

**Bureau of Indian Affairs, Interior**

**§ 170.917**

standards and guidelines. The carrier should work with the appropriate tribal, local, State and Federal agencies to address all cleanup issues, such as arranging or repackaging of the cargo, if necessary, and disposing of contaminated materials.

**REPORTING REQUIREMENTS AND INDIAN PREFERENCE**

**§ 170.910 What information on the IRR Program or projects must BIA provide to tribes?**

At the written request of a tribe, BIA must provide available information on the IRR Program or projects to a tribe within a reasonable time.

**§ 170.911 Are Indians entitled to employment and training preferences?**

(a) Federal law gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under the IRR Program.

(b) Under 25 U.S.C. 450e(b) and 23 U.S.C. 204(e), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts and sub-grants for all work performed under the IRR Program.

**§ 170.912 Does Indian employment preference apply to Federal-aid Highway Projects?**

(a) Tribal, State, and local governments may provide an Indian employment preference for Indians living on or near a reservation on projects and contracts that meet the definition of an Indian Reservation Road. (See 23 U.S.C. 101(a)(12) and 140(d), and 23 CFR 635.117(d).)

(b) Tribes may target recruiting efforts toward Indians living on or near Indian reservations, Indian lands, Alaska Native villages, pueblos, and Indian communities.

(c) Tribes and tribal employment rights offices should work cooperatively with State and local governments to develop contract provisions promoting employment opportunities for Indians on eligible federally funded transportation projects. Tribal, State, and local representatives should confer to establish Indian employment goals for these projects.

**§ 170.913 Do tribal-specific employment rights and contract preference laws apply?**

Yes. When a tribe or consortium administers an IRR Program or project intended to benefit that tribe or a tribe within the consortium, the benefitting tribe's employment rights and contracting preference laws apply. (See § 170.619 and 25 U.S.C. 450e(c).)

**§ 170.914 What is the difference between tribal preference and Indian preference?**

Indian preference is a hiring preference for Indians in general. Tribal preference is a preference adopted by a tribal government that may or may not include a preference for Indians in general, Indians of a particular tribe, Indians in a particular region, or any combination thereof.

**§ 170.915 May tribal employment taxes or fees be included in an IRR project budget?**

Yes. The cost of tribal employment taxes or fees may be included in the budget for an IRR program or project, except for BIA force account.

**§ 170.916 May tribes impose taxes or fees on those performing IRR Program services?**

Yes. Tribes, as sovereign nations, may impose taxes and fees for IRR Program activities. When a tribe administers IRR programs or projects under ISDEAA, its tribal employment and contracting preference laws, including taxes and fees, apply.

**§ 170.917 Can tribes receive direct payment of tribal employment taxes or fees?**

This section applies to non-tribally administered IRR projects. Tribes can request that BIA pay tribal employment taxes or fees directly to them under a voucher or other written payment instrument, based on a negotiated payment schedule. Tribes may consider requesting direct payment of tribal employment taxes or fees from other transportation departments in lieu of receiving their payment from the contractor.

## § 170.920

## 25 CFR Ch. I (4-1-06 Edition)

### EMERGENCY RELIEF

#### **§ 170.920 What is the purpose of the provisions relating to emergency relief?**

Sections 170.920 through 170.927 relating to emergency relief are provided for information only and do not change the provisions of 23 CFR part 668 or existing guidance on emergency relief.

#### **§ 170.921 What emergency or disaster assistance programs are available?**

(a) FHWA operates two emergency relief programs:

(1) The Emergency Relief (ER) Program, which provides disaster assistance for Federal-aid highways owned by State, county and local governments; and

(2) The Emergency Relief for Federally Owned Roads (ERFO) Program, which provides disaster assistance for Federal roads, including Indian Reservation Roads, that have been damaged due to natural disasters (floods, hurricanes, tornadoes, etc.).

(b) The Federal Emergency Management Agency (FEMA) may be considered as an alternate funding source to repair damage that is ineligible under the ER or ERFO Programs.

#### **§ 170.922 How can States get Emergency Relief Program funds to repair IRR System damage?**

States can request emergency relief program funds to repair damage to Federal-aid highways caused by natural disasters or catastrophic failures. It is the responsibility of individual States to request these funds.

#### **§ 170.923 What qualifies for ERFO funding?**

(a) Tribes can use ERFO funding to repair damage to IRR transportation facilities (including roads, bridges, and related structures) caused by natural disaster over a widespread area or by a catastrophic failure from any external cause. The Secretary of Transportation determines eligible repairs under 23 CFR 668, subpart B.

(1) Examples of natural disasters include, but are not limited to, floods, earthquakes, tornadoes, landslides, avalanches or severe storms, such as saturated surface conditions and high-

water table caused by precipitation over an extended period of time.

(2) An example of a catastrophic failure includes, but is not limited to, a bridge collapse after being struck by a barge, truck or a landslide.

(b) Structural deficiencies, normal physical deterioration, and routine heavy maintenance do not qualify for ERFO funding.

#### **§ 170.924 What happens if DOT denies an ERFO claim?**

The appealing tribe or the facility owner (if the tribe is not the owner) may appeal the finding or determination to the Secretary of Transportation at: FHWA, 400 7th St., SW., HFL-1, Washington, DC 20590. If the tribe is appealing it must provide a courtesy copy of its appeal to BIA.

#### **§ 170.925 Is ERFO funding supplemental to IRR Program funding?**

Yes. If ERFO funds are approved and available, they can be used to supplement IRR construction and maintenance funds for FHWA-approved repairs. If IRR construction or maintenance funds are used to address an approved claim when ERFO funds are unavailable, the next authorized ERFO funds may be used to reimburse the construction or maintenance funds expended.

#### **§ 170.926 Can a tribe administer approved ERFO repairs under a self-determination contract or a self-governance agreement?**

Yes.

#### **§ 170.927 How can FEMA Program funds be used to repair damage?**

(a) A tribe can request FEMA Program funds for emergency repairs to damaged roads not on the IRR System if the President has declared a major disaster or emergency. The tribe makes the request by submitting an SF 424, Application for Federal Assistance, directly to FEMA, as described in FEMA Response and Recovery Directorate 9512.4 (Dec. 28, 1999).

(b) Tribes can ask States to seek FEMA Program funds to repair damage to roads not on the IRR System.