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25 CFR Part 243
Reindeer in Alaska; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 243

RIN 1076–AE37

Reindeer in Alaska

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Indian Affairs is promulgating these regulations relating to the Alaska Native reindeer industry to meet the needs of Alaska Native Reindeer owners. These regulations would also apply to non-Natives who own, or want to own, reindeer in Alaska. They will provide Alaska Native reindeer owners, government officials, and those doing business with them, with procedures and policies for administration of the reindeer industry in Alaska.

This proposed rule also contains Paperwork Reduction Act information, which we are submitting to the Desk Officer for the Department of the Interior, OIRA/OMB for review and approval.

DATES: Comments on the proposed rule must be received on or before June 9, 2004. Comments on the information collection activities should be received close to April 12, 2004, in order to receive maximum consideration.

ADDRESSES: Public comments on this proposed rule should be addressed to: Alaska Regional Director, Attn: Warren Eastland, Bureau of Indian Affairs, P.O. Box 25520 (3rd floor, Federal Building), Juneau, Alaska 99802–5520.

You may submit comments concerning the information collection to the Desk Officer for the Department of the Interior, OIRA/OMB, by telefacsimile at (202) 395–6566 or by e-mail to: *OIRA_DOCKET@omb.eop.gov.*

Please send a copy of your comments on the information collection to the Bureau of Indian Affairs at the location specified in the **ADDRESSES** section. Note that requests for comments on the rule and the information collection are separate.

FOR FURTHER INFORMATION CONTACT: Warren Eastland, Wildlife Biologist, 907–586–7321.

SUPPLEMENTARY INFORMATION: These proposed regulations will have no impact on the reindeer grazing regulations administered by the Bureau of Land Management, which are found at 43 CFR part 4300.

This proposed rule is published by authority of the Secretary of the Interior granted under 25 U.S.C. 500k and delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Background

The Reindeer Act of September 1, 1937, 50 Stat. 900 (25 U.S.C. 500–500n) authorizes and directs the Secretary of the Interior to organize and manage the reindeer industry or business in Alaska in such a manner as to establish and maintain a complete and self-sustaining economy for the Natives of Alaska, and to encourage and develop Alaska Native activity and responsibility in all branches of the industry or business (25 U.S.C. 500 and 500f). To preserve the Native character of the reindeer industry in Alaska, the sale or transfer of Native or government-owned reindeer or reindeer products is allowed only under regulations to be developed by the Secretary (25 U.S.C. 500i).

For many years the Bureau of Indian Affairs (BIA) used an informal permit system in conjunction with the infrequent sale of live reindeer. Contracts for the sale of meat (and more recently velvet antler) were seldom reviewed. A May 23, 1979, opinion by the Assistant Regional Solicitor, Alaska, concluded that 25 U.S.C. 500i prohibited transfer of ownership of reindeer or reindeer products to anyone not an Alaska Native, unless such transfers were carried out in accordance with regulations adopted by the Secretary. A subsequent opinion concluded that, in the absence of such regulations, BIA officials had no legal authority to permit such sales. A primary purpose of the regulations being proposed is to prescribe the procedures by which valid transfers can be carried out. A secondary purpose is to ratify or validate past transfers that have occurred without benefit of authorizing regulations.

For better than five decades after enactment of the 1937 Reindeer Act, it was presumed that it established a government and Native monopoly on the ownership of live reindeer in Alaska. However, litigation more recently arose over the right of a non-Native to import into Alaska reindeer obtained from external sources. The Reindeer Herders Association challenged the Bureau of Indian Affairs' 1989 interpretation of the Act, which had found that non-Native importation of non-Alaska reindeer was not prohibited. Although that BIA interpretation was initially disfavored, in decisions by the Interior Board of Indian Appeals and the Federal District Court, it was eventually approved and reinstated by Circuit Court of Appeals in *Williams* v. *Babbitt*, 115 F.3d 657 (9th Cir. 1997), cert. denied, 523 U.S. 1117 (1998). Accordingly, it is necessary in these regulations to draw a distinction between Alaskan reindeer, owned by Alaska Natives or the United States Government, and imported reindeer, which are not descended from those present in Alaska at the time of the passage of the Reindeer Act. The former are subject to the restrictions on alienation imposed by 25 U.S.C. 500i, whereas the latter are not.

Although the BIA has for many years under the authority of 25 U.S.C. 500(g) administered a program under which government-owned reindeer were loaned to individual Native herders to help them establish or increase the size of their private herds, it has been determined that more formal guidelines for the operation of such loan program need not be provided for in these regulations. As a result of animals running off to join wild caribou herds that have invaded the grazing range of the domesticated herds, the substantial majority of the government-owned reindeer in the hands of Native borrowers have been lost. Because the BIA has no means to rebuild its stock of reindeer available for loan, it has been determined that it is not feasible to continue the reindeer loan program.

Procedural Requirements

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The scale of reindeer herding in Alaska is such that the value of the entire industry, including animals and infrastructure, is less than $100 million.

(b) This rule will not create inconsistencies with other agencies' actions. The Bureau of Indian Affairs is the sole agency tasked with administration of the Reindeer Act of 1937.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are no entitlements, grants, fees, loan programs or other obligations associated with the administration of the Reindeer Act of 1937.

(d) This rule will not raise novel, legal or policy issues. This rule merely

formalizes commonly accepted practice for the administration of the Bureau of Indian Affairs' responsibility under the Reindeer Act of 1937.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed regulations do not require any permitting or data gathering from Native reindeer owners, and only a very few non-Natives who wish to acquire Alaska reindeer will be affected, and then only by limited data gathering and not in an economic way.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

(a) Does not have an annual effect on the economy of $100 million or more. The entire reindeer industry in Alaska, including the value of all the animals and the supporting infrastructure, does not add up to $100 million.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. These regulations only affect the administration of the Reindeer Act of 1937 and do not affect the value of, or prices received for Alaska reindeer.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The administration of the Reindeer Act allows Alaska Natives to compete, should they wish, with other nations' reindeer industries, and protects the industry from illegal competition from non-Natives.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The administration of the Reindeer Act does not affect any governmental agency, but clarifies for Indian Reorganization Act councils the regulatory requirements for Alaska reindeer sales to Natives and non-Natives.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The entire reindeer industry in Alaska, including the value of all the animals and the supporting infrastructure, does not add up to $100 million.

Takings Implications (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The proposed regulations do not involve taking issues. They do clarify under what conditions non-Natives may acquire Alaska reindeer, do not affect the ownership of Alaska reindeer by Natives, and are not expected to affect Alaska reindeer currently owned by non-Natives.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The proposed regulations do not involve any aspect of Federal-State relations.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The proposed regulations do not involve court action, nor do they provide significant use of enforcement and judicial action.

Paperwork Reduction Act

The previous OMB Control Number, 1076–0047, covered the loan of reindeer to Alaska Natives who wished to start their own herd of reindeer or to improve their existing herd. The collection was allowed to expire because many reindeer ran off to join the caribou herds that traveled into the area where the federal reindeer were located. Therefore, a sufficient number of reindeer could not be maintained in the reindeer loan program to meet the minimum PRA transactions per year. This proposed regulation does require an information collection under the Paperwork Reduction Act. The information will be used to monitor the use and sale of Alaskan reindeer. The information we now require under the proposed regulations is limited to names and addresses of non-Natives who wish to possess Alaska reindeer and to reports of reindeer disposition and yearly reports. The reporting or application hourly burden varies from 5 minutes to 20 minutes, depending upon the kind of report or application used. The special use and sale reports are submitted annually to BIA staff. Researchers at the University of Alaska, who study the Alaska Native reindeer, submit their findings to BIA staff in lieu of a generic report. The table below explains the collection activity.

Form	Time per form (minutes)	Time × number of users	Estimate cost per form	Cost per form × no of users	Federal cost @ $32.75/hour
Special use permit display	10	2 × 10 = 20 minutes	$1.67	$3.34	$10.92
Reindeer sale permit	10	8 × 10 = 80 minutes	1.67	13.36	43.68
Annual report form	10	2 × 10 = 20 minutes	1.67	3.34	10.92
		8 × 5 = 40 minutes	0.84	6.72	21.84
Generic report	15–20	1 × 20 =20 minutes	3.34	3.34	10.92
Subtotals					
Permit		100 min		16.70	54.60
Report		80 min		13.40	43.68
Totals		180 = 3 hours		30.10	98.28

We invite your comments on the necessity of the information collection to perform agency functions adequately; whether the estimate of the public burden is accurate; whether the agency can improve the quality, utility, and

clarity of the information requested; if the use of automated, electronic, mechanical or other technological collection techniques would reduce the time needed for public response; and if our methodology and assumptions are valid.

Documentation has been prepared and submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, for review and approval of the information request.

Please note that we will not require nor sponsor a request for information, and you need not respond to a request that does not have a valid OMB Control Number.

We request comments on the information collection request. You may submit them to the location in the **ADDRESSES** section. Please note that these comments are separate from any comments on the rule. Your comments will be available for public review at the location in the **ADDRESSES** section. If you wish your name or address withheld, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowed by law.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required. The proposed regulations do not constitute any irretrievable commitment of resources, nor will they permit environmental activities that are not otherwise regulated. The proposed regulations are merely administrative matters pertaining to the Reindeer Act of 1937.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. The proposed regulations affect only individuals or groups of individuals outside of tribal governments, and the restrictive measures contained affect only non-Natives.

Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, this regulation does not have a significant effect on the nation's energy supply, distribution, or use. The proposed regulations pertain only to who and under what conditions may own Alaska reindeer. There are no energy issues involved.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, **§ 243.2 What terms do I need to know?**)

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*

Public Comment Solicitation

If you wish to comment on this proposed rule, you may mail or hand-deliver your written comments to the person listed in the **ADDRESSES** section of this document. Submissions by facsimile should be sent to (907) 586–7120. We cannot accept electronic submissions at this time. All written comments received by the date indicated in the **DATES** section of this document will be carefully assessed and fully considered prior to publication of a final rule.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record. We will honor the request to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law.

If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 25 CFR Part 243

Indians—Alaska natives, Livestock—Reindeer.

Dated: February 27, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

For the reasons discussed in the preamble, the Bureau of Indian Affairs proposes to add 25 CFR part 243 to read as follows:

PART 243—REINDEER IN ALASKA

Sec.
243.1 What is the purpose of this part?
243.2 What terms do I need to know?
243.3 Delegation of authority.
243.4 Who can own or possess Alaskan reindeer?
243.5 Who can own or possess imported reindeer, and what limitations apply?
243.6 Which sales or transfers do not require a permit?
243.7 How can a non-Native acquire live reindeer?
243.8 What penalties apply to violations of this part?
243.9 Who may inherit live Alaskan reindeer and by what means?
243.10 Information collection.
243.11 Are transfers of Alaskan reindeer that occurred before issuance of this part valid?
243.12 Are Alaskan reindeer trust property owned by the U.S. Government for the benefit of Alaska Natives?
243.13 Who may appeal an action under this part?

Authority: Sec. 12, 50 Stat. 902; 48 U.S.C. 250k. Interpret or apply sec. 3, 50 Stat. 900.

§ 243.1 What is the purpose of this part?

The Department's policy is to encourage and develop the activity and responsibility of Alaska Natives in all branches of the reindeer industry or business in Alaska, and to preserve the Native character of that industry or business. This part contains requirements governing acquiring and

transferring reindeer and reindeer products in Alaska.

§ 243.2 What terms do I need to know?

Act means the Reindeer Industry Act of September 1, 1937, 50 Stat. 900 (25 U.S.C. 500 *et seq.*), as amended.

Alaska Native means:

(1) Eskimos, Indians, and Aleuts inhabiting Alaska at the time of the Treaty of Cession of Alaska to the United States and their descendants; and

(2) Indians and Eskimos who, since the year 1867 and before September 1, 1937, migrated into Alaska from the Dominion of Canada, and their descendants currently living in Alaska.

Alaskan Reindeer means:

(1) All reindeer descended from those present in Alaska at the time of passage of the Act; and

(2) Any caribou introduced into animal husbandry or that have joined reindeer herds.

BIA means the Bureau of Indian Affairs.

Designee means the person assigned by the Alaska Regional Director to administer the reindeer program.

Imported reindeer means reindeer brought into Alaska from any region outside of Alaska by non-Native persons since passage of the Act. It does not include ''Alaskan'' reindeer sold live and shipped out of Alaska, or their descendants, that have been returned to Alaska.

Native reindeer organization means any corporation, association, or other organization, whether incorporated or not, composed solely of Alaska Natives, for the purpose of engaging in or promoting the reindeer industry.

Non-Native means a person who is not an Alaska Native.

Regional Director means the officer in charge of the Alaska Regional Office of the Bureau of Indian Affairs.

Reindeer products mean the meat, hide, antlers, or any other products derived from reindeer.

Transfer means the conveyance of ownership of reindeer or reindeer products, or any interest in them or interest in an Alaska Native reindeer organization, by any method.

We, us and *our* mean the Regional Director or the Director's designee.

§ 243.3 Delegation of authority.

The Secretary of the Interior has delegated authority under the Act through the Assistant Secretary ''Indian Affairs to the Alaska Regional Director of the Bureau of Indian Affairs. All claims of ownership of reindeer in Alaska, as required by the Act (section 500b), must be filed with the Regional Director or the Director's designee.

§ 243.4 Who can own or possess Alaskan reindeer?

(a) Only Alaska Natives, organizations of Alaska Natives, or the United States for the benefit of these Natives, can own Alaskan reindeer in Alaska.

(1) Any transfer not allowed by this part is not legal, and does not confer ownership or the right to keep Alaskan reindeer, reindeer products, or any interest in them.

(2) Anyone violating this part will forfeit their reindeer or reindeer products to the Federal Government.

(b) An Alaska Native or a Native reindeer organization may transfer reindeer that they own to other Alaska Natives or Native reindeer organizations without restriction, except as provided in this part.

(c) We may maintain reindeer for research projects, so long as the purpose of the research benefits the Native reindeer industry. We retain title to these reindeer and will determine their eventual disposition.

(d) A non-Native manager of Alaskan reindeer must, by the last day of September each year:

(1) Provide us a copy of the contract with the Native reindeer owner; and

(2) Provide us a written report of all Alaskan reindeer kept, born, died or transferred.

(e) We may permit possession of a limited number of Alaskan reindeer by a non-Native applicant under a Special Use Permit for Public Display.

(1) We can revoke this permit for cause.

(2) The permit will not allow the permit-holder to keep a breeding herd (*i.e.*, a herd that is capable of reproduction).

(3) The permit holder must report to us in writing by the last day of September each year on all reindeer held under this permit.

§ 243.5 Who can own or possess imported reindeer, and what limitations apply?

(a) Anyone, including non-Natives, may own imported reindeer in Alaska for any legitimate purpose, subject to State and Federal animal health laws and regulations.

(b) Imported reindeer must not be intermingled with, or be bred to, Alaskan reindeer without our written consent. Any offspring resulting from a mating with Alaskan reindeer are considered Alaskan reindeer and a non-Native owner may not maintain these reindeer alive in Alaska.

(c) This paragraph applies if a non-Native owner of imported reindeer in Alaska contracts with a Native reindeer owner to keep and manage the imported reindeer. The owner must:

(1) Distinguish the imported reindeer from the Alaskan reindeer by applying a distinctly different permanent earmark or tattoo on all imported reindeer; and

(2) Register the earmark or tattoo with the State Division of Agriculture book of livestock brand marks.

§ 243.6 Which sales or transfers do not require a permit?

The following transfers do not require a permit:

(a) Sale by Alaska Natives of dead reindeer or reindeer products to non-Natives; and

(b) Transfer of live reindeer between unrelated Alaska Natives.

§ 243.7 How can a non-Native acquire live reindeer?

If you are a non-Native who wants to acquire live Alaskan reindeer, you must apply to us in writing. We will either grant the request and issue a written permit valid for 90 days or reject the request and give our reasons in writing. Any transfer that we authorize is subject to the following conditions.

(a) The transfer must meet the requirements of the Act and this part.

(b) Within 30 days of transfer, you must either butcher the reindeer in Alaska or ship them out of Alaska. If you ship the reindeer out alive:

(1) You must comply with all Federal and State animal health regulations governing transfers and shipments; and

(2) The reindeer and their descendants must never be brought back to Alaska alive.

(c) Within 30 days of the transfer, you must report to us the actual number of reindeer transferred or slaughtered.

§ 243.8 What penalties apply to violations of this part?

If you are a non-Native transferee of live Alaskan reindeer who violates the provisions of this part, you are subject to the penalties in this section.

(a) Under 25 U.S.C. 500i, you can be fined up to $5,000 if you:

(1) Take possession of reindeer without a permit issued under § 243.7; or

(2) Do not abide by the terms of a permit issued under § 243.7 (including the requirement you slaughter or export the reindeer within 30 days and not bring them back alive into Alaska).

(b) Under 25 U.S.C. 500b, you are barred from asserting your title to the reindeer if you:

(1) Do not obtain from us a transfer permit and fully comply with its terms; or

(2) Fail to file with us a claim of title to reindeer within 30 days of acquiring them.

§ 243.9 Who may inherit live Alaskan reindeer and by what means?

(a) Privately owned live Alaskan reindeer may pass to the deceased owner's Native heirs by descent or devise.

(b) This paragraph applies if the final probate decree of the Department of the Interior, or the decision of any reviewing Federal court, identifies a non-Native as inheriting Alaskan reindeer. The non-Native may inherit, but must be allowed no more than 30 days from receiving the final determination of heirship to:

(1) Slaughter the reindeer;

(2) Apply for a permit to transfer the reindeer to an out-of-state transferee; or

(3) Apply for a permit to transfer ownership of the reindeer to one or more Alaska Native family members or other Alaska Native(s).

§ 243.10 Information collection.

The Department of the Interior collects information for the Reindeer Act to ensure compliance with its terms, to monitor the industry in Alaska, and to maintain a complete and self-sustaining economy for Alaska Natives (25 U.S.C. 500f). The collection of information as required in §§ 243.4, 243.5, 243.6, 243.7 and 243.8 has not been approved by the Office of Management and Budget under 44 U.S.C. 3507; a previously assigned clearance number 1076–0047 was allowed to expire. A request has been submitted to the Office of Management and Budget for review and reinstatement of this control number.

§ 243.11 Are transfers of Alaskan reindeer that occurred before issuance of this part valid?

All transfers of live Alaskan reindeer or reindeer products that were completed before the effective date of this part are hereby ratified and confirmed. This ratification does not extend to transfers that:

(a) Were fraudulent;

(b) Were made under duress;

(c) Did not result in payment of fair compensation to the Native transferer; or

(d) Would have been prohibited under §§ 243.6 or 243.8 of this part.

§ 243.12 Are Alaskan reindeer trust property owned by the U.S. Government for the benefit of Alaska Natives?

Except for reindeer maintained by BIA for research purposes or under other special use permits, all Alaskan reindeer are the private property of their Native owners subject only to:

(a) The restrictions of the Reindeer Act; and

(b) BIA's responsibility to ensure that any transfers of ownership are in accordance with this part.

§ 243.13 Who may appeal an action under this part?

Any interested party adversely affected by a decision under this part has the right of appeal as provided in 25 CFR part 2, and 43 CFR part 4, subpart D.

[FR Doc. 04–5467 Filed 3–10–04; 8:45 am]

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