

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****23 CFR Part 661**

[FHWA Docket No. FHWA-98-4743]

RIN 2125-AE57

**Indian Reservation Roads Bridge Program****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Final rule.

**SUMMARY:** The FHWA adopts as final an interim final rule that establishes the regulation on the Indian reservation road bridge program (IRRB). The purpose of adopting the interim final rule as final is to establish a nationwide priority program for improving deficient Indian reservation road (IRR) bridges as required by the Transportation Equity Act for the 21st Century (TEA-21). This final rule also establishes the project selection and fund allocation procedures to ensure the uniform application of this IRRBP.

**EFFECTIVE DATE(S):** June 9, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wade F. Casey, P.E., Federal Lands Highway (HFPD-9), (202) 366-9486, or Ms. Vivian Philbin, Office of the Chief Counsel (HCC-40), (303) 716-2122. Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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**Background**

The FHWA published an interim final rule on part 661 on July 19, 1999, at 64 FR 38565. Interested persons were invited to submit comments to FHWA

Docket No. FHWA-98-4743. The interim final rule established the nationwide priority program for improving deficient Indian reservation road bridges as required by section 1115 of the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178; 112 Stat. 107; June 1998). The interim final rule also established the project selection and fund allocation procedures to ensure uniform application of the program and distribution of the funds associated with this program. The interim final rule has been in effect since July 19, 1999.

Section 1115 of TEA-21 required the Secretary of Transportation (hereinafter Secretary) to establish a nationwide priority program for improving deficient IRR bridges. This legislation also required the Secretary, in cooperation with the Secretary of the Interior, to reserve not less than \$13 million for projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures for deficient IRR bridges, including multiple-pipe culverts. In order to immediately implement the IRRBP and promptly address the deficient IRR bridges, the FHWA, in conjunction with the Bureau of Indian Affairs (BIA) and in consultation with the Indian tribal governments (ITGs) and other interested parties, developed project selection and fund allocation procedures and issued an interim final rule.

Before issuing a final rule for the IRRBP, we indicated that we would invite and actively consider comments introduced concerning the IRRBP interim final rule and that we would assess how the IRRBP is working, including the fund allocation process based on experience with these rules.

**Summary of Comments**

Since publication of the interim final rule, the FHWA received 5 comments to the docket, one from a tribal chairman, one from a tribal member, one from the BIA Pacific Regional Office, one from a private citizen and one from the TEA-21 Negotiated Rulemaking Tribal Caucus.

The tribal chairman was concerned that the IRRBP is funded as a \$13 million set-aside from the IRR construction program; that the program would be a detriment to tribes in Oklahoma; that the bulk of deficient IRR bridges are in Oklahoma and that there is a need to place bridges on low water crossings.

The individual tribal member who commented was also from Oklahoma and stated that the interim final rule is non-compliant with the Civil Rights Act; it creates two classes of Indian people, those living on reservations and those that do not; and limits the use of program funds by non-BIA owned IRR bridges that serve non-reservation tribes such as those in Oklahoma.

The BIA Pacific Region was concerned that tribal bridge owners would not be able to provide a 20 percent funding match; that right-of-way should be accepted in the form of a memorandum of agreement (MOA) or memorandum of understanding (MOU) between government agencies; that TEA-21 be amended to provide funding for project planning and design; lastly, that the 120 calendar day award period be amended to 180 calendar days.

The private citizen who commented was concerned about treatment of BIA versus non-BIA owned bridges and that all Indian tribes regardless of location should benefit from this bridge program, even if they reside off the "Indian Reservation."

The tribal caucus of the TEA-21 Negotiated Rulemaking Committee recommended a number of changes to the interim final rule. It disagreed with the 20 percent fund match requirement for non-BIA owned IRR bridges. It also disagreed with the provision that set a \$1.5 million limitation on IRRBP funds for non-BIA owned IRR bridges. In addition, it felt that for structurally deficient IRR bridges with a sufficiency rating of 50 or less, that the BIA should use its 6 percent administrative funds to design replacement bridges. It also recommended that the IRR Coordinating committee be consulted regarding the deficient bridge list.

The FHWA has considered all of the written comments submitted and we are adopting this interim rule as final based on the following discussion:

(a) It is approaching four years since the rules governing the IRRBP have been in place, and ample time has gone by to observe whether the rules are working. Since publication, 69 bridges have been funded for either replacement or rehabilitation for approximately \$35.1 million. Based on a query of bridges in the process of being designed<sup>1</sup>, 66 bridge plan, specification and estimates (PS&Es) are slated to be completed in FY 2003 that will require roughly \$39.7 million in IRRBP construction funds. This is a good indication that the IRRBP funds have been fully used during the

<sup>1</sup> Recall that IRRBP funds can not be used until a PS&E is completed. See also 23 U.S.C. 202 (d)(4)(D) and 23 CFR 661.39.