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United States General Accounting Office  
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B-287501

April 9, 2001

The Honorable Ben Nighthorse Campbell  
Chairman  
The Honorable Daniel K. Inouye  
Ranking Member  
Committee on Indian Affairs  
United States Senate

The Honorable Don Young  
Chairman  
The Honorable James L. Oberstar  
Ranking Minority Member  
Committee on Transportation and Infrastructure  
House of Representatives

Subject: Department of the Interior, Bureau of Indian Affairs: Distribution of Fiscal Year 2001 Indian Reservation Roads Funds

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Interior, Bureau of Indian Affairs (BIA), entitled "Distribution of Fiscal Year 2001 Indian Reservation Roads Funds" (RIN: 1076-AE13). We received the rule on March 26, 2001. It was published in the Federal Register as a final rule on March 29, 2001. 66 Fed. Reg. 17073.

The final rule requires distribution of the remaining 25 percent of fiscal year 2001 Indian Reservation Roads funds to projects on or near Indian reservations.

The final rule has an announced effective date of March 29, 2001. The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of publication in the Federal Register or receipt of the rule by Congress, whichever is later. 5 U.S.C. 553(a)(3)(A). Since the BIA is making the rule effective the date of publication in the Federal Register, the rule does not have the required 60-day delay in its effective date.

The previously issued temporary rule (66 Fed. Reg. 1576, January 9, 2001) which distributed the initial 75 percent of roads funds also did not allow the 60-day delay. However, in that case, the rule was issued without notice and comment, and therefore, the exception to the 60-day delay provision found at 5 U.S.C. 808(2) was

applicable. Here, BIA received and considered comments submitted in response to the temporary rule before promulgating the final rule.

Enclosed is our assessment of the BIA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the BIA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Robert Robinson, Managing Director, Natural Resources and Environment. Mr. Robinson can be reached at (202) 512-3841.

signed

Kathleen E. Wannisky  
Managing Associate General Counsel

Enclosure

cc: Mr. James H. McDivitt  
Deputy Assistant Secretary--  
Indian Affairs (Management)  
Department of the Interior

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS  
ENTITLED  
"DISTRIBUTION OF FISCAL YEAR 2001  
INDIAN RESERVATION ROADS FUNDS"  
(RIN: 1076-AE13)

(i) Cost-benefit analysis

The final rule will distribute \$56.5 million of the Indian Reservation Roads funds for fiscal year 2001. According to the BIA, the administrative costs of disbursing the funds will be negligible. The benefits of the final rule include the continuation of approximately 1,400 road and bridge projects at various stages of completion and avoidance of hardships on tribes and tribal members.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The BIA states that it did not prepare a Regulatory Flexibility Analysis because the rule only applies to tribal governments.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

Following the issuance of a temporary rule on January 9, 2001, which distributed 75 percent of the roads funds, BIA received comments from 84 commenters during the 30-day comment period. These comments were considered in formulating the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule does not contain any information collections that are required to be reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is authorized under section 1115 of the Transportation Equity Act for the 21<sup>st</sup> Century, Pub. L. 105-178, and 23 U.S.C. 202(d).

Executive Order No. 12866

The final rule was determined to be an “economically significant” regulatory action under the order and reviewed by OMB.

Executive Order No. 13132 (Federalism)

The BIA has determined that the final rule does not have significant federalism implications to warrant the preparation of a Federalism Assessment.