2,3	1	Any	Paved
0,1,2,3	2	Any	Paved
0,1,2,3	3,6,7	< 50 50 - 250 >250	Earth Gravel Paved
0,1,2,3	4,5	< 50 50 - 250 >250	Earth Gravel Paved
0,1,2,3,4	8	N/A	N/A*
0,1,2,3,4	9	N/A	N/A**
0,1,2,3,4	10	N/A	N/A***
4***	1	N/A****	N/A****
4	2	ANY	Paved
4	3,6,7	< 50 50 - 250 >250	Earth Gravel Paved
4	4	< 50 50 - 250 >250	Earth Gravel Paved
4	5	< 50 50 - 250 >250	Earth Gravel Paved

* Class 8 does not have a future surface type. Per mile costs are applied independent of future surface type.

** Class 9 does not have a future surface type. Costs are independent of future surface type.

*** Class 10 does not have a future surface type. These are airstrips and is used for identification purposed only.

**** Class 1 with Construction Need of 4 does not apply. Class 1 roads must exist.

TABLE 4 - PERCENT OF GRADE AND DRAIN COST REQUIRED

Grade and Drain costs include the cost for constructing a roadbed to an adequate standard and providing adequate drainage. Specifically it includes the necessary earthwork to build the roadbed to the required horizontal and vertical geometric parameters above the surrounding terrain and provide for proper drainage away from the foundation with adequate cross drains.

Table 4 summarizes the percentage of grade and drain costs required based on the existing roadbed condition observed in an inventory update.

TABLE 4 - PERCENT OF GRADE AND DRAIN COST REQUIRED

CODE	ROADBED CONDITION	percent GRADE & DRAIN COST REQUIRED
0	Proposed Road	100 percent
1	Primitive Trail	100 percent
2	Bladed Unimproved Earth Road, Poor Drainage, Poor Alignment	100 percent
3	Minimum Built-up Roadbed (Shallow cuts and fills) with inadequate drainage and alignment that generally follows existing ground.	100 percent
4	A designed and constructed roadbed with some drainage and alignment improvements required.	100 percent
5	A roadbed constructed to the adequate standards with good horizontal and vertical alignment and proper drainage.	0 percent
6	A roadbed constructed to adequate standards with curb and gutter on one side.	0 percent
7	A roadbed constructed to adequate standards with curb and gutter on both sides.	0 percent

TABLE 5 - PERCENT OF AGGREGATE SURFACE COST REQUIRED

Table 5 summarizes the percentage of aggregate surface costs required based on all possible scenarios of existing surface type conditions and calculated future surface type.

TABLE 5 - PERCENT OF AGGREGATE SURFACE COST REQUIRED

Existing Surface Type	Future Surface Type		
	Paved	Gravel	Earth
Proposed	100 percent	100 percent	0 percent
Primitive	100 percent	100 percent	0 percent
Earth	100 percent	100 percent	0 percent
Gravel	100 percent	* 100 percent	0 percent
Bituminous <2"	100 percent	0 percent	0 percent
Bituminous >2"	0 or 100 percent	0 percent	0 percent
Concrete	0 or 100 percent	0 percent	0 percent

* If the Surface Condition Index (SCI) is 40 or less indicating that reconstruction will be required, then 100 percent of the aggregate cost will be required. If greater than 40, then none of the aggregate cost will be applied.

TABLE 6 - PERCENT OF PAVEMENT SURFACE COST REQUIRED

Table 6 Summarizes the percentage of pavement surface costs for existing conditions required based on all possible scenarios of existing surface type conditions and calculated future surface type. Pavement overlays are calculated at 100 percent of the pavement costs.

TABLE 6 - PERCENT OF PAVEMENT SURFACE COST REQUIRED

Existing Surface Type	Future Surface Type		
	Paved	Gravel	Earth
Proposed	100 percent	100 percent	0
Primitive	100 percent	100 percent	0
Earth	100 percent	100 percent	0
Gravel	100 percent	100 percent	0
Bituminous < 2"	100 percent	0 percent	0
Bituminous > 2"	0 or 100 percent*	0 percent	0
Concrete	0 or 100 percent*	0 percent	0

* If the Surface Condition Index (SCI) is 60 or less indicating that reconstruction will be required, then 100 percent of the aggregate cost will be required. If greater than 60, then none of the aggregate cost will be applied.

TABLE 7 - PERCENT OF INCIDENTAL CONSTRUCTION COST REQUIRED

Incidental cost items are generally required if a project includes construction or reconstruction of the roadbed. Some incidental items are included in all road improvement projects, while others are only required for specific projects. Table 7 summarizes the incidental construction determination estimating procedure for each of the Roadbed Category Codes. As shown in Table 4, roadbed condition codes 0 through 2 will require 65 percent of the incidental costs for 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	MAINTENANCE OF TRAFFIC REQUIRED
0	Proposed Road.	65 percent	N/A
1	Primitive Trail.	65 percent	N/A
2	Bladed Unimproved Earth Road, Poor Drainage, Poor Alignment.	65 percent	N/A
3	Minimum Built-up Roadbed (shallow cuts and fills) with inadequate drainage and alignment that generally follows existing ground.	N/A	75 percent
4	A designed and constructed roadbed with some drainage and alignment improvements required.	N/A	75 percent
5	A roadbed constructed to the adequate standards with good horizontal and vertical alignment and proper drainage. Requiring surfacing.	N/A	30 percent
6	A roadbed constructed to adequate standards with curb and gutter on one side. Requiring surfacing.	N/A	30 percent
7	A roadbed constructed to adequate standards with curb and gutter on both sides. Requiring surfacing.	N/A	30 percent

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	Per Cent of Total Incidental Construction Cost
Fencing	1 percent
Landscaping	9 percent
Structural Concrete	9 percent
Traffic Signals	3 percent
Utilities	3 percent

Subpart E--Service Delivery for Indian Reservation Roads

Funding Process

Sec. 170.600 What must BIA include in the notice of funds availability?

(a) Upon receiving the total fiscal year of TTP funding from FHWA, BIA will provide a notice of funds availability to each BIA Regional Office and FHWA that includes the total funding available to each tribe within each region as determined by 23 U.S.C. 202(b) and (c);

A listing of FHWA-approved TTP projects (TTPTIP) is made available through the BIA Transportation and FHWA websites.

(b) Upon receipt of the information identified in (a), the BIA Region and FHWA will forward the information to the tribes along with an offer of technical assistance in carrying out the tribe's transportation program.

Sec. 170.602 If a tribe incurs unforeseen construction costs, can it get additional funds?

- a. If a tribe under a self-determination contract incurs unforeseen construction costs, it may request additional funds from the Secretary in accordance with 25 CFR 900.130(e).
- b. No additional funding is available for unforeseen construction costs under any other contract or agreement.

Miscellaneous Provisions

Sec. 170.605 May BIA or FHWA use force account methods in the TTP?

When requested by a tribe, BIA or FHWA may use force account methods in carrying out the eligible work of the TTP. Applicable Federal acquisition laws and regulations apply to BIA and FHWA when carrying out force account activities on behalf of a tribe.

Sec. 170.606 How do legislation and procurement requirements affect the TTP?

Other legislation and procurement requirements apply to the TTP as shown in the following table:

Legislation, regulation or other requirement	Applies to tribes under self-determination contracts	Applies to tribes under self-governance agreements	Applies to tribes under BIA or FHWA Program Agreements	Applies to activities performed by the Secretary
Buy Indian Act	No	No	No	Yes
Buy American Act	No	No	No	Yes
Federal Acquisition Regulation (FAR)	No(1)	No	No	Yes
Federal Tort Claims Act	Yes	Yes	Yes	Yes
Davis-Bacon Act	Yes(2)	Yes(2)	Yes(2)	Yes

(1) Unless agreed to by the tribe or tribal organization under ISDEAA, 25 U.S.C. 450j(a), and 25 CFR part 900.115

(2) Does not apply when tribe performs work with its own employees.

Sec. 170.607 Can a tribe use its allocation of TTP funds for contract support costs?

Yes. Contract support costs are an eligible item out of a tribe’s TTP allocation and need to be included in a tribe’s project construction budget.

Sec. 170.608 Can a tribe pay contract support costs from Department of the Interior or BIA appropriations?

No. Contract support costs for TTP construction projects cannot be paid out of Department of the Interior or BIA appropriations.

Sec. 170.609 Can a tribe receive additional TTP funds for start-up activities?

No. Additional TTP funding for start-up activities is not available.

Contracts and Agreements

Sec. 170.610 What TTP functions may a tribe assume under ISDEAA, FHWA Program Agreements, and other appropriate agreements?

A tribe may assume all TTP functions and activities that are otherwise contractible and non-inherently Federal under self-determination contracts, self-governance agreements, FHWA Program Agreements; and other appropriate agreements.

(a) Administrative support functions are an eligible use of TTP funding by the tribes.

(b) Appendix A to this subpart contains a list of non-contractible functions and activities that cannot be included in contracts or agreements.

Sec. 170.611 What special provisions apply to ISDEAA contracts and agreements?

(a) Multi-year contracts and agreements. The Secretary can enter into a multi-year TTP self-determination contract and self-governance agreement with a tribe under sections 105(c)(1)(A) and (2) of ISDEAA. The amount of such contracts or agreements is subject to the availability of appropriations.

(b) Consortia. Under Title I and Title IV of ISDEAA, tribes and multi-tribal organizations are eligible to assume TTPs under consortium contracts or agreements. For an explanation of self-determination contracts, refer to Title I, 25 U.S.C. 450f. For an explanation of self-governance agreements, see Title IV, 25 U.S.C. 450b(1) and 458b(b)(2).

(c) Advance payments. The Secretary and the tribe must negotiate a schedule of advance payments as part of the terms of a self-determination contract in accordance with 25 CFR 900.132.

(d) Design and construction contracts. The Secretary can enter into a design/construct TTP self-determination contract that includes both the design and construction of one or more TTP projects. The Secretary may make advance payments to a tribe:

(1) Under a self-determination design/construct contract for construction activities based on progress, need, and the payment schedule negotiated under 25 CFR 900.132; and

(2) Under a self-governance agreement in the form of annual or semiannual installments as indicated in the agreement.

Sec. 170.612 How are non-contractible functions funded?

All non-contractible TTP "program" and "project" functions are funded by the Administrative expenses identified in 23 USC 202(a)(6).

Sec. 170.613 When do BIA and FHWA determine the amount of funds needed for non-contractible non-project related functions?

Each year, the Secretaries will develop a national and regional budget that distributes the administrative funding identified in 23 USC 202(a)(6). These funds are only for use by BIA and FHWA transportation personnel performing program management and oversight, and project-related administration activities.

Sec. 170.614 Can a tribe receive funds before BIA publishes the final notice of funding availability?

A tribe can receive funds before BIA publishes the final notice of funding availability required by Sec. 170.600(a) when partial year funding is made available to the TTP through continuing resolutions or other Congressional actions.

Sec. 170.615 Can a tribe receive advance payments for non-construction activities under the TTP?

Yes. A tribe must receive advance payments for non-construction activities under 25 U.S.C. 4501 for self-determination contracts on a quarterly, semiannual, lump-sum, or other basis proposed by a tribe and authorized by law.

Sec. 170.616 How are payments made to tribes if additional funds are made available from Chapter 2 of Title 23?

After an Agreement between BIA or FHWA and the Tribe is executed, any additional funds will be made available to tribes under the terms of the executed Agreement.

Sec. 170.617 May a tribe include a contingency in its proposal budget?

(a) A tribe with a self-determination contract may include a contingency amount in its proposed budget in accordance with 25 CFR 900.127(e)(8).

(b) A tribe with a self-governance agreement may include a project-specific line item for contingencies if the tribe does not include its full TTP funding allocation in the agreement.

(c) The amounts in both paragraphs (a) and (b) of this section must be within the tribal share made available or within the negotiated ISDEAA contract or agreement.

Sec. 170.618 Can a tribe keep savings resulting from project administration?

All funds made available to a tribe through the 23 U.S.C 202(b) are considered "tribal" and are available to the tribe until expended.

Sec. 170.619 Do tribal preference and Indian preference apply to TTP funding?

Tribal preference and Indian preference apply to TTP funding as shown in the following table:

If...	Then...
(a) A contract serves a single tribe.....	Section 7(c) under Title I of ISDEAA allows tribal employment or contract preference laws, including tribe local preference laws, to govern.
(b) A contract serves more than one tribe.	Section 7(b) under Title I of ISDEAA applies.
(c) A self-governance agreement exists under Title IV of ISDEAA.	25 CFR 1000.406 applies. .

Sec. 170.620 How do ISDEAA's Indian preference provisions apply?

This section applies when the Secretary or a tribe enters into a cooperative, reimbursable, or other agreement with a State or local government for a TTP construction project. The tribe and the parties may choose to incorporate the provisions of section 7(b) of ISDEAA in the agreement.

Sec. 170.621 What if a tribe fails to substantially perform work under a contract or agreement?

If a tribe fails to substantially perform work under a contract or agreement:

- (a) For self-determination contracts, the Secretary must use the monitoring and enforcement procedures in 25 CFR 900.131(a)-(b) and ISDEAA, part 900 subpart L (appeals);
- (b) For self-governance agreements, the Secretary must use the monitoring and enforcement procedures in 25 CFR part 1000 subpart K.
- (c) For FHWA or BIA TTP Agreements, the Secretaries will utilize the procedures identified in such Agreements.

Sec. 170.622 What TTP program, functions, services, and activities are subject to the self-governance construction regulations?

All TTP design and construction projects and activities, whether included separately or under a program in the agreement, are subject to the regulations in 25 CFR 1000 subpart K, including applicable exceptions.

Sec. 170.623 How are TTP projects and activities included in a self-governance agreement?

To include a TTP project or activity in a self-governance agreement, the following information is required:

- (a) All work must be included in the FHWA-approved TTPTIP; and
- (b) All other information required under 25 CFR 1000 subpart K.

Sec. 170.624 Is technical assistance available?

Yes. Technical assistance is available from BIA, the Office of Self-Governance, and FHWA for tribes with questions about contracting the TTP or TTP projects.

Sec. 170.625 What regulations apply to waivers?

The following regulations apply to waivers:

- (a) For self-determination contracts, 25 CFR 900.140-148;
- (b) For self-governance agreements, 25 CFR 1000.220-232;
- (c) For direct service, 25 CFR 1.2.

Sec. 170.626 How does a tribe request a waiver of a Department of Transportation regulation?

(a) When a tribe enters into contracts or agreements with the Secretary, the following applies:

(1) A tribe must follow the procedures in ISDEAA, Title I, and 25 CFR 900.140-148 for self-determination contracts and Title IV, 25 CFR 1000.220-232 for tribal self-governance agreements. A courtesy copy of the request should be sent to the Secretary of Transportation at: 1200 New Jersey Ave. SE., HFL-1, Washington, DC 20590.

(b) When a tribe enters into contracts or agreements with the Secretary of Transportation, the following applies:

(1) The request must be made to the Secretary of Transportation at: 1200 New Jersey Ave. SE., HFL-1, Washington, DC 20590.

Appendix A to Subpart E--TTP Functions That Are Not Otherwise Contractible

The program functions listed in this appendix cannot be included in a self-determination contract or self-governance agreement. (23 U.S.C. 202(b)(6)(B) and 23 USC 202(b)(7)(B))

A. TTP project-related pre-contracting activities:

1. Notifying tribes of available funding including the right of first refusal; and

2. Providing technical assistance.

B. TTP project-related contracting activities:

1. Providing technical assistance;

2. Reviewing all scopes of work under 25 CFR 900.122;

3. Evaluating proposals and making declination decisions, if warranted;

4. Performing declination activities;

5. Negotiating and entering into contracts or agreements with State, tribal, and local governments and other Federal agencies;

6. Processing progress payments or contract payments;

7. Approving contract modifications;

8. Processing claims and disputes with tribal governments; and

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9. Closing out contracts or agreements.

C. Planning activities:

1. Reviewing and approving TTP transportation improvement programs developed by tribes or other contractors;

2. Reviewing and approving TTP long-range transportation plans developed by tribes or other contractors; and

D. Environmental and historical preservation activities:

1. Reviewing and approving all items required for environmental compliance; and

2. Reviewing and approving all items required for archaeological compliance.

E. Processing rights-of-way:

1. Reviewing rights-of-way applications and certifications;

2. Approving rights-of-way documents;

3. Processing grants and acquisition of rights-of-way requests for tribal trust and allotted lands under 25 CFR part 169;

4. Responding to information requests;

5. Filing Affidavit of Completion Forms; and

6. Performing custodial functions related to storing rights-of-way documents.

F. Conducting project development and design under 25 CFR 900.131:

1. Participating in the plan-in-hand reviews on behalf of BIA as facility owner;

2. Reviewing and/or approving plans, specifications, and cost estimates (PS&E's) for health and safety assurance on behalf of BIA as facility owner;

3. Reviewing PS&E's to assure compliance with NEPA as well as all other applicable Federal laws; and

4. Reviewing PS&E's to assure compliance with or exceeding Federal standards for TTP design and construction.

G. Construction:

1. Making application for clean air/clean water permits as facility owner;

2. Ensuring that all required State/tribal/Federal permits are obtained;

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3. Performing quality assurance activities;
4. Conducting value engineering activities as facility owner;
5. Negotiating with contractors on behalf of Federal Government;
6. Approving contract modifications/change orders;
7. Conducting periodic site visits;
8. Performing all Federal Government required project-related activities contained in the contract documents and required by 25 CFR parts 900 and 1000;
9. Conducting activities to assure compliance with safety plans as a jurisdictional responsibility hazardous materials, traffic control, OSHA, etc.;
10. Participating in final inspection and acceptance of project documents as built drawings on behalf of BIA as facility owner; and
11. Reviewing project closeout activities and reports.

H. Other activities:

1. Performing other non-contractible required TTP project activities contained in this part, ISDEAA and part 1000; and
2. Other Title 23 non-project-related management activities.

I. BIADOT program management:

1. Developing budget on needs for the TTP;
2. Developing legislative proposals;
3. Coordinating legislative activities;
4. Developing and issuing regulations;
5. Developing and issuing TTP planning, design, and construction standards;
6. Developing/revising interagency agreements;
7. Developing and approving TTP stewardship agreements in conjunction with FHWA;
8. Developing annual TTP obligation and TTP accomplishments reports;
9. Developing reports on TTP project expenditures and performance measures for the Government Performance and Results Act (GPRA);
10. Responding to/maintaining data for congressional inquiries;
11. Developing and maintaining funding formula and its database;

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12. Allocating TTP and other transportation funding;
13. Providing technical assistance to tribe/tribal organizations/agencies/regions;
14. Providing national program leadership for: National Scenic Byways Program, Public Lands Highways Discretionary Program, Transportation Enhancement Program, Indian Local Technical Assistance Program, Recreational Travel and Tourism, Transit Program, ERFO Program, Presidential initiatives (Millennium Trails, Lewis & Clark, Western Tourism Policy Group);
15. Participating in and supporting tribal transportation association meetings;
16. Coordinating with and monitoring Indian Local Technical Assistance Program centers;
17. Planning, coordinating, and conducting BIA/tribal training;
18. Developing information management systems to support consistency in data format, use, etc., with the Secretary of Transportation for the TTP;
19. Participating in special transportation related workgroups, special projects, task forces and meetings as requested by tribes;
20. Participating in national, regional, and local transportation organizations;
21. Participating in and supporting FHWA Coordinated Technology Implementation program;
22. Participating in national and regional TTP meetings;
23. Consulting with tribes on non-project related TTP issues;
24. Participating in TTP, process, and product reviews;
25. Developing and approving national indefinite quantity service contracts;
26. Assisting and supporting the TTP Coordinating Committee;
27. Processing TTP Bridge program projects and other discretionary funding applications or proposals from tribes;
28. Coordinating with FHWA;
29. Performing stewardship of the TTP;
30. Performing oversight of the TTP and its funded activities;
31. Performing any other non-contractible TTP activity included in this part; and
32. Determining eligibility of new uses of TTP funds.

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J. BIADOT Planning:

1. Maintaining the official TTP inventory;
2. Reviewing long-range transportation plans;
3. Reviewing and approving TTP transportation improvement programs;
4. Maintaining nationwide inventory of TTP strip and atlas maps;
5. Coordinating with tribal/State/regional/local governments;
6. Developing and issuing procedures for management systems;
7. Distributing approved TTP transportation improvement programs to BIA regions;
8. Coordinating with other Federal agencies as applicable;
9. Coordinating and processing the funding and repair of damaged Indian Reservation Roads with FHWA;
10. Calculating and distributing TTP transportation planning funds to BIA regions;
11. Reprogramming unused TTP transportation planning funds at the end of the fiscal year;
12. Monitoring the nationwide obligation of TTP transportation planning funds;
13. Providing technical assistance and training to BIA regions and tribes;
14. Approving Atlas maps;
15. Reviewing TTP inventory information for quality assurance; and
16. Advising BIA regions and tribes of transportation funding opportunities.

K. BIADOT engineering:

1. Participating in the development of design/construction standards with FHWA;
2. Developing and approving design/construction/maintenance standards;
3. Conducting TTP/product reviews; and
4. Developing and issuing technical criteria for management systems.

L. BIADOT responsibilities for bridges:

1. Maintaining BIA National Bridge Inventory information/database;
2. Conducting quality assurance of the bridge inspection program;

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3. Reviewing and processing TTP Bridge program applications;
4. Participating in second level review of TTP bridge PS-E's; and
5. Developing criteria for bridge management systems.

M. BIADOT responsibilities to perform other non-contractible required TTP activities contained in this part.

N. BIA regional offices program management:

1. Designating TTP System roads;
2. Notifying tribes of available funding;
3. Developing state TTP transportation improvement programs;
4. Providing FHWA-approved TTP transportation improvement programs to tribes;
5. Providing technical assistance to tribes/tribal organizations/agencies;
6. Funding common services as provided as part of the region/agency/BIA Division of Transportation TTP costs;
7. Processing and investigating non-project related tort claims;
8. Preparing budgets for BIA regional and agency TTP activities;
9. Developing/revising interagency agreements;
10. Developing control schedules/transportation improvement programs;
11. Developing regional TTP stewardship agreements;
12. Developing quarterly/annual TTP obligation and program accomplishments reports;
13. Developing reports on TTP project expenditures and performance measures for Government Performance and Results Act (GPRA);
14. Responding to/maintaining data for congressional inquiries;
15. Participating in Indian transportation association meetings;
16. Participating in Indian Local Technical Assistance Program (LTAP) meetings and workshops;
17. Participating in BIA/tribal training development highway safety, work zone safety, etc;
18. Participating in special workgroups, task forces, and meetings as requested by tribes and BIA region/agency personnel;

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19. Participating in national, regional, or local transportation organizations meetings and workshops;
 20. Reviewing Coordinated Technology Implementation Program project proposals;
 21. Consulting with tribal governments on non-project related program issues;
 22. Funding costs for common services as provided as part of BIA TTP region/ agency/contracting support costs;
 23. Reviewing TTP Atlas maps;
 24. Processing Freedom of Information Act (FOIA) requests;
 25. Monitoring the obligation and expenditure of all TTP funds allocated to BIA region;
 26. Performing activities related to the application for ERFO funds, administration, and oversight of such funds; and
 27. Participating in TTP, process, and product reviews.
- O. BIA regional offices' planning:
1. Coordinating with tribal/State/regional/local government;
 2. Coordinating and processing the funding and repair of damaged Indian Reservation Roads with tribes;
 3. Reviewing and approving TTP Inventory data;
 4. Maintaining, reviewing, and approving the management systems databases;
 5. Reviewing and approving TTP State transportation improvement programs; and
 6. Performing Federal responsibilities identified in the TTP Transportation Planning Procedures and Guidelines manual.
- P. BIA regional offices' engineering:
1. Approving tribal standards for the TTP use;
 2. Developing and implementing new engineering techniques in the TTP; and
 3. Providing technical assistance.
- Q. BIA regional offices' responsibilities for bridges:
1. Reviewing and processing TTP bridge program applications;
 2. Reviewing and processing TTP bridge inspection reports and information; and

3. Ensuring the safe use of roads and bridges.

R. BIA regional offices' other responsibilities for performing other non-contractible required TTP activities contained in this part.

Subpart F--Program Oversight and Accountability

Sec. 170.700 What is the TTP stewardship plan?

The TTP stewardship plan delineates the respective roles and responsibilities of BIA and FHWA in the administration of the TTP and the process used for fulfilling those roles and responsibilities.

Sec. 170.701 May a direct service tribe and BIA Region sign a Memorandum of Understanding?

Yes. A TTP tribal/BIA region MOU is a document that a direct service tribe and BIA may enter into to help define the roles, responsibilities and consultation process between the regional BIA office and the **Indian** tribal government. It describes how the TTP will be carried out by BIA on the tribe's behalf.

Sec. 170.702 What activities may the Secretaries review and monitor?

The Secretaries review and monitor the performance of all TTP activities.

Sec. 170.703 What program reviews do the Secretaries conduct?

(a) BIADOT and FHWA conduct formal program reviews of BIA Regional Offices or tribes to examine program procedures and identify improvements. For a BIA Regional Office review, the regional tribes will be notified of these formal program reviews. Tribes may send representatives to these meetings at their own expense.

(b) The review will provide recommendations to improve the program, processes and controls of the following activities:

- (1) Administrative 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 review, the review team must:

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

(2) Within 60 days of the review, provide a written report of its findings and recommendations to the tribe, reviewed office, BIA, all participants, and affected tribal governments and organizations.

Sec. 170.704 What happens when the review process identifies areas for improvement?

When the review process identifies areas for improvement:

(a) The tribe or regional office must develop a corrective action plan within 60 days;

(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 tribe or BIA regional office implements the plan and reports either annually or biennially to BIADOT and FHWA on implementation accomplishments.

Subpart G—Maintenance Programs

Sec. 170.800 Who has authority to finance, build, operate, or maintain toll or toll free tribal transportation facilities?

Public authorities such as tribes, States, counties, local governments, and the Federal Government have authority to finance, build, operate, or maintain toll or toll free tribal transportation facilities.

Sec. 170.801 What is the BIA Transportation Facility Maintenance Program?

Congress provides funding for the BIA Transportation Facility Maintenance Program in the annual Department of the Interior appropriations acts. It is used for maintaining the BIA Road System and BIA transportation facilities. Appendix A to this subpart contains a list of activities that are eligible for funding under the BIA transportation facility maintenance program.

Sec. 170.802 Can TTP funding be used for maintenance?

Yes. In accordance with 23 USC 202(a)(8), a tribe may use not more than the greater of an amount equal to 25 percent of its TTP funds or \$500,000 of its TTP funds for the purpose of maintenance. These funds can only be used to maintain the public facilities included in the NTTFI. Road sealing activities shall not be subject to this limitation.

Sec. 170.803 What facilities are eligible under the BIA transportation facility maintenance program and the TTP?

(a) TTP funds can be used for the maintenance of TTP facilities identified in the NTTFI.

(b) BIA Transportation Facility Maintenance Funding shall only be used on:

(1) BIA transportation facilities such as:

(a) BIA road systems and related road appurtenances such as signs, traffic signals, pavement striping, trail markers, guardrails, etc.;

(b) Highway bridges and drainage structures;

(c) Airport runways and heliport pads, including runway lighting;

(d) Boardwalks;

(e) Adjacent parking areas;

(f) Maintenance yards;

(g) Bus stations;

(h) System public pedestrian walkways, paths, bike and other trails;

(i) Motorized vehicle trails;

(j) Public access roads to heliports and airports;

(k) BIA and tribal post-secondary school roads and parking lots built with TTP Program funds; and

(l) Public ferry boats and boat ramps.

(2) Other transportation facilities as approved by the Secretary.

Sec. 170.804 Can any of the funds identified for maintenance in §§ 170.802-803(a) be used to improve TTP transportation facilities?

No. The funds identified for maintenance in §§ 170.802-803(a) cannot be used to improve roads or other TTP transportation facilities to a higher road classification, standard or capacity.

Sec. 170.805 Can a tribe perform road maintenance?

Yes. A tribe may enter into self-determination contracts, self-governance agreements, FHWA Program Agreements, and other appropriate agreements, depending on the funding source to perform tribal transportation facility maintenance.

Sec. 170.806 To what standards must a TTP transportation facility be maintained?

Subject to availability of funding, TTP transportation facilities must be maintained in accordance with an applicable standard that meets or exceeds any of the following:

- (a) Appropriate National Association of County Engineers maintenance standards;
- (b) AASHTO road and bridge maintenance manuals, latest edition; or
- (c) Other applicable tribal, Federal, State, or local government maintenance standards as may be negotiated in an ISDEAA road maintenance self-determination contract or self-governance agreement.

Sec. 170.807 What happens if lack of funds results in inadequate maintenance?

If BIA determines that an TTP transportation facility is not being maintained under TTP TFMMS standards due to insufficient funding, the Secretary will notify the facility owner, and if BIA owned, continue to request annual maintenance funding for that facility. In addition, the Secretary will report these findings to the Secretary of Transportation under 23 U.S.C. 201(a). The Secretary will provide a draft copy of the report to the affected tribe for comment before forwarding it to Secretary of Transportation.

Sec. 170.808 What is emergency maintenance?

Emergency maintenance is work that must be accomplished immediately because of life threatening circumstances due to a catastrophic failure or natural disaster. Examples of emergency maintenance include: ice and snow control, traffic control, work in slide areas, repairs to drainage washouts, retrieving hazardous materials, suppressing wild fires, and repairing the ravages of other disasters.

Appendix A to Subpart G--List of Activities Eligible for Funding Under BIA Facility and Tribal Transportation Facility Maintenance

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The following activities are eligible for BIA Facility and Tribal Transportation Facility Maintenance funding. The list is not all-inclusive.

1. Cleaning and repairing ditches and culverts.
2. Stabilizing, removing, and controlling slides, drift sand, mud, ice, snow, and other impediments.
3. Adding additional culverts to prevent roadway and adjoining property damage.
4. Repairing, replacing or installing traffic control devices, guardrails and other features necessary to control traffic and protect the road and the traveling public.
5. Removing roadway hazards.
6. Repairing or developing stable road embankments.
7. Repairing parking facilities and appurtenances such as striping, lights, curbs, etc.
8. Repairing transit facilities and appurtenances such as bus shelters, striping, sidewalks, etc.
9. Training maintenance personnel.
10. Administering the BIA transportation facility maintenance program.
11. Performing environmental/archeological mitigation associated with transportation facility maintenance.
12. Leasing, renting, or purchasing of maintenance equipment.
13. Paying utilities cost for roadway lighting and traffic signals.
14. Purchasing maintenance materials.
15. Developing, implementing, and maintaining an BIA Transportation Facility Maintenance Management System (TFMMS).
16. Performing pavement maintenance such as pot hole patching, crack sealing, chip sealing, surface rejuvenation, and thin overlays (less than 1 inch).
17. Performing erosion control.
18. Controlling roadway dust.
19. Re-graveling roads.
20. Controlling vegetation through mowing, noxious weed control, trimming, etc.
21. Making bridge repairs.
22. Paying the cost of closing of transportation facilities due to safety or other concerns.

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23. Maintaining airport runways, heliport pads, and their public access roads.

24. Maintaining and operating BIA public ferry boats.

25. Making highway alignment changes for safety reasons. These changes require prior notice to the Secretary.

26. Making temporary highway alignment or relocation changes for emergency reasons.

27. Maintaining other TTP intermodal transportation facilities provided that there is a properly executed agreement with the owning public authority within available funding.

Subpart H--Miscellaneous Provisions

Hazardous and Nuclear Waste Transportation

Sec. 170.900 What is the purpose of the provisions relating to transportation of hazardous and nuclear waste?

Sections 170.900 through 170.906 on transportation of nuclear and hazardous waste are provided for information only, they do not create any legal responsibilities or duties for any person or entity, and are not intended to create any basis for a cause of action under the Federal Tort Claims Act.

Sec. 170.901 What standards govern transportation of radioactive and hazardous materials?

DOT, the International Atomic Energy Agency, the U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency have established standards and regulations for the shipment of radioactive and hazardous materials. Legal authority includes, but is not limited to, 23 U.S.C. 141; 23 U.S.C. 127; 49 CFR parts 107, 171-180; 10 CFR part 71. And 49 USC 5115

Sec. 170.902 What is the role of State, tribal, and local governments?

State, tribal, and local governments typically provide for the safety of their residents and other persons and protection of resources within their jurisdictions. With respect to radioactive and hazardous materials, some State, tribal, and local governments enact legislation, execute cooperative agreements, designate alternate transportation routes, develop emergency response plans, perform emergency response, issue permits, conduct vehicle inspections, enforce traffic laws, and perform highway construction and maintenance. These activities must not conflict with Federal laws and regulations.

Sec. 170.903 Who notifies tribes of the transport of radioactive waste?

The Department of Energy (DOE) has elected, by policy, to notify tribes of DOE shipments through their jurisdiction.

Sec. 170.904 Who responds to an accident involving a radioactive or hazardous materials shipment?

Tribal, Federal, local, and State police, fire departments, and rescue squads are often the first to respond to transportation accidents involving radioactive or hazardous materials. If radioactive materials are involved, DOE typically:

(a) Ensures that appropriate State and tribal agencies are contacted and coordinate any necessary Radiological Assistance Program team activities; and

(b) Dispatches a Radiological Assistance Program team that may include nuclear engineers, health physicists, industrial hygienists, public affairs specialists, and other personnel who provide related services.

Sec. 170.905 How can tribes obtain training in handling hazardous material?

(a) Tribes cannot use TTP funds to train personnel to handle radioactive and hazardous material.

(b) Tribes can seek training from DOE, EPA, NRC, OSHA, States, and other sources. Funding is available from DOT under the Hazardous Materials Uniform Safety Act or the Hazardous Materials Transportation Safety Improvement Act of 2012, EPA for monitoring and FEMA for general preparedness.

Sec. 170.906 Who cleans up radioactive and hazardous material spills?

The carrier is typically responsible for cleanup of a radioactive or hazardous material spill with assistance from the shipper using established standards and guidelines. The carrier should work with the appropriate tribal, local, State and Federal agencies to address all cleanup issues, such as arranging or repackaging of the cargo, if necessary, and disposing of contaminated materials.

Reporting Requirements and Indian Preference

Sec. 170.910 What information on the TTP or projects must BIA or FHWA provide to tribes?

At the written request of a tribe, BIA or FHWA must provide available information on the TTP or projects to a tribe within a reasonable time.

Sec. 170.911 Are Indians entitled to employment and training preferences?

(a) Federal law gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under the TTP.

(b) Under 25 U.S.C. 450e(b), 23 U.S.C. 140(d), and 23 U.S.C. 202(a)(3), Indian organizations and Indian owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts and sub-grants for all work performed under the TTP.

Sec. 170.912 Does Indian employment preference apply to Federal-aid Highway Projects?

(a) Tribal, State, and local governments may provide an Indian employment preference for Indians living on or near a reservation on projects and contracts that meet the definition of a tribal transportation facility. (See 23 U.S.C. 101(a)(12) and 140(d), and 23 CFR 635.117(d).)

(b) Tribes may target recruiting efforts toward Indians living on or near Indian reservations, Indian lands, Alaska Native villages, pueblos, and Indian communities.

(c) Tribes and tribal employment rights offices should work cooperatively with State and local governments to develop contract provisions promoting employment opportunities for Indians on eligible federally funded transportation projects. Tribal, State, and local representatives should confer to establish Indian employment goals for these projects.

Sec. 170.913 Do tribal-specific employment rights and contract preference laws apply?

Yes. When a tribe or consortium administers an TTP or project intended to benefit that tribe or a tribe within the consortium, the benefitting tribe's employment rights and contracting preference laws apply. (See Sec. 170.619 and 25 U.S.C. 450e(c))

Sec. 170.914 What is the difference between tribal preference and Indian preference?

Indian preference is a hiring preference for Indians in general. Tribal preference is a preference adopted by a tribal government that may or may not include a preference for Indians in general, Indians of a particular tribe, Indians in a particular region, or any combination thereof.

Sec. 170.915 May tribal employment taxes or fees be included in a TTP project budget?

Yes. The cost of tribal employment taxes or fees may be included in the budget for a TTP project.

Sec. 170.916 May tribes impose taxes or fees on those performing TTP services?

Yes. Tribes, as sovereign nations, may impose taxes and fees for TTP activities. When a tribe administers TTPs or projects under ISDEAA, its tribal employment and contracting preference laws, including taxes and fees, apply.

Sec. 170.917 Can tribes receive direct payment of tribal employment taxes or fees?

This section applies to non-tribally administered TTP projects. Tribes can request that BIA pay tribal employment taxes or fees directly to them under a voucher or other written payment instrument, based on a negotiated payment schedule. Tribes may consider requesting direct payment of tribal employment taxes or fees from other transportation departments in lieu of receiving their payment from the contractor.

Emergency Relief

Sec. 170.920 What is the purpose of the provisions relating to emergency relief?

Sections 170.920 through 170.927 relating to emergency relief are provided for information only and do not change the provisions of 23 CFR part 668 or the Emergency Relief for Federally Owned Roads Disaster Assistance Manual.

Sec. 170.921 What emergency or disaster assistance programs are available?

(a) Three programs are available to address emergency or disaster needs:

(1) The Emergency Relief (ER) Program, which provides disaster assistance for Federal-aid highways owned by State, county and local governments; and

(2) The Emergency Relief for Federally Owned Roads (ERFO) Program, which provides disaster assistance for Federal roads, including TTP facilities, which have been damaged due to natural disasters (floods, hurricanes, tornadoes, etc.). The intent of the ERFO program is to pay the unusually heavy expenses in the repair and reconstruction of Federal roads 23 CFR 668.205(a). The ERFO program is not intended to cover all repair costs nor interim emergency repair costs that are necessary to repair or reconstruct Federal roads.

(3) The Tribal High Priority Projects Program (See Subpart I).

(b) The Federal Emergency Management Agency (FEMA) may be considered as an alternate funding source to repair damage that is ineligible under the ER or ERFO Programs.

Sec. 170.922 How can States get Emergency Relief Program funds to repair TTP System damage?

States can request emergency relief program funds to repair damage to Federal-aid highways caused by natural disasters or catastrophic failures. It is the responsibility of individual States to request these funds.

Sec. 170.923 What qualifies for ERFO funding?

(a) Tribes can use ERFO funding to repair damage to TTP transportation facilities (including roads, bridges, and related structures) caused by natural disaster over a widespread area or by a catastrophic failure from any external cause. The Secretary of Transportation determines eligible repairs under 23 CFR 668, subpart B.

(1) Examples of natural disasters include, but are not limited to, floods, earthquakes, tornadoes, landslides, avalanches or severe storms, such as saturated surface conditions and high-water table caused by precipitation over an extended period of time.

(2) An example of a catastrophic failure includes, but is not limited to, a bridge collapse after being struck by a barge, truck or a landslide.

(b) Structural deficiencies, normal physical deterioration, and routine heavy maintenance do not qualify for ERFO funding.

Sec. 170.924 What happens if DOT denies an ERFO claim?

The appealing tribe or the facility owner (if the tribe is not the owner) may appeal the finding or determination to the Secretary of Transportation at: FHWA, 1200 New Jersey Ave., SE., HFL-1, Washington, DC 20590. If the tribe is appealing it must provide a courtesy copy of its appeal to BIA.

Sec. 170.925 Is ERFO funding supplemental to TTP funding?

Yes. If ERFO funds are approved and available, they can be used to supplement TTP construction and maintenance funds for FHWA-approved repairs. If TTP or BIA maintenance program funds are used to address an approved claim when ERFO funds are unavailable, the next authorized ERFO funds may be used to reimburse the construction or maintenance funds expended.

Sec. 170.926 Can a tribe administer approved ERFO repairs under a self-determination contracts, self-governance agreements, FHWA Program Agreements, and other appropriate agreements?

Yes.

Sec. 170.927 How can FEMA Program funds be used to repair damage?

(a) A tribe can request FEMA Program funds for emergency repairs to damaged roads not on the TTP System if the President has declared a major disaster or emergency. The tribe makes the request by submitting an application per the directions found on www.fema.gov.

(b) Tribes can ask States to seek FEMA Program funds to repair damage to roads not on the TTP System.

Tribal Transportation Departments

Sec. 170.930 What is a tribal transportation department?

A tribal transportation department is a department, commission, board, or official of any tribal government charged by its laws with the responsibility for highway construction. Tribal governments, as sovereign nations, have inherent authority to establish their own transportation departments under their own tribal laws. Tribes may staff and organize transportation departments in any manner that best suits their needs. Tribes can receive technical assistance from TTACs, BIA regional road engineers, FHWA, or AASHTO to establish a tribal transportation department.

Sec. 170.931 Can tribes use TTP funds to pay tribal transportation department operating costs?

Yes. Tribes can use TTP funds to pay the cost of planning, administration, and performance of approved TTP activities (see appendix A, subpart B). Tribes can also use BIA road maintenance funds to pay the cost of planning, administration, and performance of maintenance activities under this part.

Sec. 170.932 Are there other funding sources for tribal transportation departments?

There are many sources of funds that may help support a tribal transportation department. The following are some examples of additional funding sources:

- (a) Tribal general funds;
- (b) Tribal Priority Allocation;
- (c) Tribal permits and license fees;
- (d) Tribal fuel tax;
- (e) Federal, State, private, and local transportation grants assistance;
- (f) Tribal Employment Rights Ordinance fees (TERO); and
- (g) Capacity building grants from Administration for Native Americans and other organizations.

Sec. 170.933 Can tribes regulate oversize or overweight vehicles?

Yes. Tribal governments can regulate travel on roads under their jurisdiction and establish a permitting process to regulate the travel of oversize or overweight vehicles, in accordance with applicable Federal law. BIA may, with the consent of the affected tribe, establish a permitting process to regulate the travel of oversize or overweight vehicles on BIA-system roads.

Resolving Disputes

Sec. 170.934 Are alternative dispute resolution procedures available?

(a) Federal agencies should use mediation, conciliation, arbitration, and other techniques to resolve disputes brought by TTP beneficiaries. The goal of these alternative dispute resolution (ADR) procedures is to provide an inexpensive and expeditious forum to resolve disputes. Federal agencies should resolve disputes at the lowest possible staff level and in a consensual manner whenever possible.

(b) Except as required in 25 CFR part 900 and part 1000, tribes operating under a self-determination contract or self-governance agreement are entitled to use dispute resolution techniques prescribed in:

- (1) The ADR Act, 5 U.S.C. 571-583;
- (2) The Contract Disputes Act, 41 U.S.C. 601-613; and

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(3) The Indian Self-Determination and Education Assistance Act and the implementing regulations (including for non-construction the mediation and alternative dispute resolution options listed in 25 U.S.C. 4501 (model contract section (b)(12))).

- a. Tribes operating under a Program Agreement with FHWA are entitled to use dispute resolution techniques prescribed in 25 CFR § 170.934 and Article II, Section 4 of the Agreement.

Sec. 170.935 How does a direct service tribe begin the alternative dispute resolution process?

(a) To begin the ADR process, a direct service tribe must write to the BIA Regional Director, or the Chief of BIA Division of Transportation. The letter must:

(1) Ask to begin one of the alternative dispute resolution (ADR) procedures in the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571-583 (ADR Act); and

(2) Explain the factual and legal basis for the dispute.

(b) ADR proceedings will be governed by procedures in the ADR Act and the implementing regulations.

Other Miscellaneous Provisions

Sec. 170.941 May tribes become involved in transportation research?

Yes. Tribes may:

(a) Participate in Transportation Research Board meetings, committees, and workshops sponsored by the National Science Foundation;

(b) Participate in and coordinate the development of tribal and TTP transportation research needs;

(c) Submit transportation research proposals to States, FHWA, AASHTO, and FTA;

(d) Prepare and include transportation research proposals in their TTPTIPS;

(e) Access Transportation Research Information System Network (TRISNET) database; and

(f) Participate in transportation research activities under Intergovernmental Personnel Act agreements.

Sec. 170.942 Can a tribe use Federal funds for transportation services for a tribe's Welfare-to-Work, Temporary Assistance to Needy Families, and other quality-of-life improvement programs?

(a) A tribe can use TTP funds:

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(1) To coordinate transportation-related activities to help provide access to jobs and make education, training, childcare, healthcare, and other services more accessible to tribal members; and

(2) As the matching share for other Federal, State, and local mobility programs.

(b) To the extent authorized by law additional grants and program funds are available for the purposes in paragraph (a)(1) of this section from other programs administered by the Departments of Transportation, Health and Human Services, and Labor.

(c) Tribes should also apply for Federal and State public transportation and personal mobility program grants and funds.

**SUBPART I - Tribal High Priority Projects Program
(THPPP)**

Sections 170.1000 through 170.1007 relating to the Tribal High Priority Projects Program are provided for information only and do not change the provisions of Section 1123 of MAP-21.

Sec. 170.1000 What is the Tribal High Priority Projects Program (THPPP)?

- (a) The Secretary shall use amounts made available under Sec. 1123 of MAP-21 to carry out a Tribal High Priority Projects Program under which funds shall be provided to eligible applicants in accordance with this section.
- (b) Applicants eligible for program funds under this section include:
- 1) An Indian tribe whose annual allocation of funding under 23 USC 202, is insufficient to complete the highest priority project of the Indian tribe;
 - 2) A governmental subdivision of an Indian tribe—
 - i. That is authorized to administer the funding of the Indian tribe under 23 USC 202; and
 - ii. For which the annual allocation under that section is insufficient to complete the highest priority project of the Indian tribe; or
 - 3) Any Indian tribe that has an emergency or disaster with respect to a transportation facility included on the national inventory of tribal transportation facilities under 23 USC 202(b)(1).
- (c) THPPP funds cannot be used for:
- 1) transportation planning;
 - 2) research;
 - 3) routine maintenance activities;
 - 4) structures and erosion protection unrelated to transportation and roadways;
 - 5) general reservation planning not involving transportation;
 - 6) landscaping and irrigation systems not involving transportation programs and projects;
 - 7) work performed on projects that are not included on a transportation improvement program approved by the Federal Highway Administration, unless otherwise authorized by the Secretary of the Interior and the Secretary;
 - 8) the purchase of equipment unless otherwise authorized by Federal law; or
 - 9) the condemnation of land for recreational trails.
- (d) Additional Definitions for this subpart:
- 1) LIST.—The term “list” means the funding priority list developed under §170.1005.
 - 2) PROGRAM.—The term “program” means the THPPP established in Sec. 1123 of MAP-21.
 - 3) PROJECT.—The term “project” means a project provided funds under THPPP.

Sec. 170.1001 How is an emergency/disaster defined?

In this subpart, the term ``emergency or disaster`` means damage to a tribal transportation facility that-

(a) renders the tribal transportation facility impassable or unusable;

(b) is caused by-

- 1) a natural disaster over a widespread area; or
- 2) a catastrophic failure from an external cause; and

(c) would be eligible under the emergency relief program under section 125 of title 23, United States Code, but does not meet the funding thresholds required by that section.

Sec. 170.1002 What funding is available for THPPP?

(a) The THPPP is authorized at \$30,000,000 for each of fiscal years 2013 and 2014. The funds to carry out the program are to be made available from the general fund of the Treasury.

(b) The funds made available under paragraph (a) shall be administered in the same manner as funds made available for the Tribal Transportation Program under 23 USC 202, except that-

- 1.the funds made available for the THPPP shall remain available until September 30 of the third fiscal year after the year appropriated; and
- 2.the Federal share of the cost of a project shall be 100 percent.

Sec. 170.1003 How will THPPP applications be ranked and funded?

(a) The Secretary of the Interior and the Secretary shall determine the eligibility of, and fund, program applications, subject to the availability of funds.

(b) Project ranking criteria for applications under this section shall include-

- (1) the existence of safety hazards with documented fatality and injury accidents;
- (2) the number of years since the Indian tribe last completed a construction project funded by 23 USC 202 or the Indian Reservation Roads Program, which was authorized under 23 USC 204 prior to the passage of MAP-21;
- (3) the readiness of the Indian tribe to proceed to construction or bridge design need;
- (4) the percentage of project costs matched by funds that are not provided under section 202 of title 23, United States Code, with projects with a greater percentage of other sources of matching funds ranked ahead of lesser matches);
- (5) the amount of funds requested, with requests for lesser amounts given greater priority;
- (6) the challenges caused by geographic isolation; and
- (7) all weather access for employment, commerce, health, safety, educational resources, or housing.

(c) The project scoring matrix identified in Appendix A to Subpart I shall be used to rank all applications accepted under this section.

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- (d) Project funding shall be limited to a maximum of \$1,000,000 per application, except that funding for disaster or emergency projects shall also be limited to the estimated cost of repairing damage to the tribal transportation facility.
- (e) All cost estimates prepared for a project shall be required to be submitted by the applicant to the Secretaries for certification and approval.
- (f) Funds obligated to a project that remain unexpended after final closeout of a project shall be returned to the Program and used for future approved projects.

Sec. 170.1004 How may a tribe apply for THPPP?

(a) To apply for funds under this subpart, an eligible applicant shall submit to the Department of the Interior or the Department an application that includes—

- (1) project scope of work, including deliverables, budget, and timeline;
- (2) the amount of funds requested;
- (3) project information addressing—
 - (i) the ranking criteria identified in §170.1000(b)(3); or
 - (ii) the nature of the emergency or disaster;
- (4) documentation that the project meets the definition of a tribal transportation facility and is included in the national inventory of tribal transportation facilities under section 202(b)(1) of title 23, United States Code;
- (5) documentation of official tribal action requesting the project;
- (6) documentation from the Indian tribe providing authority for the Secretary of the Interior to place the project on a transportation improvement program if the project is selected and approved; and
- (7) any other information the Secretary of the Interior or Secretary considers appropriate to make a determination.

(b) An applicant for funds under the program may only have 1 application for assistance under this section pending at any 1 time, including any emergency or disaster application.

Sec. 170.1005 What is the THPPP Funding Priority List?

The Secretary of the Interior and the Secretary shall jointly produce a funding priority list that ranks the projects approved for funding under the program. The number of projects on the list shall be limited by the amount of funding made available.

Sec. 170.1006 What is the timeline for THPPP?

- (a) The Secretary of the Interior and the Secretary shall—
- (1) require applications for funding no sooner than 60 days after funding is made available pursuant to subsection (a);
 - (2) notify all applicants and Regions in writing of acceptance of applications;

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(3) rank all accepted applications in accordance with the project scoring matrix, develop the funding priority list, and return unaccepted applications to the applicant with an explanation of deficiencies;

(4) notify all accepted applicants of the projects included on the funding priority list no later than 180 days after the application deadline has passed pursuant to subparagraph (A); and

(5) distribute funds to successful applicants.

(b) If the total funding required for accepted projects is less than the total funds available for THPPP, an additional call for projects will take place.

Sec. 170.1007 How does award of an emergency/disaster project affect projects on the FPL?

(a) Notwithstanding subsection § 170.1006, an eligible applicant may submit an emergency or disaster project application at any time during the fiscal year.

(b) The Secretary shall—

(1) consider project applications submitted under (a) to be a priority; and

(2) fund the project applications in accordance with paragraph (c).

(c) If an eligible applicant submits an application for a project under this subsection:

(1) before the issuance of the list under § 170.1005 and the project is determined to be eligible for program funds, the Secretary of the Interior shall provide funding for the project before providing funding for other approved projects on the list;

(2) after the issuance of the list under subsection § 170.1005 and the distribution of program funds in accordance with the list, the Secretary of the Interior shall provide funding for the project on the date on which unobligated funds provided to projects on the list are returned to the Department of the Interior.

(d) If the Secretary of the Interior uses funding previously designated for a project on the list to fund an emergency or disaster project under this subsection, the project on the list that did not receive funding as a result of the redesignation of funds shall move to the top of the list the following year.

(e) The cost of a project submitted as an emergency or disaster under this subpart shall be at least 10 percent of the distribution of funds of the Indian tribe under 23 USC 202(b).

Appendix A to Subpart I.--TTP High Priority Project Scoring Matrix

Score	10	5	3	1	0
Accident and fatality rate for candidate route (see note 1)	Severe	X	Moderate	Minimal	No Accidents
Years since last TTP or IRR construction project completed	Never	Last project more than 10 years ago	Last Project 5 -9 years ago	Last projects within last 1 to 4 years	Currently has project
Readiness to Proceed to Construction or TTPBP Design Need	PS&E complete and approved	Bridge replacement PS&E development project	Bridge rehabilitation PS&E development project	Non-bridge PS&E development project	X
Percentage of project matched by other fund sources	X	80 percent or more by other funds	20-79 percent by other funds	1-19 percent by other funds	No other funds
Amount of funds requested (see Note 2)	X	\$250,000 or less	\$250,001 to \$500,000	\$500,001 to \$750,000	Over \$750,000
Geographic Isolation	No external access to community	Substandard primary access to community	Substandard secondary access to community	Substandard access to tribal facility	X
All weather access for: --- Employment; --- Commerce; --- Health; --- Safety; --- Educational resources; --- Housing.	Addresses all 6 elements	Addresses 4 or 5 elements	Addresses 3 elements	Addresses 2 elements	Addresses 1 element
1 National Highway Traffic Safety Board Standards					
2 Total funds requested, including preliminary design, construction, and construction engineering					