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United States Government Accountability Office  
Washington, DC 20548

B-294387

September 24, 2004

The Honorable Ben Nighthorse Campbell  
Chairman  
The Honorable Daniel K. Inouye  
Vice Chairman  
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: Indian Reservation Roads Program*

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 "Indian Reservation Roads Program" (RIN: 1076-AE17). We received the rule on September 13, 2004. It was published in the Federal Register as a final rule on July 19, 2004. 69 Fed. Reg. 43090.

The final rule establishes policies and procedures governing the Indian Reservation Roads (IRR) Program. The rule expands transportation activities available to tribes and tribal organizations and provides guidance for planning, designing, constructing, and maintaining transportation facilities. It also establishes a funding distribution methodology called the Tribal Transportation Allocation Methodology.

The final rule has an announced effective date of October 1, 2004. 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. 801(a)(3)(A). The rule was published in the Federal Register on July 19, 2004. It was received by Congress on September 14, 2004. Therefore, the final rule does not have the required 60-day delay in its effective date.

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, with the exception of the 60-day delay in the rule's effective date, 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: David W. Anderson  
Assistant Secretary – Indian Affairs  
Department of the Interior

ENCLOSURE

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  
"INDIAN RESERVATION ROADS PROGRAM"  
(RIN: 1076-AE17)

(i) Cost-benefit analysis

The yearly amount of IRR Program funds is approximately \$275 million.

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

The BIA has certified that the final rule will not have a significant economic impact on a substantial number of small entities.

(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.*

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On August 7, 2002, the BIA published a Notice of Proposed Rulemaking in the Federal Register. 67 Fed. Reg. 51327. BIA received responses from 1,586 commenters. A discussion of the comments received is in the preamble to the final rule. In addition, the final rule was the subject of a negotiated rulemaking.

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

The final rule contains an information collection, which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB has approved the collection and assigned OMB Control No. 1076-0161 with an expiration date of October 31, 2005. The total burden of the collection is estimated to be 31,470 hours.

### Statutory authorization for the rule

The final rule is promulgated under the authority contained in the Transportation Equity Act for the 21<sup>st</sup> Century (Pub. L. 105-178, 112 Stat. 107) and 5 U.S.C. 565; 23 U.S.C. 101(a), 202, 204, 308; and 25 U.S.C. 47 and 450.

### Executive Order No. 12866

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

### Executive Order No. 13132 (Federalism)

BIA states that the final rule does not have significant federalism effects because it pertains solely to federal-tribal relations and will not interfere with the roles, rights, and responsibilities of States. Also, Indian tribes were consulted and were involved in the negotiated rulemaking that was conducted in formulating the final rule.