

Marilyn Winstead McCall at (202) 233-9029.

**SUPPLEMENTARY INFORMATION:** For more detailed information on this proposal, please see EPA's Notice of Direct Final Decision published in the Final Rules section of this Federal Register which approves Guam's petition for exemption from the gasoline anti-dumping regulations, but does not approve Guam's petition for exemption from the fuel detergent additization regulations. The Agency views this final decision as a noncontroversial action for the reasons discussed in the Notice of Direct Final Decision published in today's Federal Register, and because it believes the effects of this decision are limited to the Territory of Guam. If no adverse or critical comments are received in response to this proposed decision, no further action is contemplated in relation to this decision. If EPA receives adverse or critical comments, EPA will withdraw the Notice of Direct Final Decision by publishing an appropriate notice in the Federal Register, and all public comments received will be addressed in a subsequent notice. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

Dated: October 8, 1996.

Carol M. Browner,  
Administrator.

[FR Doc. 96-26448 Filed 10-15-96; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Part 2530

[AA-320-00-4212-02]

RIN 1004-AB10

#### Indian Allotments

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Land Management (BLM) is proposing this rulemaking to revise the provisions on Indian allotments to reduce the regulatory burden imposed on the public, to streamline and clarify the existing provisions, and to remove redundant and unnecessary requirements. BLM has refined the suitability requirements and the public notification process to make the requirements clearer. We have also clarified the availability of lands within

national forest for Indian allotments and the procedures for handling allotments on those lands.

**DATES:** *Comments:* Commenters must submit comments by November 15, 1996.

**ADDRESSES:** Commenters may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240. You may also transmit comments electronically via the Internet to WOCComment@WO0033wp.wo.blm.gov. Please include "attn: AB10", and your name and address in your message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly. Comments will be available for public review in Room 401 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Holidays.

**FOR FURTHER INFORMATION CONTACT:** Jeff Holdren, (202) 452-7779.

#### SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of Proposed Rule
- IV. Procedural Matters

#### I. Public Comment Procedures

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commented is addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule, comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

#### II. Background:

The Secretary is authorized by section 310 of the Federal Land Policy and Management Act (FLPMA), (43 U.S.C. 1740) to promulgate rules and regulations to carry out the purposes of FLPMA and other laws applicable to the public lands.

Section 4 of the Indian General Allotment Act of February 8, 1887 (25 U.S.C. 334 and 336), (Act) as amended, provides that if you are an Indian eligible for an allotment, you may apply for an allotment to the BLM office having jurisdiction over the lands

covered by your application. The Act provides for the following allotment types and maximum allowable acreage:

- Irrigable land-not more than 40 acres,
- Nonirrigable agricultural land-not more than 80 acres, and
- Nonirrigable grazing land-not more than 160 acres.

Your eligibility depends upon your being able to furnish documentation from the Bureau of Indian Affairs (BIA) that show you are an Indian who meets the requirements for filing under this Act. If you are eligible, your minor children are also qualified to file for an allotment under the Act.

#### III. Discussion of Proposed Rule

This proposed rule, which would revise 43 CFR Part 2530—Indian Allotments, identifies the qualification requirements as well as the steps a person must take to file an application for an Indian allotment on BLM administered public lands and public lands on national forests and the requirements for a trust patent. This revision is needed because the existing regulations have become outdated since being modified in 1972. Specifically, National Environmental Policy Act (NEPA) requirements as well as applicable FLPMA requirements and provisions of laws relating to hazardous substances need to be added. FLPMA requirements include meeting planning requirements and meeting the 2-year notification to grazing permittees and lessees. The revision will make the regulations easier to read and understand, thereby making it easier for the affected public to determine the applicability of the regulations. This revision is part of BLM's efforts to simplify and clarify its existing regulations.

BLM is considering requiring a \$100 filing fee for requesting an Indian allotment, as authorized by the Act. A fee has not implemented since the enactment of these regulations in the early part of this century. This fee, if authorized would require the applicant to pay a portion of the costs of processing an allotment application and is more consistent with today's costs of doing business.

The proposed revision sets forth application procedures for applying for Indian allotments on the public lands. Public lands, as defined in this rulemaking, would include any lands administered by BLM, or lands within a national forest that are part of the original public domain and are otherwise not available for application under this Act. This definition is being added to clarify the type of lands that

are subject to application for an Indian allotment. The proposed revision would reorganize the regulations, adding a definition section for clarity (43 CFR 2530.5). A section is added that specifies what public lands are available for an Indian allotment (43 CFR 2530.10) and would:

- affirm that approval of an Indian allotment is discretionary with BLM;
- require that BLM ensure that the lands under application are valuable for agriculture or grazing, and suitable physically and economically; and
- provide that lands otherwise appropriated or segregated from surface entry are not available for selection.

Regulations pertaining to protests and appeals of BLM actions taken on your application are currently contained in 43 CFR part 4, subpart E. BLM is in the process of preparing proposed regulations that would locate BLM protest and appeals procedures in 43 CFR part 1840. Should these BLM protest and appeals regulations become final, appropriate changes in the references will be made to 43 CFR part 1840.

#### *Section by Section Analysis*

The proposed regulations would renumber current sections of the regulations. BLM would revise § 2530.10 (formerly § 2530.0–8), land subject to allotment, to add provisions to inform you, the applicant, of the need for lands being properly classified for settlement under the Indian General Allotment Act. We would also add provisions requiring you to provide evidence with respect to the lands that they are physically and economically suitable for support of an Indian family and you have sincerely applied for these lands considering all of these factors. This section would also clarify that we can allow allotments on public lands valuable or potentially valuable for leasable minerals.

Section 2530.13 on qualification requirements would substantially streamline current regulatory provisions by substituting a general reference to the requirement that an applicant for an Indian allotment submit documentation from BIA of eligibility to BLM. This documentation would replace the current regulatory requirement that you furnish BLM a certificate of eligibility from the Commissioner of Indian Affairs.

Section 2530.14 would clarify the eligibility requirements of children of living allotment applicants and orphaned children. Additionally, § 2530.14 would provide procedures for

applications on behalf of minor children. We have removed the current regulatory provision on Indian wives (§ 2531.1(e)) since § 2530.13, in addressing the general qualification requirements, would be applicable to all applicants, regardless of gender.

The proposed rule would relocate the current provisions on applications for allotments to §§ 2530.15, 2530.16, and 2530.17 and expand them to provide more detailed procedures, including submission of a nonrefundable filing fee. Section 2530.15 would encourage you to consult with BLM before submitting an application, to ensure you can meet all of the requirements with respect to water and land use conflicts, and to familiarize you with the processes and the responsibilities of the various governmental agencies involved. Section 2530.16 would itemize the information you are to provide in your application (a BLM official form is no longer required). This section would also require submission of a nonrefundable filing fee of \$100 for each application and a certificate of eligibility from BIA. The filing fee is to provide partial payment for the BLM's acting upon your application. It would provide that your filing of an application does not segregate the land from the operation of the public land laws, and that your application may not be assigned. Section 2530.17 would specify additional requirements you must meet, including compliance with all State and local zoning requirements as well as assurance that you have, either through production or acquisition, a sufficient quantity and quality of water to develop your allotment.

Sections 2530.20, 2530.21 and 2530.22 would address BLM's process of notifying the public of any proposed decision to grant an allotment. We would publish this notice of proposed decision in local newspapers and distribute it to the Governor of the State, local governmental entities, authorized users, and interested parties. BLM would allow the public 45 days from the initial date of publication in the newspaper to comment on the proposed decision. As noted in §§ 2530.23 and 2530.24, BLM would analyze all comments received and would address all protests according to the procedures found in 43 CFR part 4.

Section 2530.26 would provide that if grazing authorizations exist upon the lands you have applied for, BLM may delay approval of your allotment for a period up to two years so that we can give notice to the permittees and lessees. However, a permittee or lessee may waive the two year notification.

Section 2530.27 would require that the lands covered by the allotment be segregated from the public land laws and mining laws to eliminate potential encumbrances or any conflicts with the settlement of the allotment. The lands would be segregated for 2 years beginning on the date your allotment is approved, and BLM may extend the segregation in specific circumstances.

Requirements for filing an application for a trust patent would be addressed in revised 43 CFR part 2530, subpart 2531, which would deal exclusively with trust patents. Section 2531.1 would direct BLM to issue you a trust patent after you successfully complete the required 2-year settlement period on your allotment and your meeting all other requirements. If you are unable to complete the 2-year settlement period due to circumstances such as war, acts of God, or legal delays, § 2531.2 would provide that BLM may grant you an extension of not more than 2 additional years. If a grazing lessee or licensee requests the delay your application will be suspended for the amount of time of the delay request.

Sections 2531.5 and 2531.6 would address the disposition of the allotment of an Indian who dies after settlement but before we issue a trust patent. If an allottee dies after complying with the requirements to obtain title, but prior to our issuing a trust patent, we will issue a trust patent to the heirs of the deceased allottee, without requiring any further occupancy.

43 CFR part 2530, subpart 2533, which currently addresses Indian allotments in national forests, would be replaced by 43 CFR part 2530, subpart § 2532. A new § 2532.3 would state the qualifications that you must meet for approval of an application for an Indian allotment on national forests. You may file an application for an allotment for lands on national forests if you: (1) are not entitled to an allotment on an existing reservation, (2) belong to a tribe without a reservation, or (3) belong to a reservation that is insufficient in size to accommodate allotments for the members of the tribe.

Section 2532.4, a proposed revision of existing § 2531.1, would provide that your application be submitted to the District Ranger or the Forest Supervisor in the same format as required for applications for allotments on public lands administered by BLM. Likewise, the Forest Service would require a nonrefundable filing fee of \$100.

Section 2532.5 would provide that the Forest Service is to process applications in accordance with Forest Service regulations, and would set forth the procedures for rejecting and accepting

applications for allotments on national forests. The Secretary of the Interior would retain final responsibility for accepting or rejecting applications and the Secretary would issue trust patents on national forest lands in the same manner as trust patents for BLM lands. Section 2532.6 would provide you the right to appeal to the Interior Board of Land Appeals if BLM rejects your application on the basis that the lands you applied for are not suitable for disposal under the Act.

#### IV. Procedural Matters

The principal author of this proposed rulemaking is Jeff Holdren, Realty Use Group, assisted by the staff of the Regulatory Management Team of the Bureau of Land Management.

#### *National Environmental Policy Act*

BLM has prepared an environmental assessment (EA) and has found that the proposed rule would not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified previously (see "ADDRESSES"). BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the Written Comments section above, or contact us directly.

#### *Paperwork Reduction Act*

BLM has determined that fewer than 5 Indian allotment applications per year are filed. Therefore, the information collection requirements contained in the proposed regulation are exempt from the provisions of the Paperwork Reduction Act (44 U.S.C. 3518(c)(1)).

#### *Regulatory Flexibility Act*

Congress enacted The Regulatory Flexibility Act of 1980 (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

#### *Unfunded Mandates Reform Act*

BLM has determined that this proposed rule is not significant under the Unfunded Mandates Reform Act of 1995, because it will not result in State, local and tribal government, in the aggregate, or private sector, expenditure of \$100 million or more in any one year. This proposed rule will not significantly or uniquely affect small governments.

#### *Executive Order 12612*

The proposed rule would not have a 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. Therefore, in accordance with Executive Order 12612, BLM has determined that this proposed rule does not have sufficient federalism implications to warrant BLM preparation of a Federalism assessment.

#### *Executive Order 12630*

BLM recognizes that in the case of *Public Lands Council v. Babbitt*, No. 95-CV-165-B, in the U.S. District Court for the District of Wyoming, the court implied that holders of existing grazing leases may have some undefined property rights. BLM and the Department of the Interior strongly disagree with this interpretation of the Taylor Grazing Act, and the case is currently on appeal. Should the Court of Appeals uphold this interpretation, BLM will consider preparing a Takings Implications Assessment under Executive Order 12630 to consider the implications of this proposed rule on private property rights.

#### *Executive Order 12866*

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866. BLM does not have to assess the potential costs and benefits of the rule under section 6(a)(3) of that order. The Office of Management and Budget has exempted the rule from review under that order.

#### List of Subjects in 43 CFR Part 2530

Indians—lands, National forests, Public lands, Reporting and recordkeeping requirements.

Dated: October 2, 1996.

Sylvia V. Baca,

*Deputy Assistant Secretary of the Interior.*

For the reasons set forth in the preamble and under the authority of the FLPMA (43 U.S.C. 1201; 43 U.S.C. 1740) BLM proposes to revise part 2530 of subchapter B, chapter II of title 43 of the Code of Federal Regulations as set forth below:

## PART 2530—INDIAN ALLOTMENTS

### Subpart 2530—Indian Allotments—General Sec.

- 2530.1 What is the authority for granting an Indian allotment on public lands administered by BLM?
- 2530.5 What terminology should I know?
- 2530.10 What public lands are available for an Indian allotment?
- 2530.11 Where do I find information about applying for a native allotment in Alaska?
- 2530.12 What is the maximum acreage for an Indian allotment?
- 2530.13 What qualifications must I meet to be eligible for an Indian allotment?
- 2530.14 Do my minor children qualify for an Indian allotment, and how do they apply?
- 2530.15 What steps must I take prior to filing an application?
- 2530.16 How do I apply for an Indian allotment?
- 2530.17 What additional requirements must I meet to have my application approved?
- 2530.18 What will BLM do upon receipt of the above information?
- 2530.19 What limitations apply to my application?
- 2530.20 How do I find out if my application is approved?
- 2530.21 How are the public and affected parties made aware of the initial approval of my application?
- 2530.22 What information will the notice to the public include?
- 2530.23 How will BLM evaluate my comments and the comments or concerns of other interested parties?
- 2530.24 Can anyone appeal or protest the proposed decision on the allowance of my allotment?
- 2530.25 How do I know when I may begin to develop my allotment?
- 2530.26 If my application is rejected by BLM how do I appeal?
- 2530.27 When do lands covered by my application for an allotment become segregated from appropriation under the public land laws and mining laws?
- 2530.28 When will the segregative effect on my allotment terminate?
- 2530.29 How do lands with existing grazing authorizations affect my allotment?

### Subpart 2531—Trust Patents

- 2531.1 How do I obtain title to the lands covered by my allotment?
- 2531.2 If I am unable to meet the 2-year time requirement for occupying and developing my allotment, can I obtain an extension of time?
- 2531.3 What criteria must I meet to obtain a trust patent?
- 2531.4 If my allotment is unsurveyed, may I receive a trust patent?
- 2531.5 In the event of my death, will my heirs be notified of my eligibility for a trust patent?
- 2531.6 In the event of my death, may my heirs receive a trust patent?

**Subpart 2532—Indian Allotments—National Forests**

- 2532.1 What is the authority for filing an Indian allotment on public lands within a national forest?
- 2532.2 What limitations do I have in applying for an allotment on public lands within a national forest?
- 2532.3 What conditions must I meet to qualify for an allotment on public lands within a national forest?
- 2532.4 How do I apply for an Indian allotment on public lands within a national forest?
- 2532.5 How will my application be processed?
- 2532.6 What may I do if my application is rejected?
- Authority: 25 U.S.C. 334 and 336.

**Subpart 2530—Indian Allotments—General****§ 2530.1 What is the authority for granting an Indian allotment on public lands administered by BLM?**

Section 4 of the Indian General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended by the Act of February 28, 1891 (26 Stat. 794), and section 17 of the Act of June 25, 1910 (25 U.S.C. 336), provide that if you are an Indian eligible for an allotment under existing laws, you may apply to the Bureau of Land Management (BLM) office having jurisdiction over the lands covered by the application to have the lands allotted to you and to your children in the manner provided by law.

**§ 2530.5 What terminology should I know?**

As used in this part, the term:

*Act* means the Indian General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended.

*Allotment* means a tract of land issued to individual Indians or a tribe by the United States of America in trust, restricted, or fee simple status by Acts of Congress.

*Allowance* means the applicant is authorized to enter the allotment for purposes of settlement.

*Crop* means any agricultural product to which the lands are generally adapted and which would show a profit when the expense of producing it is deducted.

*Indian* means a person who is a member of or eligible for membership in an Indian tribe.

*Indian tribe* means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group that, at the time of an application for an allotment pursuant to these regulations, is recognized by the Secretary of the Interior as eligible to receive services from the United States Bureau of Indian Affairs.

*Irrigable lands* means lands that are susceptible to successful irrigation from

a known and adequate source of a supply of water and upon which agricultural crops can be profitably raised.

*Irrigation* means the application of water to lands to grow crops.

*Mineral laws* means those laws applicable to the mineral resources administered by the BLM. They include, but are not limited to, the mining laws, the mineral leasing laws, the mineral material disposal laws and the Geothermal Steam Act.

*Mining laws* means those laws as defined at § 3809.0–5(e) of this chapter.

*Nonirrigable agricultural lands* means lands upon which agricultural crops can be profitably grown without irrigation.

*Nonirrigable grazing lands* means lands suitable for grazing that cannot be profitably devoted to any other agricultural use.

*Public lands* means, for the purposes of these regulations, any lands, administered by the Bureau of Land Management, or lands within National Forests that are part of the original public domain and are not reserved, withdrawn, or otherwise not available for application under this Act.

*Segregation* means the temporary removal, subject to valid existing rights, of a specified area of the public lands from appropriation under the public land laws and mining laws, pursuant to the authority of the Secretary of the Interior to provide for the orderly administration of the public lands.

*Settlement* means occupancy and development of the lands in the allotment in a manner consistent with the applicant's plan of operation.

*Trust patent* means a patent issued to the United States of America in trust for an individual Indian or a tribe. Lands conveyed by trust patent cannot be alienated or encumbered without approval of the United States of America.

*Water right* means the right, whether by existing ownership, contract, purchase, or appropriation in accordance with State law, to use water on the lands for the purposes set out in the allotment.

*Water supply* means a permanent and adequate source of water that is sufficient for domestic, livestock, or agricultural purposes in accordance with the proposal in the allotment application.

**§ 2530.10 What public lands are available for an Indian allotment?**

BLM may approve an application for an allotment on any surveyed or unsurveyed public lands suitable for disposal under the Act not otherwise appropriated or segregated from surface

entry by withdrawal or classification. BLM may allow an allotment on lands valuable or potentially valuable for leasable minerals with a reservation of the minerals interests of value to the United States. BLM will grant an allotment on public lands not included in a national forest if the lands under application are determined by BLM to be:

(a) Suitable and properly classified for development under the Indian General Allotment Act using the procedures and criteria in part 2400 of this chapter and will not exceed the maximum acreage requirements addressed in § 2530.12;

(b) Valuable for agricultural or grazing purposes; and

(c) Physically and economically suitable for support of an Indian or an Indian family and is applicable for that purpose. BLM's determination of economic feasibility will take into account all costs associated with settlement of the public lands covered by your application.

**§ 2530.11 Where do I find information about applying for a native allotment in Alaska?**

For native allotments in Alaska, see 43 CFR part 2560, subpart 2561.

**§ 2530.12 What is the maximum acreage for an Indian allotment?**

An allotment to any one Indian will not exceed the following acreage requirements:

- (a) 40 acres of irrigable land;
- (b) 80 acres of nonirrigable land; or
- (c) 160 acres of nonirrigable grazing land.

**§ 2530.13 What qualifications must I meet to be eligible for an Indian allotment?**

(a) You must qualify as an Indian, as defined in this part, to be eligible for an Indian allotment on public lands.

(b) You must furnish documentation from the Bureau of Indian Affairs that shows you are an Indian eligible to apply for an Indian allotment. This documentation must show that you are a member of a recognized tribe, or are entitled to be so recognized. You must attach that documentation to your allotment application.

**§ 2530.14 Do my minor children qualify for an Indian allotment, and how do they apply?**

(a) If you are eligible for an allotment under the Act, you are also eligible, upon application, for an allotment for your living minor children, stepchildren, or other children as to whom you fill the role of parent. Orphan children (children whose both parents are deceased) are not eligible for an allotment unless they qualify under the criteria stated in § 2530.13.

(b) BLM requires the actual settlement by the parent or the person standing in place of the parents to substantiate the filing for an Indian allotment on behalf of minor children.

(c) In every case where you file an application for a minor child, you must show that you have an allotment under the Act and are using the land covered by your allotment in accordance with the Act's requirements.

(d) You may apply on behalf of a minor child, but you must show that your child resides with and receives subsistence from you.

**§ 2530.15 What steps must I take prior to filing an application?**

Prior to filing an application for an Indian allotment, you should consult with the appropriate staff in the BLM office that has jurisdiction over the lands covered by your application to:

- (a) Determine availability of the lands you wish to apply for and water availability;
- (b) Check for conformity with approved land use plans;
- (c) Provide an explanation of the requirements of applicable law and regulations;
- (d) Familiarize you with respective Federal and State responsibilities; and
- (e) Avoid potential conflicts.

**§ 2530.16 How do I apply for an Indian allotment?**

(a) You must file an application in the BLM office having jurisdiction over the lands covered by your application in accordance with the provisions of regulation § 1821.2 of this chapter. No official BLM form is required.

(b) Your application must be accompanied by a nonrefundable filing fee of \$100 and must include the following information:

- (1) Name and address (including zip code); if you are applying on behalf of a minor child, the name and age of child and the your relationship to the child;
- (2) Name of Indian tribe in which you claim membership or eligibility for membership;
- (3) Documentation from the Bureau of Indian Affairs that you or your minor children are eligible for an Indian allotment, as provided in § 2530.2;
- (4) Legal description of lands being applied for (township, range, meridian, section, subdivision, and state) and acreage;
- (5) A plan of development that describes the proposed use of the land and description of improvements to be placed on the lands covered by the application;
- (6) Types of allotments, if any, that you previously received under any Act of Congress; and

(7) A description of the manner in which you will make settlement on the lands covered by the application.

(c) BLM will not approve your application unless and until BLM determines that the public lands involved are suitable for disposal under the Indian General Allotment Act and classified pursuant to the provisions of § 2530.10 and part 2400 of this chapter.

**§ 2530.17 What additional requirements must I meet to have my application approved?**

In addition to the requirements stated in § 2530.12 and § 2530.13, you must meet the following requirements:

- (a) Your description of the proposed use of the lands is consistent with all State and local zoning requirements, health and safety codes, and development standards;
- (b) Your anticipated return from agricultural use of the lands would support the residents at an income level above that established at a subsistence level for rural agricultural families as established by the Bureau of Labor Statistics; and
- (c) Where appropriate, your application must include documentation that the average rainfall is adequate for agricultural purposes or that, under State law, you have appropriated sufficient water to properly irrigate the allotment.

**§ 2530.18 What will BLM do upon receipt of the above information?**

BLM will notify the appropriate State agencies of your filing and will consult with those agencies as appropriate. BLM will analyze your proposed uses of the lands in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331 *et seq.*) based on data you have provided and other available resource information. BLM also requires compliance with applicable laws, regulations and policies concerning hazardous substances.

**§ 2530.19 What limitations apply to my application?**

The following limitations apply to your application:

- (a) Your filing of an application for an allotment under the provisions of this subpart does not segregate the land or confer any right, title, or interest in the land;
- (b) You may not assign your application for an allotment to another individual; and
- (c) Procedures for and limitations to seeking an allotment in the National Forests are found in subpart 2532 of this part.

**§ 2530.20 How do I find out if my application is approved?**

Upon completing review of your application, BLM will issue a proposed decision to you approving your application for an allotment if your application meets the following criteria:

- (a) Your proposed development of the allotment is economically feasible;
- (b) An environmental assessment, as required under the National Environmental Policy Act, shows that the proposed development is a suitable use of the requested land; and
- (c) You have met the other qualifications identified in § 2530.15.

**§ 2530.21 How are the public and affected parties made aware of the initial approval of my application?**

In addition to notifying you of the proposed approval of your application, BLM will publish a notice of the proposed approval of your application once a week for 3 consecutive weeks in a newspaper of general circulation in the vicinity of the public lands specified in the application. BLM also will send copies of the notice to the Governor of the State, the head of the governing body of any political subdivision having zoning or other land use regulatory authority in the area within which the public lands covered by the notice are located, authorized users, and to other persons considered by BLM as likely to be interested including, but not limited to, adjoining and cornering landowners.

**§ 2530.22 What information will the notice to the public include?**

The notice that is published in the newspaper will include:

- (a) A reference to the applicable land use plan;
- (b) A legal description of the lands;
- (c) Date of classification and proposed date to allow an allotment;
- (d) A brief description of the plan of development;
- (e) A statement as to the segregative effect; and
- (f) An invitation for public comment.

**§ 2530.23 How will BLM evaluate my comments and the comments or concerns of other interested parties?**

BLM will analyze all comments received concerning your entry on the land covered by the allotment. In analyzing these comments BLM will consider the merits of the comments received. Comments may shed new light or information on the operation plan for your allotment, provide new evidence about environmental issues, provide local or regional governmental data that were formerly unknown, and provide other new details that pertain to the

suitability of approving or rejecting your allotment.

**§ 2530.24 Can anyone appeal or protest the proposed decision on the allowance of my allotment?**

For a period of 45 days from the initial date of publication in the newspaper, you or other parties may file a protest to the notice of a proposed decision granting the allotment, according to the procedures found in part 4., subpart E of this title. If BLM rejects your protest, you have the right to appeal the rejection of the protest to the Interior Board of Land Appeals by following the procedures found in part 4, subpart E of this chapter.

**§ 2530.25 If my application is rejected by BLM, how do I appeal?**

You may appeal BLM's decision to deny you an allotment by following the procedures described in the applicable provisions of part 4 subpart E of this title. However, you may not appeal or protest the initial suitability and classification determination of the lands that resulted from the land use planning process. Protests of proposed or initial classification decisions are covered in part 2400 of this title.

**§ 2530.26 How do I know when I may begin to develop my allotment?**

BLM will issue a final decision approving your application for an Indian allotment and authorizing you to develop your allotment in accordance with the plan of operation. The decision will specify the date you may begin this development work. If the 2-year notification to grazing lessees is applicable, the allotment will not be allowed until the 2-year period has passed.

**§ 2530.27 When do lands covered by my application for an allotment become segregated from appropriation under the public land laws and mining laws?**

This event takes place on the date the decision allowing you to enter the lands covered by your application is issued. BLM will note the segregation on the public land records in accordance with § 1813.1 of this chapter. Subject to valid existing rights, the lands will remain segregated for a period not to exceed 2 years from the date of decision, unless BLM grants an extension of time due to circumstances specified under § 2531.2.

**§ 2530.28 When will the segregative effect on my allotment terminate?**

The segregative effect on your allotment terminates when one of the following events occurs:

(a) Automatically, when BLM issues you a patent or other document of

conveyance to the affected lands; however, the lands remain closed to mineral entry because the minerals are reserved to the United States in trust for the individual Indian or Indians, together with the right to lease, extract or retain them;

(b) If either BLM cancels the allotment or you relinquish it, on the date and time specified in an opening order published in the Federal Register; or

(c) Automatically, when the 2-year segregation period or extension ends.

**§ 2530.29 How do lands with existing grazing authorizations affect my allotment?**

When BLM identifies lands for disposal and such disposal precludes livestock grazing, BLM will not approve your allotment until 2 years after we notify any permittees and lessees that we may cancel their grazing permit(s) or grazing lease(s) and grazing preference in accordance with § 4110.4-2(b) of this chapter. A permittee or lessee may unconditionally waive the 2-year prior notification.

**Subpart 2531—Trust Patents**

**§ 2531.1 How do I obtain title to the lands covered by my allotment?**

To be eligible to receive a trust patent (title) to the public lands covered by your allotment, you must occupy and develop your allotment within two years from the date of entry and file an application for a trust patent with the BLM office having jurisdiction over the lands covered by your allotment.

**§ 2531.2 If I am unable to meet the 2-year time requirement for occupying and developing my allotment, can I obtain an extension of time?**

Upon your request, BLM may grant an extension of not more than two additional years if you cannot implement your plan of operation upon your allotment within the two years provided in § 2531.1. BLM will grant an extension only in extraordinary circumstances, such as war, acts of God, or legal delays.

**§ 2531.3 What criteria must I meet to obtain a trust patent?**

Prior to conveyance of title, BLM will examine the lands covered by your allotment to assure compliance with the provisions of this part. When BLM has determined that you have, settled the lands covered by your allotment in accordance with your plan of development, BLM will issue a trust patent to you.

**§ 2531.4 If my allotment is unsurveyed, may I receive a trust patent?**

No. Your allotment must be surveyed before BLM may issue a patent.

**§ 2531.5 In the event of my death, will my heirs be notified of my eligibility for a trust patent?**

In cases where the death of an allottee is reported to BLM, BLM will attempt to notify heirs of the allottee that they have 90 days from receipt of the notice to submit proof to BLM that the allottee personally settled on the lands covered by the allotment and met all other requirements for a trust patent. BLM will describe to the heirs what form of proof is acceptable. BLM will cancel the allotment for failure of your heirs to submit the proof required by this section within the time allowed will result in cancellation of the allotment.

**§ 2531.6 In the event of my death, may my heirs receive a trust patent?**

Yes, where an allottee dies after complying with the requirements to obtain title but prior to issuance of a trust patent, BLM will issue to the heirs of the deceased allottee a trust patent for lands covered by the allotment without requiring further occupancy or use on their part.

**Subpart 2532—Indian Allotments—National Forests**

**§ 2532.1 What is the authority for filing an Indian allotment on public lands within a national forest?**

Section 31 of the Act of June 25, 1910 (25 U.S.C. 337), authorizes allotments on public lands within national forests under the Act.

**§ 2532.2 What limitations do I have in applying for an allotment on public lands within a national forest?**

You may apply only for surveyed or unsurveyed public lands of the United States within a national forest, when continuous occupancy or improvements by eligible Indians existed either from June 25, 1910, or at the time the national forest was created. If there are lands valuable for leasable minerals, BLM may approve your application for an allotment, subject to a reservation of the mineral interests of value to the United States.

**§ 2532.3 What conditions must I meet to qualify for an allotment on public lands within a national forest?**

To meet the qualification requirements, you must be an Indian who occupies, lives on, or has improvements on the lands. No other conditions qualify you for an Indian allotment. If you are entitled to an allotment on any existing Indian reservation, or belong to any Indian tribe that does not have a reservation, or the reservation is insufficient in size to afford an allotment to each member of

that tribe, you are not entitled to an allotment.

**§ 2532.4 How do I apply for an Indian allotment on public lands within a national forest?**

To apply for an allotment on public lands within a National Forest, you must submit an application to the District Ranger or the Forest Supervisor of the particular forest where the lands are located. Your application must contain the information specified in § 2530.16. You must also remit a nonrefundable filing fee of \$100.

**§ 2532.5 How will my application be processed?**

(a) The responsible Forest Service official will process your application in accordance with the regulations at 36 CFR 254.50, unless the land is withdrawn or otherwise unavailable for filing. If the lands are not available for filing, the Forest Service will notify BLM that the lands are not available, and your application will be rejected.

(b) The Secretary of Agriculture will determine whether any of the lands you applied for are more valuable for agriculture or grazing than for the timber found on the land. He or she will send the application, this finding, and a report on the suitability of the land for disposal under the Act, to the Secretary of the Interior. The land suitability report will analyze such factors as physical characteristics of the land, potential uses and users of the land, land use planning, and environmental considerations.

(c) Upon receipt of a determination and suitability report from the Secretary of Agriculture, the Secretary of the Interior will, after consideration of all relevant information, decide if the land applied for is suitable for disposal under the Act. If the Secretary approves the application, BLM will issue a trust patent in accordance with subpart 2531 of this part.

**§ 2532.6 What may I do if my application is rejected?**

If the Secretary determines that the land covered by your application is not suitable for disposal under the Act, BLM will send you a decision to this effect. You may appeal a decision rejecting your application under the provisions contained in part 4, subpart E of this title.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 227**

[Docket No. 960917262-6262-01; I.D. 122294A]

**Listing Endangered and Threatened Species; Shortnose Sturgeon in the Androscoggin and Kennebec Rivers, ME**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Denial of petition.

**SUMMARY:** NMFS finds that a petitioned action to remove shortnose sturgeon (*Acipenser brevirostrum*) occurring in the Androscoggin and Kennebec Rivers from the List of Endangered and Threatened Wildlife is not warranted at this time.

Shortnose sturgeon in the Androscoggin and Kennebec Rivers continue to face substantial threats to their habitat and/or range, and existing regulatory mechanisms other than the Endangered Species Act (ESA) are inadequate to ensure the detailed review and management of these threats. Moreover, the Petersen population estimate used by the petitioner is higher and less reliable than the best estimate accepted by NMFS. The Schnabel population estimate used by NMFS also has limitations, but is the best available information upon which a listing decision can be based. NMFS lacks critical, recent information on population dynamics (e.g., natality, natural mortality, age or size structure) that could be used to assess how well the Androscoggin River and Kennebec River breeding populations are replacing themselves over time.

**ADDRESSES:** A copy of the Status Review of Shortnose Sturgeon in the Androscoggin and Kennebec Rivers (NMFS, 1996) is available upon request to the National Marine Fisheries Service, Office of Protected Resources (F/PR), 1315 East-West Highway, Silver Spring, MD, 20910.

**FOR FURTHER INFORMATION CONTACT:** Marta Nammack, Endangered Species Division, NMFS, (301/713-1401).

**SUPPLEMENTARY INFORMATION:**

**Petition Background**

On September 19, 1994, NMFS received a petition from Edwards Manufacturing Company, Inc., to remove shortnose sturgeon in the Kennebec River system (the

Androscoggin and Kennebec Rivers) in Kennebec, Sagadahoc and Lincoln Counties, ME, from the List of Endangered and Threatened Wildlife (50 CFR 17.11). In support of its petition, petitioner cited research conducted on shortnose sturgeon in the Androscoggin and Kennebec Rivers over the last two decades and an initial population estimate averaging 11,000 adult shortnose sturgeon. Additionally, density data (shortnose sturgeon per hectare) reported from six river populations, including the Kennebec River, were used to infer that, at least, the Kennebec River system was supporting a shortnose sturgeon population near carrying capacity.

On January 6, 1995, NMFS issued a 90-day finding (60 FR 2070) that the petition presented substantial information indicating that the petitioned action may be warranted. NMFS initiated a status review of shortnose sturgeon occurring within the Androscoggin and Kennebec Rivers and, using the best scientific and commercial data available, assessed whether shortnose sturgeon inhabiting the Androscoggin and Kennebec Rivers could be delisted as requested by the petitioner.

When originally listed, shortnose sturgeon were considered endangered throughout their range in the eastern United States, though not all extant populations were identified at the time of their original listing. Today, at least 17 populations of shortnose sturgeon are known within the species' wide latitudinal range. Recognizing that the knowledge concerning shortnose sturgeon increased during the years following the species' ESA listing, NMFS began a status review in the late 1980s to assess whether individual shortnose sturgeon populations should be considered "distinct" for ESA purposes.<sup>1</sup> Further, the status review was also used to investigate changes to the listing status of these individual populations in instances where changes appeared warranted. In the 1987 status review, NMFS stated that:

the differences reported in longevity, growth rates, and age at sexual maturity between shortnose sturgeon from the northern and southern extremes of its range are expected in any species with a wide latitudinal distribution. The best available information also indicates differences in life history and habitat preferences between the northern and southern river systems

<sup>1</sup> In the 1978 amendments to the ESA, the definition of "species" was changed to: "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature."