DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2560

[WO–350–1410–00–24 1A]

RIN 1004–AD34

Alaska Native Veterans Allotments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing final regulations to allow certain Alaska Native veterans another opportunity to apply for a Native allotment under the repealed Native Allotment Act of 1906. Congress passed the Alaska Native Veterans Allotment Act in 1998 which mandates regulations to implement it. This action will enable certain Alaska Native veterans who, because of their military service, were not able to apply for an allotment during the early 1970s, to do so now.

EFFECTIVE DATE: July 31, 2000.

ADDRESSES: You may send inquiries or suggestions to: Director (630), Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Connie Van Horn, Division of Conveyance Management, Bureau of Land Management, 222 West Seventh Avenue, 13, Anchorage, Alaska 99513–7599; telephone (907) 271–3767; or Frank Bruno, Bureau of Land Management, Regulatory Affairs Group (WO–630), Mail Stop 401, 1620 L Street, NW, Washington, DC 20036; telephone (202) 452–0352. To reach Ms. Van Horn or Mr. Bruno, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, seven days a week.

SUPPLEMENTARY INFORMATION:

I. Background

What Has BLM Done Since the Proposed Rule Was Published in February?

Since the proposed rule was published in the February 8, 2000, **Federal Register** (65 FR 6259), BLM has been receiving and analyzing public comments, and preparing this final rule. The final rule published today is the last stage of the rulemaking process that will result in the amendment of 43 CFR part 2560 to add subpart 2568, ''Alaska Native Allotments for Certain Veterans.''

What Was the Process for Public Comments?

BLM invited public comment for 60 days and received written comments from 65 individuals and groups. In addition, the agency held public meetings in five Alaska cities (Anchorage, Juneau, Fairbanks, Bethel, and Nome) during the publication period to give participants an opportunity to express their views about the proposed rule. The primary purpose of these meetings was to gather input from Native entities, in keeping with the requirement in Public Law 105–276 that the Secretary of the Interior promulgate regulations ''after consultation with Alaska Natives groups.'' All the meetings were open to the public and were advertised in local newspapers. Participants included both Native and non-Native individuals. Oral comments were recorded in writing at each meeting; notes of the meetings, as well as all written comments submitted to BLM at the meetings, are included in the administrative record for this rule.

Most written comments we received during the 60-day comment period addressed more than one section of the proposed rule. Comments are addressed on a section-by-section basis in the Response to Comments section.

Why Was the Proposed Rule Published?

The Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA; 43 U.S.C. 1601 *et seq.*) repealed the Native Allotment Act of 1906 (34 Stat. 196, as amended, 42 Stat. 415 and 70 Stat. 954, 43 U.S.C. 270–1 through 270–3 (1970)) on December 18, 1971. During the time just before the 1906 Act was repealed, certain Alaska Natives who were eligible to apply for allotments were serving in the U.S. military and may have missed their opportunity to apply because of their military service.

Section 432 of Public Law 105–276 (43 U.S.C. 1629g) of October 21, 1998, allows certain Alaska Native veterans a new opportunity to apply for allotments under the 1906 Act as it was in effect before its repeal. Public Law 105–276 amended ANCSA by adding Section 41, requiring the Department of the Interior to create regulations within 18 months to carry it out.

Although Public Law 105–276 authorizes allotments under the 1906 Act as it was in effect before December 18, 1971, this law creates a new right that did not exist between the repeal of the 1906 Act and the enactment of Public Law 105–276. The requirements of the 1906 Act as it existed before December 18, 1971, apply to allotment applicants under Public Law 105–276 but there are different and additional requirements that Congress added for Native veteran allotments applicants.

The final rule implements the provisions of the 1906 Act as they pertain to Native veteran allotments as well as the specific provisions of Public Law 105–276 that are unique to Native veteran allotments.

What is the Best Way To Read This Rulemaking To Understand the New Regulation?

The part you are reading now is called the preamble. It discusses the rule that BLM proposed on February 8, 2000, and the comments we received from the public about the rule. It explains what changes we made in this final rule and why we made them. It also explains why we did not make changes the public suggested.

The ''regulatory text'' is the part that follows the authorization of the rulemaking by the Assistant Secretary of the Interior, and begins with ''SUBPART 2568–ALASKA NATIVE ALLOTMENTS FOR CERTAIN VETERANS.'' This text will become the regulation in the Code of Federal Regulations to implement the Alaska Native Veterans allotment program.

II. Final Rule as Adopted

The final rule is adopted with the changes to the proposed rule discussed in the Responses to Comments section. In summary, the final rule explains how to apply for an Alaska Native veterans allotment and outlines the requirements an applicant must meet to qualify to apply for and receive an allotment. The final rule explains requirements of the Native Allotment Act of 1906 which applicants must meet as well as requirements of Public Law 105–276 that differ from those under the 1906 law and its regulations in 43 CFR Part 2561.

The final rule explains:

1. What types of Federal land can and cannot be conveyed to an allotment applicant,

2. When an applicant may apply for an alternative allotment if the original application describes land that cannot be conveyed,

3. The processing of applications for allotments within Alaska Conservation System Units (CSU's), such as National Parks, Wildlife Refuges, Wild and Scenic Rivers etc.,

4. How a personal representative may apply for an allotment on behalf of the heirs of certain eligible veterans, and

5. The intra-agency appeal process of decisions determining allotments to be inconsistent with the purposes of a CSU.

III. Responses to Comments

In preparing the final rule, BLM carefully analyzed and considered all comments received during the 60-day public comment period, both written comments and oral comments recorded at the five public meetings held throughout Alaska. A discussion of those comments follows. The discussion deals with changes we are making to the final rule resulting from comments we received. We also cover changes urged by the public that we are not making. In both cases we explain the reason(s) for our decision.

Forty-seven of the 65 comments BLM received were about requirements in Public Law 105–276 or in the Native Allotment Act of 1906. Some of these requirements were included in the proposed rule and some were not. In the discussion of the comments we received on specific sections of the proposed rule, we have explained when a requirement in the regulations is also a legal requirement. In these cases, we also explained that BLM does not have authority in its regulations to change the requirements of the law that these regulations are intended to carry out.

The comments most often expressed were about land that BLM cannot convey to Alaska Native veterans, the military service requirements of Public Law 105–276 itself, including eligibility criteria concerning deceased veterans, and the requirement for Alaska Native veterans to meet the same use and occupancy standards as individuals who filed applications under the Native Allotment Act of 1906 before it was repealed in 1971. Public Law 105–276 was very specific about what lands BLM could convey to Alaska Native veterans and what lands it could not convey. The law also required military service during a certain period of time and it placed limitations on the eligibility of deceased veterans.

We are making certain changes to the proposed rule where commenters said the language was not clear or where additional explanation makes a section easier to understand. We are making other changes to make sure the rule is consistent from one section to another and to make sure the meaning of certain terms is clear.

The following is a section-by-section discussion of the comments BLM received, the suggestions we are adopting and why, and the suggestions we are not adopting and the reasons we are not adopting them.

Section 2568.30

Section 2568.30 contains definitions of terms used in the regulations. BLM is adding a new definition in the final rule to clarify the meaning of the terms ''consistent'' and ''inconsistent'' as these terms are applied to the evaluation of allotment applications in CSU's. Public Law 105–276 authorizes the Secretary of the Interior to convey alternative lands to an applicant who qualifies for an allotment in a CSU if the CSU manager determines the allotment is incompatible with a purpose for which the CSU was established. The terms ''compatible'' and ''incompatible'' have very specific meanings under other laws. BLM wants to avoid any possible confusion between the terms used to describe the unique process for evaluating Native veteran allotment applications in CSU's under Public Law 105–276 and other processes followed under other laws. We referred in the proposed rule to allotments determined to be ''consistent'' and ''inconsistent'' with CSU purposes, and we are retaining these terms in the final rule. We also said in proposed section 2568.102 that the process for deciding whether an allotment is inconsistent with a CSU ''should not be confused with any similar process under any other act, including the incompatibility process under the National Wildlife Refuge System Improvement Act of 1997.'' This statement is especially important because in some cases eligible Native veterans will be able to receive allotments of land within National Wildlife Refuges and we want to make sure there is no confusion about the process that BLM will follow for evaluating the applications for those allotments. We are retaining in the final rule the same language we included in the proposed rule for section 2568.102 and including a new definition in section 2568.30.

Section 2568.50

Section 2568.50 contains criteria an applicant must meet to be eligible for an allotment. We are adding two new paragraphs to this section to emphasize two requirements for Alaska Native veterans allotments. A new paragraph (b) clarifies that an applicant has to establish that he or she used land according to the rules that were in effect before December 18, 1971, and that the land is still owned by the Federal government. A new paragraph (f) restates the requirement of the 1906 Act that an Alaska Native veteran has to be a resident of Alaska in order to qualify for an allotment and also states that a deceased veteran had to have been a resident of Alaska at the time of death.

BLM received three comments questioning the Alaska residency requirement for Native veteran allotments. Some Alaska Native veterans who do not now live in Alaska believe it is unfair for veterans to be expected to uproot their families and return to Alaska to be eligible to receive an allotment.

The Native Allotment Act of 1906 said that allotments can only be granted to Alaska Natives who reside in Alaska. The existing Native allotment regulations contain the same residency language as the 1906 Act (43 CFR 2561.0–3). Public Law 105–276 required allotment applicants to comply with the allotment rules that were in effect before December 18, 1971, and those rules included the requirement that an individual had to have been an Alaska resident. BLM has no authority to waive the Alaska residency requirement for Native veterans.

Because we are adding a new paragraph between two existing paragraphs in section 2568.50, we are renumbering the remaining paragraphs of this section in the final rule. Paragraph (b) in the proposed section 2568.50 will be new paragraph (c) in the final rule, paragraph (c) in the proposed rule will be new paragraph (d) in the final rule, paragraph (d) in the proposed rule will be new paragraph (e) in the final rule, and the paragraph concerning the Alaska residency requirement will be new paragraph (f).

Paragraph (b) of the proposed section (new paragraph (c)) stated the military service criteria for Native veterans. BLM received 18 comments objecting to the limitations on time and duration of military service. Public Law 105–276 specified that eligible Native veterans had to have served in the military between January 1, 1969, and December 31, 1971, and that they had to have completed six months' service between January 1, 1969, and June 2, 1971, or enlisted or been drafted after June 2, 1971, but before December 3, 1971. The proposed rule reiterated the military service requirements contained in the law.

The limitation of military service eligibility to the 1969–1971 period was based on the idea that the veterans who may have missed their opportunity to file Native allotment applications, because of their military service, were those who served during the years immediately before the repeal of the 1906 Native Allotment Act. This repeal occurred on December 18, 1971.

The military service requirements in the rule are identical to the requirements in Public Law 105–276. We do not have the authority to change this requirement in the regulations. The final rule, in new paragraph (c) of section 2568.50, contains the same

military service requirements as those stated in Public Law 105–276.

In the proposed rule, paragraph (c) of this section (new paragraph (d)) said that an individual must ''not have already received conveyance or approval of an allotment.'' It qualified this requirement by stating that ''if you received an allotment interest by inheritance, devise, gift, or purchase you are not disqualified from applying.'' BLM received three comments on this statement, suggesting it be rephrased to read ''if you received an allotment interest by inheritance, devise, gift, or purchase you are still qualified to apply.'' BLM assumes these comments reflect a desire that we state in the affirmative rather than the negative, perhaps to make it easier to understand. We are adopting this suggested change in the final rule, with a slight modification of the proposed wording. The statement in parentheses in new paragraph (d) of the final rule, which was paragraph (c) in the proposed rule, will read ''However, if you are otherwise qualified to receive an allotment under the Alaska Native Veterans Allotment Act, you are still qualified even if you received another allotment interest by inheritance, devise, gift, or purchase''.

Sections 2568.60–2568.64

Sections 2568.60 through 2568.64 outline the requirements for a personal representative to file an allotment application on behalf of the estate of a deceased veteran. BLM received nine comments on the limitations on how and when a veteran died. The proposed rule contained the same criteria for eligibility that appeared in Public Law 105–276: a veteran had to have (1) died in combat between 1969 and 1971; (2) died while a prisoner of war between 1969 and 1971; or (3) died later as a result of a service connected wound received during that time. All those who commented said that it should not matter when a veteran died or whether death was connected to military service.

The criteria in the rule for deceased veterans are identical to the criteria in the law itself. BLM cannot change the criteria in the rule to be more expansive than the law allows. From the time of the colonial government until Public Law 105–276 was passed, claims against the government for land were not allowed to be made by deceased persons. Congress was well aware of this total prohibition under the public land laws when it decided to make one small exception for those Alaska Natives who died within a particular period of time as a direct result of combat in the Vietnam War. Congress made this provision of the law for the benefit of a small group of individuals.

One commenter suggested that the requirements for the appointment of a personal representative are burdensome and unnecessary and that a simple affidavit system should be used instead. BLM included the sections in the proposed rule concerning personal representatives because Public Law 105–276 said a personal representative would apply for an allotment on behalf of the estate of an eligible deceased veteran. The law does not allow any method for the estate of a deceased veteran to apply for allotments except through appointment of a personal representative. The same commenter pointed out that the Alaska Probate Code requires probates to be initiated within three years of a person's death. Although BLM is aware of this time limit, we note that there is an exception for determination of heirs.

BLM does not have the authority nor the expertise to determine the heirs of a deceased veteran. It also does not have the authority to choose or appoint personal representatives. Often there will be numerous heirs or persons claiming to be heirs. BLM cannot know which allotment application to process or which parcel of land to convey without a formal determination of the estate representative and the heirs who will benefit. The lack of a formal representative would cause considerable chaos and dramatically slow down the processing of all allotment applications.

We are adding a new provision to section 2568.64 in the final rule. As we said in the discussion of section 2568.50 above, we have decided to restate the Alaska residency requirement of the Native Allotment Act of 1906 as one of the qualifications a Native veteran must meet, and we are also adding a statement that a deceased veteran had to have been a resident of Alaska at the time of death. We are adding this same requirement concerning Alaska residency at the time of death to section 2568.64 in the final rule so that it is included with the other requirements for applications filed on behalf of the estates of deceased veterans.

Section 2568.74

Paragraph 2568.74(a) in the proposed rule required a Native veteran to file a Bureau of Indian Affairs form called a Certificate of Indian Blood (CIB). BLM received one comment suggesting that a tribal card be allowed instead because of the difficulty of obtaining a CIB.

The 1906 Native Allotment Act required that an allotment applicant be an Alaska Native. Under the 1906 Act as it was in effect before December 18, 1971, the Bureau of Indian Affairs certified applications and verified that an applicant had sufficient Native blood to qualify. On the other hand, tribal membership and a tribal card are sometimes granted to those who have no Native blood, so issuance of a tribal card does not prove that a person is an Alaska Native. All Alaska Native veterans must meet the requirements of the 1906 Act, including the requirement that an applicant be an Alaska Native. Because of this, and because a tribal card is unreliable proof of Native blood, we did not change the final rule.

Proposed section 2568.74(c) required an applicant to file a map with the application, and proposed section 2568.74(d) required a legal description of the land. Proposed section 2568.74(d) also stated that the map will control if there is a discrepancy between the map and the legal description. BLM received one comment about situations where there is a discrepancy between the parcel as it is located on the ground and the map or the legal description. We are responding to this comment by adding a sentence to section 2568.74(d) in the final rule to clarify that if there is a discrepancy between the map or the legal description and the parcel as it is located on the ground, the posted location will control.

Section 2568.76

Section 2568.76 does not require a fee to file an application. In the preamble to the proposed rule, we stated that we were not proposing an application filing fee, but we asked for comments on whether we should and whether such a fee should be refunded if an applicant did not receive an allotment. We received seven comments on this issue, all opposing an application filing fee because there was never such a fee under the 1906 Native Allotment Act while it was in effect. The final rule does not include a requirement for a filing fee.

Section 2568.77

Section 2568.77 requires an applicant to post on the ground the land in an allotment application. BLM received five comments on this requirement. One commenter suggested that Native veterans are being asked to meet different requirements from those imposed on 1906 Native Allotment Act applicants. In fact, the existing regulations for 1906 Act allotments do contain a requirement for posting (43 CFR 2561.1(d)), and the application form for 1906 Act allotments requires an applicant to state that he or she has posted the lands described in the application. The same requirement is in

the application form for Native veteran allotments.

Additionally, BLM believes it is essential for an allotment applicant to post the lands for which he or she is applying. Posting puts others on notice of the allotment claim and the specific lands involved, and ensures accurate and efficient examination and survey of the claim. The final rule will contain the same posting requirement as was contained in the proposed rule.

Four of the five comments asked BLM to make allowances in the regulation for weather conditions when assessing compliance with the posting requirement. Although BLM is aware of the difficulties that inclement weather will undoubtedly create for applicants, particularly at certain times of the year, we do not believe the regulation needs to contain language allowing for weather conditions. The regulation states the same requirement that was imposed on 1906 Native Allotment Act applicants.

Section 2568.79

The rule limits the number of allotment parcels that may be conveyed to a Native veteran to two. This is the same limitation stated in Public Law 105–276.

BLM received three comments suggesting that Native veterans should be allowed to choose more than two parcels because applicants under the 1906 Act were able to. BLM's regulations must conform to Public Law 105–276. We have no authority to change the parcel limitation stated in the law.

Section 2568.90

Section 2568.90 identifies the types of land that BLM can convey to Native veterans.

Paragraph 2568.90(a)(1) says a Native veteran can receive title only to land that is currently owned by the Federal government. BLM received three comments suggesting that we allow voluntary title recovery of conveyed land for the benefit of Native veteran applicants. Public Law 105–276 prohibits this because land reconveyed to BLM becomes acquired land, and BLM is prohibited in Public Law 105–276 from conveying acquired land to Native veterans. We added a new section, 2568.95, to the final rule explaining that BLM is prohibited from accepting voluntary title recovery for the benefit of Native veterans.

In this final rule we are correcting proposed 43 CFR 2568.90(a)(3) to state that a Native veteran applicant may receive title only to land that has not been continuously withdrawn since before his or her sixth birthday. Proposed section 2568.90(a)(3) said a Native veteran could only receive title to land that has not been continuously withdrawn since before his or her fifth birthday. We are making a technical correction to this section. BLM has a long-established policy, based on administrative case law, of rejecting Native allotment applications under the 1906 Act without a hearing if the land described in the application has been continuously withdrawn since before the applicants sixth birthday. If, however, the applicant was at least six years old at the time of the withdrawal BLM gives an opportunity for an administrative hearing to determine if he or she meets the use and occupancy requirements of the 1906 Act and its regulations.

We are also making a technical change to reflect that use and occupancy had to have begun before December 14, 1968, not before December 13, 1968. Proposed section 2568.90(a)(4) said that an applicant had to have begun using a parcel of Federal land before December 13, 1968. Three commenters questioned the rationale behind this date and suggested that use and occupancy should be able to begin any time before the repeal of the 1906 Native Allotment Act on December 18, 1971.

Public Land Order (PLO) 4582 withdrew unreserved public lands in Alaska effective December 14, 1968, from all forms of appropriation and disposition under the public land laws. Therefore, no new Native allotments could be initiated after PLO 4582 became effective. Applications for Native allotments could be processed to conclusion as long as occupation began before December 14, 1968. Because of PLO 4582 BLM can't grant a Native allotment if use and occupancy began after December 13, 1968. Public Law 105–276 specifically states, in section 41(a)(2) ''Allotments may be selected only from lands that were vacant, unappropriated, and unreserved on the date when the person eligible for the allotment first used and occupied those lands.''

Section 2568.90(a)(5) explains the use and occupancy criteria Native veterans have to meet. BLM received five comments suggesting that we eliminate the use and occupancy requirements of the 1906 Native Allotment Act for Native veterans or that no greater burden be placed on Native veterans than has been imposed in the past on applicants under the 1906 Act. Although BLM understands that it may be difficult for veterans to show use that began more than 30 years ago, the use and occupancy requirements in the rule are the same requirements that applicants under the 1906 Native Allotment Act had to meet. Public Law 105–276 stated that certain Native veterans will be eligible for allotments if they ''would have been eligible for an allotment under the Act of May 17, 1906 (chapter 2469; 34 Stat. 197), as that Act was in effect before December 18, 1971'' (section 41(b)(1)(A) of Public Law 105–276). Since Public Law 105–276 said that Native veterans must be eligible under the 1906 Act we have no authority to eliminate or modify the use and occupancy requirement in the final rule. We do not believe the rule imposes different use requirements on Native veterans than on other 1906 Act applicants.

Section 2568.91

Section 2568.91 lists the types of land that BLM cannot convey to a Native veteran. We received 18 comments objecting to the types of Federal lands that are not available. The categories of lands that we may not convey which were described in the proposed rule were taken directly from Public Law 105–276. BLM understands that there have been major changes in Alaska land status in the 30 years since the 1906 Native Allotment Act was repealed. We also realize that many areas will not be available under Public Law 105–276 even if Native veterans can show their use and occupancy predated another interest. Congress limited the types of land that BLM can convey to Native veterans and the language in the proposed rule reflected the limitations in the law itself.

The most common objection we received was that paragraph (b) said land selected by the State of Alaska (2568.91(b)) was not available for allotment, even when the applicant's use and occupancy predated the State selection application. Public Law 105–276 prohibits conveyance to a Native veteran of Federal land that is selected by but not yet conveyed to the State of Alaska or to a Native corporation under ANCSA. BLM included in section 2568.91 the same list of prohibited land that appeared in the statute.

Paragraph (c) in the proposed rule said that land selected by a Native corporation under ANCSA is unavailable for conveyance. The section went on to explain that a Native corporation may relinquish up to 160 acres of its selection to allow a Native veteran to receive an allotment as long as this doesn't violate selection rules in 43 CFR 2650 or cause the corporation to become underselected. BLM included this in the proposed rule because several Native corporations were willing

to consider relinquishment of their selections for the benefit of Native veterans.

We interpret the statute to mean that although we can't convey selected land to Native veterans, a voluntary relinquishment from a Native corporation would remove land from the ''selected'' category and would permit conveyance to a Native veteran.

We did not include a similar relinquishment provision in the proposed rule regarding land selected by the State of Alaska. However, we believe a similar provision needs to be included in the final rule to give the State the opportunity to relinquish a selection thereby permitting a Native veteran to receive an allotment. In this final rule BLM is including language regarding the State's option to relinquish up to 160 acres of a selection to allow a Native veteran to apply for an allotment.

However, any Alaska Native veteran must realize that applying for land which BLM cannot convey is very risky. If BLM does not receive and approve a relinquishment from a Native corporation or from the State before the filing period for allotment applications ends, that veteran cannot file an application for an allotment in a different location and is not eligible for an alternative allotment. BLM recommends that Native veterans consider all the risks before filing an application for an allotment on lands that have been selected either by a Native corporation or by the State of Alaska.

We are including a new section 2568.92 concerning the risks involved when a Native veteran applies for land that is selected by a Native corporation or by the State of Alaska. This new section makes it clear that if BLM does not receive and approve a relinquishment from a Native corporation or the State before the end of the allotment application filing period, the allotment applicant will not be able to apply for land in a different location and will not be eligible for an alternative allotment.

To accommodate the addition of a new section 2568.92, section 2568.92 in the proposed rule will become new section 2568.93 in the final rule, proposed section 2568.93 will become new section 2568.94 in the final rule, and the section we are adding on BLM's lack of authority to accept reconveyance of non-Federal land for Native veterans allotments (previously discussed in connection with section 2568.90) will be new section 2568.95.

Section 2568.94 (Proposed Section 2568.93)

Section 2568.93 of the proposed rule stated that BLM cannot convey an allotment to a Native veteran if the land is valuable for sand or gravel. This prohibition was included because Native veterans must comply with the requirements for Native allotments that were in effect before December 18, 1971. BLM received five comments on the proposed rule suggesting that sand and gravel have not been considered ''valuable minerals'' since the passage of the Common Varieties Act of 1955.

The Common Varieties Act of 1955 provided that sand and gravel could no longer be disposed of under the Mining Law of 1872, 30 U.S.C. 21, *et seq.* Instead, sand and gravel would be subject to disposition under other acts such as the Mineral Materials Act, 30 U.S.C. 601. Congress had taken similar action in prior years to remove other minerals such as oil, gas, coal, potassium, phosphate, and sulphur from the operation of the mining laws. These amendments did not change the mineral character of such deposits and certainly did not destroy their value. In some communities where there has been extensive growth, the United States government has received thousands of dollars per acre for the sale of sand and gravel since the Common Varieties Act was passed. In 1978 the Ninth Circuit Court of Appeals recognized in *Chugach Natives, Inc.* v. *Doyon Ltd., et al.* (569 F.2d 491) that sand and gravel were mineral resources and part of the subsurface estate under ANCSA.

Lands valuable for sand or gravel were still considered to be mineral for purposes of evaluating Native allotment applications until 1980 when Congress said in section 905(a)(3) of ANILCA, 43 U.S.C. 1634(a)(3), that such lands were non-mineral. If Congress had considered lands valuable for sand and gravel to be non-mineral before 1980, there would have been no reason to include language in ANILCA saying that such lands were non-mineral. Therefore, section 2568.93, which becomes new section 2568.94 in the final rule, reflects the same prohibition against the conveyance of lands valuable for sand or gravel that was contained in the proposed rule.

Sections 2568.100 through 2568.106

Sections 2568.100 through 2568.106 explain the process a CSU manager will follow to determine if an allotment would be consistent with CSU purposes. BLM received five comments on this process.

Section 2568.101

This section states a Native veteran may receive an allotment if conveyance of the allotment is not inconsistent with the purposes of the CSU. One commenter suggested that a decision of inconsistency should only be made by the Secretary of the Interior, not by a CSU manager. BLM believes the CSU manager is in the best position to make an initial decision of inconsistency based on the resource values of the CSU. It is reasonable for the Secretary to delegate this decision to CSU managers, and it is standard practice for him to delegate such decisions. The Secretary rarely makes such decisions directly, although the Secretary has the option to review any decision made within the Department if he or she chooses to do so.

43 CFR 2568.103

Proposed section 2568.103 explained how a land management agency will determine whether an allotment would be consistent with the purposes of a CSU. The proposed rule said in paragraph (b) that ''You or your representative may also accompany, at your expense, the CSU representative on any field exam.'' BLM received two comments objecting to the language concerning an applicant participating in a field exam at his or her own expense. We believe it is important to make sure the final rule is consistent with existing regulations and practices under the 1906 Native Allotment Act unless the Alaska Native Veterans Allotment Act specifically requires something different. In the final rule we are adopting the suggestion to delete the words ''at your expense'' from the statement in paragraph (b) that the applicant may accompany the CSU representative on a field exam.

The proposed rule also stated, in paragraph (c), that the CSU manager would send a written decision and a resource assessment to BLM, and a copy of the decision to the applicant. It allowed the applicant to request a copy of the resource assessment. One commenter suggested that the applicant should be given a copy of the resource assessment along with the decision document. BLM agrees and in the final rule we are changing this section to specify that the CSU manager will send the applicant a copy of the decision and a copy of the resource assessment.

Section 2568.105

Section 2568.105 in the proposed rule described the situations where an allotment could be found to be consistent with a CSU. Paragraph (a)

stated that an allotment may be consistent if ''You locate an allotment near land that BLM has conveyed to a Native corporation under ANCSA.'' We are modifying section 2568.105(a) in the final rule to make clear that an individual's allotment must be one that he or she is qualified to receive under the 1906 Native Allotment Act.

Section 2568.106

This section establishes the criteria a CSU manager will use in determining whether an allotment would be inconsistent with the purposes of the CSU. One commenter raised concerns about the language in proposed section 2568.106 that would allow the CSU manager, when considering whether an allotment is inconsistent with CSU purposes, to weigh such factors as:

(1) the possible future uses of the allotment,

(2) its isolation from existing private property, and

(3) its possible interference with subsistence activities.

This commenter suggests that Native veteran allotment applicants should not be treated differently from applicants under the 1906 Native Allotment Act.

Public Law 105–276 allows the conveyance of land within CSU's to Native veterans and gives the Department of the Interior authority to determine whether an allotment would be inconsistent with CSU purposes, and, if so, to offer alternative lands to the veteran. Because Public Law 105–276 mandates these conditions which did not apply to 1906 Act applicants, we must carry them out in our regulations. Although Public Law 105–276 does not say what factors the Department should consider in making a determination of inconsistency, BLM believes it is important to give applicants an indication of the criteria we will use to make such a determination. Inconsistency determinations will be made on a case-by-case basis depending upon the specific resource values and purposes of each CSU.

Section 2568.110(c)

Proposed section 2568.110 identified the types of land that would be available for alternative allotments when BLM cannot convey an allotment for which a Native veteran qualifies. Paragraph (c) states that the applicant may choose an alternative allotment from ''vacant, unappropriated, and unreserved land.''

BLM recognizes that paragraph (c), if strictly construed, would make it virtually impossible for an applicant to acquire an alternative allotment because of the vast amount of Federal land still withdrawn for future classification under section 17(d)(1) of ANCSA, 43 U.S.C. 1616(d)(1). The final rule adds language stating that for purposes of this section, the term ''unreserved'' includes land withdrawn solely under the authority of section 17(d)(1) of ANCSA.

Congress has adopted a similar rule on other occasions in the past. One example occurred in section 906(j) of ANILCA, 94 Stat. 2441. The State of Alaska could only select unreserved lands as provided by section 6(b) of the Alaska Statehood Act, 72 Stat. 339, as amended. Section 906(j) of ANILCA said that ''* * *. the following withdrawals, classifications or designations shall not, of themselves, remove the lands involved from the status of vacant, unappropriated, and unreserved lands for the purposes of * * * future State selections * * * : (1) withdrawals for classification pursuant to section 17(d)(1) of the Alaska Native Claims Settlement Act * * *''

Section 2568.113

BLM is adding a new section 2568.113 to the final rule. It states that if the applicant is eligible to choose an alternative allotment, he or she need not prove use and occupancy of the land in the alternative location. We did this to clarify the requirements an applicant must meet when applying for an alternative allotment.

Section 2568.113 in the proposed rule will become new section 2568.114 in the final rule and section 2568.114 in the proposed rule will become new section 2568.115 in the final rule.

Section 2568.114 (Proposed Section 2568.113)

As explained previously, the proposed rule contained language explaining the procedures and requirements relating to allotments in CSU's. Proposed section 2568.113 explained how an applicant would apply for an alternative allotment if the CSU manager determined that conveyance of an allotment in the original location would be inconsistent with the CSU. BLM received one comment suggesting that we modify language in proposed section 2568.113 (new section 2568.114) to clarify that the CSU manager must evaluate an application for an alternative allotment in a CSU to determine if it is consistent with CSU purposes in the same manner as the original application is evaluated. BLM is adding a sentence in new section 2568.114 in the final rule to make clear that the alternative allotment must also not be inconsistent with the CSU.

Sections 2568.120–2568.123

Sections 2568.120 through 123 explain the process for appealing inconsistency decisions made by CSU managers.

One commenter suggested that appeals of inconsistency decisions should be made to the Interior Board of Land Appeals in the same manner as other Native allotment decisions. As we explained in the preamble to the proposed rule, we believe that the individual agencies are best equipped to quickly make these decisions and that land managers can make sound decisions based on their in-depth knowledge of the resources in the CSU's.

Comments on Subjects Not Included in the Proposed Rule

Some of the comments BLM received were related to Native veterans allotments or to Alaska Native Allotments in general but did not pertain to any language that appeared in the proposed rule itself.

Legislative Approval

BLM received two comments suggesting that we should allow the legislative approval provision of Section 905 of ANILCA, 43 U.S.C. 1634(a), to apply to Native veterans allotments. Since ANILCA was enacted in 1980, it does not apply to Native veterans allotments. Public Law 105–276 said that veterans allotments must meet the requirements of the 1906 Native Allotment Act as it was in effect before December 18, 1971.

Additionally, Congress recognized that legislative approval does not apply to Native veterans allotments because legislation was recently introduced that would amend Public Law 105–276 to provide for it. This final rule does not contain any language relating to legislative approval of Native veterans allotments because Public Law 105–276 contains no authority for such approval.

Monetary Compensation

BLM received one comment suggesting that monetary compensation be offered instead of an allotment of land, especially since Public Law 105–276 limited the types of Federal land that can be conveyed.

Public Law 105–276 does not contain any provision for monetary compensation in lieu of an allotment of land. BLM has no authority to include such a provision in its regulations.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These final regulations are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These final regulations will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These final regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These final regulations do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. The effect of these final regulations will be on a limited number of individuals who are qualified to apply for allotments and on the Interior Department agencies responsible for administering the allotment program. The allotment application period is limited by law to 18 months, and existing staff of responsible agencies will process applications following most of the same rules that are currently in effect for allotment applications under the 1906 Native Allotment Act.

National Environmental Policy Act

Section 910 of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980 , 43 U.S.C. 1638, made conveyances, regulations, and other actions which lead to the issuance of conveyances to Natives under ANCSA exempt from NEPA compliance requirements. Since Congress made the Alaska Native Veterans Allotment Act a part of ANCSA, NEPA does not apply.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, 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. This final rule will apply only to certain Alaska Native veterans eligible to apply for allotments. This rule applies only to Alaska Native veterans as individuals. Therefore, the Department of the Interior certifies that this document will not have any significant impacts on small entities under the RFA.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These final regulations are not a ''major rule'' as defined at 5 U.S.C. 804(2). This final rule does not meet any of the criteria for a ''major rule'' under the definition contained in SBREFA. The final rule will result in some costs to allotment applicants, and to the Department of the Interior to implement the allotment program over the next several years. It will not result in major cost or price increases for consumers, industries, or regions, and the cost increases for government agencies will be small. This final rule will have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The total annual effect on the economy will be far below $100 million. Based on Department of Veterans Affairs data, BLM estimates that about 1,100 individuals with at least one quarter Alaska Native blood meet the military service criteria in the Alaska Native Veterans law and may be eligible to apply for allotments. If each applicant were to choose the maximum number of land parcels allowed (2), the total number of parcels involved would be 2,200. BLM estimates the cost of processing an application for a single allotment parcel does not exceed $25,000, including the cost of adjudication, examination, survey, and conveyance. This estimate is based on the average cost of processing allotment applications originally filed under the Alaska Native Allotment Act of 1906. The total cost to process 2,200 parcels would be $55 million over the life of the program, which is the statutory 18-month application period and as many additional years as necessary to complete all applications. In no case would these costs approximate the $100 million annual impact threshold.

Unfunded Mandates Reform Act

These final regulations do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these final regulations have a significant or unique effect on State, local, or tribal governments or the private sector. The only mandate imposed on State governments will be for the State court appointment of personal representatives in cases involving the estates of certain deceased applicants, but this mandate will cost far below $100 million per year. These final regulations impose no mandate on local or tribal governments or the private sector. Program costs will fall primarily on the Department of the Interior. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. The final rule will allow BLM to convey Federal land only under certain circumstances, and land containing other applications or entries is specifically forbidden by law from being conveyed to Native veterans. Even if a Native veteran could show use and occupancy of land before another application or entry was made, the Native would have no vested property right until he or she filed an application for an allotment under section 41 of ANCSA. No existing applications or entries or other private property interests will be affected by this proposed rule. Therefore, the Department of the Interior has determined that the rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The final rule will 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. The final rule will give the State the authority to voluntarily relinquish up to 160 acres of a selection so that a Native veteran can apply for an allotment, but the State is not required to relinquish. Voluntary relinquishments will have no effect on the State's ability to reach its full acreage entitlement from the Federal government. Native veterans will not be able to apply for land already owned by the State, even if they can show that they used and occupied the land before the State applied for it. Allotments conveyed under section 41 of ANCSA are not taxable, just as allotments conveyed under the 1906 Act are not taxable, so there will be no effect on State or local property tax revenue. Therefore, in accordance with Executive Order 12612, BLM has determined that

this final rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. Representatives of the State of Alaska and the BLM Alaska have had general discussions on the content of the statute and the final regulations. Representatives of the State of Alaska recognize that lands conveyed to the State are prohibited from land availability under this statute and that the State may relinquish, but is not required to relinquish, a selection to allow a Native veteran to file an allotment application.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this final rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This final rule contains information collection requirements covered under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C 3501 *et seq.* All information requirements pertain to an application form whereby Alaska veterans may apply for the benefits described in this final rule. OMB reviewed and approved an information collection package for the application form. Because all the information requirements are contained in the application form and covered by that information collection package, BLM has not prepared a separate information collection package for these regulations.

The information BLM asks for in the form identified in section 2568.73 will be collected through the allotment application form ''Alaska Native Veteran Allotment Application,'' under OMB form number 1004–0191. BLM will require individual Alaska Native veterans who apply for allotments under section 41 of ANCSA or, in the case of certain deceased veterans, the personal representatives of their estates to comply with the information collection requirement.

Specific information to be collected is as follows:

Name, address, date of birth, telephone number, dates of military service, branch of service, legal description of land for which veteran or representative is applying, dates of occupancy of land, description and value of improvements on land, and specific uses of land.

BLM estimates the total number of respondents will be approximately 1,100 and the burden on new respondents will be approximately 30,800 hours. These estimates apply to the entire 18-month application period. For a 12-month period this works out to 732 applicants and 20,496 hours. The estimate of the number of respondents is based on computer data from the Department of Veterans Affairs concerning Alaska Native veterans with at least one quarter Alaska Native blood who served in the U.S. military between January 1, 1969, and December 31, 1971. This data was further screened to identify those persons who meet the 6 months' service requirement in section 41 of ANCSA. BLM derived the total estimated burden hours by multiplying the number of potential respondents by an estimate of the 28 hours required to complete the application form and obtain the other documentation required by the form. The majority of questions on the form require brief answers, many of them simply ''yes'' or ''no.'' Only two questions require narrative responses and in both cases responses are not required from all applicants.

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) and 512 DM 2 we consulted with tribes as follows:

Section 41 of ANCSA, which authorizes Native allotments for certain veterans, specifically requires that the Department of the Interior promulgate these regulations ''after consultation with Alaska Natives groups.'' BLM has consulted with the Bureau of Indian Affairs throughout the process of this rulemaking and has held public meetings to discuss the rule with Native entities, including tribes. Native views were solicited very early in the rulemaking process and BLM has included all written comments received from tribes and other Native entities in the administrative record for this rule. BLM held additional meetings with Native groups before these regulations became final and considered tribal and other Native views in the final rulemaking. Accordingly:

a. We have consulted with affected tribes.

b. Consultations were open and candid so that the affected tribes could fully evaluate the potential impact of the rule on trust resources.

c. We fully considered tribal views in the final rulemaking.

d. We consulted with the appropriate bureaus and offices of the Department about the potential effects of this rule on tribes. We consulted with the Bureau of Indian Affairs and the Division of Indian Affairs, Office of the Solicitor.

Author

The principal author of this rule is Connie Van Horn, Division of Conveyance Management, Bureau of Land Management, Anchorage, Alaska; assisted by Frank Bruno of BLM's Regulatory Affairs Group, Bureau of Land Management, Washington, DC.

List of Subjects in 43 CFR Part 2560

Alaska, Homesteads, Indian Lands, Public Lands, Public Lands-Sale, and Reporting and Recordkeeping requirements, Alaska Native allotments for certain veterans.

Dated: June 26, 2000.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

PART 2560—[AMENDED]

Accordingly, BLM amends 43 CFR part 2560 as set forth below:

1. The authority citation for part 2560 continues to read as follows:

Authority: 43 U.S.C. 1601 *et seq.*, as amended; Section 432 of Public Law 105–276; 34 Stat. 197, as amended; 42 Stat. 415; 70 Stat. 954; 43 U.S.C. 270–1 through 270–3 (1970).

2. Add subpart 2568 to read as follows:

Subpart 2568—Alaska Native Allotments for Certain Veterans

Purpose

Regulatory Authority

Definitions

Information Collection

Who is Qualified for an Allotment

Personal Representatives

Subpart 2568—Alaska Native Allotments For Certain Veterans

Purpose

§ 2568.10 What Alaska Native allotment benefits are available to certain Alaska Native veterans?

Eligible Alaska Native veterans may receive an allotment of one or two parcels of Federal land in Alaska totaling no more than 160 acres.

Regulatory Authority

§ 2568.20 What is the legal authority for these allotments?

(a) The Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.* (ANCSA), as amended.

(b) Section 432 of Public Law 105–276, the Appropriations Act for the Departments of Veterans Affairs and Housing and Urban Development for fiscal year 1999, which amended ANCSA by adding section 41.

(c) The Native Allotment Act of 1906, 34 Stat. 197, as amended, 42 Stat. 415 and 70 Stat. 954, 43 U.S.C. 270–1 through 270–3 (1970).

§ 2568.21 Do other regulations directly apply to these regulations?

Yes. The regulations implementing the Native Allotment Act of 1906, 43 CFR Subpart 2561, also apply to Alaska Native Veteran Allotments to the extent they are not inconsistent with section 41 of ANCSA or other provisions in this Subpart.

Definitions

§ 2568.30 What terms do I need to know to understand these regulations?

Alaska Native is defined in the Native Allotment Act of 1906 as amended by the Act of August 2, 1956, 70 Stat. 954.

Allotment has the same meaning as in 43 CFR 2561.0–5(b).

Conservation System Unit has the same meaning as under Sec. 102(4) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 16 U.S.C. 3102(4).

Consistent and inconsistent mean compatible and incompatible, respectively, in accordance with the guidelines in these regulations in §§ 2568.102 through 2568.106.

Veteran has the same meaning as in 38 U.S.C. 101, paragraph 2.

Information Collection

§ 2568.40 Does BLM have the authority to ask me for the information required in these regulations?

(a) Yes. The Office of Management and Budget has approved, under 44 U.S.C. 3507, the information collection requirements contained in Subpart 2568 and has assigned them clearance number 1004–0191 for Form AK–2561–10. BLM uses this information to determine if using the public lands is appropriate. You must respond to obtain a benefit.

(b) BLM estimates that the public reporting burden for this information is as follows: 28 hours per response to fill out form AK–2561–10. These estimates include the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed and completing the collection of information.

(c) Send comments regarding this burden estimate or any other aspect of this collection to the Information Collection Clearance Officer, Bureau of Land Management, 1849 C St. N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Who Is Qualified for an Allotment

§ 2568.50 What qualifications do I need to be eligible for an allotment?

To qualify for an allotment you must:

(a) Have been eligible for an allotment under the Native Allotment Act as it was in effect before December 18, 1971; and

(b) Establish that you used land in accordance with the regulation in effect before December 18, 1971, and that the land is still owned by the Federal government; and

(c) Be a veteran who served at least six months between January 1, 1969, and June 2, 1971, or enlisted or was drafted after June 2, 1971, but before December 3, 1971; and

(d) Not have already received conveyance or approval of an allotment. (However, if you are otherwise qualified to receive an allotment under the Alaska Native Veterans Allotment Act, you will still qualify even if you received another allotment interest by inheritance, devise, gift, or purchase); and

(e) Not have a Native allotment application pending on October 21, 1998; and

(f) Reside in the State of Alaska or, in the case of a deceased veteran, have been a resident of Alaska at the time of death.

Personal Representatives

§ 2568.60 May the personal representatives of eligible deceased veterans apply on their behalf?

Yes. The personal representative may apply for an allotment, for the benefit of the deceased veteran's heirs, if, between January 1, 1969, and December 31, 1971, the deceased veteran:

(a) Was killed in action,

(b) Was wounded in action and later died as a direct consequence of that wound, as determined and certified by the Department of Veterans Affairs, or

(c) Died while a prisoner of war.

§ 2568.61 What are the requirements for a personal representative?

The person filing the application must present proof of a current appointment as personal representative of the estate of the deceased veteran by the proper court, or proof that this appointment process has begun.

§ 2568.62 Under what circumstances does BLM accept the appointment of a personal representative?

BLM will accept an appointment of personal representative made any time after an eligible person dies, even if that appointment came before enactment of the Alaska Native Veterans Allotment Act.

§ 2568.63 Under what circumstances does BLM reject the appointment of a personal representative?

If the appointment process is incomplete at the time of allotment application filing, the prospective personal representative must file the proof of appointment with BLM within 18 months after the application filing deadline or BLM will reject the application.

§ 2568.64 Are there different requirements for giving an allotment to the estate of a deceased veteran?

No, the estate of the deceased veteran eligible under § 2568.60 must meet the same requirements for a Native allotment as other living Alaska Native veterans. In addition, a deceased veteran must have been a resident of Alaska at the time of death.

Applying for an Allotment

§ 2568.70 If I am qualified for an allotment, when can I apply?

If you are qualified, you can apply between July 31, 2000 and January 31, 2002.

§ 2568.71 Where do I file my application?

You must file your application in person or by mail with the BLM Alaska State Office in Anchorage, Alaska.

§ 2568.72 When does BLM consider my application to be filed too late?

BLM will consider applications to be filed too late if they are:

(a) Submitted in person after the deadline in section 2568.70, or

(b) Postmarked after the deadline in section 2568.70.

§ 2568.73 Do I need to fill out a special application form?

Yes. You must complete form no. AK–2561–10, ''Alaska Native Veteran Allotment Application.''

§ 2568.74 What else must I file with my application?

You must also file:

(a) A Certificate of Indian Blood (CIB), which is a Bureau of Indian Affairs form,

(b) A DD Form 214 ''Certificate of Release or Discharge from Active Duty'' or other documentation from the Department of Defense (DOD) to verify military service, as well as any information on cause of death supplied by the Department of Veterans Affairs,

(c) A map at a scale of 1:63,360 or larger, sufficient to locate on-the-ground the land for which you are applying, and

(d) A legal description of the land for which you are applying. If there is a discrepancy between the map and the legal description, the map will control. The map must be sufficient to allow BLM to locate the parcel on the ground. If there is a discrepancy between the map or legal description and the location of the parcel on the ground, the location as posted on the ground will control. You must also estimate the number of acres in each parcel.

§ 2568.75 Must I include a Certificate of Indian Blood as well as a Department of Defense verification of qualifying military service when I file my application with BLM?

Yes.

(a) If the CIB or DOD verification of qualifying military service is missing when you file the application, BLM will ask you to provide the information within the time specified in a notice. BLM will not process the application until you file the necessary documents but will consider the application as having been filed on time.

(b) A personal representative filing on behalf of the estate of a deceased veteran must file the Department of Veterans Affairs verification of cause of death.

§ 2568.76 Do I need to pay any fees when I file my application?

No. You do not need to pay a fee to file an application.

§ 2568.77 Do I have to post, on-the-ground, the land in my application?

(a) Yes. Before you file your application you must post the land by marking all corners on the ground with your name and address.

(b) On land within a CSU, you must get a free special use permit from the CSU manager before you erect any signs or markers. The CSU manager may establish in the permit a maximum size of any signs or markers. If the CSU manager later decides under section 2568.104 that your allotment is not consistent with the CSU, you must promptly remove the signs or markers unless the CSU manager waives this requirement in the special use permit.

§ 2568.78 Will my application segregate the land for which I am applying from other applications or land actions?

The filing of an application with a sufficient description to identify the lands will segregate those lands. ''Segregation'' has the same meaning as in 43 CFR 2091.0–5(b).

§ 2568.79 Are there any rules about the number and size of parcels?

Yes. You may apply for one or two parcels, but if you apply for two parcels the two combined cannot total more than 160 acres. You may apply for less than 160 acres. Each parcel must be reasonably compact.

§ 2568.80 Does the parcel have to be surveyed before I can receive title to it?

Yes. The land in your application must be surveyed before BLM can convey it to you. BLM will survey your allotment at no charge to you, or you may obtain a private survey. BLM must approve the survey if it is done by a private surveyor.

§ 2568.81 If BLM finds errors in my application, will BLM give me a chance to correct them?

Yes. If you file your application during the 18-month filing period and BLM finds correctable errors, it will consider the application as having been filed on time once you correct them. BLM will send you a notice advising you of any correctable errors and give you at least 60 days to correct them. You must make corrections within the specified time or BLM will reject your application.

§ 2568.82 If BLM decides that I have not submitted enough information to show qualifying use and occupancy, will it reject my application or give me a chance to submit more information?

(a) BLM will not reject your application without giving you an opportunity for a hearing to establish the facts of your use.

(b) If BLM cannot determine from the information you submit that you met the use and occupancy requirements of the 1906 Act, it will send you a notice saying that you have not submitted enough evidence and will give you at least 60 days to file additional information.

(c) If you do not submit additional evidence by the end of the time BLM gives you or if you submit additional evidence but BLM still cannot determine that you meet the use and occupancy requirements, the following process will occur:

(1) BLM will issue a formal contest complaint telling you why it believes it should reject your application.

(2) If you answer the complaint and tell BLM you want a hearing, BLM will ask an Administrative Law Judge (ALJ) of the Interior Department, Office of Hearings and Appeals, to preside over a hearing to establish the facts of your use and occupancy.

(3) The ALJ will evaluate all the written evidence and oral testimony and issue a decision.

(4) You can appeal this decision to the Interior Board of Land Appeals according to 43 CFR Part 4.

Available Lands—General

§ 2568.90 If I qualify for an allotment, what land may BLM convey to me?

You may receive title only to:

(a) Land that:

(1) Is currently owned by the Federal government,

(2) Was vacant, unappropriated, and unreserved when you first began to use and occupy it,

(3) Has not been continuously withdrawn since before your sixth birthday,

(4) You started using before December 14, 1968, the date when Public Land Order 4582 withdrew all unreserved public lands in Alaska from all forms of appropriation and disposition under the public land laws, and

(5) You prove by a preponderance of the evidence that you used and occupied in a substantially continuous and independent manner, at least potentially exclusive of others, for five or more years. This possession of the land must not be merely intermittent. ''Preponderance of evidence'' means evidence which is more convincing than the evidence offered in opposition to it; that is, evidence which as a whole shows that the fact you are trying to prove is more likely a fact than not.

(b) Substitute land explained in 43 CFR 2568.110.

§ 2568.91 Is there land owned by the Federal government that BLM cannot convey to me even if I qualify?

You cannot receive an allotment containing any of the following:

(a) A regularly used and recognized campsite that is primarily used by someone other than yourself. The campsite area that you cannot receive is that which is actually used as a campsite.

(b) Land presently selected by, but not conveyed to, the State of Alaska. The State may relinquish up to 160 acres of its selection to allow an eligible Native veteran to receive an allotment;

(c) Land presently selected by, but not conveyed to, a Native corporation as defined in 43 U.S.C. 1602(m). A Native corporation may relinquish up to 160 acres of its selection to allow an eligible Native veteran to receive an allotment, as long as the remaining ANCSA selection comports with the appropriate selection rules in 43 CFR 2650. Any such relinquishment must not cause the corporation to become underselected. See 43 U.S.C. 1621(j)(2) for a definition of underselection;

(d) Land designated as wilderness by statute;

(e) Land acquired by the Federal government through gift, purchase, or exchange;

(f) Land containing any development owned or controlled by a unit of government, or a person other than yourself;

(g) Land withdrawn or reserved for national defense, other than the National Petroleum Reserve-Alaska;

(h) National Forest land; or

(i) Land selected or claimed, but not yet conveyed, under a public land law, including but not limited to the following:

(1) Land within a recorded mining claim;

(2) Home sites;

(3) Trade and manufacturing sites;

(4) Reindeer sites and headquarters sites;

(5) Cemetery sites.

§ 2568.92 Is there anything else I should consider if I apply for land that is selected by a Native corporation or by the State of Alaska?

You must realize that applying for land which cannot be conveyed because it has been selected by a Native corporation or by the State is very risky. If BLM does not receive and approve a relinquishment from a Native corporation or the State before the allotment application filing period ends, you cannot file an application for an allotment in a different location and you will not be eligible for an alternative allotment.

§ 2568.93 Is there a limit to how much water frontage my allotment can include?

Yes, in some cases. You will normally be limited to a half-mile (referred to as 160 rods in the regulations at 43 CFR part 2094) along the shore of a navigable water body. If you apply for land that extends more than a half-mile, BLM will treat your application as a request to waive this limitation. As explained in 43 CFR 2094.2, BLM can waive the half-mile limitation if it determines the land is not needed for a harborage, wharf, or boat landing area, and that a waiver would not harm the public interest.

§ 2568.94 Can I receive an allotment of land that is valuable for minerals?

BLM can convey an allotment that is known to be or believed to be valuable for coal, oil, or gas, but the ownership of these minerals remains with the Federal government. BLM cannot convey to you land valuable for other kinds of minerals such as gold, silver, sand or gravel. If BLM conveys an allotment that is valuable for coal, oil, or gas, the allottee owns all minerals in the land except those expressly reserved to the United States in the conveyance.

§ 2568.95 Will BLM try to reacquire land that has been conveyed out of Federal ownership so it can convey that land to a Native veteran?

No. The Alaska Native Veterans Allotment Act does not give BLM the

authority to reacquire former Federal land in order to convey it to a Native veteran.

Available Lands—Conservation System Units (CSU)

§ 2568.100 What is a CSU?

A CSU is an Alaska unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or a National Forest Monument.

§ 2568.101 If the land I used and occupied is within a CSU other than a National Wilderness or any part of a National Forest, can I receive a title to it?

You may receive title if you qualify for that allotment and the managing agency of the CSU agrees that conveyance of that allotment is not inconsistent with the purposes of the CSU.

§ 2568.102 Is the process by which the managing agency decides whether my allotment is not inconsistent with the CSU the same as other such determination processes?

No. This process is unique to this regulation. It should not be confused with any similar process under any other act, including the incompatibility process under the National Wildlife Refuge System Improvement Act of 1997.

§ 2568.103 By what process does the managing agency of a CSU decide if my allotment would be consistent with the CSU?

(a) BLM conducts a field exam, with you or your representative, to check the boundaries of the land for which you are applying and to look for signs of use and occupancy. The CSU manager or a designated representative may also attend the field exam.

(b) The CSU manager or representative assesses the resources to determine if the allotment would be consistent with CSU purposes at that location. You may submit any other information for the CSU manager to consider. You or your representative may also accompany the CSU representative on any field exam.

(c) The CSU manager submits a written decision and resource assessment to BLM within 18 months of the BLM field exam. The CSU manager will send you a copy of the decision and a copy of the resource assessment.

§ 2568.104 How will a CSU manager determine if my allotment is consistent with the CSU?

The CSU manager will decide this on a case-by-case basis by considering the law or withdrawal order which created the CSU. The law or withdrawal order explains the purposes for which the CSU was created. The manager would also consider the mission of the CSU managing agency as established in law and policy. The manager will also consider how the cumulative impacts of the various activities that could take place on the allotment might affect the CSU.

§ 2568.105 In what situations could a CSU manager likely find an allotment to be consistent with the CSU?

An allotment could generally be consistent with the purposes of the CSU if:

(a) The allotment for which you qualify is located near land that BLM has conveyed to a Native corporation under ANCSA, or,

(b) A Native corporation has selected the land under ANCSA and has said it would relinquish such selection, as long as the remaining ANCSA selection comports with the appropriate selection rules in 43 CFR 2650. Any relinquishment must not cause the corporation to become underselected. See 43 U.S.C. 1621(j)(2) for a definition of underselection.

§ 2568.106 In what situations could a CSU manager generally find an allotment to be inconsistent with the purposes of a CSU?

An allotment could generally be inconsistent in situations including, but not limited to, the following:

(a) If, by itself or as part of a group of allotments, it could significantly interfere with biological, physical, cultural, scenic, recreational, natural quiet or subsistence values of the CSU.

(b) If, by itself or as part of a group of allotments, it obstructs access by the public or managing agency to the resource values of surrounding CSU lands.

(c) If, by itself or as part of a group of allotments, it could trigger development or future uses in an area that would adversely affect resource values of surrounding CSU lands.

(d) If it is isolated from existing private properties and opens an area of a CSU to new access and uses that adversely affect resource values of the surrounding CSU lands.

(e) If it interferes with the implementation of the CSU management plan.

Alternative Allotments

§ 2568.110 If I qualify for Federal land in one of the categories BLM cannot convey, is there any other way for me to receive an allotment?

Yes. If you qualify for land in one of the categories listed in section 2568.91 which BLM cannot convey, you may choose an alternative allotment from the following types of land within the same ANCSA Region as the land for which you originally qualified:

(a) Land within an original withdrawal under section 11(a)(1) of ANCSA for selection by a Village Corporation which was:

(1) Not selected,

(2) Selected and later relinquished, or

(3) Selected and later rejected by BLM;

(b) Land outside of, but touching a boundary of a Village withdrawal, not including land described in section 2568.91 or land within a National Park; or

(c) Vacant, unappropriated, and unreserved land. (For purposes of this section, the term ''unreserved'' includes land withdrawn solely under the authority of section 17(d)(1) of ANCSA.)

§ 2568.111 What if BLM decides that I qualify for land that is in the category of Federal land that BLM cannot convey?

BLM will notify you in writing that you are eligible to choose an alternative allotment from lands described in section 2568.110.

§ 2568.112 What do I do if BLM notifies me that I am eligible to choose an alternative allotment?

You must file a request for an alternative allotment in the Alaska State Office as stated in section 2568.71 and follow all the requirements you did for your original allotment application.

§ 2568.113 Do I have to prove that I used and occupied the land I've chosen as an alternative allotment?

No. If BLM cannot convey the allotment for which you originally apply, and you are eligible to choose an alternative allotment, you do not have to prove that you used and occupied the land in the alternative location.

§ 2568.114 How do I apply for an alternative allotment if the CSU manager determines my application is inconsistent with a CSU?

You should contact the appropriate CSU manager as quickly as possible to discuss resource concerns, potential constraints, and impacts on existing management plans. After you do this you must file a request for an alternative allotment with the BLM Alaska State Office as stated in section 2568.71 and follow all the requirements of the original allotment application. If the alternative allotment land is also in the CSU, the CSU manager will evaluate it to determine if conveyance of an allotment there would be inconsistent with the CSU as well.

§ 2568.115 When must I apply for an alternative allotment if the CSU manager determines my application is inconsistent with a CSU?

Your application for an alternative allotment must be filed:

(a) Within 12 months of when you receive a decision from a CSU manager that says your original allotment is inconsistent with the purposes of the CSU or,

(b) Within six months of when you receive a decision from the CSU manager on your request for reconsideration of the original decision affirming that your original allotment is inconsistent with the purposes of the CSU, or

(c) Within three months of the date an appellate decision from the appropriate Federal official becomes final. This official will be either:

(1) The Regional Director of the National Park Service (NPS),

(2) The Regional Director of the U.S. Fish and Wildlife Service (USFWS), or

(3) The BLM Alaska State Director

Appeals

§ 2568.120 What can I do if I disagree with any of the decisions that are made about my allotment application?

You may appeal all decisions, except for CSU inconsistency decisions or determinations by the Department of Veterans Affairs, to the Interior Board of Land Appeals under 43 CFR Part 4.

§ 2568.121 If an agency determines my allotment is inconsistent with the purposes of a CSU, what can I do if I disagree?

(a) You may request reconsideration of a CSU manager's decision by sending a signed request to that manager.

(b) The request for reconsideration must be submitted in person or correctly addressed and postmarked to the CSU manager no later than 90 calendar days of when you received the decision.

(c) The request for reconsideration must include:

(1) The BLM case file number of the application and parcel, and

(2) Your reason(s) for filing the reconsideration, and any new pertinent information.

§ 2568.122 What then does the CSU manager do with my request for reconsideration?

(a) The CSU manager will reconsider the original inconsistency decision and send you a written decision within 45 calendar days after he or she receives your request. The 45 days may be extended for a good reason in which case you would be notified of the extension in writing. The reconsideration decision will give the CSU Manager's reasons for this new decision and it will summarize the evidence that the CSU manager used.

(b) The reconsideration decision will provide information on how to appeal if you disagree with it.

§ 2568.123 Can I appeal the CSU Manager's reconsidered decision if I disagree with it?

(a) Yes. If you or your legal representative disagree with the decision you may appeal to the appropriate Federal official designated in the appeal information you receive with the decision. That official will be either the NPS Regional Director, the USFWS Regional Director, or the BLM Alaska State Director, depending on the CSU where your proposed allotment is located.

(b) Your appeal must:

(1) Be in writing,

(2) Be submitted in person to the CSU manager or correctly addressed and postmarked no later than 45 calendar days of when you received the reconsidered decision.

(3) State any legal or factual reason(s) why you believe the decision is wrong. You may include any additional evidence or arguments to support your appeal.

(c) The CSU manager will send your appeal to the appropriate Federal official, which is either the NPS Regional Director, the USFWS Regional Director, or the BLM Alaska State Director.

(d) You may present oral testimony to the appropriate Federal official to clarify issues raised in the written record.

(e) The appropriate Federal official will send you his or her written decision within 45 calendar days of when he or she receives your appeal. The 45 days may be extended for good reason in which case you would be notified of the extension in writing.

(f) The decision of the appropriate Federal official is the final administrative decision of the Department of the Interior.

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