



B-285683

June 23, 2000

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

The Honorable Bud Shuster  
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 2000 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 2000 Indian Reservation Roads Funds" (RIN: 1076-AD99). We received the rule on June 12, 2000. It was published in the Federal Register as a temporary rule on June 16, 2000. 65 Fed. Reg. 37697.

The temporary rule requires distribution of one-half of the Fiscal Year 2000 Indian Reservation Roads funds to projects on or near Indian reservations using the Relative Need Formula adopted in 1993. This rule follows a previous temporary rule published on February 15, 2000 (65 Fed. Reg. 7431) which permitted distribution of the first half of the Fiscal Year 2000 funds. That rule was the subject of our report, GAO/OGC-00-26, March 8, 2000.

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 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 Jim Wells, Director, Energy, Resources, and Science Issues. Mr. Wells can be reached at (202) 512-3841.

**Robert P. Murphy**  
General Counsel

Enclosure

cc: **The Honorable Kevin Gover**  
Assistant Secretary for Indian Affairs  
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 2000  
INDIAN RESERVATION ROADS FUNDS"  
(RIN: 1076-AD99)

(i) Cost-benefit analysis

The temporary rule will distribute the remaining \$100 million of the \$200 million Indian Reservation Roads funds for FY 2000. According to the BIA, the administrative costs of disbursing the funds will be negligible. The benefits of the temporary rule include the continuation of approximately 950 road and bridge projects that are 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 temporary rule only applies to tribal governments, not state or local governments. We also note that an analysis was not required under the Act because the rule was not issued following a general notice of proposed rulemaking.

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

The temporary rule does not contain either an intergovernmental or private sector mandate 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.

The Assistant Secretary of the BIA, pursuant to 5 U.S.C. 553(b)(3)(B), has determined that notice and comment procedures are impracticable, unnecessary, and contrary to the public interest and under 5 U.S.C. 553(d)(3) has found good cause to make the rule effective immediately. To delay the implementation of this rule would set back needed and planned road construction on the reservations and cause delays because of the short construction season on some reservations.

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

**The temporary rule contains no new information collections that are subject to review by the Office of Management and Budget under the Act.**

**Statutory authorization for the rule**

**The temporary 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 temporary rule was determined to be an “economically significant” regulatory action under the Order and was reviewed and approved by the Office of Management and Budget.**

**Executive Order No. 12612 (Federalism)**

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