

25 CFR 170 Tribal Transportation Program

- The following slides provide a side-by-side comparison of the updated regulations “Updated 25CFR170” to the original 2004 25CFR170 regulations “Previous 25CFR170”.
- The comparison is structured by sections of the regulations indicated by slide Title. There are three sections that will be covered.
 - *Sec. .400-.420 Transportation Planning*
 - *Sec. .421-.424 Tribal Transportation Improvement Programs*
 - *Sec. .435-.441 Public Hearings*

- "[Reserved]" is a term used as a place holder within the Code of Federal Regulations. An agency uses "[Reserved]" to simply indicate that it may insert regulatory information into this location some time in the future. Occasionally "[Reserved]" is used to indicate that a portion of the CFR was intentionally left empty and not accidentally dropped due to a printing or computer error.

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Transportation Planning

Updated 25CFR170

Transportation Planning

§ 170.400 What is the purpose of transportation planning?

The purpose of transportation planning is to address current and future *transportation*, land use, economic development, traffic demand, public safety, health, and social needs.

Previous 25CFR170

Transportation Planning

§ 170.400 What is the purpose of transportation planning?

The purpose of transportation planning is to ~~fulfill goals by developing strategies to meet transportation needs.~~

~~These strategies~~ address current and future land use, economic development, traffic demand, public safety, health, and social needs.

Updated 25CFR170

§ 170.401 What *are BIA's and FHWA's* roles in transportation planning?

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

- (a) *Reviewing, and approving the TTPTIP as well as providing technical assistance to the Tribes during the development of their TTIP or Priority List;*
- (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 *or project identification studies;*
- (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.

Previous 25CFR170

§ 170.401 What is BIA's role in transportation planning?

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

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

Updated 25CFR170

§ 170.402 What is the Tribal role in transportation planning?

- (a) All Tribes must prepare a *TTIP* or Tribal priority list.
- (b) Tribes operating with a *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 *and ensuring that the data is entered into the NTTFI*;
 - (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 *or project identification studies*.

Previous 25CFR170

§ 170.402 What is the tribal role in transportation planning?

- (a) All tribes must prepare a ~~tribal TIP (TTIP)~~ or tribal priority list.
- (b) Tribes with a self-determination contract or self-governance agreement may assume any of the following planning functions:
- (1) Coordinating with States and their political subdivisions, and appropriate planning authorities on regionally significant ~~IRR~~ projects;
 - (2) Preparing ~~IRR Inventory~~ data updates;
 - (3) Facilitating public involvement;
 - (4) Performing traffic studies;
 - (5) Developing short- and long-range transportation plans;
 - (6) Mapping;
 - (7) Developing and maintaining tribal management systems;
 - (8) Participating in transportation planning and other transportation related meetings;
 - (9) Performing transportation planning for operational and maintenance facilities;
 - (10) Developing ~~IRR Program~~ budgets including transportation planning cost estimates;
 - (11) Conducting special transportation studies, as appropriate;
 - (12) Researching rights-of-way documents for project planning; and
 - (13) Performing preliminary project planning.

§ 170.403 What **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.

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

Funds as defined in 23 U.S.C. ~~204(j)~~ are ~~specifically reserved for a tribal government's~~ transportation planning.

Tribes may also identify transportation planning as a priority ~~in their tribal priority list or TTIP and request the use of up to 100 percent of their IRR Program construction funds for transportation planning.~~

§ 170.404 *Can Tribes use transportation planning funds for other activities?*

Yes. After completion of a Tribe's annual planning activities, unexpended planning funds made available under 23 U.S.C. 202(c) may be used on eligible projects or activities provided that they are identified on a FHWA-approved TTPTIP.

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

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

§ 170.405 *How must Tribes use planning funds?*

TTP funds as defined in 23 U.S.C. 202(c) are available to a Tribal government to support Tribal transportation planning and associated activities, including:

- (a) Attending transportation planning meetings;*
- (b) Pursuing other sources of funds; and*
- (c) Developing the Tribal priority list, TTIP, LRTP, or any of the transportation planning functions and activities listed in § 170.402.*

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

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

- **§§ 170.406–170.408**
[Reserved].

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

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

~~(1) Attending transportation planning meetings;~~

~~(2) Pursuing other sources of funds; and~~

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

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

- *§§ 170.406–170.408
[Reserved].*

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

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

§ 170.409 What is the purpose of long-range transportation planning?

(a) The purpose of long-range transportation planning is to clearly demonstrate a Tribe's transportation needs and to develop 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 LRTP.

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

Previous regulation did not have section 170.409

§ 170.410 *How does a long-range transportation plan relate to the NTTFI?*

A LRTP is developed using a uniform process that identifies the transportation needs and priorities of a Tribe. The NTTFI (see § 170.442) is derived from transportation facilities identified through an LRTP. It is also a means for identifying projects and activities for the TTP.

~~**Long-Range Transportation Planning**~~

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

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

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

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

A LRTP 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.

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

~~A comprehensive long range transportation plan may include:~~

- (a) An evaluation of a full range of transportation modes and connections between modes such as highway, rail, air, and water, to meet transportation needs;
- (b) Trip generation studies, including determination of traffic generators due to land use;
- (c) Social and economic development planning to identify transportation improvements or needs to accommodate existing and proposed land use in a safe and economical fashion;
- (d) Measures that address health and safety concerns relating to transportation improvements;
- (e) A review of the existing and proposed transportation system to identify the relationships between transportation and the environment;
- (f) Cultural preservation planning to identify important issues and develop a transportation plan that is sensitive to tribal cultural preservation;
- (g) Scenic byway and tourism plans;
- (h) Measures that address energy conservation considerations;
- (i) A prioritized list of short and long-term transportation needs; and
- (j) An analysis of funding alternatives to implement plan recommendations.

§ 170.412 How is the Tribal *TTP* long-range transportation plan developed and approved?

(a) The Tribal *TTP* long-range transportation plan is developed by *either*:

(1) A Tribe working through a self-determination contract, self-governance agreement, *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 funds.*

(b) During the development of the *TTP* long-range transportation plan, the Tribe and BIA *or FHWA* will 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.

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

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

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

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

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

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

Updated 25CFR170

§ 170.413 What is the public's 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 *in this section*. 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 *must include either meetings or notices, or both*.

(a) For public meetings, BIA, *FHWA* or the Tribe must:

- (1) Advertise each public meeting in local *and Tribal* public newspapers at least 15 days before the meeting date. In the absence of local and *Tribal* public newspapers, BIA, *FHWA*, or the Tribe may post notices under locally acceptable practices;
- (2) Provide at the meeting copies of the draft *LRTP*;
- (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 the Tribe must:

- (1) Publish a notice in the local and Tribal *public* newspapers when the draft *LRTP* is complete. In the absence of local and *Tribal* public newspapers, BIA, *FHWA*, or the Tribe may post notices under *locally* acceptable practices; and
- (2) State in the notice that the *LRTP* 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).

Previous 25CFR170

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

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

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

- (1) Advertise each public meeting in local public newspapers at least 15 days before the meeting date. In the absence of local public newspapers, BIA or the tribe may post notices under local acceptable practices;
- (2) Provide at the meeting copies of the draft ~~long-range transportation plan~~;
- (3) Provide information on funding and the planning process; and
- (4) Provide the public the opportunity to comment, either orally or in writing.

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

- (1) Publish a notice in the local and tribal newspapers when the draft ~~long-range transportation plan~~ is complete. In the absence of local public newspapers, BIA or the tribe may post notices under ~~local~~ acceptable practices; and
- (2) State in the notice that ~~the long-range transportation plan~~ is available for review, where a copy can be obtained, whom to contact for questions, where comments may be submitted, and the deadline for submitting comments (normally 30 days).

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

The Tribal government uses its *TTP* long-range transportation plan *to develop transportation projects as documented in* a Tribal priority list or TTIP *and to identify and justify the Tribe's updates to the NTTFI*. To be consistent with State, *Metropolitan Planning Organization (MPO) and Regional Planning Organization (RPO)* planning practices, *the TTP long-range transportation plan must be reviewed annually and updated at least every five years.*

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

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

- ~~(a) Review the IRR long-range transportation plan annually; and~~
- ~~(b) Update the plan every 5 years.~~

§ 170.415 What *are* pre-project planning *and project identification studies*?

(a) Pre-project planning *and project identification studies are* part of overall transportation planning and include the activities conducted before final project approval on the *TTPTIP. These processes provide the information necessary to financially constrain and program a project on the four-year TTPTIP but are not the final determination that projects will be designed and built.* These activities include:

- (1) Preliminary project cost estimates;
- (2) Certification of public involvement;
- (3) Consultation and coordination with States and/or MPO's for 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* sources and identification of other funding sources to expedite the planning, design, and construction of projects on the *TTPTIP*.

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

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

- (1) Preliminary project cost estimates;
- (2) Certification of public involvement;
- (3) Consultation and coordination with States and/or MPO's for a regionally significant projects;
- (4) Preliminary needs assessments; and
- (5) Preliminary environmental and archeological reviews.

(b) The BIA ~~regional office must~~ work cooperatively with tribal, state, regional, and metropolitan transportation planning organizations concerning the leveraging of funds from non-~~IRR Program~~ sources and identification of other funding sources to expedite the planning, design, and construction of projects on the ~~IRRTIP~~.

§ 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 TTIP.

~~Transportation Improvement Program~~

§ 170.420 What is the tribal priority list?

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

- (a) ~~May or may not identify projects in order of priority;~~
- (b) Is not financially constrained; and
- ~~(c) Is provided to BIA by official tribal action, unless the tribal government submits a Tribal Transportation Improvement Program (TTIP).~~

Tribal Transportation Improvement Programs

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

(a) The TTIP:

(1) *Is developed from and must be consistent with the Tribe's Tribal priority list or LRTP;*

(2) *Is financially constrained for all identified funding sources;*

(3) *Must identify (year by year) all TTP funded projects and activities that are expected to be carried out over the next four years as well as the projected costs and all other funding sources that are expected to be used on those projects. Although 23 U.S.C. 134(j)(1)(D) indicates a TIP must be updated once every four years, Tribes are encouraged to update the TTIP annually to best represent the plans of the Tribe;*

(4) *Must identify all projects and activities that are funded through other Federal, State, county, and municipal transportation funds and are carried out by the Tribe in accordance with 23 U.S.C. 202(a)(9);*

(5) *Must include public involvement;*

(6) *Is reviewed and updated as necessary by the Tribal government;*

(7) *Can be changed only by the Tribal government; and*

(8) *After approval by the Tribal government, must be forwarded to BIA or FHWA by Tribal resolution or authorized governmental action certifying public involvement has occurred and requesting approval.*

(b) *A copy of the FHWA-approved TTIP is returned to the Tribe and BIA. Although the FHWA-approved TTIP authorizes the Tribe to expend TTP funds for the projects and/or activities shown, it does not waive or modify other Federal, local, or financial statutory or regulatory requirements associated with the projects or activities.*

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

The TTIP:

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

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

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

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

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

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

~~(g) Must be forwarded to BIA by resolution or by tribally authorized government action for inclusion into the IRR TIP~~

§ 170.422 *How does the public participate in developing the TTIP?*

Public involvement is required in the development of the TTIP.

(a) The Tribe must publish a notice in local and/or Tribal newspapers when the draft TTIP is complete. In the absence of local public newspapers, the Tribe or BIA may post notices under locally acceptable practices. The notice

must indicate where a copy can be obtained, a contact person for questions, where comments may be submitted, and the deadline for submitting comments.

A copy of the notice will be made available to 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 department, or MPO may conduct public involvement activities.

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

~~The IRRTIP:~~

~~(a) Is financially constrained;~~

~~(b) Must include eligible projects from tribal TTIPs;~~

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

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

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

Updated 25CFR170

§ 170.423 How are annual updates or amendments to the TTIP conducted?

(a) The TTIP annual update allows:

(1) Changes to schedules and funding amounts for identified projects and activities; and

(2) The addition of transportation projects and activities planned for the next four years.

(b) During the first quarter of a fiscal year, Tribes will be notified of the opportunity to update their TTIP. This notification will contain information on where the Tribes can access their estimated TTP funding amounts for that fiscal year, and will include a copy of their previously approved TTIP, as well as instructions for submitting the annual update.

(c) The Tribe must then review any new transportation planning information and priority lists, update their TTIP using the procedures in § 170.421, and forward the documentation to their respective BIA Regional Office or to FHWA.

(d) If forwarded to:

(1) A BIA Regional Office—The Office will review all submitted information with the Tribe and provide a written response (concurring, denying, or requesting additional information) within 45 days. If the BIA regional office concurs in the TTIP, it is then forwarded to FHWA for final approval.

(2) FHWA—FHWA will review all submitted information with the Tribe and provide a written response (approving, denying, or requesting additional information) within 45 days. Once a proposed TTIP update is approved by FHWA, it will be included in that year's overall TTIP.

(e) The Tribe may amend their approved TTIP at any time using the procedures in § 170.421 and paragraph (d) of this section in order to add a new project or activity within the current fiscal year that they intend to expend TTP funds on.

Previous 25CFR170

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

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

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

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

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

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

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

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

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

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

~~(4) Apply for IRRHPP funding under subpart C.~~

~~(c) In order to get a project on the IRRTIP, tribes may seek flexible~~

~~financing alternatives as described in subpart C.~~

§ 170.424 What is the TTP Transportation Improvement Program (TTPTIP)?

(a) Each year, FHWA will compile the approved TTIPs for all of the Tribes into one document called the TTPTIP. This document will identify all expected projects and activities over a four-year

period and will be organized by fiscal year, State, and Tribe.

(b) FHWA and BIA will post the approved TTPTIP on their respective Web sites. A subset of the TTPTIP that identifies only design and construction

activities will annually be provided to the pertinent FHWA Division office for further transmittal to each State Transportation Office/Department for inclusion in the STIP without further action per 23 U.S.C. 201(c)(4).

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

~~Public involvement is required in the development of the IRRTIP.~~

~~(a) BIA or the tribe must publish a notice in local and tribal newspapers when the draft tribal or IRRTIP is complete. In the absence of local public newspapers, the tribe or BIA may post notices under local acceptable practices.~~

~~The notice must indicate where a copy can be obtained, contact person for questions, where comments may be submitted, and the deadline for submitting comments.~~

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

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

- *Removed*

~~§ 170.425 How does BIA update the IRR TIP?~~

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

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

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

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

- *Removed*

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

~~The approval process for the IRRTIP is:~~

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

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

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

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

- *Removed*

~~§ 170.427 How may an IRRTIP be amended?~~

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

~~(b) BIA may amend the IRRTIP:~~

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

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

~~practical.~~

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

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

- *Removed*

~~**§ 170.428 How is the State Transportation Improvement Program related to the IRRTIP?**~~

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

Public Hearings

Updated 25CFR170

Public Hearings

§ 170.435 *When is a public hearing required?*

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*, *a LRTP*, or a project. A public hearing must be held if a project:

- (a) Is *for the construction of* 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.

Previous 25CFR170

Public Hearings

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

The tribe, or BIA after consultation with the appropriate tribe and other involved agencies, determines whether or not a public hearing is needed for an ~~IRRTIP~~, ~~long range transportation plan~~ or project. A public hearing must be held if a project:

- (a) Is a new route or facility;
- (b) Would significantly change the layout or function of connecting or related roads or streets;
- (c) Would cause a substantial adverse effect on adjacent property; or
- (d) Is controversial or expected to be controversial in nature.

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

Public hearings for a TTIP or a Tribe's LRTP are funded using the Tribe's funds as described in §170.403.

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

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

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

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

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

§ 170.437 *If there is no hearing*, how must BIA, *FHWA*, or a Tribe inform the public?

(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 *will* send a copy of the notice to the affected Tribe.

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

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

- (1) Project location;
- (2) Type of improvement planned;
- (3) Dates and schedule for work;
- (4) Name and address where more information is available; and
- (5) Provisions for requesting a hearing.

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

§ 170.438 How must BIA, *FHWA*, or a Tribe inform the public of when a hearing is held?

(a) When BIA, *FHWA*, or a Tribe holds a hearing under this part, it must notify the public of the hearing by publishing a notice *with information about the project, how to attend the hearing, and where copies of documents can be obtained or viewed.*

(b) BIA or the Tribe must publish the notice *by*:

(1) Posting *the notice and publishing it in a newspaper of general circulation* at least 30 days before the public hearing; and,

(2) Sending a courtesy copy of the notice to *each* affected Tribe and BIA Regional Office.

(c) A second notice for a hearing is optional.

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

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

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

~~(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.

Updated 25CFR170

§ 170.439 How is a public hearing conducted?

(a) *Presiding official.* A Tribal (*tribal council*) or Federal (*FHWA or BIA*) official *will be* appointed to preside over the public hearing. The presiding official must *encourage* 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 *five* 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 *under* 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 *must be* present to answer questions.

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

(1) Oral statements at the hearing;

(2) Written statements submitted at the hearing; *and*

(3) Written statements sent to the address noted in the hearing notice within *five* working days following the public hearing.

Previous 25CFR170

§ 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 ~~*under*~~ the Uniform Relocation 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 ~~*must be*~~ present to answer questions.

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

(1) Oral statement at the hearing;

(2) Written statement submitted at the hearing;

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

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

Within 20 working days *after* the public hearing, the presiding official *will* issue *and post at the hearing site a statement that:*

- (a) Summarizes the results of the hearing;*
- (b) Explains any needed further action;*
- (c) Explains how the public may request a copy; and*
- (d) Outlines appeal procedures.*

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

~~Results of a public hearing are available as follows:~~

- ~~(a) Within 20 working days **of the completion of** the public hearing, the presiding official issues **a hearing statement summarizing the results of the public hearing and the determination of needed further action.**~~
- ~~(b) The presiding official posts the hearing statement at the hearing site. The public may request a copy. The hearing statement outlines appeal procedures.~~

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

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

§ 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.