



[4337-15-P]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 169

[189A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1076-AF20

Rights-of-Way on Indian Land; Bond Exemption

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would exempt Federal, State, Tribal, and local governments from the requirement to obtain a bond, insurance, or alternative form of security for a right-of-way across Indian land and BIA land where such governments are prohibited by law from obtaining security.

DATES: Comments are due by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Please submit comments by email to consultation@bia.gov or to Office of Regulatory Affairs & Collaborative Action – Indian Affairs (RACA), U.S. Department of the Interior, 1849 C Street, NW, Mail Stop 4660, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273-4680; elizabeth.appel@bia.gov.

SUPPLEMENTARY INFORMATION: On November 19, 2015, the Bureau of Indian Affairs (BIA) finalized revisions to the regulations governing rights-of-way on Indian land and BIA land at 25 CFR part 169. *See* 80 FR 72492. The regulations became effective on April 21, 2016. 81 FR 14976. The final regulations established new requirements for bonding, insurance, or

alternative form of security to cover the annual rental, estimated damages, operation and maintenance charges, and restoration. *See* 25 CFR 169.103(a). The regulations allow for waiver of this requirement on a case-by-case basis. *See* 25 CFR 169.103(f).

Currently, a governmental entity applying for a right-of-way across Indian land or BIA land must seek a waiver (and landowner consent for the waiver) from the requirement to provide bonding, insurance, or alternate security in those cases in which the entity is prohibited by law from obtaining such bonding, insurance, or alternate security. This rule would eliminate the need for governmental entities to seek a waiver for each instance by exempting governmental entities from the requirement to obtain bonding, insurance, or alternative form of security if they are prohibited by law from doing so. It also requires governmental entities to provide a certification with their application, with citation to applicable law, that they are prohibited by law from providing security. In addition, this rule requires governmental entities to notify landowners that they are prohibited by law from providing security when they notify the Indian landowners of their application under 25 CFR 169.107.

Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and

freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements and would not impose any economic effects on small governmental entities.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Will not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing

the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

E. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined there are no substantial direct effects on federally recognized Indian Tribes that will result from this rulemaking because the rule addresses an inconsistency that may have otherwise prevented governments from obtaining rights-of-way on Indian land.

I. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. In accordance with 44 U.S.C. 3507(d), the information collections in 25 CFR part 169 are authorized by OMB Control Number 1076-0181, Rights-of-Way on Indian Land, which expires 04/30/2019. The requirements in this rule to provide a legal citation and notice is not expected to have a quantifiable effect on the hour burden estimate for the information collection, but BIA will review whether its current estimates are affected by this change at the next renewal.

A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A

Statement of Energy Effects is not required.

L. Clarity of this Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- a. Be logically organized;
- b. Use the active voice to address readers directly;
- c. Use clear language rather than jargon;
- d. Be divided into short sections and sentences; and
- e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "**ADDRESSES**" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

M. Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

N. E.O. 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not an E.O. 13771 regulatory action because it imposes no more than *de*

minimis costs.

List of Subjects in 25 CFR Part 169

Indians-lands, Reporting and recordkeeping requirements, Rights-of-way.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend 25 CFR part 169 as follows:

PART 169-RIGHTS-OF-WAY OVER INDIAN LAND

1. The authority citation for part 169 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 323 - 328; 25 U.S.C. 2201 *et seq.*

2. Amend § 169.103 by adding paragraph (k) to read as follows:

§ 169.103 What bonds, insurance, or other security must accompany the application?

* * * * *

(k) The requirements of this section do not apply to Federal, State, Tribal, or local governments who are prohibited by law from providing a bond, insurance, or other security. Federal, State, Tribal, or local governments seeking this exemption must include with their application a certification, including a citation to applicable law, that they are prohibited by law from providing security. Federal, State, Tribal, or local governments must also notify landowners that they are prohibited by law from providing security when they notify the Indian landowners of their application under § 169.107.

Dated: June 29, 2018.

John Tahsuda,
Principal Deputy Assistant Secretary – Indian Affairs
exercising the authority of the Assistant Secretary – Indian Affairs.

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