

**§ 170.115**

seek assistance in resolving the problem.

**ELIGIBLE USES IF IRR PROGRAM FUNDS**

**§ 170.115 What activities may be funded with IRR Program funds?**

(a) IRR Program 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 recommended by the IRR Program Coordinating Committee under the procedures in Appendix A to Subpart B (35) and §170.156 and approved by FHWA or BIA pursuant to §170.117.

(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.

**§ 170.116 What activities are not eligible for IRR Program funding?**

IRR Program funds cannot be used for any of the following:

(a) Routine maintenance work such as: grading shoulders and ditches; cleaning culverts; snow removal, roadside mowing, normal sign repair and replacement, painting roadway structures, and the maintaining, cleaning, or repair of bridge appurtenances;

(b) Structures and erosion protection unrelated to transportation and roadways;

(c) General reservation planning not involving transportation;

(d) Landscaping and irrigation systems not involving transportation programs and projects;

(e) Work performed on projects that are not included on an FHWA-approved IRR Transportation Improvement Program (TIP), unless otherwise authorized by the Secretary of the Interior and the Secretary of Transportation;

(f) Purchase of equipment unless authorized by Federal law or in this part; or

(g) Condemnation of land for recreational trails.

**§ 170.117 How can a tribe determine whether a new use of funds is allowable?**

(a) A tribe that proposes new uses of IRR Program funds must ask BIA in writing whether the proposed use is eli-

gible under Federal law. The tribe must also provide a copy of its inquiry to FHWA.

(1) In cases involving eligibility questions that refer to 25 U.S.C., BIA will determine whether the new proposed use of IRR Program 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 4058-MIB, Washington, DC 20240.

(2) In cases involving eligibility questions that refer to the IRR Program 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, 400 7th St., SW., HFL-1, Washington, DC 20590.

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

(c) If either BIA or FHWA fails to issue the requesting tribe a timely response to the eligibility inquiry, the proposed use will be deemed to be allowable for that specific project.

**USE OF IRR AND CULTURAL ACCESS ROADS**

**§ 170.120 What restrictions apply to the use of an Indian Reservation Road?**

Indian Reservation Roads (IRRs) must be open and available for public use. However, the public authority having jurisdiction over these roads may:

(a) Restrict road use or close roads temporarily when required for public safety, fire prevention or suppression, fish or game protection, low load capacity bridges, prevention of damage to unstable roadbeds, or as contained in §§170.122 and 170.813;

(b) Conduct engineering and traffic analysis to determine maximum speed