

Northern Cheyenne Tribe

U.S. Department of Transportation
Dockets Management Facility
Room PL-401
400 Seventh Street, S.W.
Washington, D.C. 20590-0001

Re: Comments of the **Northern Cheyenne** Indian Tribe
Regarding the Proposed Regulations to Implement TEA-21
for the IRR Program at 25 C.F.R. Part 170.
RIN 1076-AE17
Docket No. FHWA-2002-12229

Docket Clerk:

The **Northern Cheyenne** Indian Tribe (hereafter “the Tribe”) has prepared and submits the enclosed comments concerning non-consensus issues included in the preamble to the proposed regulations at 25 C.F.R. Part 170 for the Indian Reservation Roads (IRR) Program developed by the Transportation Equity Act for the 21st Century (TEA-21) Negotiated Rulemaking Committee (“the Committee”) and published by the BIA on August 7, 2002. We request that our comments be included in the official record of comments made during the 60-day comment period and be fully considered by the Committee when it reconvenes to finalize the proposed rule.

We enclose Tribal Resolution [**DOI-232(2002)**] authorizing submission of the following comments to those specific sections of the proposed rule which will do irreparable harm to our Indian Reservation Roads Program if they are adopted without alteration. To those sections we offer specific changes which will make each section acceptable and which coincide with the spirit and letter of the consensus positions of both Committee caucuses. As stated in our resolution, we generally support, endorse and applaud the recommendations and suggested regulatory proposals of the Tribal Caucus.

The Tribe is pleased to submit comments on these long anticipated proposed regulations. The roads, bridges and other transportation systems serving Indian reservations throughout the country are in serious disrepair and will continue to deteriorate until the United States Transportation Department requests and United States Congress appropriates adequate funds to the IRR Program. Transportation systems of the IRR Program fair far worse than State, County or other Federal transportation systems in terms of dollars appropriated and expended per road mile. It is no surprise that a commuter is four times more likely to be killed on an IRR system road or bridge than on another road and bridge system.

The Tribe participated in several discussions with other Rocky Mountain Regional Tribes and reached consensus as a community concerning issues regarding the Proposed Regulations to Implement TEA-21 for the IRR Program at 25 C.F.R Part 170.

Therefore, please consider the following changes to the proposed rule to ensure the continuation of a viable, effective Roads program for the Northern Cheyenne Indian Reservation.

1. The tribes within the Rocky Mountain Region are opposed to the implementation of the HPP Program.
 - a. In lieu of elimination of the HPP Program it is recommended that each regions contribution to HPP be maintained and administered within each respective region.
 - b. The Rocky Mountain Regions review of the proposed HPP Program indicates a contribution of approximately \$750k, due to the proposed criteria for the HPP Projects the tribes in the Rocky Mountain Region would not be eligible to participate.
 - c. The fatality and injury rate within the Rocky Mountain Region is ranked among the highest in the nation, due to this fact we feel that the funds would be better utilized towards safety improvements.
2. Clarify where the 2% planning funds come from.
 - a. Will the HPP and potentially the PAF effect the amount of funds available to tribes for transportation planning.
 - b. The chart in section 170.226 is unclear in regards to whether the 2% planning funds are taken down before or after the HPP and PAF.
3. The term “Government Subdivision” mentioned within the proposed rule needs to be clearly and narrowly defined at section 170.6.
 - a. What exactly is a “Government Subdivision” of a tribe?
4. Ranking criteria for HPP Projects is unfavorable to large land based tribes, and needs further clarification.
 - a. Certain criteria all but eliminate large land based tribes. i.e.)
 - i. Geographic isolation
 - ii. Years since last IRR construction project completed
5. Tribes within the Rocky Mountain Region would prefer that PAF be eliminated.
 - a. These funds can be better utilized for a quality construction program.
6. What is the definition of the Relative Need Distribution Factor?

- a. This seems to suggest that a revised method is going to be developed, what does that mean, another version of the proposed formula that has not been presented in this Proposed Rule.
7. The Rocky Mountain Regional Tribes recommend, if HPP and PAF remain, that a cap be placed on HPP and PAF to no more than a \$75 million program level increase.
 - a. For example the 25% will only apply up to \$350 million authorization.
 - b. Funds above \$350 million will only be applied to construction.
 8. Section 170. 270, 274 and 279. Cost to Construct and VMT as the most significant factors in the funding formula at 170.270, includes all costs for all eligible IRR projects, as those projects are listed and defined at Appendix A to Subpart B.
 - a. The calculation for cost to construct and VMT should be limited to Indian Reservation Roads on the BIA Road Inventory, on which funding for the IRR program is intended and desperately needs to be used.
 - b. Formula factors which subvert this basic premise dilute an already scarce pool of construction funding, divert scarce resources to unwarranted entities and projects, and perpetuate a windfall to state highway programs, some of whom presently include state and county roads on which IRR funds are spent in their inventory.

We appreciate the opportunity to make known to the Federal government our serious concerns with the IRR Program.

Keene Bends, Transportation Planner
Northern Cheyenne Tribe

Enclosures (Tribal Resolution)

**NORTHERN CHEYENNE TRIBAL COUNCIL
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

RESOLUTION NO. DOI - 232 (2002)

**A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL
AUTHORIZING SUBMISSION OF COMMENTS TO THE UNITED STATES
DEPARTMENT OF TRANSPORTATION REGARDING PROPOSED IRR
REGULATION IMPLEMENTING TEA-21 FOR THE IRR PROGRAM AT 25 C.F.R.
PART 170. RIN 1076-AE17, DOCKET NO. FHWA-2002-12229.**

WHEREAS: Improving and developing transportation systems which serve our reservation community is critical to the future well being of our members;

WHEREAS: Maximizing Tribal flexibility and discretion in the administration of the IRR Program; honoring tribal sovereignty and furthering the policy of self-determination and self-governance; increasing Federal accountability and responsiveness to the Indian governments they serve; eliminating unnecessary bureaucratic requirements which burden the operation of the IRR Program; promoting sensible economic practices and innovative thinking; and improving communication, consultation and collaboration in performance of the IRR Program, are tribal goals which will ensure that tribal transportation priorities are addressed and the health and safety of our members are protected;

WHEREAS: The Transportation Equity Act for the 21st Century, P.L. 105-178, 112 Stat. 107, signed into law in 1998 expands the use of and appropriates Federal Highway Trust funds through fiscal year 2003, including funds for the Indian Reservation Roads (IRR) Program;

WHEREAS: Section 1115(b) of TEA-21 mandates that the Federal government enter into “negotiated rulemaking” with tribal governments to develop IRR Program regulations as well as an equitable funding formula to allocate IRR funds;

WHEREAS: A TEA-21 rulemaking committee comprised of representatives of small, medium and large Indian tribes convened and negotiated a proposed regulation for the IRR Program with Federal representatives of the U.S. Department of the Interior and U.S. Department of Transportation which has been published in draft by the BIA for comment on August 7, 2002;

WHEREAS, the TEA-21 Committee could not reach agreement on a number of important issues relating to the “Proposed Regulations to Implement TEA-21 for the IRR Program at C.F.R part 170. RIN 1076-AE17, Docket NO. FHWA-2002-12229”, and solicits the comments of effected Indian tribes to better inform the Committee;

NOW, THEREFORE BE IT RESOLVED, that the Tribal Council of the Northern Cheyenne Tribe hereby authorizes the submission of the Tribe’s public comments to the proposed IRR rule and does hereby endorse the views of the Tribal Caucus to the Committee regarding non-consensus issues generally, except as specifically noted for the reasons stated in the letter, herein attached, to the Committee submitting this resolution and our comments on the proposed rule.

BE IT FURTHER RESOLVED, that the Tribal Council urges the United States Department of the Interior and United States Department of Transportation to promptly reconvene the TEA-21 Committee to finalize the IRR regulations, including the non-consensus issues, consistent with the government-to-government relationship existing between the United States and sovereign Indian tribes.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by unanimous vote and adoption this (17th) day of September, 2002.

**Keene Bends, Transportation Planner
Northern Cheyenne Tribe**