

proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6002 Class E Surface Airspace.
* * * * *

ASO GA E2 Dallas, GA [Established]

Paulding Northwest Atlanta Airport, GA
(Lat. 33°54'43" N, long. 84°56'26" W)

That airspace extending upward from the surface within a 4.5-mile radius of the Paulding Northwest Atlanta Airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.
* * * * *

ASO GA E5 Dallas, GA [Amended]

Paulding Northwest Atlanta Airport, GA
(Lat. 33°54'43" N, long. 84°56'26" W)

That airspace extending upward from 700 feet above the surface of the Earth within a 7-mile radius of the Paulding Northwest Atlanta Airport.

Issued in College Park, Georgia, on November 29, 2022.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

[2231A2100DD/AAKC001030/
A0A501010.999900]

RIN 1076–AF71

Land Acquisitions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) seeks input on changes to its regulations governing the discretionary acquisition of land into trust for the benefit of tribal governments and individual Indians. Since these regulations were first promulgated in 1980, the BIA has developed extensive experience in the fee-to-trust acquisition process. Relying on that experience and input from tribal governments and individual Indians, this proposed rule seeks to make the land into trust process more efficient, simpler, and less expensive to support restoration of tribal homelands.

DATES: Interested persons are invited to submit comments on or before March 1, 2023.

ADDRESSES: You may submit comments by any one of the following methods.

- **Federal eRulemaking Portal:** Please upload comments to <https://www.regulations.gov> by using the “search” field to find the rulemaking and then following the instructions for submitting comments.

- **Email:** Please send comments to consultation and include “RIN 1076–AF71, 25 CFR part 151” in the subject line of your email.

- **Mail:** Please mail comments to Indian Affairs, RACA, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104.

FOR FURTHER INFORMATION CONTACT:

Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action (RACA), Office of the Assistant Secretary—Indian Affairs; Department of the Interior, telephone (202) 738–6065, RACA@bia.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary; AS–IA) by 209 Departmental Manual (DM) 8.

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I. Statutory Authority

Congress granted the Assistant Secretary—Indian Affairs (then, the Commissioner of Indian Affairs) authority to “have management of all Indian affairs and of all matters arising out of Indian relations.”¹ Through section 5 of the Indian Reorganization Act of 1934 (IRA), Congress further empowered the Department of the Interior (Department) to acquire, in its discretion, any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments for the purpose of providing land for tribal governments and individual Indians.²

II. Executive Summary

This proposed rule would update regulations at 25 CFR part 151 that address how the Bureau of Indian Affairs (BIA) considers and processes applications for the discretionary

¹ 25 U.S.C. 2 and 9, and 43 U.S.C. 1457.

² See 25 U.S.C. 5108.

acquisition of land into trust for the benefit of tribal governments and individual Indians, often referred to in shorthand as fee-to-trust or land into trust. The BIA has processed thousands of applications placing over a million acres of land into trust for tribes and individual Indians since the passage of the IRA in 1934. Holding land in trust greatly benefits tribes and individual Indians in various ways, including through exemption from state and local taxation and clearer tribal jurisdiction over the land. The revisions proposed here should allow BIA to process applications more quickly and with less expense to applicants.

These revisions also reflect input and recommendations provided by tribes during tribal consultations hosted by the Department. On March 28, 2022, the Department published a Dear Tribal Leader Letter announcing tribal consultation regarding proposed changes to 25 CFR part 151. The Department held two listening sessions and four formal consultation sessions. The Department also accepted written comments until June 30, 2022.

The Dear Tribal Leader Letter included a Consultation Draft of the proposed revisions to 25 CFR part 151; a Consultation Summary Sheet of Draft Revisions to Part 151; and a redline reflecting proposed changes. The Dear Tribal Leader Letter asked for comments on the Consultation Draft as well as responses to seven consultation questions. The Department received comments from tribal leaders.

III. Overview of Proposed Rule

In general, the proposed rule seeks to make the process of acquiring land into trust for the benefit of tribal governments and individual Indians more efficient, simpler, and less expensive. The BIA has attempted to do so here through extensive changes to the regulation, best explained in a section-by-section review as provided below in section IV. However, we summarize the major, overarching changes briefly here.

First, BIA affirms that it is the Secretary of the Interior's (Secretary) policy to take land into trust for many reasons supporting tribal and Indian welfare. The prior regulation lacked any affirmative policy in favor of acquisition; it will now be clear Departmental policy to support land into trust, subject to the discretion provided by the IRA. Second, BIA seeks to speed the decision-making process by requiring a decision within 120 days of assembling a complete application package. Third, the proposed rule streamlines the process for the four different forms of acquisitions—on-

reservation, contiguous to reservations, off-reservation, and initial Indian acquisitions. For each form, the proposed rule eliminates certain former criteria, and establishes certain presumptions designed to make the process more efficient, based on BIA's longstanding practice and experience in trust acquisitions. We have also developed a new fourth category of acquisition, "initial Indian acquisitions," designed to ease the process of acquiring first trust lands for those tribes who do not currently possess any land in trust. Fourth, the revised rule lays out in regulatory text the process for determining whether a tribe was "under federal jurisdiction" in 1934, as required by *Carcieri v. Salazar*, 555 U.S. 379 (2009). The revised *Carcieri* analysis should make assessing statutory authority here simpler and faster. Fifth, BIA has made many minor changes throughout the rule intended to solve problems and remove obstacles that tribes and individual Indians have faced in the trust acquisition process. For example, many applicants have conducted Phase I Environmental Site Assessments multiple times to keep those assessments valid while their application is pending. The proposed rule would anticipate only one such assessment at the beginning of the process, and allow for a single update, if necessary, after the notice of decision has been signed.

IV. Summary of Changes by Section

A. Section 151.1 What is the purpose of this part?

The proposed revision clarifies that this regulation does not govern acquisitions mandated by Congress or a Federal court order. The agency has issued guidance concerning such mandatory acquisitions, including the guidance found in BIA's Fee-to-Trust Handbook, and does not believe regulations are necessary at this time. This is because there are many, varying authorities for mandatory acquisitions, and it is difficult to draft regulations that would be consistent with all current and future mandatory acquisitions. We avoid the risk of creating inconsistency with statutory and judicial orders mandating acquisitions by employing simple guidance on how we approach such acquisitions rather than one-size-fits-all regulations.

B. Section 151.2 How are key terms defined?

The BIA proposes adding or revising many definitions for important terms, including terms used in the previous

version of the regulations as well as new terms used in the proposed revision.

The proposed rule adds new definitions for the following terms: *contiguous*, *fee interest*, *fractionated tract*, *Indian land*, *Indian landowner*, *initial Indian acquisition*, *interested party*, *marketable title*, *preliminary title opinion*, *preliminary title report*, and *undivided interest*. Definitions are also now listed in alphabetical order.

i. Clarifying Certain New Definitions

Among the new definitions, we note that *initial Indian acquisition* refers to a new category of acquisitions provided under new § 151.12. The BIA wishes to support acquisitions for tribes that do not currently have land held in trust, furthering the BIA's policy of supporting restoration of homelands. Initial Indian acquisitions provide a new, more supportive process for tribes without trust land, as discussed further regarding the new § 151.12. Tribal consultation commenters expressed concern that the consultation draft of this revision used the word "yet" rather than "currently" when referring to land held in trust status. Commenters wanted to ensure that tribes which may have had land in trust in the past but do not have land in trust now would be covered by the initial tribal acquisition provision and asked that "yet" be changed to "currently" to clarify that approach. We have done so here in the proposed rule. We clarify, in response to these comments, that the proposed rule's intention is to treat tribes that previously held land in trust but do not currently hold land in trust in the same manner as tribes which have never held land in trust.

Tribal consultation commenters also expressed concern regarding the term *marketable title*, and so we have added a clarifying definition for that term to the proposed rule. Commenters believed that requiring marketable title was inappropriate because land held in trust will not likely ever be sold on the market again, and tribes may seek to acquire land for cultural, conservation, spiritual, or other reasons that are entirely separate from commercial concerns. The BIA appreciates and supports those purposes for an acquisition but notes that the term *marketable title* is used here in a strictly legal sense rather than a commercial sense, referring to title that a reasonable buyer would accept because it is sufficiently free from substantial defects and covers the entire property that the seller purports to sell.

ii. Clarifying Changes to Existing Definitions

The definition of *individual Indian* has been modified to remove paragraph (g)(4), which covered acquisitions outside of Alaska by an Alaska Native. This definition implied that acquisitions of land in trust within Alaska was not permissible under these regulations. By removing paragraph (g)(4), BIA clarifies that these regulations do not address that issue. As an additional clarification, the removal of paragraph (g)(4) does not limit trust acquisition by Alaska Natives in any way. Rather, such individuals qualify for individual Indian trust acquisitions in the same manner and to the same extent as any eligible individual Indian under these regulations.

We also clarify here that a person possessing a total of one-half or more degree of Indian blood of a tribe under paragraph (g)(3) may possess such degree of Indian blood through combined heritage from more than one tribe.

The definition of *tribe* has been modified such that an Indian tribe is any tribe listed under section 102 of the Federally Recognized Indian Tribe List Act of 1994. The List Act was not in place when these regulations were first promulgated but should be used now as it is the official record of federally recognized tribes.

The definition of *Indian reservation* has been modified slightly to ensure a comprehensive understanding of reservation status in Oklahoma after *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). The new definition provides that in the State of Oklahoma “wherever historic reservations have not yet been reaffirmed” the term *Indian reservation* means land constituting the former reservation of the tribe as defined by the Secretary. By including this phrase, we make clear that the Secretary will consider all historic Oklahoma reservations consistent with *McGirt* and its progeny as Indian reservations for purposes of this regulation, regardless of whether courts have concluded reaffirmation litigation addressing such historic reservations.

Finally, we removed the definition of *tribal consolidation area*. This term was used only once in the existing rule regarding the Department’s land acquisition policy. The proposed rule’s expansive understanding of the Department’s land acquisition policy will cover any acquisitions in such an area.

C. Section 151.3 Land Acquisition Policy

The existing rule does not express any policy clearly in favor of trust acquisition for tribes and individual Indians. The proposed revision makes plain that the Secretary’s policy is to support acquisitions of land in trust for the benefits of tribes and individual Indians. The prior technical introductory language has been moved to new paragraph (a).

In paragraph (b)(3), BIA proposes adding an expansive list of policy reasons that would support an acquisition on behalf of a tribe, including any reason the Secretary determines will support tribal welfare. We note, however, that none of these policy reasons are required if the subject land is within a reservation (per paragraph (b)(1)) or if the tribe already owns an interest in the land, such as a fee interest (per paragraph (b)(2)). We received comment during the tribal consultation encouraging us not to use the word “establish” in regard to homelands, and therefore we have changed language to use the word “protect.” We also included the policy goal of establishing a tribal land base and providing for climate change-related acquisitions. Commenters also suggested adding “cultural practices” to the list of policy reasons in addition to “cultural resources,” and we have done so.

In paragraph (c), several tribal consultation commenters pointed out that the word “adjacent” is used where the intended meaning was “contiguous.” We have changed the text to read “contiguous,” consistent with commenters’ recommendations and our understanding of the existing rule’s meaning.

D. Section 151.4 How will the Secretary determine that statutory authority exists to acquire land in trust status?

This new section lays out in regulatory text the Department’s approach to determining statutory authority for acquisitions in trust as required by the Supreme Court’s opinion in *Carcieri v. Salazar*, 555 U.S. 379 (2009), which determined that the IRA only authorized acquisitions for tribes that were under Federal jurisdiction at the time of the IRA’s passage, June 18, 1934. The proposed approach incorporates caselaw and analysis by the Office of the Solicitor interpreting the Department’s statutory authority as guided by *Carcieri*.

The proposed rule identifies three categories of evidence. Conclusive

evidence establishes in and of itself both that a tribe was placed under Federal jurisdiction and that this jurisdiction persisted in 1934. If conclusive evidence exists, no further analysis is required. Presumptive evidence indicates that a tribe was placed under Federal jurisdiction and may indicate that such jurisdiction persisted in 1934. Where presumptive evidence exists, further analysis must focus only on whether there is evidence indicating that Federal jurisdiction did not exist or did not exist in 1934, such as a statute expressly removing Federal jurisdiction. If neither conclusive nor presumptive evidence exists, the Department will consider available probative evidence, a comprehensive category for which many examples are listed in paragraph (a)(3)(i).

In response to tribal consultation comments, we have added paragraph (a)(4) to clarify that Federal executive officials cannot disavow a government-to-government relationship with a tribe, as that power belongs solely to Congress.

We note that paragraph (c) explains that, if the Office of the Solicitor has previously issued a favorable *Carcieri* analysis for a tribe, no additional analysis is needed. Such prior determinations remain valid under the proposed revision, which is broader and more inclusive than previous guidance governing the Solicitor’s analyses.

Paragraph (e) clarifies that where a statute other than the IRA has authorized trust land acquisitions, the *Carcieri*-based IRA analysis provided for in paragraphs (a) through (d) is not relevant, and the Secretary may acquire land in trust as permitted by the other Federal law.

Finally, we note that existing § 151.4, “Acquisitions in trust of lands owned in fee by an Indian,” has been deleted in the proposed rule as unnecessary. The rule already provides for such acquisitions, and this section adds no additional information or process regarding such acquisitions.

E. Section 151.5 May the Secretary acquire land in trust status by exchange?

Minor stylistic changes have been proposed to this section.

F. Section 151.6 May the Secretary approve acquisition of a fractional interest?

This section, § 151.7 in the existing regulation, has been modified to clarify how its provisions are consistent with 25 U.S.C. 2216(c), a provision of the Indian Lands Consolidation Act. Section 2216(c) allows for mandatory

acquisitions of fractional interests of a parcel at least a portion of which was in trust or restricted status on November 7, 2000, and is located within a reservation. Tribal consultation commenters were concerned that existing § 151.6 requires use of the discretionary process for such acquisitions, in contravention of past practice and section 2216(c). We assure commenters this is not the case; where section 2216(c) provides for mandatory acquisitions of fractional interests, the Department will continue to employ that statutory authority. However, where a fractional interest is off-reservation or trust or restricted status of another fractional interest in the same parcel did not exist on November 7, 2000, section 2216(c) does not provide authority for mandatory trust acquisitions and, thus, the Department must typically rely on the discretionary acquisition authority provided by the IRA and developed in these regulations. Consistent clarifying

language has been added to the introduction of this section.

The proposed revision also replaces the term “buyer” with “applicant.” The term “buyer” is inapposite here; the individual or tribe is not typically buying any property, but rather applying to the Department to take the individual or tribe’s fractional interest into trust for the individual or tribe’s benefit.

G. Section 151.7 Is tribal consent required for nonmember acquisitions?

No changes are proposed to this section, numbered in the existing regulations as § 151.8.

H. Section 151.8 What documentation is included in a trust acquisition package?

This section expands substantially upon existing § 151.9, “Requests for approval of acquisitions.” The new section describes all the pieces of

information necessary for the Department to assemble a complete trust acquisition package. Once a complete package is assembled, the proposed rule requires the Department to notify the applicant and then make a decision on the application within 120 days. Many tribal consultation commenters were concerned that no timing deadline was applied to the Department’s responsibility to notify applicants of a complete acquisition package; therefore, this proposed revision requires such notification within 30 days.

Tribal consultation commenters also pointed out that this section may be confusing in that some pieces of a complete application package are provided by the applicant, while some are developed by the Department. The following chart clarifies how the Department and applicants work together to develop a complete application package.

Paragraph No.	Applicant contribution	Department contribution
Section 151.8(a)(1)	A signed letter from the tribal government supported by a tribal resolution or other act, or if an individual applicant, a signed letter.	None.
Section 151.8(a)(2)	Documentation from the applicant explaining purpose, and if an individual, need.	No Department contribution is needed to complete this component of the package. Rather, the Department will consider this information in coming to a decision. Concurrence that the description is legally sufficient.
Section 151.8(a)(3)	An aliquot legal description of the land and a map, or a metes and bounds land description and survey.	
Section 151.8(a)(4)	Information, or permission to access the land to gather such information, allowing the Department to comply with NEPA and 602 DM 2 regarding hazardous substances.	The Department will develop or adopt and complete NEPA analyses, including any required public process, and develop or adopt Phase I and Phase II Environmental Site Assessments produced under 602 DM 2.
Section 151.8(a)(5)	Evidence of marketable title	Preliminary Title Opinion
Section 151.8(a)(6)	None (applicant replies to comment letters are invited but not required for a complete acquisition package).	Notification letters to state and local governments and any response letters.
Section 151.8(a)(7)	Statement that any existing encumbrances on title will not interfere with the applicant’s intended use.	None.
Section 151.8(a)(8)	None unless warranted by specific application	None unless warranted by specific application.

Regarding the requirement in § 151.8(a)(3) that the Department concur that a description is legally sufficient, many commenters were concerned that this adds a novel requirement to the land into trust process that may present obstacles. The BIA clarifies that concurrence with the land description presented by the applicant was and has always been a necessary part of the acquisition process. The BIA has always reviewed land descriptions to ensure they are accurate, that the parcel “closes,” and that, generally, the description describes with sufficient specificity what land is to be acquired. It is listed in new § 151.8 primarily to be comprehensive in the requirements for a complete acquisition package. Without such a provision, a flawed or otherwise insufficient land description

could be construed as completing an acquisition package, forcing the Department to deny a request if not resolved before the 120-day deadline.

I. Section 151.9 How will the Secretary evaluate a request involving land within the boundaries of an Indian reservation?

This section is the first of four sections providing the process for the Secretary’s consideration of different types of acquisition applications based on the location of the subject land related to an Indian reservation or, in the case of initial Indian acquisitions, the fact that the tribe has no land currently in trust.

The on-reservation acquisition process has been simplified and designed to result in faster acquisitions in several ways. First, under paragraph

(a), the Secretary is no longer required to consider the need for a tribal government’s acquisition, the impact on state and local government tax rolls, and jurisdictional problems or conflicts of land use which may arise. Given that the subject land is within an Indian reservation set aside by the United States Government for the use and welfare of a tribe and based on the long experience of BIA in processing such applications and then administering land placed into trust, these considerations are not necessary.

We note that some commenters wished to eliminate the purpose criterion in paragraph (a) as well. Because an understanding of purpose is necessary to comply with the National Environmental Policy Act (NEPA) and to support the approach described in

paragraph (b), BIA is retaining this criterion.

Second, under paragraph (b), the Secretary will apply great weight to applications pursuing certain important purposes for tribal welfare, including, for instance, the need to protect tribal homelands. This approach recognizes and incorporates the Secretary's policy to support acquisition of land in trust for the benefit of tribes. In applying great weight, the Secretary will expressly consider and closely scrutinize the importance of the listed tribal purposes for land acquisition, and in the holistic consideration applied to land into trust acquisitions under the discretionary authority of the IRA, if reaching a disapproval decision, explain in detail why an acquisition for such purposes should not be approved.

Third, under paragraph (c), the Secretary will now apply a presumption of approval for on-reservation acquisitions. Given that the subject land is within an Indian reservation set aside by the United States Government for the use and welfare of a tribe and given the long history of such lands being removed from tribal ownership through improper sale or the Government's efforts to allot land originally held by the tribal government, a presumption of approval restoring reservation lands to trust status is appropriate and consistent with the proposed rule's policy on land into trust acquisitions.

Fourth, under paragraph (d), while the Secretary will notify state and local governments of a request to have land acquired in trust, the Secretary will no longer invite comment regarding on-reservation acquisitions.

J. Section 151.10 How will the Secretary evaluate a request involving land contiguous to the boundaries of an Indian reservation?

The process for approving acquisitions contiguous to an Indian reservation has also been simplified and designed to result in faster review and decision-making. Paragraphs (a) through (c) are the same for contiguous and on-reservation acquisitions. Under paragraph (a), the Secretary is no longer required to consider the need for a tribal government's acquisition. Under paragraph (b), granting great weight to important tribal purposes will be applied. The Secretary also presumes, based on decades of experience in acquiring and administering contiguous trust lands, that the tribal community will benefit from the acquisition. Under paragraph (c), the Secretary will now apply a presumption of approval for on-reservation acquisitions. Given that the subject land is contiguous to an Indian

reservation set aside by the United States Government for the use and welfare of a tribe, and would, after acquisition, form a contiguous parcel of the tribal nation, and based on the long experience of BIA in processing such applications and then administering land placed into trust, these considerations applied under the existing regulations are warranted. However, the proposed rule retains notice and an invitation to state and local governments to comment on the acquisition's potential impact on regulatory jurisdiction, real property taxes, and special assessments. If such comments are received, the Secretary will consider them in her holistic analysis of the application. If no such comments are received, no consideration of these factors is required by the proposed rule.

Section 151.11 How will the Secretary evaluate a request involving land outside the boundaries of an Indian reservation?

Off-reservation acquisitions have been streamlined and designed to result in faster review and decision-making through the same reductions in review criteria described for on-reservation and contiguous acquisitions appearing in paragraph (a), and by applying the same great weight standard to important tribal purposes in new paragraph (b).

In addition, existing paragraph (b) applied a "bungee cord" approach, increasing the difficulty of approving an acquisition as distance from a tribe's reservation increased. The proposed rule abandons this approach, providing in new paragraph (c) that the Secretary presumes community benefits without regard to distance of the land from a tribe's reservation boundaries or trust lands. This understanding fits with the BIA's long experience in implementing the land into trust authorities under the IRA. Where a tribe takes off-reservation land into trust, that land nearly always serves an important economic, cultural, self-determination, or sovereignty purpose that supports tribal welfare. Tribal governments are rational actors that make acquisition decisions carefully based on available resources, planning, and purposes valued by the tribe. Accordingly, the Secretary will no longer apply a limiting understanding of distance from a tribal reservation, but will instead consider the location of the land in her holistic analysis of the application as she considers comments received from state and local governments.

K. Section 151.12 How will the Secretary evaluate a request involving land for an initial Indian acquisition?

This new section is designed to support and speed review and decision-making for acquisitions for tribes which do not currently have land in trust. In the past, initial Indian acquisitions would have been processed under the existing rule's off-reservation provisions. The proposed rule removes any consideration of the location of the land, except if such consideration is necessary given state and local comments, while also providing the reduced criteria for analysis in paragraph (a) and great weight granted to important purposes in paragraph (b). The proposed rule also establishes a presumption of approval for such requests in paragraph (c).

L. Section 151.13 How will the Secretary act on requests?

Minor clarifying changes to language were made in this section, including the use of "Office of the Secretary" rather than "Secretary" in paragraphs (c) and (d). Because this rule uses the defined term *Secretary* in its inclusive sense to mean all Department staff with delegated authority from the Secretary, here in § 151.12 where we refer to the unusual instance where the Secretary herself and her immediate office have taken over review of an application, we specify that circumstance by using "Office of the Secretary."

In addition, the proposed rule adds new § 151.15, regarding environmental review, to the steps that occur after a decision to take land into trust but before signature on the acceptance of conveyance document, described in paragraph (c)(2)(iii). This change is explained in detail below regarding the new § 151.15.

N. Section 151.14 How will the Secretary review title?

Two significant changes were made to the Secretary's title review process. First, our understanding is that in certain jurisdictions, including California, many title insurance companies decline to provide abstracts of title to tribal applicants. This market failure has created substantial obstacles for such applicants to bring land into trust. New paragraph (a)(2)(ii) is designed to address that issue by allowing applicants who cannot obtain an abstract of title to instead provide evidence of a title insurance company's declination, and a policy of title insurance less than five years old. In such cases the Secretary shall accept the applicant's preliminary title report in

place of an abstract of title as sufficient proof of good title under this section. Evidence of declination may be provided as a letter or email from the applicant's title insurance company declining to provide an abstract based on their business practices.

Second, in paragraph (b) the proposed rule allows the Secretary to seek additional action, if necessary, to address liens, encumbrances, or infirmities on title. The existing rule mandates disapproval if the Secretary determines title is unmarketable. The new rule makes this choice discretionary by replacing "shall" with "may." While we expect the Department will need to disapprove if title is so deficient as to be unmarketable, the Secretary retains discretion here.

We note also that many tribal consultation commenters were concerned that encumbrances on the land which cannot be conveniently eliminated may prevent acquisition in trust. We clarify here that the Department may accept, in its discretion, some encumbrances on title and, should those encumbrances have the potential to impose costs in the future, the Department may enter into indemnification agreements with the applicant to facilitate the processing of fee-to-trust applications. Under the Checklist for Solicitor's Office Review of Fee-to-Trust Applications, issued by Solicitor Tompkins on January 5, 2017, an indemnification agreement between the BIA and a Tribal applicant to address a responsibility that runs with the land may be appropriate if the Tribal applicant is willing to enter into the indemnification agreement, the risk of liability for the responsibility is low, and the indemnification agreement is the only device that will allow the Department to continue processing the land into trust application. The Department has completed many such agreements and is willing to consider them whenever necessary to further an acquisition.

O. Section 151.15 How will the Secretary conduct a review of environmental conditions?

New § 151.15 covers the Department's environmental responsibilities under NEPA and the Departmental Manual at 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. Paragraph (a) simply states that the Department will comply with NEPA; no changes to BIA's practices are created through this paragraph. Paragraph (b) creates a new process in relation to 602 DM 2. That Departmental policy helps ensure that the Department does not acquire land that has been contaminated

by hazardous substances, or that if it does acquire such land unknowingly, its due diligence in examining the property will ensure an innocent landowner defense to liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

The innocent landowner defense is only available where environmental site assessments developed pursuant to 602 DM 2 are performed or updated within 180 days of an acquisition. Under the existing regulations, many applicants have, therefore, needed to continually update their environmental site assessments while waiting for a decision on their application. Environmental consultant fees in performing this work added significantly to the cost of an acquisition. To address this problem, the proposed revisions anticipate a maximum of two environmental site assessments. One assessment should be prepared to develop a complete application package. Section 151.15(b) provides that, if this assessment will be more than 180 days old at the time of acquisition and, thus, an update is needed, then a single additional update may be performed after the Secretary issues her notice of decision approving the acquisition, but before the acceptance of conveyance document is signed. Based on lengthy experience in such acquisitions, if no recognized environmental conditions are identified in the first environmental site assessment, the chances are low that any such conditions will have emerged by the time of acceptance. Repeated updates are, therefore, an unnecessary expense for the applicant that will be avoided through new § 151.15(b). We note that § 151.15(b) states that this single additional update "may" be required by the Secretary; we use the term "may" because if the original environmental site assessment was performed less than six months before the acceptance of conveyance, there is no need to perform an update.

P. Section 151.16 How is formalization of acceptance and trust status attained?

Proposed § 151.16 explains in greater detail how the final process of accepting land into trust occurs and when. This section replaces existing § 151.14 and expands on its description of formalization of acceptance.

In brief, this section explains that after all procedural steps are completed, including notice of intent to acquire the land in trust, title review, environmental review, and the expiration of the appeal period, the Secretary will sign an instrument of conveyance. That signature places the

land into trust for the benefit of the applicant.

Q. Section 151.17 What effect does this part have on pending requests and final agency decisions already issued?

Paragraph (a) of proposed § 151.17 addresses pending applications, offering a choice to applicants. By default, the Department will continue processing such applications under the existing regulations, with the understanding that altering the applicable applications midstream might be an unnecessary disruption, especially for applications that are near the end of the process or awaiting decision.

However, if an applicant wishes to apply the new regulations to its pending application, the applicant may do so by informing us of their choice, with the single exception that the 120-day timeline created in new § 151.8(b)(2) will not apply. Given the number of pending applications before the Department, if a large number of such applications were placed at once under the 120-day timeline, the volume could potentially cause serious problems for agency decision-making.

Paragraph (b) explains that any decisions already made under the existing regulations are not altered by the new regulation.

V. 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 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 would not change current funding requirements and would not impose any economic effects on small governmental entities because it makes no change to the status quo.

C. Congressional Review Act (CRA)

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

(a) Would 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) Would 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.

D. Unfunded Mandates Reform Act of 1995

This rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule would not have a significant or unique effect on State, local, or tribal governments or the private sector because this rule affects only individual Indians and tribal governments that petition the Department to take land into trust for their benefit. 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 would not affect 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 would 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 will conduct two virtual sessions, one in-person consultation, and will accept oral and written comments. The consultations sessions will be open to tribal leadership and representatives of federally recognized Indian Tribes and Alaska Native Corporations.

- *In-Person Session:* The in-person consultation will be held on January 13, 2023, from 9 a.m. to 12 p.m. MST, at the BLM National Training Center (NTC), 9828 N 31st Ave. Phoenix, AZ 85051.

- *1st Virtual Session:* The first virtual consultation session will be held on January 19, 2023, from 1 p.m. to 4 p.m. EST. Please visit <https://www.zoomgov.com/meeting/register/vJlsd-2qrjwiH2bVXpLvS2VPUZEst2HgtKk> to register in advance.

- *2nd Virtual Session:* The second virtual consultation will be held on January 30, 2023, from 2 p.m. to 5 p.m. EST. Please visit https://www.zoomgov.com/meeting/register/vJlsduGtqzgtE1hw9EIFrDf3-X_1gy5wGR0 to register in advance.

- *Comment Deadline:* Please see **DATES** and **ADDRESSES** for submission instructions.

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 hosted extensive consultation with federally recognized Indian Tribes in preparation of this proposed rule, including through a Dear Tribal Leader letter delivered to every federally-recognized tribe in the country, and through three consultation sessions held on May 9, 13, and 23, 2022.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

J. National Environmental Policy Act (NEPA)

This rule would 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 would not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Energy Effects (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 (section 1(b)(12)), 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 **ADDRESSES**. 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 feel lists or tables would be useful, and so forth.

M. Public Availability of Comments

Before including your address, phone number, email 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 151

Administrative practice and procedure, Indians, Indians—land acquisition, Indians—law, Indians—tribal government.

■ For the reasons stated in the preamble, the Department of the Interior, Bureau

of Indian Affairs, proposes to revise 25 CFR part 151 to read as follows:

PART 151—LAND ACQUISITIONS

Sec.

- 151.1 What is the purpose of this part?
- 151.2 How are key terms defined?
- 151.3 What is the Secretary's land acquisition policy?
- 151.4 How will the Secretary determine that statutory authority exists to acquire land in trust status?
- 151.5 May the Secretary acquire land in trust status by exchange?
- 151.6 May the Secretary approve acquisition of a fractional interest?
- 151.7 Is tribal consent required for nonmember acquisitions?
- 151.8 What documentation is included in a trust acquisition package?
- 151.9 How will the Secretary evaluate a request involving land within the boundaries of an Indian reservation?
- 151.10 How will the Secretary evaluate a request involving land contiguous to the boundaries of an Indian reservation?
- 151.11 How will the Secretary evaluate a request involving land outside the boundaries of an Indian reservation?
- 151.12 How will the Secretary evaluate a request involving land for an initial Indian acquisition?
- 151.13 How will the Secretary act on requests?
- 151.14 How will the Secretary review title?
- 151.15 How will the Secretary conduct a review of environmental conditions?
- 151.16 How is formalization of acceptance and trust status attained?
- 151.17 What effect does this part have on pending requests and final agency decisions already issued?

Authority: R.S. 161; 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

§ 151.1 What is the purpose of this part?

This part sets forth the authorities, policies, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes. This part does not cover acquisition of land by individual Indians and tribes in fee simple status even though such land may, by operation of law, be held in restricted status following acquisition; acquisition of land mandated by Congress or a Federal court; acquisition of land in trust status by inheritance or escheat; or transfers of land into restricted fee status unless required by Federal law.

§ 151.2 How are key terms defined?

Contiguous means two parcels of land having a common boundary notwithstanding the existence of non-navigable waters or a public road or right-of-way and includes parcels that touch at a point.

Fee interest means an interest in land that is owned in unrestricted fee simple status and is, thus, freely alienable by the fee owner.

Fractionated tract means a tract of Indian land owned in common by Indian landowners and/or fee owners holding undivided interests therein.

Indian land means any tract in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status and includes both individually owned Indian land and tribal land.

Indian landowner means a tribe or individual Indian who owns an interest in Indian land.

Indian reservation or tribe's reservation means, unless another definition is required by Federal law authorizing a particular trust acquisition, that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma wherever historic reservations have not yet been reaffirmed, or where there has been a final judicial determination that a reservation has been disestablished or diminished, *Indian reservation* means that area of land constituting the former reservation of the tribe as defined by the Secretary.

Individual Indian means:

- (1) Any person who is an enrolled member of a tribe;
- (2) Any person who is a descendent of such a member and said descendant was, on June 1, 1934, physically residing on a federally recognized Indian reservation; or
- (3) Any other person possessing a total of one-half or more degree Indian blood of a tribe.

Initial Indian acquisition means an acquisition of land in trust status for the benefit of a tribe that has no land currently held in trust status.

Interested party means a person or other entity whose legally protected interests would be affected by a decision.

Land means real property or any interest therein.

Marketable title means title that a reasonable buyer would accept because it appears to lack substantial defect and to cover the entire property that the seller has purported to sell.

Preliminary Title Opinion means an opinion issued by the Office of the

Solicitor that reviews the existing status of title, examining both record and non-record title evidence and any encumbrances or liens against the land, and sets forth requirements to be met before acquiring land in trust status.

Preliminary title report means a report prepared by a title company prior to issuing a policy of title insurance that shows the ownership of a specific parcel of land together with the liens and encumbrances thereon.

Restricted land or *land in restricted status* means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary due to limitations contained in the conveyance instrument pursuant to Federal law or because a Federal law directly imposes such limitations.

Secretary means the Secretary of the Interior or authorized representative.

Tribe means any Indian tribe listed under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130). For purposes of acquisitions made under the authority of 25 U.S.C. 5136 and 5138, or other statutory authority which specifically authorizes trust acquisitions for such corporations, *tribe* also means a corporation chartered under section 17 of the Act of June 18, 1934 (25 U.S.C. 5124) or section 3 of the Act of June 26, 1936 (25 U.S.C. 5203).

Trust land or *land in trust status* means land the title to which is held in trust by the United States for an individual Indian or a tribe.

Undivided interest means a fractional share of ownership in an estate of Indian land where the estate is owned in common with other Indian landowners or fee owners.

§ 151.3 What is the Secretary's land acquisition policy?

It is the Secretary's policy to acquire land in trust status through direct acquisition or transfer for individual Indians and tribes to strengthen self-determination and sovereignty, ensure that every tribe has protected homelands where its citizens can maintain their tribal existence and way of life, and consolidate land ownership to strengthen tribal governance over reservation lands and reduce checkerboarding. The Secretary retains discretion whether to acquire land in trust status where discretion is granted under Federal law.

(a) Land not held in trust or restricted status may only be acquired for an individual Indian or a tribe in trust status when the acquisition is authorized by Federal law. No

acquisition of land in trust status under this part, including a transfer of land already held in trust or restricted status, shall be valid unless the acquisition is approved by the Secretary.

(b) Subject to the provisions of Federal law authorizing trust land acquisitions, the Secretary may acquire land for a tribe in trust status:

(1) When the land is located within the exterior boundaries of the tribe's reservation or contiguous thereto;

(2) When the tribe already owns an interest in the land; or

(3) When the Secretary determines that the acquisition of the land will further tribal interests by establishing a tribal land base or protecting tribal homelands, protecting sacred sites or cultural resources and practices, establishing or maintaining conservation or environmental mitigation areas, consolidating land ownership, reducing checkerboarding, acquiring land lost through allotment, protecting treaty or subsistence rights, or facilitating tribal self-determination, economic development, Indian housing, or for other reasons the Secretary determines will support tribal welfare.

(c) Subject to the provisions contained in Federal law which authorize land acquisitions or holding land in trust or restricted status, the Secretary may acquire land in trust status for an individual Indian:

(1) When the land is located within the exterior boundaries of an Indian reservation, or contiguous thereto; or

(2) When the land is already in trust or restricted status.

§ 151.4 How will the Secretary determine that statutory authority exists to acquire land in trust status?

(a) In determining whether a tribe was under Federal jurisdiction in 1934 within the meaning of section 19 of the Indian Reorganization Act of June 18, 1934 (IRA) (25 U.S.C. 5129), and is, thus, eligible for trust acquisition under section 5 of the IRA (25 U.S.C. 5108), the Secretary shall consider evidence of Federal jurisdiction in the manner provided in paragraphs (a)(1) through (4) of this section.

(1) Conclusive evidence establishes in and of itself both that a tribe was placed under Federal jurisdiction and that this jurisdiction persisted in 1934. If such evidence exists, no further analysis under this section is needed. The following is conclusive evidence that a tribe was under Federal jurisdiction in 1934:

(i) A vote under section 18 of the IRA (25 U.S.C. 5125) to ratify or reject the IRA as recorded in *Ten Years of Tribal Government Under I.R.A.*, Theodore

Haas, United States Indian Service (Jan. 1947) (Haas List) or other Federal Government document;

(ii) Secretarial approval of a tribal constitution under section 16 of the IRA as recorded in the Haas List or other Federal Government document;

(iii) Secretarial approval of a charter of incorporation issued to a tribe under section 17 of the IRA as recorded in the Haas List or other Federal Government document;

(iv) An Executive order for a specific tribe that was still in effect in 1934;

(v) Treaties to which a tribe is a party, ratified by the United States and still in effect as to that party in 1934;

(vi) Continuing existence in 1934 or later of treaty rights guaranteed by a treaty ratified by the United States; or

(vii) Other forms of evidence deemed conclusive by the Secretary.

(2) Presumptive evidence is indicative that a tribe was placed under Federal jurisdiction and may indicate that such jurisdiction persisted in 1934. In the absence of evidence indicating that Federal jurisdiction did not exist or did not exist in 1934, presumptive evidence satisfies the analysis under this section. The following is presumptive evidence that a tribe was under Federal jurisdiction in 1934:

(i) Evidence of treaty negotiations or evidence a tribe signed a treaty with the United States whether or not such treaty was ratified by Congress;

(ii) Listing of a tribe in the Department of the Interior's 1934 Indian Population Report;

(iii) Evidence that the United States took efforts to acquire lands on behalf of a tribe in the years leading up to the passage of the IRA;

(iv) Inclusion in Volume V of Charles J. Kappler's *Indian Affairs, Laws and Treaties*;

(v) Federal legislation for a specific tribe, including termination legislation enacted after 1934, which acknowledges the existence of a government-to-government relationship with a tribe in or before 1934;

(vi) When a tribe is recognized under the process in part 83 of this chapter with a finding that the tribe has been identified as an American Indian entity on a substantially continuous basis since 1900 pursuant to § 83.11(a) of this chapter; or

(vii) Other forms of evidence deemed presumptive by the Secretary.

(3) In the absence of conclusive or presumptive evidence, the Secretary may find that a tribe was under Federal jurisdiction in 1934 when the United States in 1934 or at some point in the tribe's history prior to 1934, took an action or series of actions that, when

viewed in concert through a course of dealings or other relevant acts on behalf of a tribe, or in some instances tribal members, establishes or generally reflects Federal obligations, or duties, responsibility for or authority over the tribe, and that such jurisdictional status remained intact in 1934.

(i) Examples of Federal actions that exhibit probative evidence of Federal jurisdiction may include but are not limited to, the Department of the Interior's acquisition of land for a tribe in implementing the Indian Reorganization Act of 1934, the attendance of tribal members at Bureau of Indian Affairs operated schools, Federal decisions regarding whether to remove or not remove a tribe from its homelands, the inclusion of a tribe in Federal reports and surveys, the inclusion of a tribe or tribal members in Federal census records prepared by the Office of Indian Affairs, and the provision of health and social services to a tribe or tribal members.

(ii) [Reserved]

(4) Evidence of executive officials disavowing legal responsibility for a tribe in certain instances cannot, in itself, revoke Federal jurisdiction over a tribe without express congressional action.

(b) For some tribes, Congress enacted legislation after 1934 making the IRA applicable to the tribe. The existence of such legislation making the IRA and its trust acquisition provisions applicable to a tribe eliminates the need to determine whether a tribe was under Federal jurisdiction in 1934.

(c) In order to be eligible for trust acquisitions under section 5 of the IRA, no additional "under Federal jurisdiction" analysis is required under this part for tribes for which the Office of the Solicitor has previously issued an analysis finding the tribe was under Federal jurisdiction.

(d) Land may be acquired in trust status for an individual Indian or a tribe in the State of Oklahoma under section 5 of the IRA if the acquisition comes within the terms of this part. This authority is in addition to all other statutory authority for such an acquisition.

(e) The Secretary may also acquire land in trust status for an individual Indian or a tribe under this part when specifically authorized by Federal law other than section 5 of the IRA, subject to any limitations contained in that Federal law.

§ 151.5 May the Secretary acquire land in trust status by exchange?

The Secretary may acquire land in trust status on behalf of an individual

Indian or tribe by exchange under this part if authorized by Federal law and within the terms of this part. The disposal aspects of an exchange are governed by part 152 of this title.

§ 151.6 May the Secretary approve acquisition of a fractional interest?

Where the mandatory acquisition process provided under 25 U.S.C. 2216(c) is not applicable to a fractional interest acquisition, *e.g.*, where the acquisition proposed is located outside the boundaries of an Indian reservation, this section applies to discretionary acquisitions of fractional interests. The Secretary may approve the acquisition of a fractional interest in a fractionated tract in trust status by an individual Indian or a tribe only if:

- (a) The applicant already owns a fractional interest in the same parcel of land;
- (b) The interest being acquired by the applicant is in fee status;
- (c) The applicant offers to purchase the remaining undivided trust or restricted interests in the parcel at not less than their fair market value;
- (d) There is a specific law which grants to the applicant the right to purchase an undivided interest or interests in trust or restricted land without offering to purchase all such interests; or
- (e) The owner or owners of more than fifty percent of the remaining trust or restricted interests in the parcel consent in writing to the acquisition by the applicant.

§ 151.7 Is tribal consent required for nonmember acquisitions?

An individual Indian or tribe may acquire land in trust status on an Indian reservation other than its own only when the governing body of the tribe having jurisdiction over such reservation consents in writing to the acquisition; provided, that such consent shall not be required if the individual Indian or the tribe already owns an undivided trust or restricted interest in the parcel of land to be acquired.

§ 151.8 What documentation is included in a trust acquisition package?

An individual Indian or tribe seeking to acquire land in trust status must file a written request, *i.e.*, application, with the Secretary. The request need not be in any special form but must set out the identity of the parties, a description of the land to be acquired, and other information which would show that the acquisition fulfills the requirements of this part. The Secretary will prepare the acquisition package using information provided by the applicant and assessments developed by the Secretary,

as described in paragraphs (a) and (b) of this section:

(a) A complete acquisition package consists of the following:

(1) The applicant's request that the land be acquired in trust, as follows:

- (i) If the applicant is an Indian tribe, the tribe's written request must be a signed tribal letter for trust acquisition supported by a tribal resolution or other act of the governing body of the tribe; and

- (ii) If the applicant is an individual Indian, the individual's written request must be a signed letter requesting trust status;

(2) Documentation from the applicant providing the information assessed by the Secretary under § 151.9(a)(2) and (3), § 151.10(a)(2) and (3), § 151.11(a)(2) and (3), or § 151.12(a)(2) and (3), depending on which section applies to the application;

(3) A description of the land as follows:

- (i) An aliquot part legal description of the land and a map from the applicant, including a statement of the estate to be acquired, *e.g.*, all surface and mineral rights, surface rights only, surface rights and a portion of the mineral rights, etc.; or

- (ii) A metes and bounds land description and survey if the land cannot be described by an aliquot legal description. The survey may be completed by a land surveyor registered in the jurisdiction in which the land is located when the land being acquired is fee simple land; and

- (iii) Concurrence by the Secretary that the legal description or survey is sufficient;

(4)(i) Information from the applicant that allows the Secretary to comply with the National Environmental Policy Act and 602 Departmental Manual (DM) 2, Land Acquisitions: Hazardous Substances Determinations pursuant to § 151.15; and

- (ii) An acquisition package is not complete until the public review period of a final environmental impact statement or, where appropriate, a final environmental assessment has concluded, or the categorical exclusion documentation is complete;

(5) Title evidence submitted by the applicant, and a completed Preliminary Title Opinion prepared by the Secretary based on such evidence;

(6) Notification letters prepared and sent by the Secretary pursuant to § 151.9, § 151.10, § 151.11, or § 151.12, including any associated responses where requested by the Secretary;

(7) Statement from the applicant that any existing covenants, easements, or restrictions of record will not interfere

with the applicant's intended use of the land; and

(8) Any additional information or action requested by the Secretary, in writing, if warranted by the specific application.

(b) After the Bureau of Indian Affairs is in possession of a complete acquisition package, we will:

- (1) Notify the applicant within 30 calendar days in writing that the acquisition package is complete; and
- (2) Issue a decision on a request within 120 calendar days after issuance of the notice of a complete acquisition package.

§ 151.9 How will the Secretary evaluate a request involving land within the boundaries of an Indian reservation?

(a) The Secretary will consider the criteria in this section when evaluating requests for the acquisition of land in trust status when the land is located within the boundaries of an Indian reservation.

(1) The existence of statutory authority for the acquisition and any limitations contained in such authority, as identified in § 151.4;

(2) If the applicant is an individual Indian, the need for additional land, the amount of trust or restricted land already owned by or for that individual, and the degree to which the individual needs assistance in handling their affairs;

(3) The purposes for which the land will be used; and

(4) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

(b) The Secretary shall give great weight to any of the following in accordance with § 151.3: if the acquisition will further tribal interests by establishing a land base or protecting tribal homelands, protecting sacred sites or cultural resources and practices, establishing or maintaining conservation or environmental mitigation areas, consolidating land ownership, acquiring land lost through allotment, reducing checkerboarding, protecting treaty or subsistence rights, or facilitating self-determination, economic development, or Indian housing.

(c) When reviewing a tribe's request for land within the boundaries of an Indian reservation, the Secretary presumes that the acquisition will be approved.

(d) Upon receipt of a written request to have lands acquired in trust within the boundaries of an Indian reservation,

the Secretary will notify the state and local governments with regulatory jurisdiction over the land to be acquired of the applicant's request.

§ 151.10 How will the Secretary evaluate a request involving land contiguous to the boundaries of an Indian reservation?

(a) The Secretary will consider the criteria in this section when evaluating requests for the acquisition of land in trust status when the land is located contiguous to an Indian reservation:

(1) The existence of statutory authority for the acquisition and any limitations contained in such authority, as identified in § 151.4;

(2) If the applicant is an individual Indian, the need for additional land, the amount of trust or restricted land already owned by or for that individual, and the degree to which the individual needs assistance in handling their affairs;

(3) The purposes for which the land will be used; and

(4) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

(b) The Secretary shall give great weight to any of the following in accordance with § 151.3: if the acquisition will further tribal interests by establishing a land base or protecting tribal homelands, protect sacred sites or cultural resources and practices, establish or maintain conservation or environmental mitigation areas, consolidate land ownership, acquire land lost through allotment, reduce checkerboarding, protect treaty or subsistence rights, or facilitate self-determination, economic development, or Indian housing.

(c) When reviewing a tribe's request for land is located contiguous to an Indian reservation, the Secretary presumes that the acquisition will be approved.

(d) Upon receipt of a written request to have lands contiguous to an Indian reservation acquired in trust status, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice will inform the state or local government that each will be given 30 calendar days in which to provide written comments on the acquisition's potential impact on regulatory jurisdiction, real property taxes, and special assessments. If the state or local government responds within 30 calendar days, a copy of the comments will be provided to the applicant, who will be given a

reasonable time in which to reply if they choose to do so in their discretion, or request that the Secretary issue a decision. In considering such comments, the Secretary presumes that the tribal community will benefit from the acquisition.

§ 151.11 How will the Secretary evaluate a request involving land outside the boundaries of an Indian reservation?

(a) The Secretary shall consider the following requirements in evaluating requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to an Indian reservation:

(1) The existence of statutory authority for the acquisition and any limitations contained in such authority, as identified in § 151.4;

(2) If the applicant is an individual Indian and the land is already held in trust or restricted status, the need for additional land, the amount of trust or restricted land already by or for that individual, and the degree to which the individual needs assistance in handling their affairs;

(3) The purposes for which the land will be used; and

(4) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

(b) The Secretary shall give great weight to any of the following in accordance with § 151.3: if the acquisition will further the establishment of a land base or protect tribal homelands, protect sacred sites or cultural resources and practices, establish or maintain conservation or environmental mitigation areas, consolidate land ownership, acquire land lost through allotment, reduce checkerboarding, protect treaty or subsistence rights, or facilitate self-determination, economic development, or Indian housing.

(c) Upon receipt of a written request to have lands outside the boundaries of an Indian reservation acquired in trust status, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice will inform the state or local government that each will be given 30 calendar days in which to provide written comments on the acquisition's potential impact on regulatory jurisdiction, real property taxes, and special assessments. If the state or local government responds within 30 calendar days, a copy of the comments will be provided to the applicant, who will be given a

reasonable time in which to reply if they choose to do so in their discretion, or request that the Secretary issue a decision. In reviewing such comments, the Secretary will consider the location of the land. The Secretary presumes that the tribal community will benefit from the acquisition without regard to distance of the land from a tribe's reservation boundaries or trust lands.

§ 151.12 How will the Secretary evaluate a request involving land for an initial Indian acquisition?

(a) The Secretary will consider the criteria in this section when evaluating requests for the acquisition of land in trust status when a tribe does not have a reservation or land held in trust.

(1) The existence of statutory authority for the acquisition and any limitations contained in such authority, as identified in § 151.4;

(2) The purposes for which the land will be used; and

(3) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

(b) The Secretary shall give great weight to any of the following in accordance with § 151.3: if the acquisition will further tribal interests by establishing a land base or protecting tribal homelands, protecting sacred sites or cultural resources and practices, establishing or maintaining conservation or environmental mitigation areas, consolidating land ownership, acquiring land lost through allotment, reducing checkerboarding, protecting treaty or subsistence rights, or facilitating self-determination, economic development, or Indian housing.

(c) When reviewing a tribe's request for when a tribe does not have a reservation or land held in trust, the Secretary presumes that the acquisition will be approved.

(d) Upon receipt of a written request for land to be acquired in trust when a tribe does not have a reservation or land held in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice will inform the state or local government that each will be given 30 calendar days in which to provide written comments on the acquisition's potential impact on regulatory jurisdiction, real property taxes, and special assessments. If the state or local government responds within 30 calendar days, a copy of the comments will be provided to the applicant, who will be given a

reasonable time in which to reply if they choose to do so in their discretion, or request that the Secretary issue a decision. In reviewing such comments, the Secretary will consider the location of the land. The Secretary presumes that the tribal community will benefit from the acquisition.

§ 151.13 How will the Secretary act on requests?

(a) The Secretary shall review each request and may request any additional information or justification deemed necessary to reach a decision.

(b) The Secretary's decision to approve or deny a request shall be in writing and state the reasons for the decision.

(c) A decision made by the Office of the Secretary, or the Assistant Secretary—Indian Affairs pursuant to delegated authority, is a final agency action under 5 U.S.C. 704 upon issuance.

(1) If the Office of the Secretary or Assistant Secretary denies the request, the Assistant Secretary shall promptly provide the applicant with the decision.

(2) If the Office of the Secretary or Assistant Secretary approves the request, the Assistant Secretary shall:

(i) Promptly provide the applicant with the decision;

(ii) Promptly publish in the **Federal Register** notice of the decision to acquire land in trust status under this part; and

(iii) Immediately acquire the land in trust status under § 151.16 after the date such decision is issued and upon fulfillment of the requirements of §§ 151.14 and 151.15 and any other Department of the Interior requirements.

(d) A decision made by a Bureau of Indian Affairs official, rather than the Office of the Secretary or Assistant Secretary, pursuant to delegated authority is not a final agency action of the Department of the Interior under 5 U.S.C. 704 until administrative remedies are exhausted under part 2 of this chapter and under 43 CFR part 4, subpart D, or until the time for filing a notice of appeal has expired and no administrative appeal has been filed. Administrative appeals are governed by part 2 of this chapter and by 43 CFR part 4, subpart D.

(1) If the official denies the request, the official shall promptly provide the applicant with the decision and notification of the right to file an administrative appeal.

(2) If the official approves the request, the official shall:

(i) Promptly provide the applicant with the decision;

(ii) Promptly provide written notice of the decision and the right, if any, to file

an administrative appeal of such decision:

(A) Interested parties who have made themselves known, in writing, to the official prior to the decision being made; and

(B) The state and local governments having regulatory jurisdiction over the land to be acquired;

(iii) Promptly publish a notice in a newspaper of general circulation serving the affected area of the decision and the right, if any, of interested parties who did not make themselves known, in writing, to the official to file an administrative appeal of the decision; and

(iv) Immediately acquire the land in trust status under § 151.16 upon expiration of the time for filing a notice of appeal or upon exhaustion of administrative remedies under part 2 of this chapter and under 43 CFR part 4, subpart D, and upon the fulfillment of the requirements of §§ 151.14 and 151.15 and any other Department of the Interior requirements.

(3) The administrative appeal period begins on:

(i) The date of receipt of written notice by the applicant or interested parties entitled to notice under paragraphs (d)(1) and (d)(2)(ii) of this section; or

(ii) The date of first publication of the notice for unknown interested parties under paragraph (d)(2)(iii) of this section, which shall be deemed receipt of the decision.

(4) Any party who wishes to seek judicial review of an official's decision must first exhaust administrative remedies under part 2 of this chapter and under 43 CFR part 4, subpart D.

§ 151.14 How will the Secretary review title?

(a) If the Secretary approves a request for the acquisition of land in trust status, the Secretary shall require the applicant to furnish title evidence as follows:

(1) The deed or other conveyance instrument providing evidence of the applicant's title or, if the applicant does not yet have title, the deed providing evidence of the transferor's title and a written agreement or affidavit from the transferor that title will be transferred to the United States on behalf of the applicant to complete the acquisition in trust status; and

(2) Either:

(i) A current title insurance commitment issued by a title company; or

(ii) The policy of title insurance issued by a title company to the applicant or current owner and an

abstract of title issued by a title compact dating from the time of the policy of title insurance was issued to the applicant or current owner to the present. The Secretary will accept a preliminary title report prepared by a title company in place of an abstract of title for purposes of this paragraph (a)(2)(ii) if the applicant provides evidence that the title company will not issue an abstract of title based on practice in the local jurisdiction, and the policy of title insurance issued to the applicant or current owner is less than five years old.

(3) The applicant may choose to provide title evidence meeting the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" in effect at the time of conveyance, in lieu of the evidence required by paragraph (a)(2) of this section.

(b) After reviewing title evidence, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities that the Secretary identified and may seek additional information or action from the applicant needed to address such issues. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to acceptance of the land in trust status if the Secretary determines that the liens, encumbrances, or infirmities make title to the land unmarketable.

§ 151.15 How will the Secretary conduct a review of environmental conditions?

(a) The Secretary shall comply with the requirements of the National Environmental Policy Act (NEPA) (43 U.S.C. 4321 *et seq.*), applicable Council on Environmental Quality regulations (40 CFR parts 1500 through 1508), and Department of the Interior regulations (43 CFR part 46) and guidance. The Secretary's compliance may require preparation of an environmental impact statement, an environmental assessment, a categorical exclusion, or other documentation that satisfies the requirements of NEPA.

(b) The Secretary shall comply with the terms of 602 DM 2, Land Acquisitions: Hazardous Substances Determinations, or its successor policy if replaced or renumbered, so long as such guidance remains in place and binding. If the Secretary approves a request for the acquisition of land in trust status, the Secretary may then require, before formalization of acceptance pursuant to § 151.16, that the applicant provide information updating a prior pre-acquisition environmental site assessment conducted under 602 DM 2.

(1) If no recognized environmental conditions and other environmental issues of concern are identified in the pre-acquisition environmental site assessment and all other requirements of this section are met, the Secretary shall acquire the land in trust.

(2) If recognized environmental conditions or other environmental issues of concern are identified in the pre-acquisition environmental site assessment, the Secretary shall notify the applicant and may seek additional information or action from the applicant to address such issues of concern. The Secretary may require the elimination of any such issues of concern prior to taking the land in trust status.

§ 151.16 How is formalization of acceptance and trust status attained?

(a) The Secretary will accept land in trust status by signing an instrument of conveyance. The Secretary will sign the instrument of conveyance after publication of a notice of intent to acquire the land in trust status pursuant to § 151.13(c)(2)(ii) or (d)(2)(ii) and (iii), the requirements of §§ 151.13, 151.4, and 151.15 have been met, and upon expiration of the time for filing a notice of appeal or upon exhaustion of administrative remedies under part 2 of this chapter and under 43 CFR part 4, subpart D.

(b) The land will attain trust status when the Secretary signs the instrument of conveyance.

§ 151.17 What effect does this part have on pending requests and final agency decisions already issued?

(a) Requests pending on [EFFECTIVE DATE OF FINAL RULE], will continue to be processed under 25 CFR part 151 revised April 1, 2022, unless the applicant requests in writing to proceed under this part. Upon receipt of such a request, the Secretary shall process the pending application under this part, except for § 151.8(b)(2).

(b) This part does not alter decisions of Bureau of Indian Affairs officials under appeal or final agency decisions made before [EFFECTIVE DATE OF FINAL RULE].

Bryan Newland,

Assistant Secretary—Indian Affairs.

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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE-2022-0007]

Potomac River at the Naval Surface Warfare Center, Dahlgren Division, Dahlgren, Virginia; Danger Zone

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend its regulations for an existing danger zone in the waters of the Potomac River near Dahlgren, Virginia. The Naval Surface Warfare Center, Dahlgren Division (NSWCDD) operates research, development, testing, and evaluation ranges on the Potomac River using the danger zones as defined in the existing regulation. The NSWCDD range operations center controls Navy operations on the Potomac River Test Range. The purpose of this amendment is to expand the middle danger zone for ongoing infrared sensor testing for detection of airborne chemical or biological agent simulants, directed energy testing, and for operating manned or unmanned watercraft. This amendment will extend the legal authority to engage civilian watercraft for safe transit instructions in the Potomac River within the expanded middle danger zone.

DATES: Written comments must be submitted on or before January 4, 2023.

ADDRESSES: You may submit comments, identified by docket number COE-2022-0007, by any of the following methods:

Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

Email: david.b.olson@usace.army.mil. Include the docket number, COE-2022-0007 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2022-0007. All comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless

the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](https://www.regulations.gov) or email. The [regulations.gov](https://www.regulations.gov) website is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through [regulations.gov](https://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and also include your contact information with any compact disk you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Division, Washington, DC at 202-761-4922.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing to amend its regulations at 33 CFR part 334 to modify an existing danger zone in the Potomac River for the Naval Surface Warfare Center, Dahlgren Division (NSWCDD) near Dahlgren, Virginia. In a memorandum dated April 27, 2022, the NSWCDD requested that the Corps modify section 334.230(a)(1)(ii) to expand the existing middle danger zone to ensure safe Navy operations on the Potomac River Test Range and to extend