

Prohibitions Concerning Franchising” (“Franchise Rule” or “Rule”) <sup>1</sup> provides three exemptions based on a monetary threshold: The “minimum payment exemption,” <sup>2</sup> the “large franchise investment exemption” <sup>3</sup> and the “large franchisee exemption.” <sup>4</sup> The Rule requires the Commission to “adjust the size of the monetary thresholds every fourth year based upon the . . . Consumer Price Index for all urban consumers [CPI-U] published by the Department of Labor.” <sup>5</sup> This

requirement, added by the 2007 amendments to the Rule, took effect on July 1, 2007, so that franchisors would have a one-year phase-in period within which to comply with the amended Rule’s revised disclosure requirements before the July 1, 2008, final compliance deadline.<sup>6</sup>

As required by the Rule, the Commission previously revised the three monetary thresholds to reflect inflation in the CPI-U in 2012, 2016, and 2020.<sup>7</sup> The Commission bases the

exemption monetary thresholds that will take effect on July 12, 2024, on the increase in the CPI-U between 2007 and 2023. During this period, the annual average value of the Consumer Price Index for all urban consumers and all items increased by 46.96%—from an index value of 207.342 to a value of 304.702.<sup>8</sup> Applying the percentage increase to the three monetary thresholds increases the thresholds as follows:

Exemption	2007 Base	Adjusted 2024 threshold
Minimum Payment .....	\$500	<sup>9</sup> \$735
Large Franchise Investment .....	1,000,000	1,469,600
Large Franchisee .....	5,000,000	7,348,000

Because the calculation of these thresholds is purely ministerial in nature and implements the Rule’s mandatory adjustment mechanism, these adjustments are exempt from the rulemaking procedures specified in section 18 of the FTC Act.<sup>10</sup> In addition, the Commission has determined that notice and comment are unnecessary under the Administrative Procedure Act (“APA”) for the same reason. The Commission, therefore, has omitted notice and comment for “good cause” as provided by section 553(b)(B) of the APA.<sup>11</sup> For this reason, the requirements of the Regulatory Flexibility Act also do not apply.<sup>12</sup> Accordingly, the adjusted thresholds will take effect on July 12, 2024. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

**List of Subjects for 16 CFR Part 436**

Advertising, Business and industry, Franchising, Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission amends 16 CFR part 436 as follows:

**PART 436—DISCLOSURE REQUIREMENTS AND PROHIBITIONS CONCERNING FRANCHISING**

■ 1. The authority citation for part 436 continues to read as follows:

Authority: 15 U.S.C. 41–58.

**§ 436.8 [Amended]**

■ 2. Amend § 436.8 as follows:

- a. In paragraph (a)(1), remove “\$615” and, in its place, add “\$735”;
- b. In paragraph (a)(5)(i), remove both references to “\$1,233,000” and, in their place, add “\$1,469,600”; and
- c. In paragraph (a)(5)(ii), remove “\$6,165,000” and, in its place, add “\$7,348,000.”

By direction of the Commission.

**April J. Tabor,**

Secretary.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Part 661**

[FHWA Docket No. FHWA–2019–0039]

RIN 2125–AF91

**Tribal Transportation Facility Bridge Program**

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the existing Tribal Transportation Program Bridge Program, formerly known as the Indian Reservation Road (IRR) Bridge Program, by renaming it the Tribal Transportation Facility Bridge Program (TTFBP) to comply with the changes made in the Moving Ahead for Progress in the 21st Century Act (MAP–21), carried on through the Fixing America’s Surface Transportation (FAST) Act, and the recent changes made by the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA). It also removes references to terms such as structurally deficient, functionally obsolete, and sufficiency rating. These updates aligned the TTFBP terminology for bridge conditions with the terminology used for State departments of

rulemaking procedures of section 18 of the FTC Act).

<sup>11</sup> 5 U.S.C. 553(b)(B) (providing that “good cause” exists to forego notice and comment when public comment is unnecessary).

<sup>12</sup> 5 U.S.C. 603 and 604 (no regulatory flexibility analyses required where the APA does not require public comment).

<sup>1</sup> 16 CFR part 436.

<sup>2</sup> 16 CFR 436.8(a)(1).

<sup>3</sup> 16 CFR 436.8(a)(5)(i).

<sup>4</sup> 16 CFR 436.8(a)(5)(ii).

<sup>5</sup> 16 CFR 436.8(b).

<sup>6</sup> 72 FR 15444 (Mar. 30, 2007).

<sup>7</sup> 77 FR 36149 (June 18, 2012); 81 FR 31500 (May 19, 2016); 85 FR 38790 (June 29, 2020).

<sup>8</sup> Bureau of Labor Statistics, Consumer Price Index: Historical Consumer Price Index for All

Urban Consumers (CPI-U), available at <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202402.pdf>.

<sup>9</sup> As in prior adjustments, the Commission has exercised its inherent discretionary authority to round the total for the minimum payment exemption to facilitate compliance and for clarity.

<sup>10</sup> See 15 U.S.C. 57a(d)(2)(B); 16 CFR 1.15(b) (providing that non-substantive amendments to trade regulation rules are exempt from the

transportation (State DOT) in the Federal-aid highway program. This change established consistent terminology for classifying and referring to bridge conditions.

**DATES:** This final rule is effective August 12, 2024.

**FOR FURTHER INFORMATION CONTACT:** Mr. Russell Garcia, P.E., Federal Lands Highway/Office of Tribal Transportation, [Russell.Garcia@dot.gov](mailto:Russell.Garcia@dot.gov), (703) 404-6223, or Silvio Morales, Office of the Chief Counsel, [Silvio.Morales@dot.gov](mailto:Silvio.Morales@dot.gov), (202) 366-1345, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access and Filing**

This document, the notice of proposed rulemaking (NPRM), and all comments received may be viewed online through the Federal eRulemaking portal at [www.regulations.gov](http://www.regulations.gov) using the docket number listed above. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's website at: [www.federalregister.gov](http://www.federalregister.gov) and the U.S. Government Publishing Office's website at: [www.GovInfo.gov](http://www.GovInfo.gov).

**Background**

**Legal Authority**

This regulatory action is necessary to update 23 CFR part 661 to reflect the changes made to the program since the last regulatory update in 2008 (73 FR 15664, Mar. 25, 2008). These changes are largely nomenclature changes to the existing regulation that FHWA has been implementing under 23 U.S.C. 202(d), and do not substantively change the TTFBP. Importantly, this rule aligns the TTFBP terminology for bridge conditions with the terminology used in the Federal-aid highway program for State DOTs. This change establishes a consistent terminology for classifying and referring to bridge conditions.

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

The FHWA published its NPRM on April 04, 2023, at 88 FR 19571, requesting comments to the proposed amendments. In response to the NPRM, FHWA received comments from the Intertribal Transportation Association (ITA), 1 Tribal consultant, 1 anonymous commenter, and from 12 Tribes: the Cheyenne River Sioux Tribe, Oglala Sioux Tribe, Omaha Tribe, Chickasaw Nation, Forest County Potawatomi

Community, Ho Chunk Nation, Pueblo of Jemez, Nez Perce Tribe, Standing Rock Sioux Tribe, Spirit Lake Tribe, Trinidad Rancheria, and the Spirit Lake Tribe. The FHWA considered each of the comments in adopting this final rule.

Most 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**

(This discussion references the existing regulation, including prior nomenclature).

*1. Who must comply with this regulation? (§ 661.3)*

The Standing Rock Sioux Tribe, Omaha Tribe, Oglala Sioux Tribe, and Cheyenne River Sioux Tribe recommended deleting “and Tribal Consortiums” from this section.

The FHWA adopted this recommendation throughout the regulation because the primary applicant is the Tribe.

*2. What are the eligible activities for TTFBP funds? (§ 661.15)*

The Standing Rock Sioux Tribe, Omaha Tribe, Oglala Sioux Tribe, and Cheyenne River Sioux Tribe recommended including the installation of scour countermeasures in this section.

While scour countermeasures have always been an eligible activity for TTFBP funds, FHWA adopts the recommendation to add an explicit reference to the installation of scour countermeasures in this section for clarity. Also, FHWA added safety inspection of in-service bridges as part of eligible planning activities and clarified the inspection of new or replacement Tribal Transportation Facility (TTF) bridges is for construction inspection activity.

*3. What are the criteria for bridge eligibility? (§ 661.17)*

The Standing Rock Sioux Tribe, Omaha Tribe, Oglala Sioux Tribe, and Cheyenne River Sioux Tribe recommended in § 661.17(a)(2) to add the requirement that the Tribal transportation facility be in the National Tribal Transportation Facility Inventory (NTTFI).

The FHWA does not believe the additional language is necessary because it is covered by the Tribal transportation facility definition in this regulation.

The Standing Rock Sioux Tribe, Omaha Tribe, Oglala Sioux Tribe, and Cheyenne River Sioux Tribe also recommended that § 661.17(b)(1) should allow design of a new bridge to begin without the bridge being in the NTTFI, although they did not request changes to the proposed regulatory text. They recommended that as long as the bridge project is on a Tribal Transportation Improvement Plan (TTIP) and is approved by the Tribal Council, it can be added to the NTTFI during design, and the bridge must be classified as a Tribal transportation facility in the NTTFI to be eligible for construction.

The FHWA agrees with this position and notes that nothing in § 661.17(b)(1) would prohibit this interpretation. The FHWA does believe, however, that the new bridge to be designed and constructed must be within a route that is identified in the NTTFI. With respect to newly funded bridges still in the design stage, Tribes should start the process of recording the bridge in the NTTFI and not wait after it is built.

The Standing Rock Sioux Tribe, Omaha Tribe, Oglala Sioux Tribe, and Cheyenne River Sioux Tribe also recommended that culverts be added to the new proposed regulations as eligible projects.

The FHWA declines to adopt this proposal but notes that replacing an existing culvert with a culvert that meets the definition of a TTF bridge could be funded under the TTFBP as a new bridge.

Finally, FHWA has also removed references in § 661.17(a)(1) and (b)(2) to the length of the bridge opening and has replaced them with a reference to the definition of TTF bridge to increase clarity.

*4. When is a bridge eligible for replacement? (§ 661.19)*

The Standing Rock Sioux Tribe, Omaha Tribe, Oglala Sioux Tribe, and Cheyenne River Sioux Tribe asked if any leftover TTFBP funds at the end of the fiscal year could be used to fund bridges in fair condition.

The FHWA regulation does allow for fair condition bridges needing geometric improvements to be eligible for funding as long as they meet the criteria for bridge eligibility in § 661.17.

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

The Standing Rock Sioux Tribe, Omaha Tribe, Oglala Sioux Tribe, and Cheyenne River Sioux Tribe recommended that Bureau of Indian Affairs (BIA) owned bridges be a priority for funding and that new

bridges rank third in the ranking criteria after poor condition bridges.

The FHWA recognizes the Tribes' interest in maximizing TTFBP funds for BIA and Tribal TTF bridges and adopted this recommendation. Up to 80 percent of the funding made available for Preliminary Engineering (PE) and construction in any fiscal year is eligible for use on BIA and Tribally owned TTF bridges. The FHWA also adopted the recommendation that new bridge construction be added to the ranking criteria for funding. However, FHWA believes that it is most appropriate to add it as the fourth ranking criteria so as to prioritize projects addressing safety.

The FHWA has made three additional changes to the final rule text to increase clarity. First, we replaced the phrase "All projects will be programmed for funding" with the phrase "All projects will be ranked and prioritized for funding." The new language provides consistency with the language in § 661.23(b) and better describes the implementation of the program. Second, we replaced the phrase "low load capacity bridges based on Operating Rating" with the phrase "operating rating for bridges in poor condition with lower operating rating having precedence over higher operating rating". The new language provides clarity to use the operating rating as a ranking criterion for poor condition bridges with the same condition rating. Finally, we removed the numerical item numbers from the condition rating item names in § 661.23(d)(1). This change will reduce confusion as FHWA transitions from the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges to the Specifications for the National Bridge Inventory.

*6. What does a complete application package for Preliminary Engineering consist of and how does the project receive funding? (§ 661.25)*

The Standing Rock Sioux Tribe, Omaha Tribe, Oglala Sioux Tribe, and Cheyenne River Sioux Tribe recommended that county- and State-owned bridges' local match for the TTFBP be at 80 percent, and that the TTFBP can only be the 20 percent local match to other funding. The Tribes stated that county and State projects shall only be eligible for funding given that they meet the requirements of 23 U.S.C. 202(f) and that the obligation of Tribal Transportation Program (TTP) funds for a project is supplementary to and not in lieu of the obligation of a fair and equitable share of funds apportioned to the State.

The FHWA recognizes the Tribes' interest in maximizing TTFBP funds for BIA and Tribal TTF bridges. Up to 80 percent of the funding made available for PE and construction in any fiscal year is eligible for use on BIA and Tribally owned TTF bridges. The remaining funding in any fiscal year is made available for PE and construction for use on non-BIA/non-Tribally owned TTF bridges. However, FHWA has removed the minimum 20 percent local funding match requirement for non-BIA/non-Tribally owned TTF bridges because Tribal bridge set aside funds from the Bridge Formula Program (BFP) to carry out 23 U.S.C. 202(d) is 100 percent for all eligible TTF bridges. The statute controls the BFP Tribal bridge set aside funds.

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

The Nez Perce Tribe, Pueblo of Jemez, and the ITA support the existing 20 percent match requirement for non-BIA/non-Tribal bridges.

As stated previously, FHWA has removed the minimum 20 percent local funding match for non-BIA/non-Tribally owned TTF bridges because the Tribal bridge set aside funds from the BFP to carry out 23 U.S.C. 202(d) is 100 percent for all eligible TTF bridges. The statute controls the BFP Tribal bridge set aside funds.

*8. How does ownership impact project selection? (§ 661.29)*

The Standing Rock Sioux Tribe, Omaha Tribe, Oglala Sioux Tribe, and Cheyenne River Sioux Tribe strongly disagree with removing the phrase "trust responsibilities" from this section or any other parts of these regulations stating that the Federal Government has a trust responsibility to Native Americans which derives from Treaties, Executive orders, case law, and Federal legislation.

The FHWA adopts the language as proposed. This section pertains only to priority of project selection and does not discuss the trust responsibility of the Federal Government.

*9. What percentage of TTFBP Program funding is available for PE and construction? (§ 661.33)*

The Standing Rock Sioux Tribe, Omaha Tribe, Oglala Sioux Tribe, and Cheyenne River Sioux Tribe recommended to add a sentence at the end of the paragraph indicating "If construction funding does not use 85 percent of the funding the remaining funding may be used for PE."

The FHWA recognizes the need for both PE and construction. At various times during the fiscal year, FHWA will review the TTFBP funding and may shift funds between PE and construction funds to maximize the number of projects funded and the overall effectiveness of the program.

*10. What percentage of TTFBP funding is available for use on BIA and Tribally owned TTF bridges, and non-BIA/non-Tribally owned TTF bridges? (§ 661.35)*

The Standing Rock Sioux Tribe, Omaha Tribe, Oglala Sioux Tribe, and Cheyenne River Sioux Tribe recommended funding all BIA and Tribally owned bridges in the queue first and then BIA and Tribally owned culverts. The Tribes recommended to use the remaining funds to cover the non-BIA and non-Tribally owned bridges.

The FHWA recognizes the Tribes' interest in prioritizing the TTFBP funds for BIA and Tribal TTF bridges. Up to 80 percent of the funding made available for PE and construction in any fiscal year is eligible for use on BIA and Tribally owned TTF bridges. The remaining funding in any fiscal year is made available for PE and construction for use on non-BIA/non-Tribally owned TTF bridges.

*11. What are the funding limitations on individual TTFBP project? (§ 661.37)*

In the NPRM, FHWA was considering adjusting the funding limits for PE in § 661.37(a) and for PE and construction in § 661.37(b) because the existing funding limits established by the 2008 final rule have not kept pace with increased costs in the last 15 years and adjustment may be necessary to allow increased flexibility. The FHWA specifically requested comments on whether these amounts should be adjusted. Several Tribes made recommendations on the new funding limits: the Standing Rock Sioux Tribe, Oglala Sioux Tribe, Omaha Tribe, Cheyenne River Sioux Tribe, Chickasaw Nation, Forest County Potawatomi Community, Nez Perce Tribe, Ho Chunk Nation, Jemez Pueblo, and Trinidad Rancheria. In addition, comments were received from the ITA, Eastern Region Tribes, LLC, and one anonymous comment.

While the commenters made a number of recommendations, since the publication of the NPRM, FHWA has determined that the statutory language addresses the issue of Federal share for funds set aside from the BFP to carry out 23 U.S.C. 202(d). The Federal share associated with the funds set aside from the BFP to carry out 23 U.S.C. 202(d) is

100 percent. Therefore, this section has been revised to eliminate the funding limits for both PE and construction funds, as well as eliminating the 20 percent local match requirement for non-BIA/non-Tribally owned TTF bridges.

The Standing Rock Sioux Tribe, Omaha Tribe, Oglala Sioux Tribe, and Cheyenne River Sioux Tribe recommended a graduated percentage of construction cost to encompass the work needed to reach preliminary engineering (PE) estimated cost. Based on FHWA's experience with the prior TTP Bridge Program, FHWA adopted this recommendation as set forth in the fee scale below:

*Estimated Construction Cost:*

Up to \$1,000,000—Use up to 20% for PE  
\$1,000,000 to \$5,000,000—Use up to 15%–20% for PE

\$5,000,000 to \$10,000,000—Use up to 10%–15% for PE

Over \$10,000,000—Use up to 10% for PE

12. *What happens when TTFBP funds cannot be obligated by the end of the fiscal year? (§ 661.45)*

The Standing Rock Sioux Tribe, Omaha Tribe, Oglala Sioux Tribe, and Cheyenne River Sioux Tribe recommended not to return the unobligated TTFBP funds to FHWA during August Redistribution unless the Tribes are able to participate in that program.

The FHWA notes that the only TTFBP funds subject to August Redistribution are the funds from the Highway Trust Fund. Unobligated TTFBP funds from the General Fund will continue to be available until their lapsing period.

13. *Can TTFBP funds be spent on Interstate, State Highway, and Toll Road TTF bridges? (§ 661.49)*

The Standing Rock Sioux Tribe, Omaha Tribe, Oglala Sioux Tribe, and Cheyenne River Sioux Tribe recommended to add “as long as they are in the NTTFI and meet the criteria of 23 U.S.C. 202(f).”

The FHWA declines to adopt the additional language for the reasons discussed in § 661.17.

14. *What standards should be used for bridge design? (§ 661.53)*

The FHWA revised this section to reference the design standards to 25 CFR part 170, subpart D, appendix B to be used for § 661.53(a) and (b).

15. *Other*

The Native Village of Ouzinkie has poor condition bridges that carry pedestrian and all-terrain vehicle (ATV)

traffic and wants these bridges to be addressed, but they did not provide any proposed regulatory recommendations for doing so.

The FHWA's TTFBP only funds TTF bridges that carry highway vehicular traffic.<sup>1</sup> While pedestrian and ATV bridges are not eligible for funding under the TTFBP, FHWA encourages the commenter to pursue other potential surface transportation funding sources available for pedestrian and bicycle projects.<sup>2</sup>

### Rulemaking Analyses and Notices

#### Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Rulemaking Policies and Procedures

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order (E.O.) 12866. Accordingly, OMB has not reviewed it. This action complies with E.O.s 12866 and 13563 to improve regulation. It is anticipated that the economic impact of this rulemaking would be minimal and that the benefits would outweigh the costs. 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), 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 MAP–21, section 1118 of the FAST Act, and sections 11118, 14004, and Division J of the BIL, and would not fundamentally alter the funding available for the replacement or rehabilitation of TTF bridges in poor condition. For these reasons, FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

<sup>1</sup> <https://highways.dot.gov/federal-lands/programs-tribal/bridge/tribal-transportation-program-ttp-bridge-program-questions-answers-qas>.

<sup>2</sup> [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/funding/index.cfm](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/funding/index.cfm).

### Unfunded Mandates Reform Act of 1995

This rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires agencies to prepare a written statement, which includes estimates of anticipated impacts, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year.” The current threshold after adjustment for inflation is \$177 million, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. In addition, the definition of “Federal mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

#### Executive Order 13132 (Federalism Assessment)

The FHWA has analyzed this action in accordance with the principles and criteria contained in E.O. 13132. 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 action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

#### Executive Order 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

#### Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal Agencies must obtain approval from 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.

### National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any significant effect on the quality of the environment and is categorically excluded under 23 CFR 771.117(c)(20), which applies to the promulgation of rules, regulations, and directives. Categorically excluded actions meet the criteria for categorical exclusions under the Council on Environmental Quality regulations and under 23 CFR 771.117(a) and normally do not require any further NEPA approvals by FHWA. The FHWA does not anticipate any adverse environmental impacts from this rule; no unusual circumstances are present under 23 CFR 771.117(b).

### Executive Order 13175 (Tribal Consultation)

Prior to the publication of the NPRM, several appropriate meetings and consultations with the Tribal governments were held in 2022 about the TTFBP and the NPRM. The following meetings with the Tribes were held:

1. Inter Tribal Council of Arizona (ITCA) Virtual Meeting, March 10, 2022.
2. Bureau of Indian Affairs (BIA) Alaska Provider's Conference Virtual Meeting, April 6, 2022.
3. Tribal Transportation Program Coordinating Committee (TTPCC) Meeting in Albuquerque, New Mexico, May 17, 2022.
4. Intertribal Transportation Association (ITA) Virtual Meeting, June 29, 2022.
5. United South and Eastern Tribes (USET) Virtual Meeting, July 19, 2022.
6. TTPCC Meeting in Lewiston, Idaho, August 9, 2022.
7. National Transportation in Indian Country Conference (NTICC) Meeting in Louisville, Kentucky, August 25, 2022.
8. BIA Alaska Provider's Conference in Anchorage, Alaska, November 30, 2022.
9. ITA Meeting in Las Vegas, Nevada, December 7, 2022.

Consistent with E.O. 13175, Consultation and Coordination with Indian Tribal governments, FHWA held four more Tribal consultation meetings during the public comment period. A listening session was held virtually on April 4, 2023. Three in-person meetings were held at three different locations: on April 20, 2023, at the Department of the Interior, National Indian Programs Training Center, Albuquerque, NM; on May 17, 2023, at the Great Northern Jerome Hill Theater, St. Paul, MN; and

on May 18, 2023, at the Northwest Region Transportation Symposium, Northern Quest Resort and Casino, Airway Heights, WA. The comments submitted by Tribes through the docket and provided by Tribes at the consultation meetings noted above were considered during the development of this rulemaking.

### Executive Order 12898 (Environmental Justice)

The E.O. 12898 requires that each Federal Agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA has determined that this rule does not raise any environmental justice issues.

### 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 spring and fall of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

### Rulemaking Summary, 5 U.S.C. 553(b)(4)

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found in the Abstract section of the Department's Unified Agenda entry for this rulemaking at [<https://www.reginfo.gov/public/do/eAgendaViewRule?pubid=202310&RIN=2125-AF91>].

### List of Subjects in 23 CFR Part 661

Bridges, Highways and roads, Indians.

Issued under authority delegated in 49 CFR 1.81, 1.84, and 1.85.

**Shailen P. Bhatt,**

*Administrator, Federal Highway Administration.*

■ In consideration of the foregoing, FHWA revises 23 CFR part 661 as follows:

### PART 661—TRIBAL TRANSPORTATION FACILITY BRIDGE PROGRAM (TTFBP)

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 TTFBP?

- 661.9 What is the total funding available for the TTFBP?  
 661.11 When do TTFBP funds become available?  
 661.13 How long are these funds available?  
 661.15 What are the eligible activities for TTFBP 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 TTF bridge projects have to be listed on an approved TTP TIP?  
 661.33 What percentage of TTFBP funding is available for PE and construction?  
 661.35 What percentage of TTFBP funding is available for use on BIA and Tribally owned TTF bridges, and for non-BIA/non-Tribally owned TTF bridges?  
 661.37 What are the funding limitations on an individual TTF bridge project?  
 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 TTFBP funds?  
 661.45 What happens when TTFBP funds cannot be obligated by the end of the fiscal year?  
 661.47 Can routine bridge maintenance be performed with TTFBP funds?  
 661.49 Can TTFBP funds be spent on Interstate, State Highway, County, City, Township, and Toll Road TTF bridges?  
 661.51 Can TTFBP 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 in-service TTF bridges inspected?  
 661.57 What should be done with a BIA and Tribal bridge in poor condition if the Indian Tribe does not support the project?

**Authority:** 23 U.S.C. 120(j) and (k), 202, and 315; 49 CFR 1.81, 1.84, 1.85; 23 CFR part 490, subpart D.

### § 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 Tribal Transportation Facility Bridge Program (TTFBP).

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

Tribes must comply with this regulation in applying for TTFBP funds for planning, design, engineering, pre-construction, construction, and inspection of new or replacement Tribal Transportation Facility (TTF) bridges classified as in poor condition, having low load capacity, or needing geometric improvements.

**§ 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.

*National Bridge Inventory (NBI)* means an FHWA database containing bridge information and inspection data for all structures defined as highway bridges located on all public roads, on and off Federal-aid highways, including Tribally owned and federally owned bridges, private bridges that are connected to a public road on both ends of the bridge, temporary bridges, and bridges under construction with portions open to traffic, that are subject to the National Bridge Inspection Standards.

*National Tribal Transportation Facility Inventory (NTTFI)* means at a minimum, transportation facilities that are eligible for assistance under the TTFBP as defined in 25 CFR 170.5.

*Operating rating* means the maximum permissible live load to which the structure may be subjected for the load configuration used in the load rating. Allowing unlimited numbers of vehicles to use the bridge at operating level may shorten the life of the bridge.

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

*Rehabilitation* means major work required to restore the structural integrity of a bridge, as well as work necessary to correct major safety defects. FHWA Bridge Preservation Guide, Spring 2018 Edition.

*Replacement* means total replacement of an existing bridge with a new facility constructed in the same general traffic corridor. FHWA Bridge Preservation Guide, Spring 2018 Edition.

*Tribal Transportation Facility (TTF)* means a public highway, road, bridge, trail, transit system, or other approved facility that is located on or provides access to Tribal land and appears on the NTTFI.

*TTF bridge* means a structure located on the NTTFI, 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.

**§ 661.7 What is the TTFBP?**

The TTFBP, as established under 23 U.S.C. 202(d), is a nationwide priority program for improving TTF bridges classified as in poor condition, having low load capacity, or needing geometric improvements.

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

The funding source and amount is specified by law, which is subject to change. Due to the complex nature of the funding for the TTFBP, please refer to the applicable statute and applicable FHWA guidance, which can be found on the FHWA's TTFBP website.

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

TTFBP 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?**

TTFBP funds for each fiscal year are available for obligation for the year authorized plus 3 years (a total of 4 years).

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

TTFBP funds can be used:

(a) To carry out any planning (including safety inspection of in-service bridges), design, engineering, preconstruction, construction, and construction inspection of new or replacement TTF bridges;

(b) To replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing composition;

(c) To implement countermeasures, including scour countermeasures, for TTF bridges classified as scour critical or in poor condition, having a low load capacity, or needing geometric improvements, including multiple-pipe culverts; or

(d) To demolish the old bridge if a bridge is replaced under the TTFBP.

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

(a) For bridge replacement or rehabilitation, TTF bridges are required to meet the following:

(1) Must meet the definition of a TTF bridge;

(2) Be classified as a Tribal transportation facility;

(3) Be classified as in poor condition, have low load capacity, or need highway geometric improvements;

(4) Be recorded in the NBI maintained by FHWA;

(b) For new bridge construction, TTF bridges are required to meet the following:

(1) Be classified as a Tribal transportation facility;

(2) Be a public bridge that meets the definition of a TTF bridge and recorded in the NBI after project completion.

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

To be eligible for replacement, a TTF bridge must be in poor condition, have low load capacity, or need highway geometric improvements.

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

To be eligible for rehabilitation, a TTF bridge must be in poor or fair condition,

have low load capacity, or need highway geometric improvements.

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

(a) All projects will be ranked and prioritized for funding after a completed application package is received and accepted by FHWA. At that time, the project will be acknowledged as either BIA and Tribally owned, or non-BIA/non-Tribally 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 condition with bridges in poor condition having precedence over bridges in fair condition, and bridges in fair condition having precedence over bridges in good condition;

(2) Operating rating for bridges in poor condition with lower operating rating having precedence over higher operating rating;

(3) Bridges on school bus routes;

(4) New bridge construction;

(5) Bypass detour length;

(6) Annual average daily traffic; and

(7) Annual average daily truck traffic.

(c) Queues will carryover from fiscal year to fiscal year as made necessary by the amount of annual funding made available.

(d) TTF bridges will be classified as good, fair, or poor based on the following criteria:

(1) *Good*: When the lowest rating of the 3 NBI items for a bridge (Deck Condition Rating, Superstructure Condition Rating, Substructure Condition Rating) is 7, 8, or 9, the bridge will be classified as good. When the rating of the NBI item for a culvert (Culvert Condition Rating) is 7, 8, or 9, the culvert will be classified as good.

(2) *Fair*: When the lowest rating of the three NBI items for a bridge is 5 or 6, the bridge will be classified as fair. When the rating of the NBI item for a culvert is 5 or 6, the culvert will be classified as fair.

(3) *Poor*: When the lowest rating of the three NBI items for a bridge is 4, 3, 2, 1, or 0, the bridge will be classified as poor. When the rating of the NBI item for a culvert is 4, 3, 2, 1, or 0, the culvert will be classified as poor. A poor condition bridge with a lower condition rating will have precedence over a poor condition bridge with a higher condition rating.

**§ 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:

(1) The certification checklist;  
(2) Tribal Transportation Program (TTP) transportation improvement program (TIP);

(3) Project scope of work;

(4) Detailed cost for PE;

(5) NBI data; and

(6) An acknowledgment by the Tribe of the project specific funding requirements and that any excess funds will be returned to FHWA for further distribution.

(b) For non-BIA/non-Tribally owned TTF bridges, the application package must also include a Tribal resolution supporting the project.

(c) Incomplete application packages will be disapproved and returned for revision and resubmission along with an explanation providing the reason for disapproval.

(d) The TTF bridge projects for PE will be placed in the queue and determined as eligible for funding after receipt by FHWA of a complete application package.

(e) Funding for the approved eligible projects on the queues will be made available to the Tribes, under a TTP Program agreement between FHWA and a Tribal government, 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:

(1) A copy of the approved PS&E;

(2) The certification checklist;

(3) NBI data;

(4) The TTP TIP;

(5) All environmental and archeological clearances and complete grants of public rights-of-way that must be acquired prior to submittal of the construction application package; and

(6) An acknowledgment by the Tribe of the project specific funding requirements and that any excess funds will be returned to FHWA for further distribution.

(b) For non-BIA/non-Tribally owned TTF bridges, the application package must also include a copy of a letter from the bridge's owner approving the project and its PS&E and a Tribal resolution supporting the project.

(c) Incomplete application packages will be disapproved and returned for revision and resubmission along with an explanation providing the reason for disapproval.

(d) The TTF bridge projects for construction will be placed in the queue and determined as eligible for funding after receipt by FHWA of a complete application package.

(e) Funding for the approved eligible projects in the queues will be made available to the Tribes, under a TTP Program Agreement between FHWA and a Tribal government, or the Secretary of the Interior upon availability of program funding at FHWA.

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

(a) Primary consideration will be given to eligible projects on BIA and Tribally owned TTF bridges. A smaller percentage of available funds will be set aside for non-BIA/non-Tribally owned TTF bridges, since States and counties have access to Federal-aid and other funding to design, replace, and rehabilitate their bridges.

(b) The program policy will be to maximize the number of TTF bridges participating in the TTFBP in a given fiscal year regardless of ownership.

**§ 661.31 Do TTF bridge projects have to be listed on an approved TTP TIP?**

Yes. All TTF bridge projects must be listed on an approved FHWA TTP TIP. TTF bridge projects included in the TTP TIP that are not fiscally constrained may still be included as a list of projects dependent upon the availability of additional resources, also known as an "illustrative list".

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

(a) 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.

(b) At various times during the fiscal year, FHWA will review the TTFBP funding and may shift funds between PE and construction funds to maximize the number of projects funded and the overall effectiveness of the program.

**§ 661.35 What percentage of TTFBP funding is available for use on BIA and Tribally owned TTF bridges, and for non-BIA/non-Tribally owned TTF 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 TTF bridges. The remaining funding in any fiscal year will be made available for PE and construction for use on non-BIA/non-Tribally owned TTF 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/non-Tribally owned bridge projects to maximize the number of

projects funded and the overall effectiveness of the program.

**§ 661.37 What are the funding limitations on an individual TTF bridge project?**

The following funding provisions apply in administration of the TTFBP:

(a) There are no funding limitations on an individual TTF bridge application, but the PE estimated cost will be based on the following fee scale:

*Estimated Construction Cost:*

Up to \$1,000,000—Use up to 20% for PE

\$1,000,000 to \$5,000,000—Use up to 15%–20% for PE

\$5,000,000 to \$10,000,000—Use up to 10%–15% for PE

Over \$10,000,000—Use up to 10% for PE

(b) Requests for additional funds for PE or construction 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 TTFBP funds for cost overruns on a specific bridge project must be submitted to Bureau of Indian Affairs Division of Transportation (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 and BIADOT, 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 TTP 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 TTF bridge projects.

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

Yes. A Tribe can use other sources of funds, including TTP construction funds, on a project that has been approved for funding and placed on the

queue and then be reimbursed when TTFBP funds become available. If TTP construction funds are used for this purpose, the funds must be identified on an FHWA approved TTP TIP prior to their expenditure.

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

The TTFBP funds from the Highway Trust Fund (HTF) 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 FHWA receives and accepts a formal request for the funds from BIA, which includes a justification for the amounts requested and the reason for the failure of the prior year obligation.

**§ 661.47 Can routine bridge maintenance be performed with TTFBP funds?**

No. Routine bridge maintenance repairs, *e.g.*, guard rail repair, repair of traffic control devices, striping, cleaning scuppers, deck sweeping, snow and debris removal, etc., are not eligible uses of TTFBP funding. The U.S. Department of the Interior's annual allocation for maintenance as well as TTP construction funds are eligible funding sources for routine bridge maintenance.

**§ 661.49 Can TTFBP funds be spent on Interstate, State Highway, County, City, Township, and Toll Road TTF bridges?**

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

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

Yes, costs associated with approach roadway work, as defined in § 661.5 are eligible. 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 TTFBP funds.

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

(a) *New and replacement.* New and replacement structures 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.

(b) *Rehabilitation.* Bridges to be rehabilitated, at a minimum, should conform to the standards referenced in 25 CFR part 170, subpart D, appendix B.

**§ 661.55 How are BIA and Tribally owned in-service TTF bridges inspected?**

The BIA and Tribally owned in-service TTF bridges are inspected in accordance with 25 CFR 170.513 through 170.514.

**§ 661.57 What should be done with a BIA and Tribal bridge in poor condition if the Indian Tribe does not support the project?**

The restrictions set forth in 25 CFR 170.114(a)(1) shall apply.

[FR Doc. 2024–14933 Filed 7–11–24; 8:45 am]

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket Number USCG–2024–0378]

RIN 1625–AA08

**Special Local Regulation; San Francisco Bay, San Francisco, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation in the navigable waters of San Francisco Bay for the San Francisco Sail Grand Prix, Season 4 race periods on July 12, 2024, through July 14, 2024. This special local regulation is necessary to ensure the safety of mariners transiting the area from the dangers associated with high-speed sailing activities. This rule temporarily prohibits entering, transiting through, anchoring, blocking, or loitering within the event area near the Golden Gate Bridge and Alcatraz Island, unless authorized.

**DATES:** This rule is effective from noon on July 12, 2024, through 5:30 p.m. on July 14, 2024.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0378 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email Lieutenant William K. Harris, U.S. Coast Guard Sector San Francisco, Waterways Management Division, telephone 415–399–7443, email [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

**SUPPLEMENTARY INFORMATION:**