

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

RIN 1076-AC51

Land Acquisitions (Nongaming)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rule modifies three existing sections within Part 151 (Land Acquisitions) and creates a new section which contains additional criteria and requirements used by the Secretary in evaluating requests for the acquisition of lands by the United States in trust for federally recognized Indian tribes when lands are outside and noncontiguous to the tribes' existing reservation boundaries.

EFFECTIVE DATE: July 24, 1995.

FOR FURTHER INFORMATION CONTACT:

Alice A. Harwood, Chief, Branch of Technical Services, Division of Real Estate Services, Bureau of Indian Affairs, Room 4522, Main Interior Building, 1849 C Street, NW, Washington, DC 20240, Telephone No. (202) 208-3604.

SUPPLEMENTARY INFORMATION: The primary authors of this document are Stan Webb, Lee Maytubby, and Alice A. Harwood along with the members of the Regulation Task Force.

On July 15, 1991, the proposed rule for off-reservation land acquisitions for Indian tribes was published in the **Federal Register** (Vol. 56, No. 135, pages 32278-32280).

The Department certifies to the Office of Management and Budget that these final regulations meet the standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

The Department has determined that this rule:

- does not have significant federalism effects.
- is not a major rule under Executive Order 12866 and will not require a review by the Office of Management and Budget.
- will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because this rule applies only to Indian applicants.
- does not have significant takings implications under E.O. 12630.
- does not have significant effects on the economy, nor will it result in increases in costs or prices for consumers, individual industries,

Federal, State, or local governments, agencies, or geographical regions.

- does not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

- is categorically excluded from the National Environmental Policy Act of 1969 because it is of an administrative, technical, and procedural nature. Therefore, neither an environmental assessment nor an environmental impact statement is warranted.

Office of Management and Budget approved the information requested in Sections 151.9, 151.10, 151.11(c) and 151.13 under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0100. This information is required from Indian tribes and individuals to acquire land in trust status and used to assist the Secretary in making a determination. Response to this request is required to obtain a benefit.

Public reporting for this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct your comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337-SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs (Project 1076-0100), Office of Management and Budget, Washington, DC 20502.

The annual number of tribal requests to place lands in trust is small. There will be some costs incurred by the requesting tribes in providing information to the Secretary.

Summary of Comments on Proposed Rule

Sixty-seven comments were submitted in response to the July 15, 1991, **Federal Register** publication of proposed amendments to 25 CFR Part 151.

A number of commenters expressed a fear that the regulations would undermine tribal sovereignty and self-determination and inhibit the development of reservation economies, and that they would be inconsistent with the Indian policy statement issued by President Bush on June 14, 1991. There is additional concern that the proposed rules would:

- (1) afford state and local governments a virtual veto power over tribal governments;
- (2) promote a "guardian-ward" relationship between the United States

and the tribes, rather than the preferred "government-to-government" relationship; and

(3) force tribes to divert their limited resources into "unnecessary" efforts aimed at regulatory compliance;

(4) be inconsistent with the federal trust responsibility to Indian tribes, and

(5) further complicate an already cumbersome and time-consuming process by placing tribal interests lower than those of state and local governments.

One commenter argued that a "federalism assessment" would be needed under Executive Order 12612, and another maintained that a "competent regulatory analysis" would be required under the Regulatory Flexibility Act.

Due to comments received, the gaming section, proposed as 151.12 has been deleted and will be incorporated into a new CFR part under a separate rulemaking.

Section 151.10 On-Reservation Acquisition

Comment: It was suggested that 25 CFR 151.10(e) be revised to reflect the BIA's position that Indian-owned fee lands within the boundaries of a reservation should be exempt from state property.

Response: It should be noted that the United States Supreme Court recently held that (under certain circumstances) on-reservation fee lands *will* be subject to local property taxes. Therefore, 25 CFR 151.10(e) is not revised.

Comment: Comments suggested that *all* of the existing rules be made inapplicable to on-reservation acquisitions, and another requested a clarification that the strict notice and consultation requirements set forth in the proposed 25 CFR 151.11 would not apply to acquisitions of lands which are either within the boundaries of a reservation or contiguous thereto.

Response: It should be noted that the decision whether to accept title in trust status is a discretionary one, and that the Secretary has chosen to regulate the decision-making process in order to promote national uniformity.

The notice and comment procedures, which do not require formal consultation, were informally adopted in 1980. Notice and *comment* procedures are incorporated in the introductory paragraph to 25 CFR 151.10.

Comment: It was also suggested that the proposed rules be revised to accept legislatively-mandated acquisitions from compliance with 25 CFR 151.10 and the proposed 151.11. An alternatively suggested that they be revised to specify that certain provisions