

Bureau of Indian Affairs, Interior

§ 170.300

(CTC) and Vehicle Miles Traveled (VMT) components of RNDF. The IRR Inventory is developed through the LRTP 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.

§ 170.228 Are all facilities included in the IRR Inventory used to calculate CTC?

No. Projects/facilities proposed to receive construction funds on an approved IRR TIP are not eligible for future inclusion in the calculation of the CTC portion of the formula for a period of 5 years thereafter.

GENERAL DATA APPEALS

§ 170.231 May a tribe challenge the data BIA uses in the RNDF?

(a) A tribe may submit a request to the BIA Regional Director to revise the data for the tribe that BIA uses in the RNDF. The request must include the tribe's data and written support for its contention that the tribal data is more accurate than BIA's.

(b) A tribe may submit a data correction request at any time. In order to impact the distribution in a given fiscal year, a data correction request must be approved, or any subsequent appeals resolved, by June 1 of the prior fiscal year.

(c) The BIA Regional Director must respond within 30 days of receiving a data correction request under this section.

(1) Unless the BIA Regional Director determines that the existing BIA data is more accurate, the BIA Regional Director must approve the tribe's data correction request and accept the tribe's corrected data.

(2) If the BIA Regional Director disapproves the tribe's request, the decision must include a detailed written explanation of the reasons for the disapproval, copies of any supporting documentation (other than the tribe's request) that the BIA Regional Director relied upon in reaching the decision, and notice of the tribe's right to appeal the decision.

(3) If the BIA Regional Director does not approve the tribe's request within 30 days of receiving the request, the request must be deemed disapproved.

§ 170.232 How does a tribe appeal a disapproval from the BIA Regional Director?

(a) Within 30 days of receiving a disapproval, or within 30 days of a disapproval by non-action of the BIA Regional Director, a tribe may file a written notice of appeal to the Director, Bureau of Indian Affairs, with a copy provided to the BIA Regional Director; and

(b) Within 30 days of receiving an appeal, the Director, Bureau of Indian Affairs must issue a written decision upholding or reversing the BIA Regional Director's disapproval. This decision must include a detailed written explanation of the reasons for the disapproval, copies of any supporting documentation that the Director, Bureau of Indian Affairs relied upon in reaching the decision (other than the tribe's request or notice of appeal), and notice of the tribe's right to appeal the decision to the Interior Board of Indian Appeals under 25 CFR part 2.

FLEXIBLE FINANCING

§ 170.300 May tribes use flexible financing to finance IRR transportation projects?

Yes. Tribes may use flexible financing in the same manner as States to finance IRR 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 IRR Program 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 IRR 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 IRR Program funds as collateral for loans or bonds to finance IRR projects. Upon the request of a tribe, a BIA region will provide

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necessary documentation to banks and other financial institutions.

§ 170.301 Can a tribe use IRR Program funds to leverage other funds or pay back loans?

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

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

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

(2) Was included in FHWA-approved IRR TIP.

§ 170.302 Can BIA regional offices borrow IRR Program funds from each other?

Yes. A BIA Regional office, in consultation with tribes, may enter into agreements to borrow IRR Program

funds to assist another BIA regional office in financing the completion of an IRR project. These funds must be repaid within the next fiscal year. These agreements cannot be executed during the last year of a transportation authorization act unless Congress has authorized IRR Program funds for the next year.

§ 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 an IRR 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.

APPENDIX A TO SUBPART C—IRR HIGH PRIORITY PROJECT SCORING MATRIX

Score	10	5	3	1	0
Accident and fatality rate for candidate route ¹ .	Severe	X	Moderate	Minimal	No accidents.
Years since last IRR construction project completed.	Never	Last project more than 10 years ago.	Last project 5–9 years ago.	Last project within last 1 to 4 years.	Currently has project.
Readiness to Proceed to Construction or IRRBP 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 funds.	X	80 percent or more by other funds.	20–79 percent by other funds.	1–19 percent	No other funds.
Amount of funds requested ² .	X	250,000 or less.	250,001–500,000.	500,001–750,000.	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 engineering, construction, and construction engineering.