

Comments of the Michigan Department of Transportation

In Response To
Notice of Proposed Rulemaking,
Published August 7, 2002, 67 Federal Register 51238
In
Docket No. FHWA-2002-12229
Indian Reservation Roads Program

Filed: October 15, 2002

The Michigan Department of Transportation (MDOT) submits these comments in response to the notice of proposed rulemaking (NPRM) issued by the Bureau of Indian Affairs, Department of Interior in this docket, 67 Federal Register 51238 (August 7, 2002). The NPRM proposes to establish policies and procedures governing the Indian Reservation Roads (IRR) Program. We essentially agree wholeheartedly with the comments submitted by the transportation departments of the states of Idaho, Montana, North Dakota, South Dakota, and Wyoming.

We believe it is good practice for State Departments of Transportation (DOTs) and Metropolitan Planning Organization (MPOs) to consult with and listen to Tribal officials. The Michigan Department of Transportation (MDOT) has made and continues to make considerable efforts to reach out to and involve tribal governments in all aspects of transportation planning. As the states cited above pointed out, the consultation requirements found in 23 U.S.C. 134 and 135 and regulations in 23 CFR part 450 are sufficient to insure that Indian tribal governments can provide input into the State planning process and do not need to be addressed by this proposed rulemaking. This proposed rulemaking should provide the Indian tribal governments with the same guidance to consultation with State DOTs and MPOs as we do in consulting with the Indian tribal governments. This type of exchange will strengthen everyone's planning process.

After reviewing the comments of the transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming, we find that it would be difficult for us to restate what they have already submitted so succinctly. Therefore, we agree with the following comments submitted by the above cited states. Our concern was mostly with ensuring this rulemaking's consistency with 67 Federal Register 41648 et seq. of June 19, 2002 regarding involvement of local elected officials in planning activities for non-metropolitan areas. Therefore, we did not

address the comments regarding consultation with MPOs since we also agree that these requirements are covered in 23 CFR 450.

Specific Comments on the NPRM
(taken from the draft comments of the Transportation Departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming.)

1. □170.100 The terms and definitions for "Consultation, Cooperation, and Coordination" in 23 CFR 450.104 should be used for this NPRM. This will avoid unnecessary confusion and require Indian tribal governments to use the same terms and definitions as State DOTs and MPOs. The term "collaboration" is not used in these rules and is not needed here if these three terms are used. The definition for "collaboration" in this NPRM is almost verbatim of the definition for "cooperation" in 23 CFR 450.104. Additional, inconsistent language would only lead to confusion.

2 □ 170.107 This section should be deleted and replaced with a description of when and how tribes and Indian tribal governments, tribal organizations, and the Bureau of Indian Affairs (BIA) must consult with State DOT's during the development of the IRR Transportation Improvement Plan (TIP). How and when the State DOT's consult with Indian tribal governments, Federal Agencies, local governments, MPO's, public and private transportation providers, operators of major intermodal terminals, and multi-state businesses in developing the Statewide Transportation Improvement Program are already defined by 23 USC 134 and 135 and the regulations in 23 CFR 450. The proposed rule incorrectly indicates that there must be a fully "coordinated" transportation planning process with the States and the Indian tribal governments. The regulations in 23 CFR 450 require a "consultation" process between the States and the Indian Tribal governments. Additional, inconsistent language would only lead to confusion.

3. □170.110 and □ 170.111. These subsections should be deleted. The State DOT's and MPO's must comply with Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794 which ensures that no person shall, on the grounds of race, color, sex, national origin, or physical

handicap, be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination under any program receiving Federal assistance from the United States Department of Transportation. The States and MPOs must also comply with NEPA to protect natural resources in implementing its transportation programs. This rule is unnecessary since other rules and laws are already enacted to prevent discrimination. Additional, inconsistent language would only lead to confusion.

4 □ 170.112 The term "collaboration" should be replaced with "cooperation" and the following should be added to the end of the sentence: "as defined in 23 CFR 450.104". The definition of "collaboration" in this NPRM is almost verbatim to the definition of "cooperation" in 23 CFR 450.104. In addition, MDOT feels that Indian tribal governments, State DOTs and MPOs should use the same terms and definitions in the planning process and eliminate the potential for confusion.

5 □ 170.430 and 170.435 The public participation requirements for long range transportation planning should parallel the State and MPO requirements.

Any questions regarding these comments can be directed to Susan Richardson, Supervisor, Rural/Urban Unit, Bureau of Transportation Planning, MDOT, 517/373-1881 or e-mail richardsons@michigan.gov.