

DEPARTMENT OF TRANSPORTATION
TRIBAL TRANSPORTATION SELF-GOVERNANCE PROGRAM
NEGOTIATED RULEMAKING COMMITTEE

DRAFT

Preamble

The Tribal Transportation Self-Governance Program (TTSGP) Negotiated Rulemaking Committee has been established pursuant to the Fixing America's Surface Transportation (FAST) Act, P.L. 114-94. The Committee is charged with the responsibilities set forth in Section 1121 of that Act and the Negotiated Rulemaking Act, which include developing the Notice of Proposed Rulemaking (NPRM), receiving and reviewing public and government comments, and finalizing a recommended final rule that contains the regulations required to carry out the TTSGP.

I. PARTICIPATION

- A. Attendance at Meetings. Committee Members must make a good faith effort to attend all full negotiating sessions. In the event a Committee Member or his/her designated alternate fails to attend two consecutive full negotiating sessions, the Committee may ask DOT to remove the member from the Committee and ask DOT to designate a replacement member.
- B. Designated Alternates. In the absence of a Committee Member, the Alternate shall have the same rights, responsibilities, duties and functions as a Committee Member during Committee and Work Group participation. Alternate Committee Members have or will be named by the Secretary and shall be fully supported by DOT to the same extent as Committee Members. Federal alternates must be designated and their names presented to the Committee as soon as possible. A Committee Member unable to attend any session shall inform the Committee Co-chairs and the Designated Federal Official in writing. References to Committee members in this document include Alternates.
- C. Constituents' Interests. Committee Members are expected to represent the concerns and interests of their constituents.
- D. Public Participation. Comments from the public will be taken as provided in these Protocols.
- E. Effect of a Failure to be Present for Vote. The absence of a Committee Member during a lawful session of a meeting shall not invalidate the vote.

II. MEETINGS

- A. Quorum. A quorum of the full Committee shall consist of two-thirds of the members of the Committee who are present during a call of the roll taken on opening day at the start of a negotiated rulemaking committee meeting. Once a quorum is initially established, the Committee may take action during the remainder of that meeting, including action on succeeding days, as long as the Committee is lawfully in session pursuant to these Protocols, and whether or not a quorum is present.
- B. Structure. The negotiations will be conducted consistent with the FAST Act, Committee Protocols and the Negotiated Rulemaking Act of 1990 ("NRA"), as amended and as adapted to the unique relationship between the Government of the United States and the governments of Indian and Alaska Native tribes.
- C. Open Meetings. Committee meetings will be announced in the Federal Register prior to the meeting and will be open to the public. Members of the public and persons other than Committee members will be given opportunities to make comments, raise questions or submit materials for the record. The Committee reserves the right to establish timelines as appropriate and necessary during the meetings.
- D. Minutes. Draft minutes will be prepared and distributed to Committee

Members/Alternates by the Designated Federal Official five working days after the meeting. DOT will maintain a record of all minutes and will distribute approved minutes, including posting on the federal website (<https://flh.fhwa.dot.gov/programs/ttp/>) to Committee Members/Alternates.

E. Agenda. Draft meeting agendas will be developed by the Tribal Co-Chairs and Designated Federal Official for approval by the Committee. A draft Agenda for each meeting shall be posted on the federal website (<https://flh.fhwa.dot.gov/programs/ttp/>) and distributed to all Members such that receipt by the Member will be no later than five working days in advance of such meeting.

F. Caucus. Any Committee member can request a Caucus at any time, which may be a non-public meeting. Parties will be asked for an estimate of the time needed for the caucus. Internal procedures will be determined by each respective caucus.

G. Time Limitations for Interruptions. Whenever the Committee process is interrupted, whether for a caucus, recess, lunch break, or any other reason, the Chair or Co-chairs shall announce the exact length of the interruption, and the time when Committee business will resume. The Chair or Co-chairs shall, without exception, reconvene the Committee at the exact time stated. Any Committee member who is not physically present at the designated time of reconvening is subject to Article I(E) of these Protocols with respect to any action taken in his or her absence.

H. Time Limitation for Non-Committee Members. It is the intent of these Protocols that Committee Members themselves, and not their agents or representatives, debate the matters that come before the Committee. Nonetheless, a Committee member may yield time to a non-Committee Member.

I. Federal Support. The Federal Representatives shall provide a person to staff the meetings for administrative support such as making copies or distributing documents, including posting on the federal website (<https://flh.fhwa.dot.gov/programs/ttp/>).

III. DECISIONMAKING

A. Consensus. All decisions of the Committee shall be made by consensus. Subject to Article VI of these protocols, Consensus means unanimous agreement as shown by an absence of expressed objection by any Committee member present at the Committee meeting with regard to a particular issue.

B. Voting. No Committee member may abstain on a vote. Unless a Committee Member expressly signals his or her opposition to a proposal, that Committee Member shall be conclusively presumed to have consented to the matter being voted upon, and that Member shall not be allowed to request reconsideration or reopening of the matter. Every Committee vote is subject to the good faith requirements of Article VI of these Protocols.

C. Reconsideration. A matter on which consensus has been achieved may not be reconsidered by the Committee, except by a consensus vote of the Committee. A proposal with respect to which consensus was not achieved may only be reconsidered

one time with a three quarters vote and time limit set by the Committee. Once reopened, a matter still requires consensus to be adopted.

IV. WORKGROUPS / STANDING COMMITTEES

A. Work Groups. Work Groups may be formed by the Committee from Committee Members or their designees to address specific issues and to make recommendations to the Committee. Each Work Group shall be chaired by a Committee Member within the Work Group who shall establish procedures for conduct of the Work Group in order to expedite the Work Group's work. The Work Group shall appoint a designated secretary to accurately record the Work Group's efforts.

Interested persons and members of the public are permitted and encouraged to participate in Work Group proceedings. Each Work Group must include a DOT representative. Work groups are not authorized to make decisions for the Committee as a whole. The agenda for each Work Group shall be distributed with the Agenda for the Committee meeting under Article II(E) of these Protocols. The Work Group Chair shall report any Work Group recommendation to the Committee, which recommendation must take the form of specific proposed language (if any regulation or regulation change is proposed), together with proposed draft preamble language to accompany that language. At the end of each Work Group session, the Work Group Chair and DOT's representative shall meet to review progress made at each Work Group session and the Work Group's agenda. Work Groups may report to the Committee both: (1) recommendations reached by consensus; and (2) recommendations reached by majority vote, as long as a summary of any significant dissenting position, as determined by the Work Group Chair, is included in the report. As appropriate workgroup drafts will be posted on the federal website (<https://flh.fhwa.dot.gov/programs/ttp/>).

B. Drafting Group. The full Committee shall establish a Drafting Group of which at least one member will be a DOT representative. Members need not be members of the full Committee, and should possess demonstrated drafting ability. As Work Groups or the full Committee reach agreement on issues, the matter may be referred to the Drafting Group for preparation of precise recommended regulatory language and the required preamble language. The Drafting Group shall also be responsible for preparing a proposed final, comprehensive preamble for presentation to the full Committee. The Drafting Group shall elect its own Committee spokesperson. All language will be referred back to the Work Groups or full Committee. When the Drafting Group cannot agree on language, all competing drafting proposals will be presented to the Work Group or the full Committee.

V. AGREEMENT

A. Product of Negotiations. The intended product of the negotiations is a proposed rule or proposed report setting forth any proposed regulations, or changes to regulations, that the Committee finds necessary, desirable or convenient. The report shall be in the form of a written statement developed by the Committee Members on behalf of the

Secretary of DOT and Tribal Committee representatives, and shall include both proposed rule language and an accompanying proposed preamble. As the Committee makes decisions on individual rulemaking proposals, each such individual decision shall consist of both exact rulemaking language and a proposed accompanying insert into the preamble. -Prior to the publication of the proposed rule, the DFO will provide the Committee with notice and an opportunity to negotiate any changes in the proposed regulations. Consistent with treaties, the federal trust relationship, federal law, Executive Orders, and policy, it is the intent of the Committee that the Secretary of Transportation and the Office of Management and Budget (OMB) should refrain from making any changes to the proposed rule unless provisions are contrary to statute.

B. Final Report. The full Committee will review all comments and any clearance issues, including those of DOT and the OMB, received in response to any proposed rule. The Committee will review the comments, and will draft responses to the comments to be included in the final rule. The Committee will submit a proposed final rule for review by the Secretary and the OMB. It is the intent of the Committee that DOT and the OMB will refrain from making any changes to the proposed final rule unless provisions are contrary to statute.

VI. SAFEGUARDS FOR THE 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. If a Committee member opposes a proposal, he or she shall: (i) state the reason for that opposition; and (ii) propose an alternative to the proposal that meets that Committee member's concerns, for further consideration of the Committee.

B. Committee Member Diligence. It is the responsibility of each Committee Member to remain constantly abreast of developing Committee and Working Group proposals.

C. Cooperative Communications. Committee members, Working Groups Members and other advisory staff are strongly encouraged to discuss and exchange ideas and information prior to the first and all subsequent meetings of the Committee with intent of exploring common positions on any issues that may be considered by the Working Groups and/or voted on by the Committee in formal session. In this way, formal Committee activities and Working Groups will be made more productive and less controversial in nature.

D. Information.

1. The Members of the Committee agree to exchange information in good faith.
2. All Members of the Committee agree not to divulge information shared by others in confidence.
3. The media release spokespersons, comprised of the two Co-chairs, will

provide Committee communications with the media. The media is welcome to attend Committee meetings, but must identify and display their media credentials.

E. DOT Assistance to Committee Members. DOT will provide requested information and/or technical assistance needed for the work of the Committee, as requested by any Committee member. All requests and results shall be made available to the full Committee.

VII. SCHEDULE

A. The Committee shall endeavor in good faith to meet monthly until the NPRM is published, then meet at least monthly at the close of the comment period of the NPRM to review comments, draft responses to the comments, and draft the final rule.

B. Additional meetings will be scheduled as necessary but the schedule for the first four meetings is as follows:

1. September 13-15;
2. October 18-20;
3. November 15-17; and
4. December 6-8.

VIII. FACILITATORS

The Committee may utilize facilitator(s). The role of the facilitator may include impartially facilitating Committee and certain Work Group discussions, assisting in the development of draft agendas, working to resolve any impasses that may arise, preparing meeting records, assisting in the location and circulation of background materials and materials the Committee develops and other functions the Committee requests. The facilitator will take no position on the issues before the Committee and serves at the will of the Committee. Committee Members, including Co-Chairs may not serve as facilitators.

IX. CO-CHAIRS, COMMITTEE, AND FEDERAL REPRESENTATIVES

A. Co-Chairs. Two tribal Co-Chairs will be selected by Committee members. The role of the Tribal Co-Chairs includes developing draft agendas with the Designated Federal Official and facilitator, chairing Committee discussions, working to resolve any impasses that may arise, reviewing meeting summaries, assisting in the location and circulation of the background materials and materials the Committee develops, and other functions that the Committee may request. The Tribal Co-Chairs will serve at the will of the Committee Members.

B. DFO. The DFO shall work with the Tribal Co-Chairs to implement these protocols, including developing draft agendas, working to resolve any impasses that may arise, reviewing meeting summaries, and other functions the Committee requests.

C. Chair. The Tribal Co-Chairs (“Chair”) shall decide who will act as the Chair for any meeting.

Signed:

August ____, 2016

Joe A. Garcia, Tribal Co-Chair
Head Councilman, Ohkay Owingeh

Kay Rhoads, Tribal Co-Chair
Principal Chief, Sac and Fox Nation

[Additional tribal Committee and Federal Members will be added]

Robert Sparrow, Designated Federal Official
Federal Highway Administration.