

§ 170.461

25 CFR Ch. I (4–1–07 Edition)

(4) Identification of design exceptions if used in the plans.

(c) A tribe may include additional items at its option.

§ 170.461 May a tribe approve plans, specifications, and estimates?

A tribe may review and approve plan, specification, and estimate (PS&E) project packages for IRR Program funded projects when:

(a) This function is included in the tribe's self-determination contract or self-governance agreement; or

(b) The tribe is the owner of the IRR transportation facility or is responsible for maintaining the facility. In this case, the tribe must have at least 30 days to review and approve the proposed PS&E package.

§ 170.462 When may a self-determination contract or self-governance agreement include PS&E review and approval?

(a) For a BIA or tribally-owned facility, the tribe may assume responsibility to review and approve PS&E packages under a self-determination contract or self-governance agreement if the tribe specifies in the contract or agreement that:

(1) A licensed professional engineer will supervise design and approval of the PS&E package;

(2) A licensed professional engineer will certify that the PS&E meets or exceeds the design, health, and safety standards in appendix B to subpart D for an IRR transportation facility;

(3) An additional licensed professional engineer (either a BIA engineer or, if the tribe chooses, a non-BIA engineer) will review the PS&E package when it is at least 95 percent complete; and

(4) If the project is to be performed by the tribe, the tribe will provide a copy of the certification and approved PS&E package to BIA before the solicitation of the project or notice to proceed.

(b) For a facility maintained by a public authority other than BIA or a tribe, in addition to satisfying the requirements of paragraph (a) of this section:

(1) The public authority must have a chance to review and approve the PS&E when it is between 75 percent

and 95 percent complete, unless an agreement between the tribe and the public authority states otherwise;

(2) If a licensed professional engineer performs the review and approval when the PS&E provided is at least 95 percent complete, the second level review requirement in paragraph (a)(2) of this section is satisfied; and

(3) The tribe must allow the public authority at least 30 days for review and approval. If the public authority does not meet this deadline or an extension granted by the tribe, the tribe may proceed with the review in accordance with paragraph (a)(2) of this section.

(c) If a BIA engineer does not complete a review within 30 days under paragraph (a)(2) of this section, the tribe may contract its own engineer to perform the review.

§ 170.463 What should the Secretary do if a design deficiency is identified?

If a review under § 170.462 identifies a design deficiency that may jeopardize public health and safety if the facility is completed, the Secretary must:

(a) For a tribally-approved PS&E package, immediately notify the tribe of the design deficiency and request that the tribe promptly resolve the deficiency in accordance with the standards in appendix B to subpart D; and

(b) For a BIA-approved PS&E package, promptly resolve the deficiency in accordance with the standards in appendix B to subpart D and notify the tribe of the required design changes.

CONSTRUCTION AND CONSTRUCTION MONITORING

§ 170.470 What are the IRR construction standards?

(a) Appendix B to this subpart lists design standards that may be used for roads and bridges.

(1) Tribes may propose road and highway bridge construction standards that are consistent with or exceed these standards.

(2) BIA may also use FHWA-approved, State or tribal road and highway bridge construction standards.

(b) For designing and building eligible intermodal projects funded by the IRR Program, tribes must use either:

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- (1) Nationally recognized standards for comparable projects; or
- (2) Tribally adopted standards that meet or exceed nationally recognized standards for comparable projects.

§ 170.471 How are projects administered?

(a) When a tribe carries out an IRR project under ISDEAA, BIA will monitor performance under the requirements of 25 CFR 900.130 and 900.131(b)(9) or 25 CFR 1000.243 and 1000.249(c) and (e), as appropriate. If BIA discovers a problem during an on-site monitoring visit, BIA must promptly notify the tribe and, if asked, provide technical assistance.

(b) BIA or the tribal government, as provided for under the contract or agreement, is responsible for day-to-day project inspections except for BIA monitoring under paragraph (a) of this section.

(c) BIA must process substantial changes in the scope of a construction project in coordination with the affected tribe.

(d) The tribe, other contractors, and BIA may perform quality control.

(e) Only the licensed professional engineer may change an IRR project's plans, specifications, and estimates (PS&E) during construction.

(1) For substantial changes, the original approving agency must review the change. The approving agency is the Federal, tribal, State, or local entity with PS&E approval authority over the project.

(2) In making any substantial change, the approving agency must consult with the affected tribe and the entity having maintenance responsibility.

(3) A change that exceeds the limits of available funding may be made only with the approving agency's consent.

§ 170.472 What construction records must tribes and BIA keep?

The following table shows which IRR construction records BIA and tribes must keep and the requirements for access.

Record keeper	Records that must be kept	Access
(a) Tribe	All records required by ISDEAA and 25 CFR 900.130-131 or 25 CFR 1000.243 and 1000.249, as appropriate.	BIA is allowed access to tribal IRR construction records as required under 25 CFR 900.130, 900.131 or 25 CFR 1000.243 and 1000.249, as appropriate.
(b) BIA	Completed daily reports of construction activities appropriate to the type of construction it is performing.	Upon reasonable advance request by a tribe, BIA must provide reasonable access to records.

§ 170.473 What happens when a construction project ends?

(a) At the end of a construction project, the agency or organization responsible for the project must make a final inspection. The inspection determines whether the project has been completed in reasonable conformity with the PS&E.

(1) Appropriate officials from the tribe, BIA, and FHWA should participate in the inspection, as well as contractors and maintenance personnel.

(2) All project information must be made available during final inspection and used to develop the IRR construc-

tion project closeout report. Some examples of project information are: Daily diaries, weekly progress reports, subcontracts, subcontract expenditures, salaries, equipment expenditures, as-built drawings, etc.

(b) An IRR construction project closeout is the final accounting of all IRR construction project expenditures. It is the closing of the financial books of the Federal Government for that construction project. Closeout occurs after:

(1) The final project inspection concludes; and

(2) The facility owner makes final acceptance of the project.