would apply even when a complete evaluation of the acquisition would be precluded by legislation.

*Response:* The introductory paragraph to both 25 CFR 151.10 and the new 25 CFR 151.11 exempts such legally mandated acquisitions.

*Section 151.10(h) Hazardous Substances and NEPA Compliance*

*Comment:* Commenters addressed the requirement that acquired property ''be free of all hazardous and toxic material as required by 602 DM 2 Land Acquisitions: Hazardous Substances Determinations.'' It was suggested that an acquisition be allowed where the proposed use of the land would involve hazardous substances, or where identified substances have been safely isolated.

*Response:* It should be noted that the Secretary retains the power to approve any acquisition ''for good cause,'' i.e., where the benefits of the acquisition would clearly outweigh the potential risks.

*Comment:* Commenters suggested that the proposed rule be modified to more accurately reflect the policy set forth at 602 DM 2.

*Response:* The policy set forth in the manual attempts to limit potential federal liability by prohibiting acquisitions where ''an expenditure of Departmental funds is required for cleanup of such real estate, except at the direction of Congress, or for good cause with the approval of the Secretary.'' The rule is modified to reference the ''extent to which the applicant has provided information that allows the Secretary to comply'' with the Departmental Manual.

*Comment:* Commenters also stated that the regulation would be too restrictive, suggesting that exceptions be made when:

(1) the seller agrees to indemnify the acquiring tribe and the United States;

(2) the estimated remedial costs would be minimal, or the acquiring tribe has adopted a corrective action plan;

(3) the waste has been safely isolated, or the land value is ''sufficient'' to justify the acquisition; or

(4) the acquiring tribe wishes to utilize the land for such purposes as waste disposal, incineration, or recycling.

*Response:* 602 DM 2 suggests that the survey process must be completed in *all* cases (with indemnification to be *required* in those cases where contaminated lands are to be acquired).

602 DM 2 permits the acquisition of contaminated lands which can be restored without a reprogramming of funds.

*Comment:* It was suggested that the proposed rule be extended to *all* federal acquisitions, and another recommended that the rule specify the types of clearances needed and the extent to which the BIA would absorb the cost of site surveys.

*Response:* 602 DM 2 applies to all agencies within the Department of the Interior.

The guidelines provide for a three-tiered survey process, with approval authority retained by the Department. However, funding may be determined on a case by case basis.

*Comment:* It was recommended that the ''rigorous'' innocent purchaser provisions in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) be made applicable to tribal land acquisitions.

*Response:* It should be noted that such a defense only protects purchasers who ''did not know and had no reason to know'' that they were acquiring contaminated property. (The proposed BIA guidelines provide for a survey process which is intended to ensure the availability of this defense.)

*Comment:* Commenters suggested that the proposed rules be revised to require compliance with the National Environmental Policy Act of 1969 (NEPA).

*Response:* The new 25 CFR 151.10(h) also requires compliance with the BIA's ''final revised implementing procedures'' for NEPA. In 1988, the procedures were published in the **Federal Register** (after a public comment period) and added to the Departmental Manual at 516 DM 6, Appendix 4.

*Section 151.11 Off-reservation Acquisitions*

*Comment:* Comments addressed the general premise that more stringent rules are needed to govern the trust acquisition of lands which are ''off-reservation'' (hereinafter meaning lands ''outside of and noncontiguous to'' the boundaries of an existing reservation). Other comments suggested that lands which are contiguous to existing reservation boundaries should be treated as other lands outside such boundaries.

*Response:* It should be noted that the acquisition of contiguous lands may be analogized to annexations by municipalities. It should be noted that treatment may be afforded by the Secretary on a case-by-case basis.

*Comment:* Commenters voiced concerns relative to ''the loss of regulatory control and removal of the property from the tax rolls.'' Specifically, they questioned whether the proposed rules would protect the states' power to regulate the appropriation and administration of water on acquired lands, and suggested that a mechanism for the collection of ''appropriate'' state taxes be incorporated in the rules.

*Response:* The BIA has instructed its field offices that proposed acquisitions of off-reservation contiguous lands for commercial purposes should be carefully scrutinized with consultation considered to avoid jurisdictional conflicts.

The new 25 CFR 151.11(d) establishes a consultation process which may give rise to agreements which could result in resolution of the above types of regulatory issues.

*Comment:* Other comments addressed the need for flexibility in applying the proposed rules to:

(1) newly recognized tribes, restored tribes, and landless tribes (including those whose land bases consist of scattered sites);

(2) lands within tribal consolidation areas, tribal service areas, and ancestral areas or tribal homelands; and

(3) acquisitions for non-commercial purposes, such as housing, recreation, and mineral development, resource protection or wildlife management.

*Response:* It should be noted that the revised introductory paragraph exempts acquisitions on behalf of newly recognized or restored tribes, when such acquisitions are ''legally mandated'' by legislation or court order.

Designated (off-reservation) tribal consolidation areas will be treated as other off-reservation lands, pending the issuance of further rules under the Indian Financing Act of 1974 and the Indian Land Consolidation Act (ILCA); tribal service areas will be treated as other off-reservation lands, unless such areas fall within the exception for ''legally mandated'' acquisitions. The new 25 CFR 151.11(b) allows landless tribes (i.e., those without any *trust* lands) to acquire land within their aboriginal homelands, subject to the other restrictions in 25 CFR 151.11.

*Section 151.11(b) Geographic Limitations*

*Comment:* Those provisions which prohibit off-reservation acquisitions of ''out-of-state'' lands (i.e., lands in a state other than that in which the acquiring tribe's ''reservation or trust lands'' are located) were opposed on the grounds that out-of-state lands may be historically significant, vital to tribal economic self-sufficiency, or within a designated tribal consolidation area or tribal service area. Specifically, some of