



4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

[178A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1076-AF38

Tribal Transportation Program; Delay of Compliance Date

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Interim final rule.

SUMMARY: This interim final rule updates the Tribal Transportation Program regulations published in 2016 to delay the deadline for Tribes to comply with requirements to collect data on proposed roads for the National Tribal Transportation Facility Inventory (NTTFI).

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Submit comments by [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Compliance with § 170.443 for proposed roads currently in the NTTFI to remain in the inventory is required by November 7, 2019.

ADDRESSES: You may submit comments by either: (1) Federal rulemaking portal www.regulations.gov (the rule is listed under the agency name “Bureau of Indian Affairs”); or (2) Mail, Hand Delivery, or Courier to: Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 4660, Washington, DC 20240. 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 sent to an address other than those listed above will not be included in the docket.

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:

I. Summary of Rule

Regulations governing the Tribal Transportation Program published last year. *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 requires Tribes to collect data for proposed roads to be added to, or remain in, the NTTFI. This interim final rule affects only § 170.443. The rule delays the current November 7, 2017, deadline for compliance with that section to November 7, 2019. This delay will allow the Bureau of Indian Affairs time to reexamine the need for this data collected in the NTTFI and consult with Tribes on whether revision or deletion of the data collection requirements in § 170.443 is appropriate. The Bureau of Indian Affairs finds that there is good cause to place this rule into immediate effect before receiving public comment and without a 30-day waiting period because the delay in the compliance deadline is expected to be uncontroversial with both the impacted Tribes and the public, and placing into immediate effect will eliminate potentially needless expenditure of resources by Tribes.

II. Procedural Requirements

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

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

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.) because Tribes are not small entities under the Regulatory Flexibility Act.

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 this rule affects only surface transportation for Tribes.

(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 it does not affect costs or prices.

(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 the rule addresses Tribal surface transportation within the United States.

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 affect a taking of private property or otherwise have taking implications under E.O. 12360. 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 summary impact statement, because the rule primarily addresses the relationship between the Federal Government and Tribes. 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 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 and Departmental policy)

The Department of the Interior strives to strengthen its government-to-government

regulations 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 have identified substantial direct effects on federally recognized Indian Tribes that will result from this rule. This rule will relieve a regulatory burden from Tribes and allow time for consultation on an appropriate replacement or deletion of regulatory requirements.

I. Paperwork Reduction Act

This rule contains information collection requirements, and the Office of Management and Budget (OMB) has approved the information collections under the Paperwork Reduction Act (PRA) under OMB Control Number 1076-0161, which expires December 31, 2019. 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 rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, and procedural nature. It is therefore subject to categorical exclusion, see 43 CFR 46.210(i), and no extraordinary circumstances exist, see 43 CFR 46.215.

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

This rulemaking 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 (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 common, everyday words and 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 you find unclear, which sections or sentences are too long, the sections where you think lists or tables would be useful, etc.

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

This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

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, amends part 170 in Title 25 of the Code of Federal Regulations as follows:

PART 170 – TRIBAL TRANSPORTATION PROGRAM

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

AUTHORITY: 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?

* * * * *

(b) For those proposed roads that currently exist in the NTTFI, the requirements identified above as paragraphs (a)(1) through (a)(8) of this section, must be completed and submitted for approval to BIA and FHWA by November 7, 2019, in order to remain on the inventory.

Dated: October 6, 2017

John Tahsuda,

Acting Assistant Secretary – Indian Affairs.

[FR Doc. 2017-23663 Filed: 10/30/2017 8:45 am; Publication Date: 10/31/2017]