

UNITED STATES
DEPARTMENT OF THE INTERIOR
in cooperation with
THE DEPARTMENT OF TRANSPORTATION
and
TRIBAL REPRESENTATIVES
Organization Protocols

PREAMBLE

The Indian Reservation Roads Program Negotiated Rulemaking Committee has been established pursuant to The Transportation Equity Act for the 21st Century. P.L. 105-178, 112 Stat. 155 (B) which directs the Secretary of the Interior to issue regulations governing the Indian Reservation Roads Program and establish a funding formula for the year 2000 and each subsequent fiscal year.

- I. The Committee will negotiate in the spirit of President Clinton's Executive Memorandum of April 29, 1994, which directs Federal Agencies to establish and maintain direct government-to-government relationships with the Tribes.
- II. The Committee commits to fulfilling its obligations in a manner that reflects the unique trust responsibility to protect and support Indian tribes and Indian people.
- III. The negotiations shall be conducted according to the procedures identified in the Negotiated Rule Making Act (subchapter III of Chapter 5 of Title 5) in a manner that reflects the unique government-to-government relationship between the Indian tribes and the United States.
- IV. These negotiations shall be conducted in a manner recognizing the Federal Government's unique roles and responsibilities to the individual tribes and Indian people as a whole so that meaningful Self-Determination policy is established. This will allow an orderly transition from the Federal domination of Indian programs and services to meaningful and effective participation by Indian people in the planning, conduct and administration of those programs and services to realize quality services.
- V. The Committee shall conduct these negotiations in a manner that will facilitate the inclusion of activities, programs, services, and functions in the agreements authorized by TEA-21 and in the regulations drafted.

- VI. The governing procedures of this Committee are detailed in these protocols. The Committee will develop proposed and final regulations to achieve the policy directives of the Transportation Equity Act for the 21st Century (TEA-21), which provides:

Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available under this title for Indian reservation roads and for highway bridges located on Indian reservation roads to pay for the costs of programs, services, functions, and activities, or portions thereof, that are specifically or functionally related to the cost of planning, research, engineering, and construction of any highway, road, bridge, parkway, or transit facility that provides access to or is located within the reservation or community of an Indian tribes shall be made available, upon request of the Indian tribal government, to the Indian tribal government for contracts and agreements for such planning, research, engineering, and construction in accordance with the Indian Self-Determination and Education Assistance Act. (P.L. 105-178 §1115(b)(4)(3)(A)).

- VII. Subject to Congress amending the relevant provisions of TEA-21, this committee will have draft regulations ready for publication on or before November 15, 1999, and the Secretary shall publish them by December 1, 1999. Final regulations shall be promulgated by March 1, 2000, in order to permit allocation of FY 2000 funds in accordance with the statute.

PARTICIPATION

- a. Attendance at Meetings. Committee Members must make a good faith effort to attend all full negotiating sessions. The Committee Members may be accompanied by such other individuals as that Member believes is appropriate to represent his or her interest.
- b. Use of Alternates. Written notice of expected absences and designated alternate shall be provided by the Committee Member to the Co-Chairs prior to the meeting. A seated alternate shall have all the authorities of a primary committee member.
- c. Timing. Meetings and scheduled breaks will begin promptly on time and end on time. This rule addresses the vital time concerns of tribes traveling across the country.
- d. Location. Meetings will be held at locations which allow for greater participation and awareness by the tribes.
- e. Fairness. This negotiation process recognizes that some representatives are traveling three thousand miles to participate, with a full day devoted to travel. All meetings will be conducted in recognition of that fact.

MEETINGS

- a. FACA. Based upon the unique government-to-government relationship between the Indian Tribes and the United States, the Unfunded Mandates Reform Act of 1995, the Transportation Equity Act for the 21st Century, and other applicable laws, the Committee may apply such provisions of the Federal Advisory Committee Act as it determines are desirable.
- b. Open Meetings. The negotiation sessions and the working group meetings will be open to Federal representatives, Tribal representatives, Tribal organizations and their designated representatives and the general public. Non-committee members may speak on technical issues when requested by Committee members but may not debate. Members of the public may submit written comments to the Committee. Other individuals may participate at the discretion of the full Committee.
- c. Full Committee Meeting Minutes. The Committee shall observe the requirements of these Protocols regarding minutes, records and documents. In addition, draft minutes will be developed by an independent contracted recording service and distributed within 5 days of the conclusion of each negotiation session to be approved at the next meeting.
- d. Draft Meeting Minutes. Draft meeting minutes shall be distributed to Committee members, alternates, tribal support staff, and the Project Management staff by the independent contracting recording service. Approved meeting minutes shall be considered public information. Reference materials and other associated draft documents shall be distributed to each Committee Member, alternates, Tribal Support staff, and Project Management staff by the independent recording service. Committee Members, in turn may distribute such materials to other interested parties at their discretion.
- e. Agenda. Meeting agendas will be developed by the Committee Co-Chairs with input from Committee Members and distributed no later than two weeks in advance of the committee meetings.
- f. Caucus. A caucus can be requested at any time by any Committee Member. The Co-Chairs will be asked for an estimate of the time needed for the caucus. Internal procedures will be determined by each respective caucus. Caucuses shall be declared by the Co-Chairs. - Caucuses are not public meetings, but are intended solely for the respective Caucuses, Committee Members and invited guests.

- g. Co-Chairs. The Tribal representatives shall select four Co-Chairs. If a tribal co-chair is missing from a meeting, the tribal representatives shall appoint a Co-Chair from among the tribal representative in attendance for the purposes of the meeting. The Federal representatives shall select three Co-Chairs. Co-Chairs shall have the authority to call meetings, set agendas, and chair the meetings.
- h. Quorum. A quorum shall consist of 22 Members including no less than fifteen Tribal members and seven Federal members.

PROCEDURES

- a. Consensus The Committee will operate by consensus of the Federal and Tribal members. Consensus means general agreement as shown by an absence of express disagreement by a committee member in regards to a particular issue. Members may be able to live with the decision and may register their concern verbally on the record or in writing for the record, but this does not prevent consensus from being reached.
- b. Decision-Making. The Federal Committee Members present during all negotiations shall have full authority to make final decisions for their respective agencies. To the extent that a Committee member lacks the authority to make a final decision on an issue, the member shall take the steps necessary to obtain that authority prior to the close of the current negotiation session.
- c. Closed Issues. Decisions reached will not be reopened without the consensus of the Committee.
- d. Work Groups Work Groups may be formed by the Committee to address specific issues and to make recommendations to the Committee. Work Groups are open to any Committee Member and or the Members' designated representatives, plus such other individuals as approved by the Co-Chairs. Work groups must have a majority of Tribal Committee members. Work Groups are not authorized to make decisions for the Committee as a whole. All Committee Members will be notified of all Work Group meetings by the Co-Chairs.

AGREEMENT

- a. Unresolved Issues. When consensus is not reached on an issue, the matter shall be sent either to a special work group or to the Co-Chairs Conference (all seven Co-Chairs) to meet and form a Co-Chair consensus. This consensus will then be presented to the full committee for consideration.

- b. Product of Negotiations. The intended product of the negotiations is a preliminary report and proposed regulations, to include a revised funding formula to be developed in accordance with Sec. 1115(b)(2)(D) of TEA-21, in the form of a written statement developed by the Committee Members on behalf of the Secretary of the Department of the Interior and Tribal representatives. The Secretary agrees to submit to the Office of Management and Budget (OMB) for review before publishing the Committee's consensus-based preliminary report and proposed regulations as the Department's Notice of Proposed Rulemaking.
- c. Final Rule. The Committee will review all comments received in response to the NPRM and will submit a final report with recommendations to the Secretary for promulgation of a final rule. Consistent with the principles set forth in the preamble to this document, the Secretaries of Interior and Transportation commit to consult with the Committee regarding any modifications to the Committee's recommended final rule prior to promulgation.
- d. Implementation. Consistent with President Clinton's Executive Memorandum of April 29, 1994, the Secretary agrees to actively involve tribal governments in resolving implementation issues that arise after the final regulations are published.

SAFEGUARDS FOR COMMITTEE MEMBERS

- a. Good Faith. All Members agree to act in a good faith effort to reach consensus in all aspects of these negotiations by encouraging the free and open exchange of ideas, views, and information. Personal attacks and prejudiced statements will not be tolerated.
- b. Information. The Members of the Committee agree to exchange information in good faith. Members of the Committee will provide information in advance of the meeting where such information is necessary. All Members of the Committee agree not to divulge information shared by others in confidence outside of Full Committee and Work Group meetings. Committee members may respond to questions from the media on behalf of their own organization, but not on behalf of other members or on behalf of the Committee. Statements made to the media on behalf of the Committee must first be approved by the consensus of the Committee. Members may report on committee activities and discussion to their constituents.
- c. Information Dissemination. Robert Baracker, Designated Federal Official, will be responsible for dissemination of Committee information.

SCHEDULE

Negotiating sessions will be held regularly as determined by the Committee. The following work sessions are tentatively scheduled:

4/27-4/29/99	Portland
5/25-5/27/99	Washington, D.C.
6/22-6/24/99	Minneapolis
7/27-7/29/99	Sacramento
8/24-8/26/99	Anchorage
10/5-10/7/99	Bismarck
11/2-11/4/99	Phoenix (proposed rule/NPRM)
02/15-02/17/00	Washington, D.C. (final rule)

FACILITATORS

The FMCS will provide facilitators to assist in the negotiations. The role of the facilitators includes assisting in developing agendas for each session, recording minutes, facilitating Committee and Work Group sessions, working to resolve impasses, assisting in the preparation of the materials and other functions as requested by the Committee.

All information shared with the facilitators in private conversation or in caucus remains confidential unless disclosure is authorized by the parties. Facilitators will not be called to and shall not testify or participate in any manner in any legal proceeding regarding the negotiations.

CO-CHAIRS

The Tribal Co-Chairs selected by the Tribal representatives of the Committee are Jim Garrigan and Pete Red Tomahawk, Anthony Largo and Vlayn McCovey. The Federal Co-Chairs are Robert Baracker, Robert Ecoffey, and Vernon Palmer. The role of the Co-Chairs usually includes developing agendas, chairing Committee sessions, working to resolve any impasses that may arise, preparing meeting summaries, assisting in the location and circulation of background materials, and materials the Committee develops, and other functions the Committee requests. The Co-Chairs will represent positions of the full Committee.

REIMBURSEMENT

Travel costs and expenses (in accordance with Federal travel regulations) for all full Committee meetings and Work Group meetings will be paid for primary Tribal Committee Members and one alternate per Area to ensure continuity and expediency of the work product.

Pete Red Touchette
Tribal Co-Chair 4/14/99
Dated:

James Hanger
Tribal Co-Chair
Dated: 4/14/99

Tribal Co-Chair
Dated:

Stan McCovey
Tribal Co-Chair
Dated: 4-14-99

R. Brasher 4-14-99
Designated Federal Officer
Federal Co-Chair
Dated:

Nemontahone 4/14/99
Federal Co-Chair
Dated:

Federal Co-Chair
Dated:

Secretary of the Interior
Dated:

Secretary of Transportation
Dated: