

(c) Other applicable Federal, State, tribal, or local government maintenance standards as may be negotiated in an ISDEAA road maintenance self-determination contract or self-governance agreement.

§ 170.811 What happens if lack of funds results in inadequate maintenance?

If BIA determines that an IRR transportation facility is not being maintained under IRR TFMMS standards due to insufficient funding, the Secretary will notify the facility owner, and if tribal or BIA owned, continue to request annual maintenance funding for that facility. In addition, the Secretary will report these findings to Secretary of Transportation under 23 U.S.C. 204. The Secretary will provide a draft copy of the report to the affected tribe for comment before forwarding it to Secretary of Transportation.

§ 170.812 What is emergency maintenance?

Emergency maintenance is work that must be accomplished immediately because of life threatening circumstances due to a catastrophic failure or natural disaster. Examples of emergency maintenance include: ice and snow control, traffic control, work in slide areas, repairs to drainage washouts, retrieving hazardous materials, suppressing wild fires, and repairing the ravages of other disasters.

§ 170.813 When can access to IRR transportation facilities be restricted?

IRR transportation facilities must be open and available for public use, as are IRRs (§170.120).

(a) The Secretary may, in consultation with a tribe and applicable private landowners, restrict or temporarily close an IRR transportation facility to public use for the following reasons:

- (1) Because of unsafe conditions;
- (2) Because of natural disasters;
- (3) For fish or game protection;
- (4) To prevent traffic from causing damage to the facility; and
- (5) For reasons deemed to be in the public interest such as fire prevention or suppression as approved by the Secretary.

(b) Consultation is not required whenever the above conditions involve immediate safety or life-threatening situations.

(c) Certain IRR transportation facilities owned by the tribes or BIA may be permanently closed when the tribal government and the Secretary agree. Once this agreement is reached, BIA must remove the facility from the IRR System.

APPENDIX A TO SUBPART G—LIST OF ACTIVITIES ELIGIBLE FOR FUNDING UNDER BIA TRANSPORTATION FACILITY MAINTENANCE PROGRAM

The following activities are eligible for BIA Transportation Facility Maintenance Program. The list is not all-inclusive.

1. Cleaning and repairing ditches and culverts.
2. Stabilizing, removing, and controlling slides, drift sand, mud, ice, snow, and other impediments.
3. Adding additional culverts to prevent roadway and adjoining property damage.
4. Repairing, replacing or installing traffic control devices, guardrails and other features necessary to control traffic and protect the road and the traveling public.
5. Removing roadway hazards.
6. Repairing or developing stable road embankments.
7. Repairing parking facilities and appurtenances such as striping, lights, curbs, etc.
8. Repairing transit facilities and appurtenances such as bus shelters, striping, sidewalks, etc.
9. Training maintenance personnel.
10. Administering the BIA Transportation Facility Maintenance Program.
11. Performing environmental/archeological mitigation associated with transportation facility maintenance.
12. Leasing, renting, or purchasing of maintenance equipment.
13. Paying utilities cost for roadway lighting and traffic signals.
14. Purchasing maintenance materials.
15. Developing, implementing, and maintaining an IRR Transportation Facility Maintenance Management System (TFMMS).
16. Performing pavement maintenance such as pot hole patching, crack sealing, chip sealing, surface rejuvenation, and thin overlays (less than 1 inch).
17. Performing erosion control.
18. Controlling roadway dust.
19. Re-graveling roads.
20. Controlling vegetation through mowing, noxious weed control, trimming, etc.
21. Making bridge repairs.

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22. Paying the cost of closing of transportation facilities due to safety or other concerns.

23. Maintaining airport runways, heliport pads, and their public access roads.

24. Maintaining and operating BIA public ferry boats.

25. Making highway alignment changes for safety reasons. These changes require prior notice to the Secretary.

26. Making temporary highway alignment or relocation changes for emergency reasons.

27. Maintaining other IRR intermodal transportation facilities provided that there is a properly executed agreement with the owning public authority within available funding.

Subpart H—Miscellaneous Provisions

HAZARDOUS AND NUCLEAR WASTE TRANSPORTATION

§ 170.900 What is the purpose of the provisions relating to transportation of hazardous and nuclear waste?

Sections 170.900 through 170.907 on transportation of nuclear and hazardous waste are provided for information only, they do not create any legal responsibilities or duties for any person or entity, and are not intended to create any basis for a cause of action under the Federal Tort Claims Act.

§ 170.901 What standards govern transportation of radioactive and hazardous materials?

DOT, the International Atomic Energy Agency, the U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency have established standards and regulations for the shipment of radioactive and hazardous materials. Legal authority includes, but is not limited to, 23 U.S.C. 141; 23 U.S.C. 127; 49 CFR parts 107, 171–180; 10 CFR part 71.

§ 170.902 What is the role of State, tribal, and local governments?

State, tribal, and local governments typically provide for the safety of their residents and other persons and protection of resources within their jurisdictions. With respect to radioactive and hazardous materials, some State, tribal, and local governments enact legislation, execute cooperative agree-

ments, designate alternate transportation routes, develop emergency response plans, perform emergency response, issue permits, conduct vehicle inspections, enforce traffic laws, and perform highway construction and maintenance. These activities must not conflict with Federal laws and regulations.

§ 170.903 Who notifies tribes of the transport of radioactive waste?

The Department of Energy (DOE) has elected, by policy, to notify tribes of DOE shipments through their jurisdiction.

§ 170.904 Who responds to an accident involving a radioactive or hazardous materials shipment?

Tribal, Federal, local, and State police, fire departments, and rescue squads are often the first to respond to transportation accidents involving radioactive or hazardous materials. If radioactive materials are involved, DOE typically:

(a) Ensures that appropriate State and tribal agencies are contacted and coordinate any necessary Radiological Assistance Program team activities; and

(b) Dispatches a Radiological Assistance Program team that may include nuclear engineers, health physicists, industrial hygienists, public affairs specialists, and other personnel who provide related services.

§ 170.905 How can tribes obtain training in handling hazardous material?

(a) Tribes cannot use IRR Program funds to train personnel to handle radioactive and hazardous material.

(b) Tribes can seek training from DOE, EPA, NRC, OSHA, States, and other sources. Funding is available from DOT under the Hazardous Materials Uniform Safety Act, EPA for monitoring and FEMA for general preparedness.

§ 170.906 Who cleans up radioactive and hazardous material spills?

The carrier is typically responsible for cleanup of a radioactive or hazardous material spill with assistance from the shipper using established