

[4337-15-P]

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**[167A2100DD/AAKC001030/A0A501010.999900 253G]**

**25 CFR Part 151**

**RIN 1076-AF28**

**Title Evidence for Trust Land Acquisitions**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule deletes the requirement for fee-to-trust applicants to furnish title evidence that meets the “Standards for the Preparation of Title Evidence in Land Acquisitions by the United States” issued by the U.S. Department of Justice (DOJ), and replaces the requirement with a more targeted requirement for title evidence, because adherence to the DOJ standards is not required for acquisitions of land in trust for individual Indians or Indian tribes.

**DATES:** Comments on this rule must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. This rule will become effective without further action on [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

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

- Federal rulemaking portal: <http://www.regulations.gov>. The rule is listed under the agency name “Bureau of Indian Affairs.” The rule has been assigned Docket ID: BIA-2016-0001.

-E-mail: [elizabeth.appel@bia.gov](mailto:elizabeth.appel@bia.gov). Include the number 1076-AF28 in the subject line of the message.

- Mail or hand-delivery: Elizabeth K. Appel, Director, Office of Regulatory Affairs & Collaborative Action – Indian Affairs, U.S. Department of the Interior, 1849 C Street, NW., MS 3642, Washington, DC 20240. Include the number 1076-AF28 on the outside of the envelope.

We cannot ensure that comments received after the close of the comment period (see DATES) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Appel, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary – Indian Affairs; telephone (202) 273-4680, [elizabeth.appel@bia.gov](mailto:elizabeth.appel@bia.gov).

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## **I. Background**

Section 5 of the Indian Reorganization Act (IRA) is the primary authority for the Secretary of the Interior (Secretary) to acquire land in trust for individual Indians or Indian tribes. 25 U.S.C. 465. Congress has also enacted other statutes that authorize the acquisition of lands for specific tribes. The Department's regulations at 25 CFR Part 151 establish the process for taking land into trust pursuant to section 465 and other statutory authority. Section 151.13 of the regulations requires the applicant to furnish title evidence meeting the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States," issued by DOJ if the Secretary determines to approve a fee-to-trust application.

## **II. Description of Changes**

The current rule provides that, once the Secretary determines that he or she will approve a request to take land into trust, he or she must acquire, or require the applicant to furnish, title evidence meeting the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States*. Those standards have since been re-issued as the Department of Justice Title Standards 2001: A guide for the preparation of title evidence in land acquisition by the United States of America. This interim final rule deletes the requirement for the applicant to furnish

title evidence meeting the DOJ standards because those standards are not required for acquisitions of land in trust for individual Indians or Indian tribes.

The rule replaces the DOJ standard with a more targeted title evidence standard that requires the applicant to furnish written evidence that the applicant has ownership, or will have ownership, of title and how title was acquired, as well as either (1) a current title insurance commitment; or (2) the policy of title insurance issued at the time of the applicant's or current owner's acquisition of the interest and an abstract dating from the time the interest was acquired. Of course, this rule does not preclude applicants from having title confirmed pursuant to all requirements of the Department of Justice Title Standards if the applicant so chooses.

The rule continues the current requirement that title evidence must be submitted and reviewed by the Department before title is transferred. The rule also continues the practice of requiring the elimination of any legal claims, including but not limited to liens, mortgages, and taxes, determined by the Secretary to make title unmarketable, prior to acceptance in trust. Finally, the rule continues the requirement for the Bureau of Indian Affairs (BIA) to complete a Certificate of Inspection and Possession prior to trust transfer.

This rule will apply to all trust applications submitted after the effective date. This rule will also apply to trust applications that are pending and for which the Preliminary Title Opinion has not yet been prepared by the Office of the Solicitor as of the effective date. However, if applicants have already submitted evidence meeting the DOJ Title Standards, they need not re-submit evidence pursuant to this rule. This rule will not apply to trust applications that are pending and for which the Preliminary Title Opinion has already been prepared by the Office of the Solicitor as of the effective date.

BIA plans to update its fee-to-trust handbook to address the new rule.

### **III. Procedural Requirements**

#### **A. Regulatory Planning and Review (E.O. 12866)**

This interim final rule is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866. This rule clarifies the standard of title evidence for acquisitions of trust land by the Secretary of the Interior, and will not have any economic effects or raise any novel issues.

(1) This rule will not have an effect of \$100 million or more on the economy or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency because the Department is the only agency vested with the authority to take land into trust on behalf of Indian tribes and individual Indians.

(3) This rule does not involve entitlements, grants, user fees, or loan programs or the rights or obligations of recipients. The rule provides a more targeted requirement for title evidence for an applicant but does not otherwise affect the applicant's rights or obligations.

(4) These regulatory changes do not raise novel legal or policy issues because the regulations do not substantively change the acquisition of land from unrestricted fee status to trust status.

## **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 does not change current funding requirements or regulate small entities.

## **C. Small Business Regulatory Enforcement Fairness Act**

This interim final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises. This rule removes the requirement for title evidence to comply with DOJ standards and replaces this requirement with a more targeted requirement for title evidence; it will not result in additional expenditures by any entity.

## **D. Unfunded Mandates Reform Act**

This interim final rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

### **E. Takings (E.O. 12630)**

Under the criteria in Executive Order 12630, this interim final rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable “taking.” A takings implication assessment is not required.

### **F. Federalism (E.O. 13132)**

Under the criteria in Executive Order 13132, this interim final rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule removes the requirement for title evidence to comply with DOJ standards and replaces this requirement with a more targeted requirement for title evidence; it does not affect States or the relationship with States in any way.

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

This interim final rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

### **H. Consultation with Indian Tribes (E.O. 13175)**

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments,” Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian Tribes and Indian trust assets and have determined there is no “substantial direct effect” on Tribes, on the relationship between the Federal Government and Tribes, or on the distribution of power and responsibilities between the Federal Government and

Indian tribes. The rule will affect Tribes who apply to take land into trust, in that the rule removes unnecessary submissions of documentation. However, the rule does not have a substantial direct effect on Tribes because Tribes can still submit evidence meeting the DOJ title standards should they so choose and allowing the option of submitting a past title insurance policy and an abstract of title is intended to be less burdensome than the existing rule. The Department is committed to meaningful consultation with Tribes on substantive matters that have a substantial direct effect on Tribes, in accordance with E.O. 13175 and the Department of the Interior Policy on Consultation with Indian Tribes.

#### **I. Paperwork Reduction Act**

This information collection for trust land applications is authorized by OMB Control Number 1076-0100, with an expiration of 08/31/16. The elimination of the requirement to comply with DOJ standards is not expected to have a quantifiable effect on the hour burden estimate for the information collection, but BIA will review whether its current estimates are affected by this change at the next renewal.

#### **J. National Environmental Policy Act**

This interim final rule does not constitute a major Federal action significantly affecting the quality of the human environment.

#### **K. Information Quality Act**

In developing this interim final rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106-554).

#### **L. Effects on the Energy Supply (E.O. 13211)**

This interim final rule is not a significant energy action under the definition in Executive

Order 13211. A Statement of Energy Effects is not required.

### **M. Clarity of this Regulation**

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "COMMENTS" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

### **N. Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## **O. Required Determinations Under the Administrative Procedure Act**

We are publishing this interim final rule with a request for comment without prior notice and comment, as allowed under 5 U.S.C. 553(b)(B). Under section 553(b)(B), we find that prior notice and comment are unnecessary because this is a minor, technical action that eliminates an unnecessary requirement. This rule removes the unnecessary requirement that the title evidence the applicant submits must comply with DOJ standards for title evidence. Delay in publishing this rule would unnecessarily continue imposing the unnecessary requirement on applicants and would therefore be contrary to the public interest.

We have requested comments on this interim final rule. We will review any comments received and if we receive significant adverse comments, we will by a future publication in the Federal Register, initiate a proposed rulemaking or revise or withdraw this rule.

### **List of Subjects in 25 CFR Part 151**

Indians – lands, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the Department of the Interior amends 25 CFR part 151 as follows:

### **PART 151 – LAND ACQUISITIONS**

1. The authority citation for part 151 continues to read as follows:

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.

2. Revise § 151.13 to read as follows:

**§ 151.13 Title review.**

(a) If the Secretary determines that she will approve a request for the acquisition of land from unrestricted fee status to trust status, she shall require the applicant to furnish title evidence as follows:

(1) Written evidence of the applicant's title or that title will be transferred to the United States on behalf of the applicant to complete the acquisition in trust; and

(2) Written evidence of how title was acquired by the applicant or current owner; and

(3) Either:

(i) A current title insurance commitment; or

(ii) The policy of title insurance issued at the time of the applicant's or current owner's acquisition of the land and an abstract of title dating from the time the land was acquired by the applicant or current owner.

(b) After reviewing submitted title evidence, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities that the Secretary identified and may seek additional information from the applicant needed to address such issues. The Secretary may require the

elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition, and she shall require elimination prior to such approval if she determines that the liens, encumbrances or infirmities make title to the land unmarketable.

Dated: February 23, 2016

Lawrence S. Roberts,

*Acting Assistant Secretary – Indian Affairs.*

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