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U.S. DEPARTMENT OF TRANSPORTATION**

**BEFORE THE  
COMMITTEE ON INDIAN AFFAIRS,  
UNITED STATES SENATE**

April 3, 2019

Chairman Hoeven, Vice Chairman Udall, Members of the Committee, thank you for the opportunity to appear before you today to discuss enhancing Tribal self-governance and safety on Indian roads. The Federal Highway Administration (FHWA) has a long history of working closely with Tribal governments, and I am proud of the relationships that we have built. We are committed to partnering with Tribes to address their transportation needs. I would like to update you on a number of efforts we have underway.

**TRIBAL SELF-GOVERNANCE**

The Department of Transportation (Department) is working to establish the Tribal Transportation Self-Governance Program created by section 1121 of the Fixing America's Surface Transportation (FAST) Act. This program will establish a new option for Tribes to receive transportation funding via a compact and funding agreement negotiated between the Department and an eligible Tribe that elects to participate in the self-governance program. The Department of the Interior and the Indian Health Service already have self-governance programs. However, because the Department does not carry out services or activities on behalf of, or for the benefit of, Indian Tribes, the focus of the rulemaking to implement the program has been on eligibility, internal Departmental operations to provide flexibility and alleviate administrative burdens, and implementing those provisions of the Indian Self-Determination and Education Assistance Act that address self-governance, while acknowledging the Department's inherently Federal functions.

We have made significant progress in implementing this program, consistent with our goal to provide maximum participation of Tribes in the development and management of transportation programs on Tribal lands. To date, the Department has preliminarily identified a large number of formula-funded, discretionary, and competitive grant programs that may be included in a self-governance annual funding agreement. The Department recognizes the sovereignty of Tribal governments and respects Indian self-determination and Tribal self-governance. The Department is committed to upholding the Federal Government's unique trust responsibility by honoring the government-to-government relationship between the United States and federally recognized Indian Tribes. The Department's goal is to continue to engage Tribal leaders to develop, to the maximum extent possible, a consensus self-governance regulation that adequately addresses the concerns of the Federal government and Tribal leaders.

## *Negotiations*

In mid-2016, the Department began to implement the congressional directive to promulgate regulations to carry out a Tribal transportation self-governance program by convening a negotiated rulemaking committee composed of 18 Tribal and seven Federal representatives. The rulemaking committee met five times in 2016, four times in 2018, and will meet twice in 2019 to develop recommendations and proposed regulatory text for consideration by the Secretary.

Following enactment of H.R. 6414 (Public Law 115-235), which extended the statutory deadlines for rulemaking, the Department engaged the services of facilitators from the Federal Mediation and Conciliation Service (FMCS) to assist the committee in its negotiations. The committee agreed to focus its efforts on discussing goals, intent, and concerns related to the program and its implementation, while charging a smaller, drafting work group to develop recommended language for consideration by the full committee. The FMCS is also facilitating the work of this drafting group. Most recently, the drafting group met in February 2019, and the committee has empowered the drafting group to develop the remainder of the rule using this process.

The drafting group will meet three times over the next two months to develop additional recommended language for the committee's consideration, and the proposals will be previewed for committee members following each drafting group meeting. There will be an additional plenary meeting in June 2019 to present revised proposals for consideration by the full committee. Pending the outcome of this meeting, the Department expects to issue a proposed rule later this summer.

The Department notes that following enactment of H.R. 6414 in August 2018, Congress extended to June 4, 2019, the statutory deadline for the Department to issue a proposed rule. The Department anticipates that, with the consent of the rulemaking committee, it may have to invoke a 180-day extension to issue the proposed rule. If that occurs, the Department will notify Congress.

## **SAFETY ON INDIAN ROADS**

Safety is the Department's top priority and I am committed to enhancing transportation safety for Tribal communities. As stated in the August 2017 *Tribal Transportation Strategic Safety Plan*, prepared by the Tribal Transportation Safety Management System Steering Committee, despite known underreporting, data from the Fatality Analysis Reporting System (FARS) showed 3,278 available fatality reports in Tribal areas during the five-year period from 2010-2014. This is not acceptable. We must improve transportation safety in Tribal areas. FHWA is committed to working with our Tribal partners, the Bureau of Indian Affairs (BIA) and other Federal agencies, States, and other public organizations to identify and implement solutions to address this important issue.

## ***FHWA Programs***

Tribal transportation facilities are essential to providing safe and adequate transportation to and within Tribal land. A number of FHWA programs support Tribal transportation. Some examples are detailed below.

## Tribal Transportation Program

The **Tribal Transportation Program (TTP)** provides funding for projects to provide safe and adequate transportation and public road access to and within Indian reservations, Indian lands, and Alaska Native Village communities. The TTP provides funding to improve transportation for all 573 federally-recognized sovereign Tribal governments and is the largest Federal Lands Highway program. The program is jointly administered by FHWA and the BIA. We work together to partner with Tribes and provide robust training and technical assistance to support Tribes in enhancing Tribal transportation.

In addition to promoting safety, the TTP contributes to the economic development, self-determination, and employment of Indians and Native Americans. While the vast majority of TTP funds are distributed to Tribes via Tribal shares determined by statutory formula, the program includes a set-aside for the **TTP Safety Fund (TTPSF)**, which makes funds available to Tribes through a competitive, discretionary program. The TTPSF supports the Department's safety priority and emphasizes the development of Transportation Safety Plans, which play a critical role in determining how to best address transportation safety needs. One example of the way TTPSF funds benefit Tribes is a project funded by the TTPSF and TTP Tribal shares. Using these funds, the Citizen Potawatomi Nation in Oklahoma designed and constructed a pedestrian pathway providing safety access between the Tribal area and the nearby city of Shawnee.

In addition to the TTPSF set-aside, the TTP includes a set-aside for the **TTP Bridge Program**, which addresses the important issue of bridge safety by providing resources for planning, design, engineering, preconstruction, construction, and inspection of bridge projects. Tribes apply for these bridge funds, and, after a completed application package is received and accepted by FHWA, applications programmed for funding are placed in either a preliminary engineering or construction queue. Applications are ranked and prioritized based on established criteria and those applications not funded remain in the queue and carry over from fiscal year to fiscal year until funded.

The TTP also includes a set-aside for **Transportation Planning**, which funds Tribal transportation planning activities. The stated purpose of transportation planning is to fulfill goals by developing strategies, including strategies to address public safety, to meet transportation needs.

Not only has the TTP program improved safety, but it has also made infrastructure improvements in Tribal areas that are critical for survival. For example, the Gwich'in people who live in the Yukon Flats area of Alaska make a living from hunting and selling handicrafts. Their subsistence depends on these hunts, fishing, berry picking, and firewood gathering which was, just barely, facilitated by a bridge with a National Bridge Inventory (NBI) sufficiency rating of 4.8. The bridge was closed to all traffic in 2013, greatly impacting the Gwich'in people. However, because of an FHWA Accelerated Innovation Deployment grant and the TTP Bridge Program, it was replaced with a Geosynthetic Reinforced Soil bridge and reopened in October 2017.

### Highway Safety Improvement Program

The **Highway Safety Improvement Program (HSIP)** is a strategic, data-driven program that improves safety on all public roads, including roads in Tribal areas. The program's purpose is to achieve a significant reduction in traffic fatalities and serious injuries. HSIP funds have been used for a number of safety-related projects in Tribal areas. For example, the Jamestown S'Klallam Tribe in Washington State made safety realignments to the intersection of US-101 and Chicken Coop-Zaccardo with a project that combined TTPSF funds and HSIP program funds.

### Nationally Significant Federal Lands and Tribal Projects Program

The **Nationally Significant Federal Lands and Tribal Projects (NSFLTP) Program** provides funding for the construction, reconstruction, and rehabilitation of nationally-significant projects within, adjacent to, or accessing Federal and Tribal lands. The Department published a Notice of Funding Opportunity for this competitive program in October 2018 and is currently reviewing applications. Consistent with the statutory selection criteria established in the FAST Act, evaluation of applications for this program includes consideration of the extent to which the project furthers the goals of the Department, including safety.

### Tribal Technical Assistance Program

In addition to the programs described above, the **Tribal Technical Assistance Program (TTAP)** provides centralized delivery of highway-related training, technical assistance, and technology transfer to Tribes. The TTAP operates five Virtual Centers of Excellence (CoE), each staffed with subject matter experts to provide training and technical assistance in their specialty areas. One of the five CoEs is specifically focused on safety. FHWA is committed to providing effective technical assistance to Tribes and is evaluating the centralized delivery model launched in 2018 over the course of a two-year pilot. Through February 2019, a total of 2,609 training hours have been delivered under the pilot. This is a 60 percent increase over the five-year average of training hours delivered from 2012 through 2016.

In addition to the programs described above, some Tribes have benefitted from State planning and investment decisions with a State's Federal-aid program funding. FHWA will continue to work with our Tribal partners as we administer these programs and work together to achieve enhanced safety for all Tribes.

### ***Tribal Transportation Safety Reports to Congress***

Congress recognized the need to address Tribal transportation safety in the FAST Act. Section 1117 of the FAST Act directed the Secretary to: (1) submit to Congress a report describing the quality of transportation safety data collected by States, counties, and Indian Tribes for transportation safety systems and the relevance of that data to improving the collection and sharing of data on crashes on Indian reservations, and (2) complete a study that identifies and evaluates options for improving safety on public roads on Indian reservations and submit to Congress a report describing the results of the study.

### *Tribal Governments & Transportation Safety Data*

In order to evaluate the quality of transportation safety data, FHWA utilized a survey developed by the Tribal Transportation Safety Management Steering Committee (SMS Committee). FHWA has played a key leadership role in this committee, which it co-chairs with the BIA. The goal of the SMS Committee is to prevent and reduce fatalities and injuries associated with the use of Tribal transportation facilities. The SMS Committee members include representatives from Tribal governments and Federal agencies, including FHWA's Tribal Transportation Program, Office of Safety, and Resource Center.

The survey developed by the SMS Committee was made available to all federally-recognized Tribes and the States in which those Tribes are located. The survey responses were analyzed to evaluate the quality of existing Tribal transportation safety data, opportunities for improved data collection, options for paperless reporting, and uses of crash data. Based on that analysis, in May 2017, FHWA delivered to Congress the report required pursuant to section 1117(b) of the FAST Act: *Tribal Governments & Transportation Safety Data*.

As stated in the May 2017 report, many Tribes are not adequately represented in State and national crash databases that often drive policy, program, and project decisions because some crash data is not shared with State governments. Additionally, some incidents are undocumented. The report noted that Tribes and States identified several barriers inhibiting the sharing of crash data, including Tribal-State communication, resources required to collect and share crash data, and Federal policy for crash reports.

The May 2017 report included many actions DOT agencies would take to improve the quality and availability of safety data in Tribal areas. Consistent with these recommendations, FHWA continues to accept any form of crash data from Tribes when evaluating applications for TTPSF grants and has encouraged Tribes to conduct a self-assessment of traffic records and submit the assessment with their grant applications if formal documentation of crashes is not available. FHWA also provides assistance as requested to encourage Tribal involvement in performance measure establishment.

Additionally, in coordination with FHWA, NHTSA updated their Traffic Records Program Assessment Advisory to include multiple references to Tribal governments. This Advisory provides guidance on different assessment processes States may utilize to evaluate their State's highway safety data and traffic records system. The inclusion of references to Tribal governments in the Advisory will encourage new conversations about partnering with Tribes as States review their safety data systems. In addition to coordinating within the Department, FHWA is involved in ongoing coordination with the Department of the Interior (DOI) to address standardizing collection of crash data by DOI law enforcement and continues to work as part of the SMS Committee to improve Tribal transportation safety.

FHWA will continue its efforts and partnerships to improve collection and sharing of safety data so that Tribes are better able to address safety issues through strategic safety planning and implementation. Improved data collection and sharing also has the potential to afford Tribes improved access to funding opportunities, as analysis of information available via State and

national crash databases can inform project decisions, such as the selection of roadway safety improvements through the Highway Safety Improvement Program (HSIP).

*Options for Improving Transportation Safety in Tribal Areas*

In August 2017, the SMS Committee published the ***Tribal Transportation Strategic Safety Plan (Safety Plan)***, addressing topics selected based on review of multiple data sources. Based on this plan, in January 2018, FHWA delivered to Congress the report required pursuant to section 1117(c) of the FAST Act: ***Options for Improving Transportation Safety in Tribal Areas***. This report summarizes the topics addressed in the Safety Plan, separated into two categories: priority and additional topics. The priority topics are those which data indicates are national-level issues or which help establish data driven decision-making frameworks, while additional topics may be emerging issues or may be identified by a Tribe through analysis of incident history. The priority topics identified in the January 2018 report are: (1) Transportation Safety Decision Making Process; (2) Crash Data Collection, Sharing, and Analysis; (3) Occupant Protection, Child Passenger Seats, and Helmets; (4) Roadway Departure; (5) Impaired Driving; (6) Pedestrians; and (7) Availability of Public Safety Services. In addition to identifying these priority topics, the report discusses strategies identified in the Safety Plan that Tribes may utilize to improve transportation safety, and recognizes that a Tribe's unique incident history and local knowledge may identify other priority areas for which other strategies should be considered.

FHWA is promoting the priority topics identified in the January 2018 report at regional and national conferences and encouraging Tribes to consider these topics as they develop and update Tribal Transportation Safety Plans. FHWA is committed to finding additional ways to encourage and assist Tribes with these topics and intends to partner through the SMS Committee to identify additional ways this can be accomplished.

In addition to identifying priority topics and strategies to address them, the January 2018 report identifies general options for Federal agencies to improve transportation safety in Tribal areas. FHWA is already executing many of these recommended options, for example, by accepting the best available data when evaluating applications for TTPSF grants; fostering good relations and facilitating communication between Tribes and States; providing training, technical assistance, and resources to support Tribes in addressing safety issues; and continuing to actively collaborate with Tribal and Federal agency partners, including the BIA, in the SMS Committee. FHWA will continue to look for additional opportunities to partner with Tribes, the BIA and other Federal agencies, and other organizations to enhance Tribal transportation safety.

**CONCLUSION**

Thank you again for the opportunity to appear before you today. I would be happy to answer any questions you may have.

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