



4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

[190D0102DRDS5A300000DR.5A311.IA000118]

RIN 1076-AF45

Tribal Transportation Program; Inventory of Proposed Roads

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing a change to a provision in the Tribal Transportation Program regulations affecting proposed roads that are currently in the National Tribal Transportation Facility Inventory (NTTFI). Specifically, this proposed rule would delete the requirement for Tribes to collect and submit certain data in order to keep those proposed roads in the NTTFI. The requirement to collect and submit data to add new proposed roads to the NTTFI would remain in place.

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

ADDRESSES: You may send comments, identified by number 1076-AF45, by any of the following methods:

- Federal rulemaking portal: <http://www.regulations.gov>. Follow the instructions for sending comments.

-E-mail: comments@bia.gov. Include the number 1076-AF45 in the subject line of the message.

- Mail or hand-delivery: Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street, N.W., MIB-4660-MS, Washington, DC 20240. Include the number 1076-AF45 in the subject line of the message.

Instructions: All submissions received must include “Bureau of Indian Affairs” and “1076-AF45.” All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. We cannot ensure that comments received after the close of the comment period (see DATES) will be included in the docket for this rulemaking and considered.

Comments on the information collections contained in this proposed regulation (see “Paperwork Reduction Act” section, below) are separate from those on the substance of the rule. Send comments on the information collection burden to OMB by facsimile to (202) 395-5806 or e-mail to the OMB Desk Officer for the Department of the Interior at OIRA_DOCKET@omb.eop.gov. Please send a copy of your comments to the person listed in the FOR FURTHER INFORMATION CONTACT section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Gishi, Division of Transportation, Office of Indian Services, Bureau of Indian Affairs, (202) 513-7711, leroy.gishi@bia.gov.

SUPPLEMENTARY INFORMATION:

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- II. Tribal Consultation
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- E. Takings (E.O. 12630)
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- K. Effects on the Energy Supply (E.O. 13211)
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I. Summary of Rule

Regulations governing the Tribal Transportation Program were published in 2016. *See* 81 FR 78456 (November 7, 2016). The regulations became effective on December 7, 2016, except for § 170.443, which required Tribes' compliance one year later: on November 7, 2017. Section 170.443 required Tribes to collect data for proposed roads to be added to, or remain in, the NTTFI. BIA then further delayed the November 7, 2017, deadline for compliance with § 170.443 to November 7, 2019. *See* 82 FR 50312 (October 31, 2017), 83 FR 8609 (February 28, 2018). The purpose of the delay was to provide BIA with time to reexamine whether revision or deletion of the data collection requirements in § 170.443 would be appropriate. Since that time, BIA staff have engaged in outreach at several regional and national meetings with affected Tribes. BIA is now proposing to apply the data collection requirements going forward to any new proposed road submission, but not to proposed roads that were already in the NTTFI as of the date of publication of the regulations on November 7, 2016, unless any changes or updates were or are made after that date. BIA is making this proposal because Tribes added the proposed roads to the NTTFI under the rules that were in effect at the time, which did not require the significant data collection. Moving forward, however, BIA would require that new proposed roads include the back-up

documentation identified by § 170.443 (a)(1) – (8) in order to be added to the NTTFI.

II. Tribal Consultation

We will be hosting the following Tribal consultation sessions at targeted locations throughout the country to discuss this proposed rule. The dates and locations for the consultation sessions are as follows:

Date	Time	Location
September 5, 2019	9:00 AM-12:00 (Local time)	Minneapolis, MN
September 10, 2019	9:00 AM-12:00 (Local time)	Anchorage, AK
September 12, 2019	9:00 AM-12:00 (Local time)	Denver, CO

Please check the BIA’s Consultations website, <https://www.bia.gov/as-ia/consultations>, for the most current consultation information.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866, 13563, and 13771)

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. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations.

E.O. 13771 of January 30, 2017, directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. E.O. 13771, however, applies only to significant regulatory actions, as defined in Section 3(f) of E.O. 12866. Therefore, E.O. 13771 does not apply to this proposed rule.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule 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.).

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) Does not have an annual effect on the economy of \$100 million or more because it merely codifies eligibility requirements that were already established by past practice and a Federal District Court ruling.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because this

rule affects only individuals' eligibility for certain education contracts.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because this rule affects agreements between Tribes and the Department to allow Tribes to authorize individual leases, business agreements, and rights-of-way on Tribal land

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 monetarily 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 affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable "taking." A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement because the rule affects only agreements entered into by Tribes and the Department. A federalism summary impact statement is not required.

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

This rule complies with the requirements of Executive Order 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 Executive Order 13175 and have determined that it has substantial direct effects on federally recognized Indian Tribes because the rule affects what proposed roads will remain on the inventory of Tribal transportation facilities. The Department is hosting consultation sessions with Tribes (see "II. Tribal Consultation" above) and will be individually notifying each federally recognized Tribe of these opportunities to consult.

I. Paperwork Reduction Act

OMB Control No. 1076-0161 currently authorizes the collections of information contained in 25 CFR part 170, with an expiration of September 30, 2019. The current authorization totaling an estimated 23,446 annual burden hours. If this proposed rule is finalized, the annual burden hours will decrease by an estimated 2,520 hours. This decrease is due to the elimination of the requirement for Tribes to provide information on proposed roads that are already included on the inventory. This change would require a revision to an approved information collection under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501

et seq. for which the Department is requesting OMB approval.

OMB Control Number: 1076–0161.

Title: Tribal Transportation Program, 25 CFR 170.

Brief Description of Collection: The information submitted by Tribes allows them to participate in planning the development of transportation needs in their area; the information provides data for administration, documenting plans, and for oversight of the program by the Department. Some of the information such as the providing inventory updates (25 CFR 170.444), the development of a long range transportation plan (25 CFR 170.411 and 170.412), the development of a Tribal transportation improvement program (25 CFR 170.421), and annual report (25 CFR 170.420) are mandatory to determine how funds will be allocated to implement the Tribal Transportation Program. Some of the information, such as public hearing requirements, is necessary for public notification and involvement (25 CFR 170.437 and 170.438), while other information, such as a request for exception from design standards (25 CFR 170.456), is voluntary. The revision accounts for updates made to § 170.443, removing the requirement to provide information for proposed roads that existed in the inventory as of November 7, 2016.

Type of Review: Revision of a currently approved collection

Respondents: Federally recognized Indian Tribes.

Number of Respondents: 281 on average (each year).

Number of Responses: 1,504 on average (each year).

Frequency of Response: On occasion.

Estimated Time per Response: Varies from 0.5 hours to 40 hours.

Estimated Total Annual Hour Burden: 20,928 hours.

OMB Control No. 1076-0161 currently authorizes the collections of information contained in 25 CFR part 170. If this proposed rule is finalized, the annual burden hours for respondents will decrease by approximately 2,520 hours because Tribes will no longer be required to provide information that they would have been required to submit under the current estimates.

The recordkeeping requirements contained in section 170.472 are authorized under OMB Control No. 1076-0136, applicable to self-determination and self-governance contracts and compacts under 25 CFR 900 and 1000.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it displays a 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 Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of this Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section

3(b)(1)(B)), and 13563 (section 1(a)), 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.

List of Subjects in 25 CFR Part 170

Highways and roads, Indians-lands.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend 25 CFR part 170 as follows:

PART 170 – TRIBAL TRANSPORTATION PROGRAM

1. The authority citation for part 170 continues to read as follows:

Pub. L. 112-141, Pub. L. 114-94; 5 U.S.C. 2; 23 U.S.C. 201, 202; 25 U.S.C. 2, 9.

2. In § 170.443, revise paragraph (b) to read as follows:

§ 170.443 What is required to successfully include a proposed transportation facility in the NTTFI?

(a) * * * * *

(b) For those proposed roads that were included in the NTTFI as of November 7, 2016, the information in paragraphs (a)(1) through (a)(8) of this section may be submitted for approval to BIA and FHWA at any time, but is not required in order for those proposed roads to remain in the NTTFI, unless any changes or updates to the proposed road were (or are) made after that date.

Dated: July 3, 2019

John Tahsuda,
Principal Deputy Assistant Secretary – Indian Affairs.

[FR Doc. 2019-15928 Filed: 7/25/2019 8:45 am; Publication Date: 7/26/2019]