

Dated: March 13, 2008.

**Todd A. Stevenson,**  
Secretary, Consumer Product Safety  
Commission.

**Note:** The following appendix will not appear in the Code of Federal Regulations.

#### Appendix—List of Relevant Documents

(The following documents are available from the Commission's Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7923 or from the Commission's Web site (<http://www.cpsc.gov/library/foia/foia.html>)).

1. Briefing memorandum from Robert J. Howell, Acting Assistant Executive Director, EXHR and Patricia K. Adair, Project Manager, Directorate for Engineering Sciences, to the Commission, "Draft Final Amendments to the Standard for the Flammability of Clothing Textiles, 16 CFR Part 1610," January 11, 2008.

2. Memorandum from David Miller, EPHA, Directorate for Epidemiology, to Patricia K. Adair, Project Manager, "General Wearing Apparel Fires—Fatalities and Emergency Department Treated Injuries," December 27, 2007.

3. Memorandum from Dale R. Ray, Directorate for Economic Analysis, to Patricia K. Adair, Project Manager, "Final Regulatory Analyses—Clothing Textiles Standard Amendment," August 6, 2007.

4. Memorandum from Gail Stafford and Weiyang Tao, Directorate for Laboratory Sciences, to Patricia K. Adair, Project Manager, "Response to Comments Received on Notice of Proposed Rulemaking (NPR) for Updating the Standard for the Flammability of Clothing Textiles," October 22, 2007.

5. Memorandum from John R. Murphy, Division of Mechanical Engineering, to Patricia K. Adair, Project Manager, "Response to Comments Received as a Result of the Notice of Proposed Rulemaking (NPR) for Updating the Standard for the Flammability of Clothing Textiles," November 16, 2007.

6. Memorandum from Martha A. Kosh, Office of the Secretary, to ES, "Proposed Changes to Textile Flammability Standard Comments," May 15, 2007.

[FR Doc. E8-5569 Filed 3-24-08; 8:45 am]

BILLING CODE 6355-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 558

#### New Animal Drugs for Use in Animal Feed; Pyrantel; Technical Amendment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its animal drug regulations to correct an inadvertent omission in the list of concentrations of pyrantel tartrate Type A medicated articles approved for use by Phibro Animal Health. This action is being taken to improve the accuracy of the animal drug regulations.

**DATES:** This rule is effective March 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** George K. Haibel, Center for Veterinary Medicine (HFV-6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-276-9019, e-mail: [george.haibel@fda.hhs.gov](mailto:george.haibel@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** FDA is amending the animal drug regulations in 21 CFR 558.485 to correct an inadvertent omission in the list of concentrations of pyrantel tartrate Type A medicated articles approved for use by Phibro Animal Health. This action is being taken to improve the accuracy of the animal drug regulations.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

#### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

#### § 558.485 [Amended]

■ 2. In § 558.485, in paragraph (b)(1), add "48," in numerical sequence.

Dated: March 12, 2008.

**Bernadette Dunham,**

Director, Center for Veterinary Medicine.

[FR Doc. E8-5928 Filed 3-24-08; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 661

[FHWA Docket No. FHWA-2007-27536]

RIN 2125-AF20

#### Indian Reservation Road Bridge Program

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** Section 1119 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144) makes significant changes to the Indian Reservation Road Bridge Program (IRRBP). In addition, it authorizes \$14 million of IRRBP funds per year for the replacement or rehabilitation of structurally deficient or functionally obsolete Indian Reservation Road (IRR) bridges. This final rule amends the existing IRRBP by establishing new policies and provisions. Also, in this final rule, preliminary engineering (PE) is now an eligible activity.

**DATES:** Effective April 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Sparrow, Federal Lands Highway, HFPD-9, (202) 366-9483; or Ms. Vivian Philbin, Federal Lands Highway Counsel, HFFC-16, (720) 963-3445; Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access and Filing

Internet users may access this document, the notice of proposed rulemaking (NPRM), and all comments received by the DOT by accessing the Federal eRulemaking portal at: <http://www.regulations.gov>. It is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: <http://www.archives.gov> or the Government Printing Office's Web page at <http://www.gpoaccess.gov/nara>.

##### Background

The Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107), established the IRRBP, codified at 23 U.S.C.

202(d)(4)(B) under which a minimum of \$13 million of IRR Program funds was set aside for a nationwide priority program for improving deficient IRR bridges. On May 8, 2003, the FHWA published a final rule for the IRRBP at 68 FR 24642 (23 CFR 661). This present rulemaking is necessary due to recent legislative changes.

Section 1119 of the SAFETEA-LU authorizes \$14 million per year for fiscal years 2005 through 2009 from the Highway Trust Fund for the IRRBP to carry out PE, construction engineering (CE), and construction to replace or rehabilitate structurally deficient or functionally obsolete IRR bridges. Pursuant to the new statutory requirements, the FHWA developed amendments to the existing IRRBP regulation. This final rule reflects these amendments.

#### Discussion of Comments Received to the Notice of Proposed Rulemaking

The FHWA published its NPRM on June 5, 2007, at 72 FR 31013 requesting comments to the proposed amendments. In response to the NPRM, the FHWA received comments from the Indian Reservation Road Coordinating Committee (IRRCC) and from three Tribes: The Cherokee Nation, Eastern Band of Cherokee Indians, and the Seminole Nation of Oklahoma. The FHWA addressed each of the comments in adopting this final rule.

The majority of the comments received addressed several common issues. These issues are addressed and discussed under the appropriate section below. The remaining sections did not receive comments and will be adopted as proposed.

#### Section-by-Section Discussion of Changes

##### 1. What definitions apply to this regulation? (661.5)

Structurally deficient (SD)—The definition was updated to accurately align it with the FHWA's technical definition. A bridge becomes structurally deficient when it reaches the set threshold of one of the six criteria from the FHWA's National Bridge Inventory (NBI). This update does not change the substance of the definition, but rather will reduce ambiguity by making this definition consistent throughout FHWA.

##### 2. When is a bridge eligible for replacement? (661.19) and When is a bridge eligible for rehabilitation? (661.21)

The IRRCC recommends that instead of the sufficiency rating numbers

identified in the NPRM, the final regulation should comply with the latest criteria established by the FHWA's National Bridge Inspection Standards (NBIS) for replacement or rehabilitation of an IRR bridge project.

The FHWA adopted this recommendation. The regulation now states that the rehabilitation and replacement criteria is the same as those used in 23 CFR part 650.409(a). This change is made in order for the IRRBP rule to be consistent with any future changes in the eligibility requirements for rehabilitation or replacement of bridges as established by the FHWA. However, this change will not affect the existing eligibility requirements in the existing regulations.

##### 3. How will a bridge project be programmed for funding once eligibility has been determined? (661.23)

The IRRCC and the Seminole Nation of Oklahoma recommend that the first come first served basis should be eliminated and the criteria for ranking for the bridge applications should follow the provisions proposed under subparagraph (b)(1)–(b)(6) of this section, and deleting the proposed first sentence under subparagraph (b).

The FHWA adopted this recommendation and revised this section to eliminate the first come first served basis. Under this final rule, IRR bridges that are most critical will be given the highest priority for funding.

##### 4. What does a complete application package for PE consist of and how does the project receive funding? (661.25) and What does a complete application package for construction consist of and how does the project receive funding? (661.27)

The Seminole Nation of Oklahoma recommends improving these sections by adding a timeframe (60 or 90 days) for the FHWA to review and return incomplete application packages so projects can be pursued.

The proposed language in these sections states that an incomplete application package would be disapproved and returned for revision and resubmission along with the notation as to why it was disapproved. The FHWA believes that with this provision the projects can still be pursued once the application is completed and resubmitted to the Bureau of Indian Affairs (BIA) and the FHWA.

Likewise, the revised language in these sections clarifies that the Tribes that will receive direct funding from the FHWA are the Tribes who entered into

a contract with the FHWA under an FHWA/Tribal agreement.

##### 5. How does ownership impact project selection? (661.29)

The Cherokee Nation commented that this proposed section places a much higher priority on BIA bridges versus non-BIA bridges even though the statute makes no mention of distinction between the two. They object to the ownership distinctions in the proposed language of this section.

The FHWA believes that the ownership requirement in this section is an issue since the States and counties have ownership and primary responsibility for their bridges. Therefore, a smaller percentage of available funds has been set aside for non-BIA bridges since the States and counties have access to Federal-aid and other funding sources to replace or rehabilitate their bridges, whereas the IRRBP is the only funding source for the BIA and Tribal bridges. As such, the FHWA will retain the language in this section as proposed in the NPRM.

##### 6. What percentage of IRRBP funding is available for PE and construction? (661.33)

The Eastern Band of Cherokee Indians does not agree with the proposal that 15 percent of IRRBP funding be eligible for PE costs. They believe that typical PE costs average 10 percent and that the proposed percentage should be reduced accordingly.

The FHWA maintains that given the historic average size of the projects, the 15 percent limit for PE is adequate and feels that this percentage represents the average cost of PE on the size of projects typically funded through this program. Therefore, the FHWA has adopted the language as proposed.

##### 7. What percentage of IRRBP funding is available for use on BIA owned IRR bridges and non-BIA owned IRR bridges? (661.35)

The Cherokee Nation disagrees with the proposed regulation in this section in that the larger percentage of the IRRBP funds is set aside for BIA bridges versus the non-BIA bridges.

The FHWA's response to the comment is that the existing regulation states that up to 80 percent of the annual funding will be available for use on BIA and Tribally owned bridges with the remaining funds to be used for non-BIA owned bridges. This final rule utilizes the same funding distribution but it has the ability to shift funds between BIA and Tribally owned, and non-BIA owned bridge projects at various times during the fiscal year so

as to maximize the number of projects funded and the overall effectiveness of the program regardless of ownership.

*8. What are the funding limitations on individual IRRBP projects? (661.37)*

The Cherokee Nation, Eastern Band of Cherokee Indians, and the Seminole Nation of Oklahoma made similar comments on this section. These Tribes disagree with the funding limitation established by the FHWA for construction of non-BIA owned bridges. Likewise, they feel that the requirement to provide 20 percent matching funds in order to qualify for IRRBP funds would result in unfair treatment for some Tribes.

The proposed funding ceiling of \$1,000,000 for non-BIA owned bridges was developed based on a review of historical data on IRRBP funded projects. The FHWA determined that non-BIA owned bridge projects have an average project size less than \$600,000, and more than 75 percent of the projects were funded at a level below \$1,000,000. However, to meet funding flexibility, this section will now allow a Tribe to request additional funds for non-BIA owned projects that are above the thresholds by submitting a written justification for consideration to the FHWA. The approval of the requests would be considered on a case-by-case basis.

*9. What should be done with a deficient BIA owned IRR bridge if the Indian Tribe does not support the project? (661.59)*

The FHWA revised the proposed section in the NPRM to clarify that when the Tribe does not support a deficient IRR bridge for rehabilitation or replacement, the deficient IRR bridge can still remain open for traffic provided the structure's load rating is reduced to protect the safety of the motoring public.

**Other**

The IRRCC recommends that the proposed regulation be revised to clarify that a Tribally owned bridge be treated the same as a BIA-owned bridge for purposes of eligibility for replacement or rehabilitation and preliminary engineering costs.

The FHWA adopted the recommendation and Tribal bridges are now considered the same as BIA owned with regard to the funding criteria to align it to the IRR Program policy as established in 25 CFR part 170. The Tribal bridges are now eligible to receive 100 percent of funding for construction and \$150,000 maximum limit for PE.

**Distribution and Derivation Tables**

For ease of reference, distribution and derivation tables are provided for the current sections and the new sections, as follows:

**DISTRIBUTION TABLE**

Old section	New section
661.1	661.1.
661.3	661.3—Revised.
661.5	661.5—Revised.
661.7	661.7—Revised.
661.9	661.23—Redesignated and Revised.
661.11	661.41—Redesignated and Revised.
661.13	Removed.
661.15	661.9—Redesignated.
661.17	661.11—Redesignated.
661.19	Removed.
661.21	661.13—Redesignated.
661.23	661.15—Redesignated and Revised.
661.25	661.17—Redesignated and Revised.
661.27	661.19—Redesignated and Revised.
661.29	661.21—Redesignated and Revised.
661.31	661.29—Redesignated and Revised.
661.33	661.31—Redesignated and Revised.
661.35	661.35—Revised.
661.37	661.37—Revised.
661.39	Removed.
661.41	661.27—Redesignated and Revised.
661.43	Removed.
661.45	661.57—Redesignated.
661.47	661.39—Redesignated and Revised.
661.49	661.43—Redesignated and Revised.
661.51	661.47—Redesignated and Revised.
None	661.25—Added.
None	661.33—Added.
None	661.45—Added.
None	661.49—Added.
None	661.51—Added.
None	661.53—Added.
None	661.55—Added.
None	661.59—Added.

**DERIVATION TABLE**

New section	Old section
661.1	661.1.
661.3	661.3.
661.5	661.5.
661.7	661.7.
661.9	661.15.
661.11	661.17.
661.13	661.21.
661.15	661.23.
661.17	661.25.
661.19	661.27.
661.21	661.29.
661.23	661.9.
661.25	None.

**DERIVATION TABLE—Continued**

New section	Old section
661.27	661.41.
661.29	661.31.
661.31	661.33.
661.33	None.
661.35	661.35.
661.37	661.37.
661.39	661.47.
661.41	661.11.
661.43	661.49.
661.45	None.
661.47	661.51.
661.49	None.
661.51	None.
661.53	None.
661.55	None.
661.57	661.45.
661.59	None.

**Rulemaking Analyses and Notices**

*Executive Order 12866 (Regulatory Planning and Review) and USDOT Regulatory Policies and Procedures*

The FHWA has determined that this action would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. This rule would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612) the FHWA has evaluated the effects of this action on small entities and has determined that this action would not have a significant economic impact on a substantial number of small entities. This final rule amends the existing regulations pursuant to section 1119 of SAFETEA-LU and would not fundamentally alter the funding available for the replacement or rehabilitation of structurally deficient or functionally obsolete IRR bridges. For these reasons, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L.

104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$128.1 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, tribal governments and the private sector.

*Executive Order 13132 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

*Executive Order 13175 (Tribal Consultation)*

The FHWA met with the IRRCC at three separate meetings in Tulsa, Oklahoma, in February, 2006; Denver, Colorado, in March, 2006; and Hinckley, Minnesota, in August, 2006, to jointly review the proposed regulation and provide the IRRCC with the opportunity to make recommendations prior to publishing the NPRM. The IRRCC was established under 25 CFR part 170 by the Secretaries of the Interior and Transportation, to provide input and recommendation to BIA and FHWA in developing IRR Program policies and procedures and to supplement government-to-government consultation by coordinating and obtaining input from Tribes, BIA, and FHWA. The IRRCC consists of primary and alternate Tribal representatives from each of the 12 BIA Regions, along with 2 non-voting Federal representatives (one each from BIA and FHWA).

The proposed regulation was first distributed to the IRRCC at the Tulsa meeting referenced above. The IRRCC then met in a special meeting in Denver, Colorado, specifically to review the regulation and develop recommendations for the FHWA rulemaking. The funding workgroup of the IRRCC was assigned the task of carrying forth the recommendations to FHWA. In Hinckley, Minnesota, the FHWA met with the funding workgroup and together they reviewed the

comments. The NPRM reflected the results of the initial IRRCC input.

The FHWA and IRRCC met again in August 2007 in Ketchikan, Alaska. At that meeting, the IRRCC reviewed the published NPRM and provided recommendations and comments to FHWA. All aspects of the regulation were reviewed by the IRRCC and the comments received by the IRRCC and its members are discussed above in the section-by-section discussion.

*Executive Order 13211 (Energy Effects)*

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. We have determined that it is not a significant energy action under that order since it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain collection of information requirements for the purposes of the PRA.

*Executive Order 12988 (Civil Justice Reform)*

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

*Executive Order 13045 (Protection of Children)*

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not cause any environmental risk to health or

safety that might disproportionately affect children.

*Executive Order 12630 (Taking of Private Property)*

The FHWA has analyzed this rule under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights. The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

*National Environmental Policy Act*

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

*Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 661**

Indian Reservation Road Bridge Program.

Issued on: March 14, 2008.

**James D. Ray,**

*Acting Federal Highway Administrator.*

■ In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, by revising part 661 to read as set forth below:

**PART 661—INDIAN RESERVATION ROAD BRIDGE PROGRAM**

Sec.

- 661.1 What is the purpose of this regulation?
- 661.3 Who must comply with this regulation?
- 661.5 What definitions apply to this regulation?
- 661.7 What is the IRRBP?
- 661.9 What is the total funding available for the IRRBP?
- 661.11 When do IRRBP funds become available?
- 661.13 How long are these funds available?
- 661.15 What are the eligible activities for IRRBP funds?
- 661.17 What are the criteria for bridge eligibility?
- 661.19 When is a bridge eligible for replacement?
- 661.21 When is a bridge eligible for rehabilitation?

- 661.23 How will a bridge project be programmed for funding once eligibility has been determined?
- 661.25 What does a complete application package for PE consist of and how does the project receive funding?
- 661.27 What does a complete application package for construction consist of and how does the project receive funding?
- 661.29 How does ownership impact project selection?
- 661.31 Do IRRBP projects have to be listed on an approved IRR TIP?
- 661.33 What percentage of IRRBP funding is available for PE and construction?
- 661.35 What percentage of IRRBP funding is available for use on BIA and Tribally owned IRR bridges, and non-BIA owned IRR bridges?
- 661.37 What are the funding limitations on individual IRRBP projects?
- 661.39 How are project cost overruns funded?
- 661.41 After a bridge project has been completed (either PE or construction) what happens with the excess or surplus funding?
- 661.43 Can other sources of funds be used to finance a queued project in advance of receipt of IRRBP funds?
- 661.45 What happens when IRRBP funds cannot be obligated by the end of the fiscal year?
- 661.47 Can bridge maintenance be performed with IRRBP funds?
- 661.49 Can IRRBP funds be spent on Interstate, State Highway, and Toll Road IRR bridges?
- 661.51 Can IRRBP funds be used for the approach roadway to a bridge?
- 661.53 What standards should be used for bridge design?
- 661.55 How are BIA and Tribal owned IRR bridges inspected?
- 661.57 How is a list of deficient bridges to be generated?
- 661.59 What should be done with a deficient BIA owned IRR bridge if the Indian Tribe does not support the project?

**Authority:** 23 U.S.C. 120(j) and (k), 202, and 315; Section 1119 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144); and 49 CFR 1.48.

**§ 661.1 What is the purpose of this regulation?**

The purpose of this regulation is to prescribe policies for project selection and fund allocation procedures for administering the Indian Reservation Road Bridge Program (IRRBP).

**§ 661.3 Who must comply with this regulation?**

Public authorities must comply to participate in the IRRBP by applying for preliminary engineering (PE), construction, and construction engineering (CE) activities for the replacement or rehabilitation of structurally deficient and functionally

obsolete Indian Reservation Road (IRR) bridges.

**§ 661.5 What definitions apply to this regulation?**

The following definitions apply to this regulation:

*Approach roadway* means the portion of the highway immediately adjacent to the bridge that affects the geometrics of the bridge, including the horizontal and vertical curves and grades required to connect the existing highway alignment to the new bridge alignment using accepted engineering practices and ensuring that all safety standards are met.

*Construction engineering (CE)* is the supervision, inspection, and other activities required to ensure the project construction meets the project's approved acceptance specifications, including but not limited to: additional survey staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates.

*Functionally obsolete (FO)* is the state in which the deck geometry, load carrying capacity (comparison of the original design load to the State legal load), clearance, or approach roadway alignment no longer meets the usual criteria for the system of which it is an integral part.

*Indian Reservation Road (IRR)* means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaska Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

*Indian reservation road bridge* means a structure located on an IRR, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of the openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

*Life cycle cost analysis (LCCA)* means a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs, such as maintenance, user costs, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.

*National Bridge Inventory (NBI)* means the aggregation of structure inventory and appraisal data collected to fulfill the requirements of the National Bridge Inspection Standards (NBIS).

*Plans, specifications and estimates (PS&E)* means construction drawings, compilation of provisions, and construction project cost estimates for the performance of the prescribed scope of work.

*Preliminary engineering (PE)* means planning, survey, design, engineering, and preconstruction activities (including archaeological, environmental, and right-of-way activities) related to a specific bridge project.

*Public authority* means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

*Public road* means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

*Structurally deficient (SD)* means a bridge becomes structurally deficient when it reaches the set threshold of one of the six criteria from the FHWA NBI.

*Structure Inventory and Appraisal (SI&A) Sheet* means the graphic representation of the data recorded and stored for each NBI record in accordance with the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges (Report No. FHWA-PD-96-001).

*Sufficiency rating (SR)* means the numerical rating of a bridge based on its structural adequacy and safety, essentiality for public use, and its serviceability and functional obsolescence.

**§ 661.7 What is the IRRBP?**

The IRRBP, as established under 23 U.S.C. 202(d)(4), is a nationwide priority program for improving structurally deficient and functionally obsolete IRR bridges.

**§ 661.9 What is the total funding available for the IRRBP?**

The statute authorizes \$14 million to be appropriated from the Highway Trust Fund in Fiscal Years 2005 through 2009.

**§ 661.11 When do IRRBP funds become available?**

IRRBP funds are authorized at the start of each fiscal year but are subject to Office of Management and Budget apportionment before they become available to FHWA for further distribution.

**§ 661.13 How long are these funds available?**

IRRBP funds for each fiscal year are available for obligation for the year authorized plus three years (a total of four years).

**§ 661.15 What are the eligible activities for IRRBP funds?**

(a) IRRBP funds can be used to carry out PE, construction, and CE activities of projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions, or install scour countermeasures for structurally deficient or functionally obsolete IRR bridges, including multiple pipe culverts.

(b) If a bridge is replaced under the IRRBP, IRRBP funds can be also used for the demolition of the old bridge.

**§ 661.17 What are the criteria for bridge eligibility?**

(a) Bridge eligibility requires the following:

- (1) Have an opening of 20 feet or more;
- (2) Be located on an IRR that is included in the IRR Inventory;
- (3) Be structurally deficient or functionally obsolete, and
- (4) Be recorded in the NBI maintained by the FHWA.

(b) Bridges that were constructed, rehabilitated or replaced in the last 10 years, will be eligible only for seismic retrofit or installation of scour countermeasures.

**§ 661.19 When is a bridge eligible for replacement?**

To be eligible for replacement, the bridge must be considered structurally deficient or functionally obsolete and must be in accordance with 23 CFR part 650.409(a) for bridge replacement. After an existing bridge is replaced under the IRRBP, it must be taken completely out of service and removed from the inventory. If the original bridge is considered historic, it must still be removed from the inventory, however the Tribe is allowed to request an exemption from the BIA Division of Transportation (BIADOT) to allow the bridge to remain in place.

**§ 661.21 When is a bridge eligible for rehabilitation?**

To be eligible for rehabilitation, the bridge must be considered structurally deficient or functionally obsolete and must be in accordance with 23 CFR part 650.409(a) for bridge rehabilitation. A bridge eligible for rehabilitation may be replaced if the life cycle cost analysis is conducted which shows the cost for bridge rehabilitation exceeds the replacement cost.

**§ 661.23 How will a bridge project be programmed for funding once eligibility has been determined?**

(a) All projects will be programmed for funding after a completed application package is received and accepted by the FHWA. At that time, the project will be acknowledged as either BIA and Tribally owned, or non-BIA owned and placed in either a PE or a construction queue.

(b) All projects will be ranked and prioritized based on the following criteria:

- (1) Bridge sufficiency rating (SR);
  - (2) Bridge status with structurally deficient (SD) having precedence over functionally obsolete (FO);
  - (3) Bridges on school bus routes;
  - (4) Detour length;
  - (5) Average daily traffic; and
  - (6) Truck average daily traffic.
- (c) Queues will carryover from fiscal year to fiscal year as made necessary by the amount of annual funding made available.

**§ 661.25 What does a complete application package for PE consist of and how does the project receive funding?**

(a) A complete application package for PE consists of the following: the certification checklist, IRRBP transportation improvement program (TIP), project scope of work, detailed cost for PE, and SI&A sheet.

(b) For non-BIA IRR bridges, the application package must also include a tribal resolution supporting the project and identification of the required minimum 20 percent local funding match.

(c) The IRRBP projects for PE will be placed in queue and determined as eligible for funding after receipt by FHWA of a complete application package. Incomplete application packages will be disapproved and returned for revision and resubmission along with a notation providing the reason for disapproval.

(d) Funding for the approved eligible projects on the queues will be made available to the Tribes, under an FHWA/Tribal agreement, or the Secretary of the Interior upon availability of program funding at FHWA.

**§ 661.27 What does a complete application package for construction consist of and how does the project receive funding?**

(a) A complete application package for construction consists of the following: a copy of the approved PS&E, the certification checklist, SI&A sheet, and IRRBP TIP. For non-BIA IRR bridges, the application package must also include a copy of a letter from the bridge's owner approving the project and its PS&E, a tribal resolution supporting the project, and identification of the required minimum 20 percent local funding match. All environmental and archeological clearances and complete grants of public rights-of-way must be acquired prior to submittal of the construction application package.

(b) The IRRBP projects for construction will be placed in queue and determined as eligible for funding after receipt by FHWA of a complete application package. Incomplete application packages will be disapproved and returned for revision and resubmission along with a notation providing the reason for disapproval.

(c) Funding for the approved eligible projects on the queues will be made available to the Tribes, under an FHWA/Tribal agreement, or the Secretary of the Interior upon availability of program funding at FHWA.

**§ 661.29 How does ownership impact project selection?**

Since the Federal government has both a trust responsibility and owns the BIA bridges on Indian reservations, primary consideration will be given to eligible projects on BIA and Tribally owned IRR bridges. A smaller percentage of available funds will be set aside for non-BIA IRR bridges, since States and counties have access to Federal-aid and other funding to design, replace and rehabilitate their bridges and that 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds apportioned to the State. The program policy will be to maximize the number of IRR bridges participating in the IRRBP in a given fiscal year regardless of ownership.

**§ 661.31 Do IRRBP projects have to be listed on an approved IRR TIP?**

Yes. All IRRBP projects must be listed on an approved IRR TIP. The approved IRR TIP will be forwarded by FHWA to the respective State for inclusion into its State TIP.

**§ 661.33 What percentage of IRRBP funding is available for PE and construction?**

Up to 15 percent of the funding made available in any fiscal year will be

eligible for PE. The remaining funding in any fiscal year will be available for construction.

**§ 661.35 What percentage of IRRBP funding is available for use on BIA and Tribally owned IRR bridges, and non-BIA owned IRR bridges?**

(a) Up to 80 percent of the available funding made available for PE and construction in any fiscal year will be eligible for use on BIA and Tribally owned IRR bridges. The remaining funding in any fiscal year will be made available for PE and construction for use on non-BIA owned IRR bridges.

(b) At various times during the fiscal year, FHWA will review the projects awaiting funding and may shift funds between BIA and Tribally owned, and non-BIA owned bridge projects so as to maximize the number of projects funded and the overall effectiveness of the program.

**§ 661.37 What are the funding limitations on individual IRRBP projects?**

The following funding provisions apply in administration of the IRRBP:

(a) An IRRBP eligible BIA and Tribally owned IRR bridge is eligible for 100 percent IRRBP funding, with a \$150,000 maximum limit for PE.

(b) An IRRBP eligible non-BIA owned IRR bridge is eligible for up to 80 percent IRRBP funding, with a \$150,000 maximum limit for PE and \$1,000,000 maximum limit for construction. The minimum 20 percent local match will need to be identified in the application package. IRR Program construction funds received by a Tribe may be used as the local match.

(c) Requests for additional funds above the referenced thresholds may be submitted along with proper justification to FHWA for consideration. The request will be considered on a case-by-case basis. There is no guarantee for the approval of the request for additional funds.

**§ 661.39 How are project cost overruns funded?**

(a) A request for additional IRRBP funds for cost overruns on a specific bridge project must be submitted to BIADOT and FHWA for approval. The written submission must include a justification, an explanation as to why the overrun occurred, and the amount of additional funding required with supporting cost data. If approved by FHWA, the request will be placed at the top of the appropriate queue (with a contract modification request having a higher priority than a request for additional funds for a project award) and funding may be provided if available.

(b) Project cost overruns may also be funded out of the Tribe's regular IRR Program construction funding.

**§ 661.41 After a bridge project has been completed (either PE or construction) what happens with the excess or surplus funding?**

Since the funding is project specific, once a bridge design or construction project has been completed under this program, any excess or surplus funding is returned to FHWA for use on additional approved deficient IRRBP projects.

**§ 661.43 Can other sources of funds be used to finance a queued project in advance of receipt of IRRBP funds?**

Yes. A Tribe can use other sources of funds, including IRR Program construction funds, on a project that has been approved for funding and placed on the queue and then be reimbursed when IRRBP funds become available. If IRR Program construction funds are used for this purpose, the funds must be identified on an FHWA approved IRR TIP prior to their expenditure.

**§ 661.45 What happens when IRRBP funds cannot be obligated by the end of the fiscal year?**

IRRBP funds provided to a project that cannot be obligated by the end of the fiscal year are to be returned to FHWA during August redistribution. The returned funds will be re-allocated to the BIA the following fiscal year after receipt and acceptance at FHWA from BIA of a formal request for the funds, which includes a justification for the amounts requested and the reason for the failure of the prior year obligation.

**§ 661.47 Can bridge maintenance be performed with IRRBP funds?**

No. Bridge maintenance repairs, e.g., guard rail repair, deck repairs, repair of traffic control devices, striping, cleaning scuppers, deck sweeping, snow and debris removal, etc., are not eligible uses of IRRBP funding. The Department of the Interior annual allocation for maintenance and IRR Program construction funds are eligible funding sources for bridge maintenance.

**§ 661.49 Can IRRBP funds be spent on Interstate, State Highway, and Toll Road IRR bridges?**

Yes. Interstate, State Highway, and Toll Road IRR bridges are eligible for funding as described in § 661.37(b).

**§ 661.51 Can IRRBP funds be used for the approach roadway to a bridge?**

(a) Yes, costs associated with approach roadway work, as defined in § 661.5 are eligible.

(b) Long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive earth structures, when constructed beyond an attainable touchdown point, are not eligible uses of IRRBP funds.

**§ 661.53 What standards should be used for bridge design?**

(a) Replacement—A replacement structure must meet the current geometric, construction and structural standards required for the types and volumes of projected traffic on the facility over its design life consistent with 25 CFR part 170, Subpart D, Appendix B and 23 CFR part 625.

(b) Rehabilitation—Bridges to be rehabilitated, as a minimum, should conform to the standards of 23 CFR part 625, Design Standards for Federal-aid Highways, for the class of highway on which the bridge is a part.

**§ 661.55 How are BIA and Tribal owned IRR bridges inspected?**

BIA and Tribally owned IRR bridges are inspected in accordance with 25 CFR part 170.504–170.507.

**§ 661.57 How is a list of deficient bridges to be generated?**

(a) In consultation with the BIA, a list of deficient BIA IRR bridges will be developed each fiscal year by the FHWA based on the annual April update of the NBI. The NBI is based on data from the inspection of all bridges. Likewise, a list of non-BIA IRR bridges will be obtained from the NBI. These lists would form the basis for identifying bridges that would be considered potentially eligible for participation in the IRRBP. Two separate master bridge lists (one each for BIA and non-BIA IRR bridges) will be developed and will include, at a minimum, the following:

- (1) Sufficiency rating (SR);
- (2) Status (structurally deficient or functionally obsolete);
- (3) Average daily traffic (NBI item 29);
- (4) Detour length (NBI item 19); and
- (5) Truck average daily traffic (NBI item 109).

(b) These lists would be provided by the FHWA to the BIADOT for publication and notification of affected BIA regional offices, Indian Tribal governments (ITGs), and State and local governments.

(c) BIA regional offices, in consultation with ITGs, are encouraged to prioritize the design for bridges that are structurally deficient over bridges that are simply functionally obsolete, since the former is more critical structurally than the latter. Bridges that have higher average daily traffic (ADT) should be considered before those that have lower ADT. Detour length should

also be a factor in selection and submittal of bridges, with those having a higher detour length being of greater concern. Lastly, bridges with higher truck ADT should take precedence over those which have lower truck ADT. Other items of note should be whether school buses use the bridge and the types of trucks that may cross the bridge and the loads imposed.

**§ 661.59 What should be done with a deficient BIA owned IRR bridge if the Indian Tribe does not support the project?**

The BIA should notify the Tribe and encourage the Tribe to develop and submit an application package to FHWA for the rehabilitation or replacement of the bridge. For safety of the motoring public, if the Tribe decides not to pursue the bridge project, the BIA shall work with the Tribe to either reduce the bridge's load rating or close the bridge, and remove it from the IRR inventory in accordance with 25 CFR part 170 (170.813).

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9386]

RIN 1545-BE80

#### Abandonment of Stock or Other Securities; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations; correction.

**SUMMARY:** This document contains a correction to final regulations (TD 9386) that were published in the **Federal Register** on Wednesday, March 12, 2008 (73 FR 13124) concerning the availability and character of a loss deduction under section 165 of the Internal Revenue Code for losses sustained from abandoned stock or other securities. These regulations clarify the tax treatment of losses from abandoned securities, and affect any taxpayer claiming a deduction for a loss from abandoned securities.

**DATES:** The correction is effective March 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** Sean M. Dwyer at (202) 622-5020 or Peter C. Meisel at (202) 622-7750 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Background

The final regulations (TD 9386) that are the subject of the correction are under section 165 of the Internal Revenue Code.

#### Need for Correction

As published, final regulations (TD 9386) contain an error that may prove to be misleading and is in need of clarification.

#### Correction of Publication

Accordingly, the publication of the final regulations (TD 9386), which were the subject of FR Doc. E8-4862, is corrected as follows:

On page 13124, column 2, in the preamble, under the paragraph heading "Background", the language "A statement in the preamble to the proposed regulations requires clarification. The preamble described section 165(g)(3) as providing an exception from capital loss treatment for certain worthless securities in a domestic corporation affiliated with the taxpayer. Section 165(g)(3) provides an exception from capital loss treatment for a taxpayer that is a domestic corporation that owns certain worthless securities of a domestic or foreign corporation affiliated with the taxpayer. See § 1.165-5(d)(1) of the Income Tax Regulations." is inserted as a second paragraph.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. E8-6038 Filed 3-24-08; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[TD 9389]

RIN 1545-BG74

#### Disclosure of Return Information in Connection with Written Contracts Among the IRS, Whistleblowers, and Legal Representatives of Whistleblowers

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to the disclosure of return information, pursuant to section 6103(n) of the Internal Revenue Code (Code), by an officer or employee of the Treasury Department, to a whistleblower and, if

applicable, the legal representative of the whistleblower, to the extent necessary in connection with a written contract among the IRS, the whistleblower and, if applicable, the legal representative of the whistleblower, for services relating to the detection of violations of the internal revenue laws or related statutes. The temporary regulations will affect officers and employees of the Treasury Department who disclose return information to whistleblowers, or their legal representatives, in connection with written contracts among the IRS, whistleblowers and, if applicable, their legal representatives, for services relating to the detection of violations of the internal revenue laws or related statutes. The temporary regulations will also affect any whistleblower, or legal representative of a whistleblower, who receives return information in connection with a written contract among the IRS, the whistleblower and, if applicable, the legal representative of the whistleblower, for services relating to the detection of violations of the internal revenue laws or related statutes. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES: Effective Date:** These temporary regulations are effective on *March 25, 2008*.

**Applicability Date:** For dates of applicability, see § 301.6103(n)-2T(f).

**FOR FURTHER INFORMATION CONTACT:** Helene R. Newsome, 202-622-7950 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6103(n) relating to the disclosure of return information in connection with written contracts among the IRS, whistleblowers and, if applicable, their legal representatives.

The Tax Relief and Health Care Act of 2006, Public Law 109-432 (120 Stat. 2958), (the Act) was enacted on December 20, 2006. Section 406 of the Act amends section 7623, concerning the payment of awards to whistleblowers, and establishes a Whistleblower Office within the IRS that has responsibility for the administration of a whistleblower program. The Whistleblower Office, in connection with administering a whistleblower program, will analyze information provided by a