

[4337-15-P]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 100

[167A2100DD/AAKC001030/A0A501010.999900]

RIN 1093-AA20

Appraisals and Valuations of Indian Property

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: Congress recently passed the Indian Trust Asset Reform Act (ITARA), which requires the Secretary of the Interior to establish and publish in the Federal Register minimum qualifications for individuals to prepare appraisals and valuations of Indian trust property. This proposed rule would establish the minimum qualifications and would also implement provisions of ITARA that require the Secretary to accept appraisals and valuations without additional review or approval under certain circumstances.

DATES: Please submit written comments by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule by any of the following methods:

- Federal rulemaking portal: <http://www.regulations.gov>. The proposed rule is listed under the agency name “Office of the Secretary” and has been assigned Docket ID: DOI-2016-0005. If you would like to submit comments through the Federal e-Rulemaking Portal, go to www.regulations.gov and follow the instructions.

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- Email: Elizabeth.appel@bia.gov. Include the number “1093-AA20” in the subject line of the message.

- Mail or hand-delivery: Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street, NW, MS 3642, Washington, DC 20240. Include the number “1093-AA20” on the envelope. Please note, email or www.regulations.gov are the preferred methods for submitting comments; there is no need to submit a hard copy if you have submitted the comments through either of these electronic methods.

Comments on the Paperwork Reduction Act information collections contained in this rule are separate from comments on the substance of the rule. Submit comments on the information collection requirements in this rule to the Desk Officer for the Department of the Interior by e-mail at OIRA_Submission@omb.eop.gov or by facsimile at (202) 395-5806. Please also send a copy of your comments to comments@bia.gov.

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: Ms. Elizabeth Appel, Office of Regulatory Affairs and Collaborative Action—Indian Affairs at elizabeth.appel@bia.gov or (202) 273-4680.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary of Proposed Rule
- III. Tribal Consultation
- IV. Specific Questions on Which the Department Seeks Comment
- V. Procedural Requirements
 - A. Regulatory Planning and Review (E.O. 12866)
 - B. Regulatory Flexibility Act
 - C. Small Business Regulatory Enforcement Fairness Act
 - D. Unfunded Mandates Reform Act
 - E. Takings (E.O. 12630)

- F. Federalism (E.O. 13132)
- G. Civil Justice Reform (E.O. 12988)
- H. Consultation with Indian Tribes (E.O. 13175)
- I. Paperwork Reduction Act
- J. National Environmental Policy Act
- K. Effects on the Energy Supply (E.O. 13211)
- L. Clarity of this Regulation
- M. Public Availability of Comments

I. Background

On June 22, 2016, President Obama signed into law the Indian Trust Asset Reform Act, Pub. L. 114-178. Title III of this Act. In relevance to this rulemaking, the Act requires Interior to establish minimum qualifications for individuals to prepare appraisals and valuations of Indian trust property and allow an appraisal or valuation by a qualified person to be considered final without being reviewed or approved by Interior.

This proposed rule would establish the minimum qualifications for individuals to prepare appraisals and valuations of Indian trust property and allow an appraisal or valuation by a qualified person to be considered final without being reviewed or approved by Interior.

The Act also requires appraisals and valuations of Indian trust property to be administered by a single administrative entity within Interior. This rule is proposed under the Office of the Secretary for Department of the Interior, but may be finalized by another entity or agency within Interior depending on what single entity ultimately administers appraisals and valuations of Indian trust property.

II. Summary of Proposed Rule

This rule would establish a new Code of Federal Regulations (CFR) part to establish the minimum qualifications for appraisers, employed by or under contract with an Indian Tribe or individual Indian, to become qualified appraisers who may prepare an appraisal or valuation of

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Indian property that will, in certain circumstances, be accepted by the Department without further review or approval. We note that, because the Department is not reviewing and approving the appraisal or valuation, it is not liable for any deficiency or inaccuracy in the appraisal or valuation.

Subpart A, General Provisions, would define terms used in the regulation, describe the purpose of the regulation, and provide the standard Paperwork Reduction Act compliance statement. The terms are defined to include, in the context of this regulation, any property that the U.S. Government holds in trust or restricted status for an Indian Tribe or individual Indian, to include not just land, but also natural resources or other assets. Other important terms include “appraisal,” “valuation,” and “qualified appraiser.” Consistent with the statutory direction, the purpose of the regulations is written broadly, to include appraisals or valuations of any Indian trust property, including:

- Appraisals and valuations of real property;
- Appraisals and valuations of timber, minerals, or other property to the extent they contribute to the value of the whole property (for use in appraisals and valuations of real property); and
- Appraisals and valuations of timber, minerals, or other property separate from appraisals and valuations of real property.

Subpart B, Appraiser Qualifications, would establish the minimum qualifications an appraiser must meet to be considered a “qualified appraiser” and would establish that the Secretary must verify that the appraiser meets those minimum qualifications. The Department seeks comment as to whether these minimum qualifications are appropriate for both real property

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appraisals and valuations and for appraisals and valuations of timber, minerals, or other property separate from appraisals and valuations of real property.

This subpart would require that the verification information be submitted contemporaneously with the appraisal or valuation so that the Secretary can verify that the appraiser is a qualified appraiser at that point in time. The Department seeks ideas for allowing for verification in a way that would not require submission with each appraisal, but would ensure there were no changes in the appraiser's qualifications (e.g., the appraiser no longer holds a current Certified General Appraiser license) at the time the appraisal is submitted.

Subpart C, Appraisals and Valuations, would require the submission of appraisals and valuations to the Department for transactions requiring Secretarial approval under other parts of titles 25 and 43 of the Code of Federal Regulations. This subpart also sets out the circumstances in which the Department will forego review and approval of the appraisal or valuation. The proposed rule would require submission of the appraisal or valuation to the Department regardless of whether the Department will be reviewing and approving the appraisal or valuation. This requirement is included because the Department must use the results of the appraisal or valuation in completing the transaction requiring Secretarial approval.

The proposed rule would require the Department to forego review and approval of the appraisal or valuation and consider the appraisal or valuation final if three conditions are met: (1) the appraisal or valuation was completed by a qualified appraiser; (2) the Indian Tribe or individual Indian expressed their intent to waive Departmental review and approval; and (3) no owner of any interest in the Indian property objects to the use of the appraisal or valuation without Departmental review and approval. The first condition is clearly required by ITARA. The second condition is implied by ITARA. The number of individual Indian owners of

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fractionated tracts that must express their intent to waive Departmental review and approval, under the second condition, would depend upon the underlying title 43 or title 25 requirements. For example, if the underlying transaction is a right-of-way, then the owners of a majority of the interests in the tract must express their intent to waive Departmental review and approval, consistent with the general consent requirements in 25 CFR part 169. The third condition, that no Indian property owner objects, is necessary to address situations where one or more owners of the tract still want Departmental review and approval of the appraisal or valuation, consistent with our trust responsibility to all owners of the Indian trust property.

This subpart proposes to exempt certain transactions, thereby requiring Departmental review of the appraisal or valuation. The exempted transactions include any legislation expressly requiring the Department to review and approve an appraisal or valuation, such as the Land Buy Back Program under Claims Resolution Act of 2010 (Pub. L. 111-291), and purchase at probate under 43 CFR 30, because the judge will not be in a position to verify an appraiser's qualifications.

III. Tribal Consultation

The Department is hosting listening sessions and consultation sessions with Indian Tribes and trust beneficiaries on each of the items in Title III of ITARA (see "I. Background" for the list of items) at the dates and locations announced in 81 FR 47176 (July 20, 2016), as corrected by 81 FR 51210 (August 3, 2016). The Department will also consult on this proposed rule at those listening sessions and consultation sessions.

IV. Specific Questions on Which the Department Seeks Comment

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The Department seeks comment on any aspect of this rule that commenters wish to comment on, but also specifically poses the following questions for your consideration in commenting:

1. Do any Tribes grant Certified General Appraiser licenses similar to those granted by States? If so, is the license limited to appraisals and valuations done on property within the Tribe's jurisdiction?
2. Are the minimum qualifications in this regulation appropriate for appraisals and valuations of timber, minerals, or other property separate from appraisals and valuations of real property? If not, what qualifications would be better suited to those appraisals and valuations?
3. Is there a way to allow for the Department to verify an appraiser's qualifications, without requiring the qualifications to be submitted with each appraisal, that would ensure the appraiser is qualified at the time the appraisal is submitted (and that there have been no changes in the appraiser's qualifications)?

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 not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent

with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

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 and any economic effects on small entities (e.g., the cost to obtain an appraiser license) would be incurred as part of their normal cost of doing business.

C. Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

- (a) Will 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) Will not 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.

D. Unfunded Mandates Reform Act

This proposed 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 proposed rule does not have a significant or unique effect on State, local, or Tribal governments or the private

sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

E. Takings (E.O. 12630)

This proposed rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this proposed rule does 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 proposed rule complies with the requirements of Executive Order 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 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 proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally recognized Indian Tribes that will result from this rulemaking. Tribes may be substantially and directly affected by this

rulemaking because it allows for the submission of appraisals for transactions involving Indian property without Departmental review and approval. As such, the Department is consulting with Tribes on this proposed rule as part of the consultation sessions addressing ITARA.

I. Paperwork Reduction Act

This proposed rule contains an information collection that requires approval by OMB. The Department is seeking approval of a new information collection and a revision to an existing regulation, as follows.

OMB Control Number: XXXX–NEW.

Title: Documentation of Minimum Appraiser Qualifications.

Brief Description of Collection: The Department is proposing to establish minimum qualifications for appraisers of Indian property that require the submission of the appraiser’s qualifications to the Department for verification. Submission of the appraisal or valuation itself is already authorized by other OMB Control Numbers under the associated 43 CFR or 25 CFR part (for example, the submission of appraisals for leasing of Indian land is included in the lease information collection authorized by OMB Control Number 1076-0181).

Type of Review: New collection.

Respondents: Individuals and Private Sector.

Number of Respondents: 155.

Number of Responses: 465

Frequency of Response: 3 per year, on average

Estimated Time per Response: One hour.

Estimated Total Annual Hour Burden: 465 hours.

Estimated Total Annual Non-Hour Cost Burden: \$0.

J. National Environmental Policy Act

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

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

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. 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 "**ADDRESSES**" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections

where you believe lists or tables would be useful, etc.

M. 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.

List of Subjects in 43 CFR Part 100

Indians, Indians-claims, Indians-lands, mineral resources.

For the reasons given in the preamble, the Department of the Interior proposes to amend 43 CFR subtitle A, to add part 100 to read as follows:

Title 43—Public Lands; Interior

Subtitle A – Office of the Secretary of the Interior

Department of the Interior

PART 100—APPRAISALS AND VALUATIONS OF INDIAN PROPERTY

Subpart A – General Provisions

Sec.

- 100.100 What terms should I know for this part?
- 100.101 What is the purpose of this part?
- 100.102 Does this part apply to me?
- 100.103 How does the Paperwork Reduction Act affect this part?

Subpart B – Appraiser Qualifications

- 100.200 What are the minimum qualifications for appraisers?
- 100.201 Does a qualified appraiser have authority to conduct appraisals or valuations of any type of Indian property?
- 100.202 Will the Secretary verify the appraiser’s qualifications?

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- 100.203 What must the Tribe or individual Indian submit to the Secretary for verification of the appraiser's qualifications?
- 100.204 When must the Tribe or individual Indian submit a package for Secretarial verification of appraiser qualifications?

Subpart C – Appraisals and Valuations

- 100.300 Must I submit an appraisal or valuation to the Department?
- 100.301 Will the Department review and approve by appraisal or valuation?
- 100.302 May I request Departmental review of an appraisal even if a qualified appraiser completed the appraisal or valuation?
- 100.303 What happens if the Indian Tribe or individual Indian does not agree with the submitted appraisal or valuation?

AUTHORITY: 5 U.S.C. 301; Pub. L. 114-178.

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Subpart A – General Provisions

§ 100.100 What terms I should know for this part?

Appraisal means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Appraiser means one who is expected to perform an appraisal or valuation competently and in a manner that is independent, impartial, and objective.

Indian means:

(1) Any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner as of October 27, 2004, of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder; or

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

Indian property means trust property or restricted property.

Indian Tribe means an Indian Tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

Land Buy-Back Program for Tribal Nations means the program implementing the land consolidation provisions of the settlement agreement in *Cobell v. Salazar*, No. 1:96CV01285-JR (D.D.C.), as confirmed by Congress in the Claims Resolution Act of 2010 (Pub. L. 111-291).

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Qualified appraiser means an appraiser that is authorized to prepare an appraisal or valuation of Indian property because he or she meets the minimum qualifications of this part.

Qualifications statement means a written overview of an appraiser's education, professional history and job qualifications, providing an indication of an appraiser's competency to perform specific types of assignments. The qualifications may include information regarding education (degrees and educational institutions or programs); professional affiliations, designations, certifications, and licenses; work experience (including companies or organizations, the dates of employment, job titles and duties, and any service as an expert witness); awards and publications; types of properties appraised; types of appraisal and valuation assignments; and clients.

Restricted property means lands, natural resources, or other assets owned by Indian Tribes or individual Indians that can only be alienated or encumbered with the approval of the United States because of limitations contained in the conveyance instrument, or limitations in Federal law.

Secretary means the Secretary of the Interior or an authorized representative.

Trust property means lands, natural resources, or other assets held by the United States in trust for Indian Tribes or individual Indians.

Us/we/our means the single bureau, agency, or entity within the Department of the Interior that administers appraisals and valuations of Indian property.

Valuation means all other valuation methods or a market analysis, such as a general description of market trends, values, or benchmarks, prepared by a qualified appraiser.

§ 100.101 What is the purpose of this part?

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This part describes the minimum qualifications for appraisers, employed by or under contract with an Indian Tribe or individual Indian, to become qualified appraisers who may prepare an appraisal or valuation of Indian property that will be accepted by the Department without further review or approval.

§ 100.102 Does this part apply to me?

This part applies to anyone preparing or relying upon an appraisal or valuation of Indian property.

§ 100.103 How does the Paperwork Reduction Act affect this part?

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 100X-100X. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer – Indian Affairs, 1849 C Street, NW., Washington, DC 20240.

Subpart B – Appraiser Qualifications

§ 100.200 What are the minimum qualifications for qualified appraisers?

(a) An appraiser must meet the following minimum qualifications to be a qualified appraiser under this part:

(1) The appraiser must hold a current Certified General Appraiser license in the State in which the property appraised or valued is located;

(2) The appraiser must be in good standing with the appraiser regulatory agency of the State in which the property appraised or valued is located; and

(3) The appraiser must comply with the Uniform Standards of Professional Appraisal Practice (USPAP) rules and provisions applicable to appraisers (including but not limited to Competency requirements applicable to the type of property being appraised or valued and Ethics requirements). This includes competency in timber and mineral valuations if applicable to the subject property.

§ 100.201 Does a qualified appraiser have the authority to conduct appraisals or valuations of any type of Indian property?

All qualified appraisers of Indian property must meet the Competency requirements of USPAP for the type of property being appraised or valued. Competency can be demonstrated by previous completed assignments on the type of properties being appraised, additional education or training in specific property types, or membership and/or professional designation by a related professional appraisal association or group.

§ 100.202 Will the Secretary verify the appraiser's qualifications?

The Secretary will verify the appraiser's qualifications to determine whether the appraiser meets the requirements of § 100.200.

§ 100.203 What must the Tribe or individual Indian submit to the Secretary for a verification of the appraiser's qualifications?

The Tribe or individual Indian must submit following with the appraisal or valuation:

- (a) A copy of the appraiser's current Certified General Appraiser license;
- (b) A copy of the appraiser's qualifications statement;
- (c) The appraiser's self-certification that the appraiser meets the criteria in § 100.200; and

(d) If the property contains natural resource elements that contribute to the value of the property, such as timber or minerals, a list of the appraiser's additional qualifications for the specific type of property being valued in the appraisal report.

§ 100.204 When must the Tribe or individual Indian submit a package for Secretarial verification of appraiser qualifications?

The Tribe or individual Indian must submit the package of appraiser qualifications to the Secretary with the appraisal or valuation.

Subpart C – Appraisals and Valuations

§ 100.300 Must I submit an appraisal or valuation to the Department?

Appraisals and valuations must be submitted to us for transactions requiring Secretarial approval under other parts of titles 25 and 43 of the CFR.

§ 100.301 Will the Department review and approve my appraisal or valuation?

(a) The Department will not review the appraisal or valuation of Indian property and the appraisal or valuation will be considered final as long as:

- (1) The submission acknowledges the intent of the Indian Tribe or individual Indian to waive Departmental review and approval;
- (2) The appraisal or valuation was completed by a qualified appraiser meeting the requirements of this part; and
- (3) No owner of any interest in the Indian property objects to use of the appraisal or valuation without Departmental review and approval.

(b) The Department must review and approve the appraisal or valuation if:

- (1) Any of the criteria in paragraph (a) of this section are not met; or
- (2) The appraisal or valuation was submitted for:

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- (i) Purchase at probate under 43 CFR 30;
- (ii) The Land Buy-Back Program for Tribal Nations; or
- (iii) Specific legislation requiring the Department to review and approve an appraisal or valuation.

§ 100.302 May I request Departmental review of an appraisal even if a qualified appraiser completed the appraisal or valuation?

If you do not specifically request waiver of Departmental review and approval under § 100.300(a)(1), the Department will review the appraisal or valuation.

§ 100.303 What happens if the Indian Tribe or individual Indian does not agree with the submitted appraisal or valuation?

If the Indian Tribe or individual Indian does not agree with the submitted appraisal or valuation, the Indian Tribe or individual Indian may request that the Department perform an appraisal or valuation instead of relying on the submitted appraisal or valuation.

Dated:

Michael L. Connor
Deputy Secretary