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United States General Accounting Office
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June 16, 2003

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: Distribution of Fiscal Year 2003 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 2003 Indian Reservation Roads Funds" (RIN: 1076-AE34). We received the rule on June 2, 2003. It was published in the Federal Register as a "temporary rule and request for comments" on June 5, 2003. 68 Fed. Reg. 33625.

The temporary rule requires distribution of 75 percent of fiscal year 2003 Indian Reservation Roads Program funds to projects on or near Indian reservations using the relative needs formula.

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: Aurene M. Martin
Assistant Secretary--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 2003
INDIAN RESERVATION ROADS FUNDS"
(RIN: 1076-AE34)

(i) Cost-benefit analysis

The rule will distribute \$147 million of the \$196 million available under the Indian Reservation Roads funds for fiscal year 2003. According to the BIA, the administrative costs of disbursing the funds will be negligible. The benefits of the rule include the continuation of approximately 1,300 road and bridge projects at various states 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, 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 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 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 implementation of this rule would set back needed and planned road construction on the reservations.

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

The rule does not contain any information collections that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The rule is promulgated under the authority of section 1115 of the Transportation Equity Act for the 21st Century, Pub. L. 105-178 and 23 U.S.C. 202(d).

Executive Order No. 12866

The rule was determined to be an “economically significant” regulatory action under the order by the Office of Management and Budget.

Executive Order No. 13132 (Federalism)

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