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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

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Memorandum

To: All Regional Directors
All Central Office Directors
Director, Office of Self-Governance

From: Director, Bureau of Indian Affairs

Subject: Policy on Minimum Attachments for Acceptance of Indian Reservation Roads/Facilities into the National Road Inventory

The Indian Reservation Roads (IRR) Program annually allocates funds as made available through the Department of Transportation, Federal Highways Administration, Federal Lands Highways, among Indian tribes in accordance with a formula established by the Secretary of the Interior. These funds are specifically defined to be distributed as part of a formula based on each tribe's relative need share. The formula described in 25 CFR 170.200 Subpart C is used to allocate those funds. The funding formula uses various data elements derived and taken from the national IRR inventory of roads and bridges. In order for road inventory data to be accepted into the official inventory, a specific amount of approval documentation is needed for the requested road sections to be approved (25 CFR 170.444) in addition to data describing physical, geographic and jurisdictional features.

It is the policy of the Bureau of Indian Affairs to assure that eligible transportation facilities described in 23 USC 101(a) is accounted for in the national inventory of IRR. The purpose and function of the road inventory update process is to assure that eligible facilities located on or near Indian lands, reservation, communities and Alaska Native villages are identified in a consistent and verifiable manner, with the end result being a comprehensive nationwide system of roads, bridges, trails, and other transportation facilities. The intent of the jointly administered IRR program is to recognize these facilities that support and sustain the transportation needs of tribes and the traveling public. The following is policy guidance on the necessary attachments for incorporating the data into the official inventory.

Background

As part of the final rule for Indian Reservation Roads, 69 FR 43090, a new formula for the allocation of funds was published and became final in November 13, 2004. This formula was consistent with requirements of Title 23 U.S.C. 202, Allocations. With the new regulations

becoming final, the concept of 'tribal shares' became the process to assure funding associated with 'tribes' was available based on a the Tribal Transportation Allocation Methodology (TTAM) (25 CFR 170.201 and 170.202). This methodology allocates funds and establishes funding pools based on various data elements in the inventory and available through published statistics. A major portion of the funding allocation process is the relative need distribution factor (RNDF).

The RNDF allocates funds through the following formula: 50% Cost-to-Construct (CTC) + 30% Vehicle Miles Traveled (VMT) + 20% Population (POP). 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 as described in Table 1 of Appendix D to Subpart C of 25 CFR 170. Vehicle miles traveled is a measure of the current IRR transportation system use. And the population component is the number of American Indian or Alaska Native people served. The first two components of the formula use data from the IRR inventory. The IRR Inventory as defined in § 170.442 identifies the transportation need by providing the data that BIA uses to generate the Cost to Construct (CTC) and Vehicle Miles Traveled (VMT) components of RNDF. The IRR Inventory is developed through the long range transportation planning process, as described in §§ 170.410 through 170.415. BIA Regional offices maintain, certify, and enter the data for their region's portion of the IRR Inventory database. Only project-specific transportation activities are included in the IRR Inventory.

In the implementation of the RNDF, certain data elements are considered in the final computation of tribal shares (percentage of all federally recognized tribes). The nationwide road inventory system, including all reservations, is continuously updated. This inventory is used to determine the relative condition of the road system for each reservation. The data is also used to compute the relative "cost to construct" roads on each reservation to an adequate standard. The cost to construct data is used together with the road usage (vehicle miles traveled, VMT) and tribal population data associated with each federally recognized tribe to determine the latest "Relative Need" of each reservation as described in 23 USC (d) (2) (D). The road inventory is updated when a road is improved, when a new road is added to the inventory or when a road deteriorates to the point when it needs to be improved.

25 CFR 170.444 (g)

The IRR program currently uses an automated computer program to update the transportation inventory for each location described as eligible Indian reservations, lands, communities, Alaska native villages. The computer program known as the Road Inventory Field Data System (RIFDS) is used to update, change or add eligible IRR to the nationwide system of roads/facilities. The use of this program allows the Regions to perform most of the functions necessary for including a facility into the IRR inventory. In order to complete the update process however, several elements described in the regulations require a visual inspection before the completed inventory request is approved. These "attachments" as they have become known can be described as those documents or reports, letters etc. that comply with the intent of the update process. These attachments are generally, tribal resolutions, tribal transportation planning documents, maps, traffic counts and the acknowledgement of other public authorities that these roads/facilities are eligible for inclusion into the IRR system.

These public authorities (state, local governments and other federal agencies) can include their roads/facilities into the IRR inventory, thus acknowledging that their systems contribute to the transportation network affecting the local tribe(s). This is helpful when projects are jointly funded between the tribe and the other public authorities. This process of inclusion into the inventory update process represents public involvement which is critical in the IRR Program and required by Title 23 U.S.C.

The BIA in October 2004 published a list of minimum attachments that would satisfy the requirement of 25 CFR 170.444(g). This minimum requirement over the past year has caused some confusion and inconsistencies in complying with the intent of the regulations and the policy of the BIA regarding the IRR inventory. This policy guidance will help to clarify the role of the Division of Transportation in approving submissions into the national road inventory and provide an updated list of attachments and a clarification of the requirements.

Indian Reservation Roads Program Coordinating Committee (IRRPCC)

The Indian Reservation Roads Program Coordinating Committee (Committee) was established in regulation (25 CFR 170.155) as an advisory committee tasked with providing input and recommendations to the Secretary of the Interior and the Secretary of Transportation on the IRR program. The Committee has reviewed the current minimum attachment requirements and made recommendations to the BIA and FHWA. These recommendations have been reviewed and accepted by the BIA with the following modifications for immediate implementation in the IRR program. These recommendations are described here.

IRRPCC Recommendations

1. Long-range transportation planning (LRTP): Approved by IRRPCC 12/1/05.

Is it required? Yes

Recommendation: Policy language is adequate with clarification to the Regional Engineers that the only requirements are what is stated in the Minimum Requirements for Attachments (October 15, 2004 version).

Justification: 170.225 is clear that the IRR Inventory is derived from the LRTP.

Requirement: Provide cover sheet, page or pages containing description of route that support classification, and signature sheet. *Requirement - 25 C.F.R. 170.225 and 170.414 (requires update every 5 years)*

2. Tribal Resolution or Official Authorization: Approved by IRRPCC 12/1/05.

Is it required? Partially.

Recommendation: Strike the granting of right-of-way or easements portion from this requirement. Add “other Official Authorization” to the matrix.”

Justification: Not required at this point until construction (25 CFR Part 170).

Requirement: The tribal resolution or other official authorization will specifically refer to the route number(s), route name(s), route location(s) and route length(s), construction need and ownership. *Requirement - 25 C.F.R. 170.443 and 170.444(b)*

3. Strip Maps: Approved by IRRPCC 12/1/05.

Is it required? Yes.

Recommendation: The IRRPCC is interpreting 170.445 to mean that a strip map must illustrate the state, county, tribal, and congressional district boundaries. Secondly, the strip map must include the overall dimensions of the facility and the accompanying inventory data. However, a strip map is not required for minor updates that do not require resectioning or a change in physical location of the route if one already exists.

Justification: The policy requirements are not clear on the illustration issue but are duplicative for minor updates.

Requirement: Define or illustrate 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). In addition, the intent of the map is to show that the route complies with the definition of an IRR (23 USC 101(a) (12)).

Requirement - 25 C.F.R. 170.444(b) and 170.445

4. ADT Backup Documentation: Approved by IRRPCC 12/1/05.

Is it required? Yes.

Recommendation: Clarify the policy language to reflect that a count is required only when the ADT is changed. Further, the policy language needs to indicate the appropriate places to place the counters (e.g. not required on bridges between sections, etc.). If the road is proposed, the ADT impractical to acquire, or a current ADT does not exist, then BIA will assign a default current ADT and calculate future ADT by projecting the default current ADT at 2 percent per year for 20 years.

Justification: The existing language is open to too many interpretations.

Requirement: This will apply 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 ADT value in accordance with 25 CFR 170 Subpart C. *Requirement - Verification and Approval of Inventory Data that drives formula shares for each Tribe 25 C.F.R. 170.444(g)*

5. Typical or Representative Section Photo or Bridge Profile Photo: Approved by IRRPCC 12/1/05.

Is it required? No.

Recommendation: Remove existing language and include language that this requirement is optional.

Justification: Not required for the Inventory submissions.

Requirement: No photos are required. The database will continue to allow photos to be attached for the convenience of the facility owner but will not keep the route from being included into the IRR inventory.

6. Incidental Cost Verification: Approved by IRRPCC 12/1/05.

Is it required? Yes.

Recommendation: Clarify that the analysis and justification does not have to be provided by an engineer, however, the analysis and justification must be specific to the transportation facility(s) submitted.

Justification: Engineering does not occur until construction and therefore is unnecessary for IRR Inventory submissions.

Requirement: 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.

Requirement - 25 C.F.R. 170, Appendix D to Subpart C, Table 8

7. Statement of Inability to Provide Funding: Approved by IRRPCC 12/1/05.

Is it required? Yes.

Recommendation: The policy language should be clarified to reflect that this document is required only if the tribe is requesting the CTC and VMT for a facility be funded at 100%.

Justification: This change is necessary to clarify the intent of 25 CFR Part 170, Appendix C to Subpart C.

Requirement: This will apply when a tribe is requesting that the cost to construct and vehicle miles traveled data for routes/facilities which are other than tribal or BIA owned are to be considered at 100% of the data used to calculate these amounts. A letter or statement signed by an authorized official of the public authority as to their inability to provide funding for the route must be provided. *Requirement - 25 C.F.R. 170 Appendix C to Subpart C, Question 10 (3).*

8. Verification of Federal Aid Category: Approved by IRRPCC 12/1/05.

Is it required? Yes.

Recommendation: The policy language should be clarified to reflect that this document is required only if the tribe is requesting the CTC and VMT for a facility be funded at 100%. In addition, change the language “state or owner” to “public authority”.

Justification: This change is necessary to clarify and be consistent with the language and intent of 25 CFR Part 170, Appendix C to Subpart C.

Requirement: This document is required only if the tribe is requesting the CTC and VMT for a non Tribal and non BIA facility be funded at 100%. Documentation from the public authority that the facility is not eligible for funding for construction or reconstruction with Federal funds, other than Federal Lands Highway Program funds must be provided. This is required for ownership of other than the BIA or Tribe with a federal aid code of Local Roads. *Requirement - 25 C.F.R. 170 Appendix C to Subpart C, Question 10 (2).*

9. Acknowledgement of Public Authority Responsibility (formerly MOA Owner Agreement): Approved by IRRPCC 12/1/05.

Is it required? Partially

Recommendation: Delete the title here and in the matrix and replace it with Acknowledgement of Public Authority Responsibility. In addition, delete the existing language and replace it with language that specifies the public authority responsible for maintenance of the facility.

Justification: The ownership of rights-of-way is not the same for all tribes across the country. However, tribes may enter into MOAs at their discretion but it is not required for inventory submissions.

Requirement: 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 what entity will be responsible for the maintenance of the route after construction, and that the route will be open to the public unless the route meets the definition of 25 C.F.R.170.120, 170.121 and 170.122. *Requirement - 23 U.S.C. 116 (a) (b)*

These requirements are to be implemented immediately. The RIFDS software has been changed to reflect this both as an update and in the recent new maintenance release. If there any questions regarding this policy, please refer them to Mr. LeRoy Gishi at (202) 513-7711.

cc: Robert Sparrow, Federal Lands Highways, FHWA