

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2569

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RIN 1004-AE66

Alaska Native Vietnam-Era Veterans Allotments

AGENCY: Bureau of Land Management, Interior

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing final regulations to enable certain Alaska Native Vietnam-era veterans to apply for land allotments under Section 1119 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Dingell Act). The Dingell Act requires the BLM to issue regulations to implement the Act's land allotment provisions. This action will enable certain Alaska Native Vietnam-era veterans to apply for an allotment who, because of their military service, were not able to do so during the late 1960s and early 1970s.

EFFECTIVE DATE: The final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Paul Krabacher, Division of Lands and Cadastral, Bureau of Land Management, (907) 271-5681. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339, 24 hours a day, 7 days a week, to leave a message or question with

the previously mentioned point of contact. You will receive a reply during normal business hours.

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I. Background

On December 18, 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA; 43 U.S.C. 1601, *et seq.*), which repealed the Alaska Native Allotment Act (34 Stat. 197, as amended). During the time leading up to the repeal of the Alaska Native Allotment Act, 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.

In 1998, Congress enacted a law allowing certain Alaska Native veterans a new opportunity to apply for allotments under the Alaska Native Allotment Act, as it was in effect before its repeal (Alaska Native Veterans Allotment Act of 1998; 43 U.S.C. 1629g). Those Alaska Native veterans were able to apply for allotments from July 31, 2000 to January 31, 2002. Under the Alaska Native Veterans Allotment Act of 1998, about 250 allotments were issued to Alaska Native veterans or their heirs.

On March 12, 2019, Congress enacted the Dingell Act (codified at 43 U.S.C. § 1629g-1) to provide an additional opportunity for Alaska Native veterans who have not applied for or received an allotment under prior laws to apply for an allotment. Congress

required the BLM to issue regulations implementing the Dingell Act as it pertains to land allotments for Alaska Native veterans. This rule will carry out that congressional mandate.

II. Discussion of the Final Rule, Section-by-Section Analysis, and Response to Comments on the Proposed Rule

The BLM developed this rule based on the proposed rule published in the Federal Register on July 10, 2020 (85 FR 41495). The BLM invited public comment for 30 days and received written comments from 28 individuals and groups. In addition, the agency in collaboration with the Bureau of Indian Affairs (BIA) held public meetings in Anchorage and Fairbanks prior to the drafting of the proposed rules to give participants an opportunity to provide early input into the proposed rule. The primary purpose of these meetings was to gather input from Alaska Native entities and the State, in keeping with the requirement in the Dingell Act for consulting with State, Native corporations on available lands for selection. Oral comments were recorded in writing at each of the meetings prior to the drafting of the proposed rules. Additionally, four virtual public meetings were held during the 30-day comment period. All the meetings were open to the public and were advertised in local media. Participants included both Alaska Native and non-Native individuals. Transcripts and recordings were captured for three of the virtual meetings and are included in the administrative record for this rule.

Most of the written comments we received during the 30-day comment period addressed more than one section of the proposed rule. Comments are addressed on a section-by-section basis.

This preamble discusses the proposed rule and the comments the BLM received from the public about the rule. It explains the changes the BLM incorporated into this final rule and why the BLM made them. It also explains why the BLM did not adopt all of the changes recommended by the public.

The final rule is adopted with the changes to the proposed rule discussed in this section. In summary, the final rule establishes the requirements for participating in the Alaska Native Vietnam Veterans Land Allotment Program (Program). It contains the requirements an applicant must meet in order to qualify to apply for and receive an allotment.

The final rule establishes:

1. The types of Federal land that the BLM can and cannot convey to an allotment applicant;
2. When and how an applicant may apply for a substitute selection if the original application describes land that cannot be conveyed;
3. How a personal representative may apply for an allotment on behalf of eligible veterans or the heirs of eligible veterans; and
4. The processing of applications for allotments.

Responses to Comments

In preparing the final rule, the BLM considered each of the 171 comments received from 28 individuals and groups during the 30-day public comment period. A discussion of those comments follows. The discussion deals with changes made to the final rule resulting from comments the BLM received, as well as through internal review.

The discussion also covers changes urged by the public that the BLM is not adopting. In both cases we explain the reason(s) for the decisions.

Many of the comments the BLM received were about the applicant's inability to select lands because they are currently unavailable. Section 1119(b) of the Dingell Act identifies certain Federal lands that are excluded from being allotted under this Program, including but not limited to lands within the boundary of a National Forest System Unit, a U.S. Fish and Wildlife Service (USFWS) refuge, a National Park System Unit, or a congressionally designated wilderness area. The statute also excludes lands that are subject to a withdrawal under section 17(d)(1) of the Alaska Native Claims Settlement Act, or other authority. Commenters noted that a majority of Alaska Native veterans (or heirs) who are eligible for this Program reside in the Southeast portion of Alaska where lands are not available for selection because Congress excluded the National Forest System Units, including the Tongass National Forest. As a result of these statutory exclusions, allottees and their heirs will not be able to receive ancestral lands or lands near their homes. The Dingell Act makes only vacant, unappropriated, and unreserved lands available for selection. The BLM has no authority to make lands available except pursuant to the Dingell Act, and the regulations cannot open any new lands.

Another category of comments pertained to the 60-day time periods in the proposed rule for applicants to respond to certain actions, such as notifications for correcting errors and responding to BLM decisions. Commenters were concerned that these 60-day deadlines are not long enough. We address these comments—which were directed to many different sections of the proposed rule—in the discussion of §2569.414 that follows.

The BLM added language to some sections where commenters said the language was not clear. We are making other changes to ensure that the rule is consistent from one section to another and that the meaning of certain terms is clear.

The following is a section-by-section discussion of the comments the BLM received, and which suggestions we adopted and which suggestions we rejected and our reasons for doing each.

Section 2569.201 What terms do I need to know to understand this subpart?

Section 2569.201 contains definitions that are used in the regulations. The BLM is adding new definitions that clarify the meaning of “error” as it relates to the application process. Based on comments received, the BLM agrees that it should not reject an application with very minor errors and should consider it to be “received.” This change requires the BLM to differentiate in the regulations between errors that are very minor, major errors that are correctable, and major errors that cannot be corrected; the BLM determined it would use the terms “technical error,” “substantive error,” and “uncorrectable defect” respectively to define each category of errors. The discussion of how these new definitions will be applied during the application process is addressed later in this preamble (see discussion under §§ 2569.410 and .411).

Specific terms addressing comments or additions for clarity include:

Allotment. Several commenters requested that the definition include language from the previous 1998 Act stating that proof of prior use and occupancy of selected lands is not required. Although the BLM agrees that such proof is not required, since the regulations only provide for what is required (and not what is not), we are not changing the text in the final rule in response to these comments.

Available Federal Lands. This term in the final rule incorporates the definition from the Dingell Act. In general, “available Federal land” is defined as vacant, unappropriated, and unreserved public land. One commenter requested that available lands include lands withdrawn pursuant to section 17(d)(1) of the Alaska Native Claims Settlement Act. These lands are only available when the withdrawal is revoked. We are not changing the definition in the final rule in response to this comment.

Eligible Individual. This term is used throughout the regulations to refer to an Alaska Native veteran who is eligible to receive an allotment under the Dingell Act, or another person who is eligible to apply for an allotment on the behalf of such a veteran. One commenter requested clarity on whether a person who previously applied for, but did not receive, an allotment is eligible. An individual who previously applied for, but did not receive, an allotment does qualify for this Program. We are not changing the definition in the final rule because the definition already states that a Native Veteran who “has not already received” an allotment is an eligible individual.

Another commenter asked whether a pending application under the 1998 Act would disqualify an individual for this Program. The BLM found that this is a very rare situation and in the final rule has deleted a reference to “pending applications” from the proposed definition. If the BLM receives an application from a pending applicant, it will contact the individual and explain the options for going forward. The pending application will need to be relinquished or denied before the BLM can process an application under this Program. Therefore, the BLM removed the phrase “and does not have a pending application” from the definition. In so doing, there is no longer a reason to refer to prior allotment programs cited in the Dingell Act, and that reference has been

removed. The BLM will change the definition in the regulation to solely refer to the Dingell Act since it is no longer modifying when an applicant is deemed to have received an allotment under the other allotment acts.

Another commenter recommended spelling out the definition as written in the Dingell Act instead of referring readers to the Act. The BLM decided to retain the reference to the Act instead of reciting the definition in the Act to ensure that the language stays consistent with the Act.

Mineral. A commenter requested that the BLM add a definition for “minerals.” In the proposed and final rules, the United States will reserve to itself all minerals associated with lands allotted under this Program. The commenter requested this new definition in order to limit the U.S. mineral reservation to coal, oil, and gas. The BLM agrees that providing a definition of mineral will be beneficial because the term “mineral” is vague. However, the commenter’s requested definition is too limited considering the legislative intent behind the Dingell Act. Congress’s intent was to offer Alaska Natives, who served in the military during the Vietnam era, a chance to receive an allotment similar to the one that they otherwise could have received under the Alaska Native Allotment Act of 1906. Congress also intended to eliminate historic delays related to agency review of the mineral potential for requested allotments by allowing applicants to select any available lands while reserving the mineral estate to the United States. Under the Alaska Native Allotment Act of 1906, allotments could be made only on vacant, unappropriated, and unreserved “nonmineral” land, which is generally defined as lands that are not known to contain any leasable, saleable, or locatable minerals, in such quantities and of such qualities as would, with reasonable prospects of success in developing a paying mine

thereon, induce a person of ordinary prudence to expend the time and money necessary to such development. In 1980, however, section 905(a)(3) of the Alaska National Interest Lands Conservation Act (43 U.S.C. § 1634(a)(3)) expanded the definition of “nonmineral” lands under the Alaska Native Allotment Act of 1906 to include lands with valuable deposits of sand or gravel. Based on this revised definition of “nonmineral” lands under the Alaska Native Allotment Act of 1906, “mineral” is properly defined for this rule as including coal, oil, natural gas, other leasable minerals, locatable minerals, and saleable minerals, other than sand and gravel.

Realty Service Provider. This term refers to the tribal and intertribal organizations that provide Trust Real Estate Services pursuant to a contract or compact with the BIA. Although § 2569.412(a) lists the website the public can use to determine which Service Provider serves a particular area for assistance with an application, one commenter recommended that the link be added to the definition as well. The BLM believes that the location of the website URL is more appropriate in § 2569.412 and did not change this definition in the final rule.

Receipt date. This term is used in the regulations to refer to the date on which an application arrives at the BLM Alaska State Office. The Receipt Date is used to determine which application will receive preference if two or more applications contain conflicting selections. A commenter suggested that a postmark be the determining factor for preference versus the date an application arrives at the BLM Alaska State Office. This situation is addressed later in this preamble in the discussion of § 2569.502. The BLM did not change this definition in the final rule as a result of this comment.

Substantive error. As discussed later in this preamble (see §§ 2569.410 and .411), this new definition is added to the final rule to describe one category of errors or omissions that the BLM may find on applications and supporting documents submitted as required under § 2569.402. Substantive errors include, but are not limited to: missing land descriptions and missing forms required under § 2569.404, if applicable. When an applicant corrects this type of error, the correction could show that the application has an uncorrectable defect, for instance, the applicant is not an Alaska Native.

Technical error. As discussed later in this preamble (see §§ 2569.410 and .411), this new definition is added to the final rule to describe one category of errors or omissions that the BLM may find on applications and supporting documents submitted as required under § 2569.402. A “technical error” is defined as a type of error that does not rise to the level of a substantive error or uncorrectable defect. For example, not signing your application is a technical error that can easily be corrected and does not raise any new issues that would cause an application to be rejected.

Uncorrectable defect. As discussed later in this preamble (see §§ 2569.410 and .411), this new definition is added to the final rule to describe one category of errors or omissions that the BLM may find on applications and supporting documents submitted as required under § 2569.402. An uncorrectable defect in an application is evidence that shows you are not qualified for an allotment. That evidence includes a lack of qualifying military service or proof of Alaska Native descent, or shows that the applicant has already received an allotment under a previous allotment program.

Valid relinquishment. The Dingell Act allows an Eligible Individual to select and receive from the BLM lands that have been selected by the State or a Native corporation if that

entity “agrees to voluntarily relinquish the selection.” A commenter requested that the BLM clarify that for the relinquishment to be valid, the voluntary relinquishment must be signed by a person authorized by a board resolution of the Native corporation or a delegated official of the State. The BLM already included this requirement in the definition and it will not make any changes.

The BLM has added the new definitions in alphabetic order, which requires us to redesignate the individual definitions as paragraphs (a) through (q) in the final rule. We did not receive comments on the following definitions and they have not changed in the final rule: “Allotment,” “Native,” “Native corporation,” “Segregate,” “Selection,” “State,” “State or Native corporation selected lands,” and “Veteran.”

**Section 2569.301 How will the BLM let me know if I am an Eligible Individual; and
Section 2569.302 What if I believe I am an Eligible Individual, but I was not notified
by the BLM?**

The Department of Defense (DOD) and the Department of Veterans Affairs (VA) identified and delivered to the BIA the names of veterans who served during the Vietnam Era as specified in the Act. The BIA, after subsequent review, delivered the names of Native veterans to the BLM. The BLM further reviewed the names to determine whether the Native veterans previously received an allotment of land pursuant to previous allotment Acts. As a result, the BLM has notified approximately 2,000 individuals that it believes to be eligible for the Program. There are still individuals with pending determinations.

Comments were received from several Alaska Native organizations that suggested the BLM or the BIA share the list of Eligible Individuals publicly or directly to enhance

outreach. The list cannot be shared publicly due to the Privacy Act. However, when the BLM sends notification letters to Eligible Individuals, the Realty Service Provider and/or the BIA will be copied for their likely assistance with future applications. One commenter requested that the BLM notify the specific Native corporation when an application is received for lands within their specific region. When an application is considered received by the BLM, the location of the selection gets entered onto the Master Title Plat, which the public, including Native corporations, can monitor. The Privacy Act prevents the BLM from publishing or otherwise releasing the names of Eligible Individuals without their consent.

Eligible Individuals who were not identified through the process described earlier will need to provide documentation to demonstrate that they are eligible. In addition to the application, those individuals will be required to provide a Certificate of Degree of Indian Blood or other documentation from the BIA demonstrating that they meet the definition of a Native, and a Certificate of Release or Discharge from Active Duty (Form DD-214) or other documentation from the DOD or VA demonstrating that they meet the definition of a veteran. One commenter asked the BLM to allow an affidavit in place of the DOD or VA documentation for Veteran status. The BLM has a responsibility to ensure public lands are only granted to a private individual when the person qualifies under the Dingell Act. The BLM would be unable to ensure it was meeting its responsibility if it accepted an affidavit alone and will not incorporate this suggestion into the final rule.

Section 2659.303 Who may apply for an allotment under this subpart on behalf of another person?

Section 2659.303 sets out who can apply on behalf of an Eligible Individual. The BLM received many comments addressing how a personal representative is appointed. Several commenters suggest the BLM interpret the requirements of the Dingell Act at 43 U.S.C. 1629g-1(a)(2)(B) that a “personal representative ... has been duly appointed in the appropriate Alaska State court or a registrar has qualified” broadly, with one specifically pointing to the phrase, “a registrar has qualified” as a basis for a broad interpretation. When interpreting a statute, the language of the statute is the first consideration. The BLM believes that the Dingell Act is clear. The first portion addresses a formal probate which is done by a judge for the Alaska State Court System. The second portion, regarding the registrar, addresses informal probates. The position of registrar is set out in the Alaska State statutes as the position that makes the determination on informal probates within the Alaska State Court System (AS 13.16.085). As such, the Dingell Act requires that a personal representative be appointed by an Alaska State Court System, whether by a judge in the formal probate process or by the registrar in the informal process. The BLM cannot add an alternative method for personal representatives to be appointed.

Commenters variously suggested that the BLM expand the ways a personal representative can be appointed to include those appointed by other state courts, tribal courts, affidavits from the family, and by the wills of the deceased. The BLM does not have the authority or 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 multiple heirs or persons claiming to be heirs. The 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. Likewise, allowing the appointment of personal representatives from multiple jurisdictions could put the BLM in the position of deciding among competing appointments and the BLM is ill-equipped to make that determination. The lack of a formal representative would cause considerable chaos and dramatically slow down the processing of all allotment applications. Lastly, the Dingell Act is clear that only personal representatives appointed by the Alaska State Court System can apply on behalf a deceased Eligible Individual. Therefore, the BLM declines to make any of the requested changes in the regulations.

One commenter suggested a clarification be added to 2659.303(b) that would indicate that an attorney-in-fact would not need to be appointed by a court. We are responding to the comment by changing the order of the sentence to clarify that an attorney-in-fact does not need to be court-appointed. However, we are not adopting a recommendation that the attorney-in-fact must be appointed according to Alaska State law since this restriction is not required by the Dingell Act and could cause confusion for applicants living in other states.

Section 2569.401 When can I apply for an allotment under this subpart?

As mandated under the Dingell Act, the application period begins on the effective date of this final rule and will run for a period of 5 years (43 U.S.C. 1629g-1(b)(3)(B)). Several commenters mistakenly referred to the 5 years as the period for the BLM to process an application.

Several commenters requested the five-year window be extended. The statute directs the period that the Program will be in effect, and the BLM lacks authority to extend the application period beyond the statutory deadline. Any extension of the period

will require additional legislation from Congress. Therefore, no change was made to the final rule as a result of these comments.

One commenter requested an extension of the 5 years because the State of Alaska is so over-selected under the Statehood Act that there are currently limited lands available. As stated previously, the Dingell Act sets out the application period, and the BLM lacks the authority to change it. Again, no change was made to the final rule as a result of this comment. Also, the BLM notes that State-selected lands are available for selection under this Program if the State is willing to relinquish portions of its selection.

Another commenter states it would be unfair if an application is submitted during the 5-year period and considered late because the BLM does not adjudicate it quickly enough, and then considers it to be too late to process. The amount of time it takes the BLM to adjudicate an application does not change the date for when the BLM deems an application to be received for the purposes of the 5-year application period. An application submitted prior to the end of the 5-year window will be considered timely filed.

Upon reviewing the comments received on this section as a whole, the BLM recognizes that there is a need to address the situation where an application is received in the BLM State office after the 5-year period is over, but the application is post-marked prior to the end of the application period. Under final § 2569.502, the BLM will use the receipt date for the purposes of adjudicating the application preference rights under the Dingell Act. However, in determining whether an application is timely filed, the BLM will use the post-mark date for applications that were sent by mail, as provided for under new paragraph (a)(2) of § 2569.401 of the final rule. Additionally, new paragraph (a)(1)

has been added to clarify that BLM will consider applications timely filed that an applicant submits prior to the beginning of the application period, but BLM will not adjudicate the application until the application period begins on [INSERT EFFECTIVE DATE OF FINAL RULE].

Section 2569.404 What must I file with my application form?

One commenter proposed that proof of an applicant's valid enrollment as a citizen of a federally recognized tribe be added to the list of supporting documents that applicants must provide to the BLM to prove they are Eligible Individuals. This section already requires applicants to provide a Certificate of Degree of Indian Blood or other documentation from the BIA to prove they are eligible. The BIA has the sole authority to make a determination of whether a person is an Alaska Native. In the absence of a Certificate of Degree of Indian Blood, an individual or a tribe can work with the BIA to make sure the determination meets the definition under ANCSA (43 U.S.C. 1602) for "Native." The BLM did not change the final rule in response to this comment.

Section 2569.405 What are the special provisions that apply to selections that include State or Native corporation selected land?

This section covers the special provisions that apply when an applicant applies for Federal lands within State or Native corporation selected lands. One commenter recommended that the BLM make it clear in the final rule that applicants may need to request up to three relinquishments in order to obtain an allotment. Such a situation could arise, the commenter said, when a village Native corporation has selected the surface estate and the regional Native corporation has automatically selected the subsurface estate, and the State has top-filed some of the same lands. The proposed and

final rule only require one relinquishment, because when a village corporation relinquishes the surface, the subsurface selection by the Regional corporation is automatically relinquished. Paragraph (c) establishes that the applicant's selection takes precedent over the State's top-filing, and thus a relinquishment from the State is unnecessary. We did not change the final rule in response to this comment.

One commenter requested that the BLM consider an application complete even if the applicant has not received a valid relinquishment. The BLM added a new sentence to paragraph (a) that clarifies that an applicant is not required to provide the relinquishment with the application. The BLM will request a relinquishment from the State or Native corporation on behalf of the applicant if an applicant applies for selected lands and does not include a relinquishment. If the State or Native corporation is unwilling to provide a relinquishment within 60 days, the application will still be considered complete, but the applicant will need to submit a substitute selection pursuant to § 2569. 411(c).

One commenter requested that the regulations require the BLM to notify the “appropriate Native regional and/or village corporation so that those corporations can pro-actively assist the applicant to obtain the necessary relinquishments or select alternate lands.” The change discussed previously also addresses this comment.

Another commenter stated the regulations incentivize applicants to apply for currently available lands rather than apply for State or Native corporation selected lands because available land the applicant would otherwise select may no longer be available by the time the applicant learns the State or Native corporation will not relinquish their selected land. The Dingell Act established a first come, first served basis for the BLM to award an allotment of land. The regulations follow the same structure, which we agree

does create a situation where applicants who are risk averse may choose to apply for land they know is open rather than take a chance on land that is State or Native corporation selected. This is an unavoidable trade-off that the regulations cannot change. We did not change the final rule in response to this comment.

Section 2569.406 What are the rules about the number of parcels and size of the parcel for my selection?

Several commenters had a misunderstanding that the size of the land allotment has to be less than 160 acres. This section clearly states that an allotment cannot be more than 160 acres or less than 2.50 acres. We did not change the final rule in response to this comment.

Section 2569.409 Where do I file my application?

Several commenters recommended that the BLM allow applications to be submitted online or electronically. This option was considered but found to be impracticable within the statutory timeframe for promulgating the final rules. Congress required the BLM to issue regulations implementing section 1119 of the Dingell Act no later than 18 months after March 12, 2019. The BLM's current System of Records Notice (SORN), which is a requirement under the Privacy Act of 1974 and covers the BLM's collection of information from the public for this new regulation, was established without a means to collect information electronically and would require an amendment. The process related to a SORN amendment or renewal takes a length of time which could not be completed prior to accepting applications for this Program. We did not change the final rule in response to this comment.

Section 2569.410 What will the BLM do if it finds an error in my application?

Several commenters requested additional clarification regarding the types of errors that would or would not warrant a rejection of an application. The BLM agrees with the need to ensure that minor errors do not lead to applicants losing their preferred parcels. However, some errors could lead to an applicant being unqualified, and those errors need to be addressed differently. In response to the comments, the BLM has developed a new system for the final rule that addresses how the different types of errors will be handled.

In response to commenters' requests, this section will now explain how the BLM will review an application for errors when it is submitted. This initial review will determine whether an application can be deemed received and is not the final adjudication of whether an applicant qualifies under the Dingell Act. The BLM will review the applications to determine if there are uncorrectable defects or correctable errors in the application. An uncorrectable defect is where the application or the attached materials demonstrate that the applicant is not qualified. For instance, if a person has previously received an allotment under another allotment Act, they are not eligible under the Dingell Act. If the person indicates on their application that they have previously received an allotment, and the BLM finds that this is correct, the BLM will find that the application has an uncorrectable defect. In the case of an uncorrectable defect, the BLM will issue a decision rejecting the application and the applicant will have the right to appeal.

If the BLM finds a correctable error in an application, it will characterize the error or omission as either a technical error or a substantive error. In both cases, the BLM will send a notice to the applicant identifying the error and provide the applicant 60 days after

receiving the notice to correct the error. The applicant will need to correct the error or omission by mailing the correction to the BLM postmarked by the end of the 60-day period. If the BLM does not receive a timely correction of the error, it will reject the application.

The BLM will characterize the type of error because a technical error will be treated differently than a substantive error for the purposes of the conflict provisions in § 2569.411. As defined in § 2569.201, a “technical error” is a minor error in the information provided on the application that will assist the BLM in adjudicating the claim. Typically, the error will be an omission such as failing to sign the application. The BLM needs the information, but this omitted information is not likely to result in the BLM rejecting the application for not meeting the statutory requirements once the missing information is provided. As such, the BLM finds it likely that such an application will be approved once the information is submitted. The BLM will treat the application as received on its original receipt date once the technical error has been corrected.

Conversely, a “substantive error” in the application is the type of error or omission that goes to the very substance of the requirements of the Dingell Act. The BLM needs to ensure that allotments are only awarded to those individuals qualified to receive an allotment. A substantive error would include not providing the documents required by § 2569.404 that show proof that the applicant is an Alaska Native or a veteran, if the applicant is not on the list of Eligible Individuals. This type of error is much more likely to result in the application being rejected due to the BLM finding the person does not meet the qualifications of the Act. Due to the increased likelihood of the

application not meeting the requirements, the BLM will not consider an application with a substantive error as received for the purposes of the conflict provision at § 2569.411 until the corrections are submitted. Leaving out the land description or providing a description that fails to provide sufficient detail for the BLM to determine the applicant's intended selection will also be considered a substantive error because the BLM has no way to determine what land it should segregate and make unavailable for future selections.

These changes were addressed by adding paragraphs (b), (c), and (d) to this section.

Section 2569.411 When is my application considered received by the BLM?

One comment, which was also addressed in § 2569.410, requested that the BLM consider an application to be “received” when it has technical errors. Following the changes to § 2569.410 discussed earlier, the BLM clarifies in the final rule that an application that is free of substantive errors will be considered received on the original receipt date – that is, the date on which the application is physically received by the BLM Alaska State Office (see § 2569.201(h)). Thus, if the receipt date of an application was on Day 1, the BLM would use Day 1 as the received date even if it took the BLM until Day 15 to review the application and determine that the application is free of substantive errors. This application would have preference over any application submitted after Day 1.

If an application contains a technical or substantive error, the BLM will provide notice as set forth in § 2569.410 and require the applicant to correct the error. Once an application with only technical errors is corrected, the application will receive the preference corresponding to the date on which the BLM physically received the original

application at the BLM State Office. An application with substantive errors will receive the preference corresponding to the date upon which the BLM physically receives all corrections to the substantive errors at the BLM State Office.

Changes made in § 2569.504 to the final regulations to allow applicants to amend their selections requires a change in this section as well. If the applicant chooses to file an amended selection pursuant to § 2569.504, the applicant would receive the preference corresponding to the date on which the amended selection was physically received at the BLM Alaska State Office, assuming that the amended selection is free from technical errors or conflicts. Similar to the way a substitute selection will be handled, in terms of its application date, the BLM finds that an amended selection should not retain its the original application date in order to ensure fairness to all applicants. The BLM revised paragraph (c) in this section to reflect this change by adding the phrase “or an amended selection under § 2569.504.”

Section 2569.412 Where can I go for help with filling out an application?

The BLM received comments pertaining to Eligible Individuals getting help with filling out their applications. The proposed rule highlighted the Realty Service Provider’s role as being crucial. Several commenters raised concerns regarding limited internet access and how this could affect applicants’ ability to print maps from the Available Lands Map website (<https://arcg.is/1HTrrO>). Several commenters specifically requested that the BLM provide maps to the public showing lands that are available lands for selection. It would be logistically difficult for the BLM to supply maps of all the available lands for selection at a scale that would enable an individual to confidently select a parcel. Realty Service Providers will assist applicants with viewing, selecting,

and printing selections from the Available Lands Map website, which includes zoom capabilities, background changes to topography or satellite views. However, the BLM will fulfill map requests from the public for a specific area or location. The BLM's contact information for requesting maps for those without internet capability is found at § 2569.412 of the regulatory text. We did not change the final rule in response to these comments.

One commenter requested that we clarify the roles for the VA and the Department of Interior (DOI) regarding proposed § 2569.412(d) which included the VA in a list of places that applicants could seek assistance in filling out their applications. The VA does not have a role in providing assistance to applicants in completing applications; that role belongs to the BLM. The VA's role is to effectively direct inquiries about the Program that are made to the VA to the BLM or the BIA Alaska. The VA's statutory obligations to provide outreach to veterans and make referrals to the DOI regarding this Program will continue, along with its support in determining veteran eligibility. In response to this comment, in the final rule we removed proposed § 2569.412(d) to eliminate any confusion and redesignated paragraph (e) as new paragraph (d).

One commenter requested that the specific contact information for the BIA and the BLM, such as direct phone numbers or web site addresses be included in the rule. The regulatory text includes the requested contact information, and no further information needs to be added to the final rule. We did not change the final rule in response to this comment.

Section 2569.413 How will I receive Notices and Decisions?

The BLM received a number of comments pertaining to how the BLM would issue Notices and Decisions, how applicants would reply to them, how applicants could update their contact information, and who the BLM should contact when it issues Notices and Decisions.

One commenter requested that the BLM clarify how applicants could update their contact information. Paragraph (c) in the proposed and final rules provides the information on how applicants can update their address of record and has been updated for the final rule to include information on how to contact the BLM via fax and email.

One commenter asked the BLM to clarify when it considers a response to be received by the BLM, especially when the response is mailed. In response, the BLM added paragraph (d) to the final rule to clarify that a response will be deemed received either on the date it is physically received at the BLM Alaska State Office; if the response is mailed, on the date it was post-marked; or, if emailed, the date the email was sent.

One commenter requested that the BLM provide additional means in the final regulations for applicants to respond to notices and decisions. Rather than making this change in the final rule, the BLM will state within the individual notices and decisions that it sends to applicants how they may respond. Generally, a response can be submitted by email or fax, but not in every case. To avoid any confusion, the methods of response will be addressed in the notice or decision. We did not change the final rule in response to this comment.

Another commenter requested that the BLM clarify the substitute method referenced in § 2569.413(b)(2) for re-delivering Notices or Decisions if they are returned to the BLM as undelivered, or if the recipient refused to sign the Return Receipt.

Generally, the BLM will use first-class mail to deliver Notices and Decisions, but it may use other methods such as personal delivery or any method that the BLM determines has the highest chance of success at the time. No change was made to the rule in response to this comment.

One commenter requested that the BLM notify the Realty Service Provider and the village and regional corporation if the first delivery of a Notice or Decision is unsuccessful. By policy, the BLM will send the Realty Service Provider and/or the BIA a courtesy copy of all documents sent to an applicant. The BLM will also send the Realty Service Provider and/or the BIA a notice when a document is returned for any reason, and the BLM requests a current address from the Realty Service Provider and/or the BIA at that time. Likewise, if the land selected by an applicant is also selected by a Native corporation, the appropriate village and regional corporation will receive a courtesy copy of all documents sent to the applicant.

In preparing the final rule, the BLM found subparagraphs (b)(i) through (b)(iii) were incorrectly numbered in the proposed rule. We redesignated those paragraphs as (b)(1) through (b)(3) for the final rule to conform with U.S. Government Publishing Office style requirements.

Section 2569.414 May I request an extension of time to respond to Notices?

In response to comments requesting that the BLM extend various deadlines for things such as responding to notifications for correcting errors on applications and responding to BLM Notices, the BLM added § 2569.414 to the final rule which expressly allows extensions of time for good cause. Several commenters recommended a longer time, up to 1 year, for applicants to respond to Notices. During the consultation process

that the Department conducted in 2019 with potentially affected tribes, the proposed response time for correcting errors on applications at that time was 30 days, which participants said was too short. The BLM doubled the response time, to 60 days, for nearly all clarification issues related to the application process. For correcting technical issues, the DOI determined that it creates an unfair situation for other applicants to keep the land segregated and unavailable from other applicants to select while the original applicant makes corrections. Likewise, to extend a response time for substantive errors beyond 60 days could create an undue hardship on the applicant in that the application will not be considered received until the corrections are received, and the applicant may unwittingly lose the preference for their favored parcel.

Overall, the BLM finds that using a consistent period of 60 days to respond takes into consideration the myriad of communication difficulties that can occur in Alaska, while providing consistency throughout the regulation to avoid confusion. The time period the BLM has adopted in the rule is also fair because the 60-day response time starts when the applicant receives the Notice, and responses are considered received when postmarked. Hence, any delay in the mail would not affect the length of time the applicant has to reply. Permitting extensions to the 60-day deadline for “good cause” when fixing some types of errors or responding to Notices provides an additional safeguard to ensure fairness.

Section 2569.501 What will the BLM do with my application after it is received?

We received numerous comments on the steps the BLM will take to process applications after they are received. One commenter requested that the BLM send a copy of all Notices of Survey to the Realty Service Providers. As discussed earlier, the Realty

Service Provider and/or the BIA will receive copies of all documents, including the Notice to Survey, that the BLM sends to applicants. We did not change the final rule in response to this comment.

Another commenter expressed confusion about what it means that the BLM will note the selection to the Master Title Plat and asked whether this is a public process that is open to public comments. The Master Title Plat is a BLM-managed, publicly available record of actions that have taken place on Federal lands. Notations to the Master Title Plat are administrative functions that do not warrant public participation or comment. The BLM did not change the final rule in response to this comment.

Several commenters requested that the BLM provide a timeline for completing each of the steps outlined in paragraphs (a) through (j) in § 2569.501. Some of the commenters suggested that the BLM should issue an Interim Conveyance within one year of receiving an application, and then complete the survey and issue the Certificate of Allotment within two years. The Dingell Act states that it is the intent of Congress that once the application period begins the BLM will issue Certificates of Allotments within one year of receiving the applications of Eligible Individuals. While the BLM will strive to meet the intent of Congress, unforeseen complications with surveying parcels or adjudicating applications, for example, may cause delays. The expression of intent by Congress did not impose a statutory deadline. Also, unlike the ANCSA, the Dingell Act does not give the BLM authority to issue an interim conveyance. The BLM did not change the final rule in response to this comment.

One commenter requested that the BLM provide a notice to the applicant when an application is submitted. The BLM finds this is a matter better addressed by policy rather

than in the regulations. The BLM will issue a notification to the applicant with a courtesy copy to the Realty Service Provider and/or the BIA when an application is submitted. If the selection involves State- or Native corporation-selected lands, that entity will also receive notification that an application has been filed. The notification will provide the results of the BLM's review for errors under § 2569.410 and specify whether the application has been deemed received. If the BLM finds errors, the notification will alert the applicant and identify exactly what information is needed and why. If the BLM finds errors in the application, the applicant will have 60 days to submit a correction. We did not change the final rule in response to this comment.

One commenter requested that paragraph (c) clearly state whether an allotment adjustment could affect the acreage. The BLM will attempt to retain the acreage requested in the selection, but the adjustment may cause a reduction or addition in the acreage by straightening the boundaries or otherwise making it easier to survey. This clarification was added to the section.

Section 2569.502 What if more than one Eligible Individual applies for the same lands?

This section addresses what happens when two applicants apply for the same land. The BLM will consider an application “received” even if it has technical errors. An applicant can wait for the BLM to issue a final decision pursuant to subsection (b) before selecting a substitute selection. However, an applicant may want to select a substitute parcel if the original selection conflicts with another application that has technical errors. As such, the BLM added subsection (c) to give applicants the option to select a substitute parcel prior to a final decision on the conflict. This fully optional

provision alleviates the need for applicants to wait 60 days for parcels they are unlikely to receive. This responds to several comments received that stated that the application with minor errors should not be at a disadvantage in the conflict provision. The benefit to applicants is that they can obtain a preference right to the substitute selection earlier. The risk is being unable to choose the originally desired land later if technical errors in the conflicting application are not corrected and the original selection re-opens.

One commenter wanted confirmation that Eligible Individuals can still apply for an allotment within the five-year timeframe if their applications are rejected. This was part of the proposed rule in paragraph (c) and it is retained in the final rule. Because we are adding a new paragraph between two existing paragraphs in § 2569.502, we are renumbering the remaining paragraphs of this section in the final rule. Paragraph (c) in the proposed § 2569.502 will be paragraph (d) in the final rule.

One commenter requested that the BLM make the preference on a substitute selection based on the receipt date of their original application. While the BLM recognizes the justification for this recommendation, the logistical challenges of doing so would cause disruption throughout the adjudication process. Later applicants who had no conflict with their selection when it was made could lose out to a substitute selection made in the future. This could create a chain reaction where the applicant that is now conflicted files a substitute selection over a previous applicant as well. The delays this would cause to adjudication and the uncertainty it would cause for applicants outweigh the equitable considerations for the single applicant whose substitute selection cannot relate back to his original application receipt date. No change was made to the final rule as a result of this comment.

One commenter recommended that the first tiebreaker for determining an application's preference should be the postmark date on the application. This suggestion could cause delays as the BLM would have to wait to process any of the applications until enough time had passed for potentially conflicting applications to be received in the mail that may have an earlier postmark date. In paragraph (a)(1), the BLM chose to make the first tiebreaker the date for when the BLM receives the application in order to speed up the processing time for applications. Under paragraph (a)(2), postmarks or shipping dates would be used to break a tie if the receipt dates on multiple applications are the same. No change was made to the final rule based on this comment.

One commenter recommended that the BLM allow an applicant to include an alternative selection with their application as a backup in case there is a conflict. The BLM has considered how this recommendation would work logistically. The BLM does not believe it is sound policy to segregate the alternative selection when the application is deemed received because that would block other applicants from requesting the land, and without segregating the land, there is no guarantee that the alternative selection would remain open. As such, asking for an alternative selection would tie up lands that other Eligible Individuals could select and add complexity to an application that is of little benefit. No change was made to the final rule as a result of this comment.

Another commenter asked whether a person determined by the VA and the BIA to be an Eligible Individual pursuant to § 2569.301 would receive preference over an applicant who was not predetermined to be eligible. The conflict provision in this section rests solely on when the BLM receives a complete application, and no consideration is

given to applicants who are predetermined to be Eligible Individuals. No change was made to the final rule based on this comment.

Section 2569.503 What if my application includes lands that are not available Federal lands?

One commenter requested that an application submitted on unavailable lands should be considered as received on the receipt date. The BLM will consider the date submitted for applications, even if the applicant selected unavailable lands, in determining whether an application is timely filed for purposes of the 5-year window under the Dingell Act. However, the BLM will issue the applicant a decision informing the applicant that the lands selected are not available. The applicant will then have the same choices he or she would have under § 2569.503(a). The applicant could make a substitute selection that consists of an adjustment to his or her original selection that excludes the lands that are not available or make a new selection in a different area. For purposes of determining preference under the conflict provision, a substitute selection which describes new lands will be deemed received when the substitute selection is submitted. No change was made to the final rule as a result of this comment.

Section 2569.504 Once I file, can I change my land selection?

The BLM received several comments recommending that the BLM allow applicants to amend their selections when new lands become available. In response to these comments, the BLM re-analyzed the fairness of allowing applicants to amend their selection. Currently, the available lands are geographically restricted, primarily due to withdrawals of lands under section 17(d)(1) of the ANCSA or other authority, or because the land is within a National Wildlife Refuge or a National Forest. Actions by either the

Secretary or Congress may make these lands available during the selection period. The BLM recognizes the applicants' desire to amend their application in the event land closer to their homes or places of subsistence activities become available. On the other hand, the applicant's original selection segregates the land from all other applicants and taxpayer dollars would be expended to perform surveys that would have to be redone if applicants changed their selection.

One commenter recommended that the BLM "should allow for changes to selections up until the BLM schedules the surveys of the selected lands." The BLM believes that this recommendation balances the concerns of both the applicants and the BLM and has changed § 2569.504 in the final rule accordingly. Under new paragraph (a), the applicant would be able to amend their application up until their response to the Notice of Survey under § 2569.501(e) is due. This will limit the time in which a selection can block future applicants from selecting the land and ensure that the BLM does not waste resources on surveys which will not be needed. Likewise, it will give applicants a period of time to see if new lands have become available.

In making this change, the BLM recognized a similar issue may arise where an applicant has relinquished their application after BLM has already undergone the expense of the survey and decides to apply again. Therefore, the BLM added new paragraph (c) to only allow an application for new land if the original application is relinquished before the applicant responds to the Notice of Survey or where the original selection is no longer available.

Section 2569.505 Does the selection need to be surveyed before I can receive title to it?

Several comments were received related to the requirement that a selection must be surveyed before the BLM can convey it to the applicant and the timeliness of the survey. One commenter said the survey should be an immediate priority for the BLM. To the best of its ability, the BLM will follow the intent of the legislation to issue a Certificate of Allotment within one year of an application, including the survey. No change was made to the final rule as a result of these comments.

Section 2569.506 How will the BLM convey the land?

Several comments were received pertaining to the Certificate of Allotment. The Certificate of Allotment issued under the Dingell Act will have the same benefits as a Certificate of Allotment issued under the Alaska Native Allotment Act of 1906 as to being inalienable and nontaxable until otherwise provided by Congress, or until the Secretary of the Interior or the Secretary's delegate approves a deed of conveyance vesting in the purchaser a complete title to the land. No change was made to the final rule as a result of this comment.

One commenter requested that the lands not be encumbered or impeded by any Federal designation, including, but not limited to, Wild and Scenic River or Areas of Critical Environmental Concern. A Certificate of Allotment is a grant of a private title which means that the land is no longer federally managed land subject to such federal designations. No change was made to the final rule as a result of this comment.

One commenter requested clarification about how the Certificate of Allotment will be issued if there are multiple heirs, devisees, and/or assigns. They suggested that the BLM issue multiple Certificates of Allotment in the names of each heir. The BLM does not determine who the heirs, devisees and/or assigns are. There will be one

Certificate of Allotment, just like the other allotment programs, which will state it is for the Heirs, Devisees and/or Assigns of (name of the Eligible Individual). The BLM added paragraph (d) to § 2569.506 to clarify how the Certificate of Allotment will be issued when the Eligible Individual is deceased.

Section 2569.507 What should I do if the Eligible Individual dies or becomes incapacitated during the application process?

In reviewing the proposed rules, the BLM found that the end of the last sentence of paragraph (d) could create confusion about how a Certificate of Allotment is issued when the Eligible Individual is deceased. To correct this, the BLM has removed the phrase: “and will issue the Certificate of Allotment in the name of the deceased Eligible Individual” from the final rule.

Section 2569.601 What lands are available for selection?

Many comments identified additional lands they believed should be included as available lands for selection. Lands that they identified included lands in the Tongass National Forest, non-navigable lands within the Tongass, land within State or municipal boundaries, areas around ports, and the USFWS refuge lands. As stated earlier, the Dingell Act identified the lands that are available, and the BLM lacks the authority to make any lands available for selection that are not vacant, unappropriated, or unreserved.

Additionally, several commenters identified un-patented mining claims and State or Native selections in the Southeast as lands they believed should be available for selection. These lands would not become available for selection when the mining claim is forfeited or relinquished, or after the State or Native selections are denied or

relinquished, unless the underlying land is vacant, unappropriated, or unreserved and certified as free of known contaminants.

Several commenters noted that currently available lands are isolated. Some commenters cited costs related to visiting the currently available remote sites prior to making a commitment to a selection. One of the commenters questioned applicants' ability to access their newly acquired allotments. ANILCA Section 1323(b) guarantees access across all the BLM land and, again, the Act defines the lands that are available to be conveyed. These rules cannot open any lands not identified by the Dingell Act.

One commenter requested that the Alaska Native Veterans Allotment Program of 2019 map show "potentially available lands." The current map does show "potentially available lands." The commenter also proposed subsequent legislation to release ANCSA withdrawals on individually selected parcels. Legislative action is within the purview of Congress, not the BLM.

There were several comments suggesting that maps be printed and sent to applicants, and that applicants should be able to comment on them. The BLM is not printing maps Program-wide because of the vast area of available lands, the fact that available lands will change over time, and the significant resources required to print maps of suitable size for selections. Eligible Individuals are directed instead to use the online Available Lands Map to review and print land selections. For those without access to the internet, a physical copy of the map of available Federal lands can be requested from the agencies and offices listed in § 2569.412. Members of the public are always encouraged to provide comments on available products, such as maps, to the BLM to ensure the map is as user friendly as possible.

A commenter asked what the process is for the BLM to add additional lands as they become available. The BLM continually updates its land records with conveyances and other actions. When new lands become available, the BLM will do a contamination review and, if the lands have no known contaminants, the newly available lands will be reflected on the Available Lands Map. However, the BLM does not have the authority to add additional lands by request as the available lands are defined in the Act.

No changes were made to the final rule as a result of these comments.

Section 2569.602 How will the BLM certify that the land is free of known contamination?

One commenter requested a “more rigorous level of effort” to determine whether or not a land selection is free of known contaminants, to include a site visit to complete an environmental assessment. The BLM will perform a contaminated site review by reviewing the databases listed in § 2569.602 for contamination reports. The land would not be available for selection if any of the databases indicated that the land is potentially contaminated. The BLM finds that the approach outlined in § 2569.602 adheres to the statutory requirement to certify that the land is free of known contamination. The BLM will be cautious in its review, and any land found to have possible contamination based on these searches will not be available for selection. Throughout the Program, new land databases may become available to review for contamination, and the BLM will continue to seek out the most up-to-date information. The public is encouraged to suggest any other sources the BLM should review before it certifies the lands as free from contamination. No change was made to the final rule as a result of this comment.

Section 2569.603 (previously numbered 2569.604) Are lands that contain minerals available?

The proposed rules did not include a § 2569.603. In the final rule, proposed rule § 2569.604 is now designated § 2569.603. The BLM also revised the title and the regulation to provide additional clarification.

One commenter requested that the BLM clarify in the rule whether the allottee would receive royalties for minerals removed from the land. Minerals are reserved to the United States, so the allottee will not hold any interest in the minerals to acquire a royalty interest. Another commenter stated, “The word ‘you’ should be replaced with ‘Eligible Individuals or to the devisees and/or assigns of Eligible Individuals.’” The BLM implemented this change to add clarity to the regulations.

Section 2569.604 (previously numbered 2569.605) What happens if new lands become available?

The proposed rules did not include a § 2569.603. Section 2569.605 in the proposed rule was changed to § 2569.604 in the final rules following the removal of the missing section.

One commenter asked how new lands would become available and suggested that the rule should include a timeframe for the BLM to review new additions and make them available. New lands may become available for selection through the revocation of ANCSA section 17(d)(1) withdrawals which have been recommended by the BLM in Resource Management Plans, or through new legislation. In both scenarios, the BLM cannot estimate a timeline because the ability to open these lands is outside of the agency’s control. If new land becomes available, the BLM must certify that it is free of

known contamination before making it available for selection. The BLM will then update the Available Lands Map and its records to show those additional lands as available for selection. The BLM will work quickly to complete these steps if land becomes available. No change was made to the final rule as a result of these comments.

Section 2569.701 If Congress makes lands available within a National Wildlife Refuge, what additional rules apply?

Several commenters requested the ability to change their selection if national wildlife refuge lands become available. These comments were addressed in § 2569.504, which explains the opportunity for changing a land selection. Another commenter requested that lands be made available within the Yukon Delta National Wildlife Refuge. While national wildlife refuge lands are not available for selection under this Program, the Dingell Act directs the USFWS to submit a report to Congress with its determination of which lands within the National Wildlife Refuge System should be made available for allotment selection. Such refuge lands could be made available for selection through subsequent legislation. No changes were made to the final rule as a result of these comments.

Comments on Subjects Not Included in the Proposed Rule

Some of the comments the BLM received were general in nature but did not pertain to any language that appeared in the proposed rule itself. Several commenters were appreciative of the Program, one commenter requested outreach on specific media outlets, a comment from a Native corporation stated that they will require a cultural tie to any selection before the corporation will relinquish its selection for an Eligible Individual. No changes were made to the final rule as a result of these comments.

Comments Related to Funding

Several comments requested assurance that the Realty Service Providers are funded to assist applicants. The Dingell Act did not provide funding to the BIA or the BLM for implementing the Program. The BIA has taken measures to provide one-time funding to help offset these costs, and it intends to continue assisting the Realty Service Providers to ensure the success of the Program. Another commenter suggested that funding be made available to potential applicants to perform site visits. Any costs to visit a site are the responsibility of the Eligible Individual.

The BLM received one comment suggesting that monetary compensation be offered instead of an allotment of land, especially since 43 U.S.C. 1629g-1(b) limited the types of Federal land that can be conveyed. 43 U.S.C. 1629g-1(b) does not contain any provision for monetary compensation in lieu of an allotment of land. The BLM has no authority to include such a provision in its regulations.

No change was made to the final rule as a result of these comments.

II. Procedural Matters

Regulatory Planning and Review Executive Orders 12866 and 13563

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. These regulations are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain

flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rule-making process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

These regulations will not have an effect of \$100 million or more on the economy and will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The effect of these 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 5 years. The regulations create simple adjudication tasks for the BLM staff to implement the Dingell Act.

For more detailed information, see the Regulatory Impact Analysis (RIA) prepared for this rule. The RIA has been posted in the docket for the rule on the Federal eRulemaking Portal: In the Searchbox, enter "RIN1004-AE66," click the "Search" button, open the Docket Folder, and look under Supporting Documents.

Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

This rule is not a significant regulatory action under E.O. 12866, and therefore is not considered an E.O. 13771 regulatory action.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*), to ensure that Government regulations do not unnecessarily or

disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule will have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This rule would apply only to certain Alaska Native veterans eligible to apply for allotments and 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 Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

1. Will not have an annual effect on the economy of \$100 million or more.
2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
3. Will 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 BLM is promulgating regulations to implement Section 1119 of the Dingell Act, which provides an additional opportunity for Alaska Native veterans who have received allotments under prior laws to apply for allotments. This rule will have no significant economic impact. This rule will specify the procedures under which applications for allotments under Section 1119 of the Dingell Act are submitted and processed. Processing of these applications by the BLM will result in the transfer of lands selected by veterans from the Federal government to the veterans, as required by Congress.

Submitting and processing these applications will result in minor costs to the applicants and to the government.

Unfunded Mandates Reform Act

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

Takings (E.O. 12630)

This final rule will not affect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property.

Under the final rules, lands selected by an applicant must be Federally owned lands in the State of Alaska that are vacant, unappropriated, and unreserved. An applicant may select, in whole or in part, land that has been selected by the State or a Native corporation, but has not yet been conveyed to that entity; however, the State or Native corporation must choose to make that land available by relinquishing their selection.

The rule will not affect private property rights. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

A Federalism assessment is not required because the 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.

Civil Justice Reform (Executive Order 12988)

This final rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards

Consultation with Indian Tribes (Executive Order 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. This final rule complies with the requirements of Executive Order 13175 and Department of the Interior Secretarial Order 3317. Specifically, while preparing this rule, the BLM initiated consultation with potentially affected tribes. Examples of consultation include written correspondence, and meetings and discussions about objectives of this rulemaking effort with representatives of tribal governments.

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

This rule contains new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). The BLM may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements identified below associated with the Alaska Native Vietnam Veteran Land Allotment Program require approval by OMB:

(1) ***Provide Proof of Eligibility (43 CFR 2569.302)*** – Section 2569.302 would allow individuals who believe that they are eligible to participate in the program, but who have not been automatically notified by the BLM that they are eligible, to apply for an allotment. Such individuals would be required to provide with their application supporting documents to prove they are eligible, such as a Certificate of Degree of Indian Blood and a Certificate of Release or Discharge from Active Duty (Form DD-214).

(2) ***Appointment of Personal Representative/Guardian/Attorney-in-fact (43 CFR 2569.303 and 2569.404)*** – Section 2569.303 would allow another person to apply for an allotment on behalf of an Eligible Individual. A personal representative of the estate of an Eligible Individual could apply for an allotment for the benefit of the estate. The personal representative must be appointed in an appropriate Alaska State court by either a judge in the formal probate process or the registrar in the informal probate process. A court-appointed guardian or conservator or an attorney-in-fact of an Eligible Individual could apply for an allotment for the benefit of the Eligible individual. Similarly, under § 2569.507 if an applicant dies or becomes incapacitated before

completing the application process, a personal representative, guardian, conservator, or attorney-in-fact could be appointed to continue to represent the applicant or the applicant's estate.

Section 2569.404 identifies the information and documents that applicants would be required to include on their initial application form under various applicant scenarios. This form would collect basic contact information, along with the Eligible Individual's date of birth, and:

- A map showing the location of the requested allotment, along with a written description of the land requested. The BLM will provide an internet-based mapping tool with the identified available Federal lands;
- Appropriate documentation proving that the Eligible Individual is an Alaska Native;
- Appropriate documentation proving that the Eligible Individual is a Veteran who served during the Vietnam Conflict (between August 5, 1964, and December 31, 1971); and
- If applicable, documentation from an Alaska State Court that shows that a personal representative, guardian/conservator, or attorney-in-fact is authorized to file the application or pursue an already-filed application on behalf of the Eligible Individual or his/her estate.

If additional time is needed for the applicant or the applicant's heirs to arrange for a personal representative, guardian, conservator, or attorney-in-fact to be appointed, the BLM would allow the applicant, an employee of the BIA, or a Realty Service Provider to request that the application be held in abeyance for 2 years.

NOTE: With regard to the application process, § 2569.407 specifies that if an applicant's selection contains more than 160 rods (one-half mile) of water frontage, the BLM will automatically request the Secretary to waive the 160-rod limitation contained in Section 1 of the Act of May 14, 1898 (48 U.S.C. 371).

(3) ***Request for 2-year Extension of Application Deadline (43 CFR 2569.401 and 2569.507)*** – Section 2569.401 would set a 5-year deadline for Eligible Individuals, their heirs, or representatives to submit initial applications. In the case of those who submit applications that are incorrect, incomplete, or conflict with other selections, Eligible Individuals would have 60 days after the BLM notifies them of these defects to submit corrected, completed, or substitute applications. This period may be extended for up to 2 years in order to allow a personal representative, guardian, conservator, or attorney-in-fact to be appointed. (see §§ 2569.410, 2569.502, and 2569.503) (This two-year extension language appears in both 2569.401(b) and 2569.507(c) reg text. The preamble in the rule discusses the two-year extension under the 2569.401 discussion and includes the .507(c) citation.)

(4) ***Allotment Application – Form BLM No. AK-2469 (43 CFR 2569.402 and 2569.404)*** – Section 2569.402 would require applicants to fill out and sign an application form (BLM No. AK-2569). The requirements associated with 2569.404 are specified above.

Section 2569.403 would require the BLM to directly mail a copy of the application form to those persons who have been preliminarily identified as Eligible Individuals through the process described in § 2569.301. The applications would be mailed to the most recent addresses on file with the VA, the BIA, and the BLM. This

section also identifies locations where copies of the application form would be available for applicants who do not receive an application in the mail.

(5) ***Multiple Applications That Include Selected State and Native***

Corporation Lands (43 CFR 2569.405) – If an applicant requests land previously selected by, but not yet conveyed by the Federal Government to the State or an Alaska Native corporation, the applicant, or the BLM acting on behalf of the applicant, could request that the State or Alaska Native corporation relinquish the land to the applicant. This relinquishment would be conditioned upon the applicant successfully completing the application process. In conjunction with this rulemaking, the BLM anticipates that the State and Alaska Native corporations would also issue blanket conditional relinquishments of certain selected unconveyed lands. These blanket relinquishments also would take effect only if valid applications for these lands are successfully completed.

Upon receipt of an application requesting State or Alaska Native corporation selected, unconveyed lands, if the application does not include a relinquishment request from either the State or Naive corporation, the BLM would automatically request such relinquishment on behalf of the applicant. The BLM must receive a valid relinquishment from the State or Native corporation, agreeing to relinquish the land to the applicant before approving the application. Following existing Alaska Conveyance Program policy, the relinquishment would be in the form of a letter from the State or Alaska Native corporation and must include the legal description of the parcel the entity is willing to relinquish. The letter must also describe the conditions, if any, for the relinquishment. If the relinquishment is by a Native corporation, the letter must be

accompanied by a board resolution authorizing the relinquishment and granting the person signing the letter authority to do so.

If an application requests land covered by a blanket State or Alaska Native corporation relinquishment, a relinquishment letter and an Alaska Native corporation board resolution would not be required.

(6) ***Correcting Technical Errors on Applications (43 CFR 2569.410)*** – If the BLM finds a technical error in an application, such as an incomplete or unsigned application, it would notify the applicant. The applicant would then have 60 days after receiving notification to correct the error.

(7) ***Correcting Errors in Survey-related Documents (43 CFR 2569.501)*** – After receiving an application, reviewing the legal description of the land requested, and making minor boundary adjustments, if needed, the BLM would send the applicant a Notice of Survey, informing the applicant of the shape and location of the lands the BLM planned to survey. The applicant would have an opportunity to challenge, in writing, the draft Plan of Survey within 60 days of receipt of the BLM's notice.

(8) ***Substitute Selections – Multiple Applications on Same Lands (43 CFR 2569.502)*** – If two or more Eligible Individuals select the same lands, in whole or in part, the BLM would decide which application would be given preference based on either submission dates and times, or a lottery. The non-preferred applicants could, within 60 days of receipt of the BLM's decision, either provide the BLM a new substitute selection or request that the BLM continue to adjudicate the non-conflicting portion of the selection.

If a non-preferred applicant does not respond to the BLM's decision within 60 days, the BLM would reject the application and the Eligible Individual could file a new application for different lands before the end of the five-year program.

Upon completion of the survey, the BLM would mail the applicant a document titled Conformance to Plat of Survey. If the applicant found an error in the way the BLM surveyed the land, based on the Plan of Survey, the applicant could dispute the survey in writing within 60 days of receipt of the Conformance of Plat of Survey.

(9) ***Substitute Selections and Requests for Partial Adjudication (2569.502 and 43 CFR 2569.503)*** – If an Eligible Individual's selection includes lands that are not available Federal lands, the BLM would issue a decision informing the applicant that the land is unavailable. The applicant could, within 60 days of receipt of the BLM's decision either provide the BLM a new substitute selection or request that the BLM continue to adjudicate the portion of the selection that is within available Federal lands.

If the applicant fails to respond within 60 days of receipt of the BLM's decision, the BLM will reject the initial application and the Eligible Individual could file a new application for different lands before the end of the five-year application period.

(10) ***Appeals of BLM Decisions (43 CFR 2569.502, 2569.503, and 2569.801)***
– Applicants would be allowed to appeal any of the BLM's Decisions regarding their applications to the Interior Board of Land Appeals as provided for under 43 CFR part 4. If the applicant is a non-preferred applicant under 43 CFR 2569.502, the losing applicant could select a substitute selection under § 2569.502(b).

Title of Collection: Alaska Native Vietnam Era Veterans Land Allotment.

OMB Control Number: 1004-0216.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals and State/Local/Tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Annual Nonhour Burden Cost: \$55,000 (associated with court fees and miscellaneous expenses).

Requirement	Estimated Annual Number of Responses	Estimated Annual Hours per Response	Estimated Total Annual Burden Hours*
<i>Provide Proof of Eligibility (43 CFR 2569.302)</i>			
Individuals/Households	50	2	100
<i>Appointment of Personal Representative/Guardian/Attorney-in-fact (43 CFR 2569.303 and .404)</i>			
Individuals/Households	200	2.5	500
<i>Request for 2-year Extension of Application Deadline (43 CFR 2569.401 and 2569.507)</i>			
Individuals/Households	20	.5	10
<i>Allotment Application (43 CFR 2569.402 and 2569.404)</i>			
Individuals/Households	500	4.5	2,250
<i>State/Native Corporation Relinquishments (43 CFR 2569.405)</i>			
State/Local/Tribal Governments	75	2	150
<i>Correcting Technical Errors on Applications (43 CFR 2569.410)</i>			
Individuals/Households	175	2	350
<i>Correcting Errors in Survey-related Documents (43 CFR 2569.501)</i>			
Individuals/Households	20	2	40
<i>Substitute Selections – Multiple Applications on Same Lands (43 CFR 2569.502)</i>			
Individuals/Households	150	2	300
<i>Substitute Selections and Requests for Partial Adjudication (2569.502 and 43 CFR 2569.503)</i>			
Individuals/Households	15	.5	8
<i>Appeals of BLM Decisions (43 CFR 2569.502, 2569.503, 2569.801)</i>			
Individuals/Households	60	2	120
<i>Totals:</i>	<i>1,265</i>		<i>3,828</i>

On July 10, 2020, we published a proposed regulation (RIN 1004-AE66, “*Alaska Native Vietnam-Era Veterans Allotments*” 85 FR 41495). The proposed rule solicited

comments on the information collections for a period of 30 days, ending on August 10, 2020. We received the following comment related to information collection in response to the proposed rule:

Comment: Department of Veterans Affairs - Veterans Benefits Administration (VA-VBA), received August 10, 2020:

The VA-VBA commented on both the proposed rule, which is addressed earlier in the preamble, and on the application form. VA requested BLM clarify question 8 on the Alaska Native Vietnam-Era Veterans Allotment application as to the specific service requirement or whether BLM will consider character of discharge as part of qualifying service.

Agency Response to Comment: In response to this comment, the BLM has added the language, “(e.g. Form DD214 or other official documentation),” to the end of question 8 to clarify the proof an applicant should submit to demonstrate they meet the definition of veteran. Similarly, the BLM has added, “(e.g. Certificate of Degree of Indian Blood or other official documentation),” to the end of question 9 to clarify the proof an applicant should submit to demonstrate they meet the definition of Native. In accordance with the PRA, the information collection requirements included in this final rule have been submitted to OMB for approval under control number 1004-0216.

National Environmental Policy Act

A detailed statement under the National Environmental Policy Act (NEPA) is not required because the rule is categorically excluded from NEPA review. This final rule is excluded from the requirement to prepare a detailed statement because it is a regulation entirely procedural in nature. (For further information see 43 CFR 46.210(i)). We have

also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. Therefore, the BLM has issued a categorical exclusion for this final rule. Documentation of the reliance upon a categorical exclusion has been prepared and is available for public review with the other supporting documents for this rule.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

Author

The principal authors of this final rule are: Paul Krabacher and Candy Grimes, Division of Lands and Cadastral Survey; assisted by the Office of the Solicitor.

Dated: _____

David L. Bernhardt
Secretary of the Interior

List of Subjects in 43 CFR Subpart 2569

Alaska, Homesteads, Indian Lands, Public Lands-Sale, and Reporting and Recordkeeping requirements

For the reasons set out in the preamble, the BLM proposes to amend 43 CFR part 2560 as follows:

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

Authority: 43 U.S.C. 1201, 1740.

2. Add subpart 2569 to read as follows:

General Provisions

Sec.

2569.100 What is the purpose of this subpart?

2569.101 What is the legal authority for this subpart?

2569.201 What terms do I need to know to understand this subpart?

2569.301 How will the BLM let me know if I am an Eligible Individual?

2569.302 What if I believe I am an Eligible Individual, but I was not notified by the BLM?

2569.303 Who may apply for an allotment under this subpart on behalf of another person?

Applying for an Allotment

2569.401 When can I apply for an allotment under this subpart?

2569.402 Do I need to fill out a special application form?

2569.403 How do I obtain a copy of the application form?

2569.404 What must I file with my application form?

2569.405 What are the special provisions that apply to selections that include State or Native corporation selected land?

2569.406 What are the rules about the number of parcels and size of the parcel for my selection?

2569.407 Is there a limit to how much water frontage my selection can include?

2569.408 Do I need to pay any fees when I file my application?

2569.409 Where do I file my application?

2569.410 What will the BLM do if it finds an error in my application?

2569.411 When is my application considered received by the BLM?

2569.412 Where can I go for help with filling out an application?

2569.413 How will I receive Notices and Decisions?

2569.414 May I request an extension of time to respond to Notices?

Processing the Application

2569.501 What will the BLM do with my application after it is received?

2569.502 What if more than one Eligible Individual applies for the same lands?

2569.503 What if my application includes lands that are not available Federal lands?

2569.504 Once I file, can I change my land selection?

2569.505 Does the selection need to be surveyed before I can receive title to it?

2569.506 How will the BLM convey the land?

2569.507 What should I do if the Eligible Individual has died or become incapacitated during the application process?

Available Federal Lands – General

2569.601 What lands are available for selection?

2569.602 How will the BLM certify that the land is free of known contamination?

2569.603 Are lands that contain minerals available?

2569.604 What happens if new lands become available?

National Wildlife Refuge System

2569.701 If Congress makes lands available within a National Wildlife Refuge, what additional rules apply?

Appeals

2569.801 What can I do if I disagree with any of the Decisions that are made about my allotment application?

SUBPART 2569 - ALASKA NATIVE VIETNAM-ERA VETERANS LAND

ALLOTMENTS

1. Add an authority citation for subpart 2569 to read as follows:

AUTHORITY: 43 U.S.C. 1629g-1(b)(2).

2. Add § 2569 to read as follows:

GENERAL PROVISIONS

§ 2569.100 What is the purpose of this subpart?

The purpose of this subpart is to implement Section 1119 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019, Pub. L 116-9, codified at 43 U.S.C. 1629g-1, which allows Eligible Individuals to receive an allotment of a single parcel of available Federal lands in Alaska containing not less than 2.5 acres and not more than 160 acres

§ 2569.101 What is the legal authority for this subpart?

43 U.S.C. 1629g-1(b)(2).

§ 2569.201 What terms do I need to know to understand this subpart?

- (a) *Allotment* is an allocation to an Alaska Native of land which shall be deemed the homestead of the allottee and his or her heirs in perpetuity, and shall be inalienable and nontaxable except as otherwise provided by Congress;
- (b) *Available Federal lands* means land in Alaska that meets the requirements of 43 U.S.C. 1629g-1(a)(1) and that the BLM has certified to be free of known contamination.
- (c) *Eligible Individual* means a Native Veteran who meets the qualifications listed in 43 U.S.C. 1629g-1(a)(2) and has not already received an allotment pursuant to the Act of May 17, 1906 (34 Stat. 197, chapter 2469) (as in effect on December 17, 1971); or section 14(h)(5) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(5)); or section 41 of the Alaska Native Claims Settlement Act (43 U.S.C. 1629g);
- (d) *Mineral* means coal, oil, natural gas, other leasable minerals, locatable minerals, and saleable minerals other than sand and gravel.

- (e) *Native* means a person who meets the qualifications listed in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b));
- (f) *Native corporation* means a regional corporation or village corporation as defined in sections 3(g) and (j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602);
- (g) *Realty Service Provider* means a Public Law 93-638 “Contract” or Public Law 103-413 “Compact” Tribe or Tribal organization that provides Trust Real Estate Services for the Bureau of Indian Affairs;
- (h) *Receipt date* means the date on which an application for an allotment is physically received by the BLM Alaska State Office, whether the application is delivered by hand, by mail, or by delivery service;
- (i) *Segregate* has the same meaning as in 43 CFR 2091.0-5(b);
- (j) *Selection* means an area of land that has been identified in an application for an allotment under this part;
- (k) *State* means the State of Alaska;
- (l) *State or Native corporation selected land* means land that is selected, as of the receipt date of the allotment application, by the State of Alaska under the Statehood Act of July 7, 1958, Pub. L. 85-508, 72 Stat. 339, as amended, or the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 94 Stat. 2371, or by a Native corporation under the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1611 and 1613, and that has not been conveyed to the State or Native corporation;

- (m) *Substantive error.* An error or omission in an application of information that is immediately necessary to determine if you are eligible to apply for an allotment. Substantive errors include, but are not limited to, missing land descriptions, missing name or inability to contact the applicant, and missing forms required under § 2569.404, if applicable. When a person corrects this type of error, the correction could show the applicant has an uncorrectable defect like not being an Alaska Native.
- (n) *Technical error.* Types of errors that do not rise to the level of substantive error or uncorrectable defect. For instance, not signing your application is an easily correctable error and correcting the error by signing the application cannot raise any new issues which could cause an application to be rejected.
- (o) *Uncorrectable defect.* Information provided with an application which provides obvious evidence that you are not qualified to receive an allotment. That evidence includes a lack of qualifying military service or proof of Alaska Native descent.
- (p) *Valid relinquishment* means a signed document from a person authorized by a board resolution from a Native corporation or the State that terminates its rights, title and interest in a specific area of Native corporation or State selected land. A relinquishment may be conditioned upon conformance of a selection to the Plat of Survey and the identity of the individual applicant; and
- (q) *Veteran* means a person who meets the qualifications listed in 38 U.S.C. 101(2) and served in the U.S. Army, Navy, Air Force, Marine Corps, or Coast

Guard, including the reserve components thereof, during the period between August 5, 1964, and December 31, 1971.

WHO IS QUALIFIED FOR AN ALLOTMENT

§ 2569.301 How will the BLM let me know if I am an Eligible Individual?

The Bureau of Land Management (BLM), in consultation with the Department of Defense (DoD), the Department of Veterans Affairs (VA), and the Bureau of Indian Affairs (BIA), has identified individuals whom it believes to be Eligible Individuals. If the BLM identifies you as a presumed Eligible Individual, it will inform you by letter at your last address of record with the BIA or the VA. Even if you are identified as presumptively eligible, you still must certify in the application that you do meet the criteria of the Dingell Act.

§ 2569.302 What if I believe I am an Eligible Individual, but I was not notified by the BLM?

If the BLM has not notified you that it believes that you are an Eligible Individual, you may still apply for an allotment under this subpart. However, as described in §2569.404(b), you will need to provide evidence with your application that you are an Eligible Individual. Supporting evidence with your application must include:

- (a) A Certificate of Degree of Indian Blood or other documentation from the BIA to verify you meet the definition of Native; and
- (b) A Certificate of Release or Discharge from Active Duty (Form DD-214) or other documentation from DoD to verify your military service.

§ 2569.303 Who may apply for an allotment under this subpart on behalf of another person?

- (a) A personal representative of the estate of an Eligible Individual may apply for an allotment for the benefit of the estate. The personal representative must be appointed in an appropriate Alaska State court by either a judge in the formal probate process or the registrar in the informal probate process. The Certificate of Allotment will be issued in the name of the heirs, devisees, and/or assigns of the deceased Eligible Individual.
- (b) An attorney-in-fact, a court-appointed guardian, or a court-appointed conservator of an Eligible Individual may apply for an allotment for the benefit of the Eligible Individual. The Certificate of Allotment will be issued in the name of the Eligible Individual.

APPLYING FOR AN ALLOTMENT

§ 2569.401 **When can I apply for an allotment under this subpart?**

- (a) You can apply between [INSERT EFFECTIVE DATE OF FINAL RULE] and [INSERT DATE FIVE YEARS AFTER EFFECTIVE DATE OF FINAL RULE].
 - (1) If an application is submitted prior to the beginning of the application period, it will be held until the application period begins and considered timely filed.
 - (2) If an application is submitted by mail after the application period, the BLM will use the post-mark date to determine if the application was timely filed.
- (b) Notwithstanding paragraph (a), in the case of a corrected or completed application or of an application for a substitute selection for resolution of a conflict or an unavailable land selection, you can submit a corrected, completed, or substitute application within 60 days of receiving the notice described in § 2569.410, § 2569.502(b), or § 2569.503(a), respectively. This period may be extended for up to

two years in order to allow a personal representative, guardian, conservator, or attorney-in-fact to be appointed, as provided in § 2569.507(c).

(c) Except as set forth in paragraphs (a) and (b), the BLM will issue a decision rejecting any application received after [INSERT DATE FIVE YEARS AFTER EFFECTIVE DATE].

§ 2569.402 Do I need to fill out a special application form?

Yes. You must complete and sign the BLM Form No. AK-2569-1004-0216, “Alaska Native Vietnam-Era Veteran Land Allotment Application.”

§ 2569.403 How do I obtain a copy of the application form?

The BLM will mail you an application form if you are determined to be an Eligible Individual under § 2569.301. If you do not receive an application in the mail, you can also obtain the form at the BIA, a Realty Service Provider’s office, the BLM Public Room, or on the internet at <https://www.blm.gov/alaska/2019AKNativeVetsLand>

§ 2569.404 What must I file with my application form?

(a) You must include the following along with your signed application form:

(1) A map showing the selection you are applying for:

- A. Your selection must be drawn on a map in sufficient detail to locate the selection on the ground.
- B. You must draw your selection on a map that is either a topographic map or a printout of a map that shows the section lines from the BLM mapping tool, available at <https://www.blm.gov/alaska/2019AKNativeVetsLand>.

- (2) A written description of the lands you are applying for, including (i) section, township, range, and meridian; and (ii) if desired, additional information about the location. The submitted map will be given preference if there is a conflict between the written description and the submitted map, unless you specify otherwise.
- (b) In addition to the materials described in paragraph (a), you must also provide the following materials, under the circumstances described below:
- (1) If you, or the person on whose behalf you are applying, are an Eligible Individual as described in § 2569.301, and were not notified by the BLM of your eligibility, you must provide proof that you, or the person on whose behalf you are applying, are an Eligible Individual, consisting of:
- A. A Certificate of Degree of Indian Blood or other documentation from the BIA to verify that you (or the person on whose behalf you are applying) are an Alaska Native; and
 - B. A Certificate of Release or Discharge from Active Duty (Form DD-214) or other documentation from DoD to verify that you (or the person on whose behalf you are applying) are a Veteran and served between August 5, 1964 and December 31, 1971.
- (2) If you are applying on behalf of the estate of an Eligible Individual who is deceased, you must provide proof that you have been appointed by an Alaska State court as the personal representative of the estate, and an affidavit stating that the appointment has not expired. The appointment may

have been made before or after the enactment of the Act, as long as it has not expired.

- (3) If you are applying on behalf of an Eligible Individual as that individual's guardian or conservator, you must provide proof that you have been appointed by a court of law, and an affidavit stating that the appointment has not expired.
- (4) If you are applying on behalf of an Eligible Individual as that individual's attorney-in-fact, you must provide a legally valid and current power of attorney that either grants a general power-of-attorney or specifically includes the power to apply for this benefit or conduct real estate transactions.
- (c) You must sign the application, certifying that all the statements made in the application are true, complete, and correct to the best of your knowledge and belief and are made in good faith.

§ 2569.405 What are the special provisions that apply to selections that include State or Native corporation selected land?

- (a) If the selection you are applying for includes State or Native corporation selected land, the BLM must receive a valid relinquishment from the State or Native corporation that covers all of the lands in your selection that are State or Native corporation selected lands. If the application does not include a valid relinquishment, the BLM will contact the State or Native corporation to request a relinquishment. This requirement does not apply if all of the State or Native corporation selected land included within your selection consists of

land for which the State or Native corporation has issued a blanket conditional relinquishment as shown on the mapping tool available at

<https://www.blm.gov/alaska/2019AKNativeVetsLand>

- (b) No such relinquishment may cause a Native corporation to become underselected. See 43 U.S.C. 1621(j)(2) for a definition of underselection.
- (c) An application for Native corporation or State selected land will segregate the land from any future entries on the land once the BLM receives a valid relinquishment.
- (d) If the State or Native corporation is unable or unwilling to provide a valid relinquishment, the BLM will issue a decision finding that your selection includes lands that are not available Federal lands and then follow the procedures set out at § 2569.503.

§ 2569.406 What are the rules about the number of parcels and size of the parcel for my selection?

- (a) You may apply for only one parcel.
- (b) The parcel cannot be less than 2.5 acres or more than 160 acres.

§ 2569.407 Is there a limit to how much water frontage my selection can include?

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

the public interest. If the BLM determines it cannot waive the 160-rod (one half-mile) limitation, the BLM will issue a decision finding your selection includes lands that are not available Federal lands and then follow the procedures set out at § 2569.503.

§ 2569.408 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.

§ 2569.409 Where do I file my application?

You must file your application with the BLM Alaska State Office in Anchorage, Alaska, by one of the following methods:

- (a) Mail or delivery service: Bureau of Land Management, ATTN: Alaska Native Vietnam-era Veterans Land Allotment Section, 222 West 7th Avenue, Mail Stop 13, Anchorage, Alaska 99513-7504; or
- (b) In person: Bureau of Land Management Alaska, Public Information Center, 222 West 7th Avenue, Anchorage, Alaska 99513-7504.

§ 2569.410 What will the BLM do if it finds an error in my application?

- (a) If an error is found, the BLM will send you a notice identifying any correctable errors or omissions and whether the error is substantive or technical.
 - 1. You will have 60 days from the date you received the notice to correct the errors or provide the omitted materials.
 - 2. If you do not submit the corrections to the BLM within the 60-day period, the BLM will issue a decision rejecting your application and require you to submit a new application.
- (b) If the error is a substantive error, your application will not be deemed received until the corrections are made.

(c) If the error is a technical error, your application will be deemed received as of the receipt date. However, the application may still be rejected if the BLM does not receive the corrections within 60 days from the date you received the notice to correct the errors.

(d) If you have uncorrectable defect, then the BLM will issue a decision rejecting your application.

§ 2569.411 When is my application considered received by the BLM?

(a) An application that is free from substantive errors, as described in § 2569.410, will be deemed received on the receipt date, except that if such an application is received before [INSERT EFFECTIVE DATE OF THE FINAL RULE], the application will be deemed received on [INSERT EFFECTIVE DATE OF THE FINAL RULE].

(b) An application that contains substantive errors will be deemed received on the receipt date of the last required correction.

(c) In the case of a substitute selection for conflict resolution under § 2569.502, for correction of an unavailable lands selection under § 2569.503, or an amended selection under § 2569.504, the substitute application will be deemed received on the receipt date of the substitute selection application.

§ 2569.412 Where can I go for help with filling out an application?

You can receive help with your application at:

(a) The BIA or a Realty Service Provider for your home area or where you plan to apply. To find the list of the Realty Service Providers, go to

<https://www.bia.gov/regional-offices/alaska/real-estate-services/tribal-service-providers> or call 907-271-4104 or 1-800-645-8465;

(b) The BLM Alaska Public Room:

The Anchorage Public Room located at 222 West 7th Avenue, Anchorage, Alaska 99513-7504, by email at AK_AKSO_Public_Room@blm.gov, by telephone at 907-271-5960, Monday through Friday from 8:00 am to 4:00 pm excluding Federal Holidays

The Fairbanks Public Room located at 222 University Ave, Fairbanks, Alaska 99709, by email at BLM_AK_FDO_generaldelivery@blm.gov or by telephone at 907-474-2252 or 2200, Monday through Friday from 7:45 am to 4:30 pm excluding Federal Holidays;

(c) The following BLM Field Offices:

Anchorage Field Office located at 4700 BLM Road, Anchorage, Alaska, by email at blm_ak_afo_general_delivery@blm.gov, by phone 907-267-1246, Monday through Friday from 7:30 am to 4:00 pm excluding Federal Holidays

Glennallen Field Office located at Mile Post 186.5 Glenn Highway, by email at blm_ak_gfo_general_delivery@blm.gov, by phone 907-822-3217, Monday through Friday 8:00 am to 4:30 pm excluding Federal Holidays

Nome Field Station located at the U.S. Post Office Building, by phone 907-443-2177, Monday through Friday excluding Federal holidays;

(d) Online at the BLM website which gives answers to frequently asked questions and a mapping tool which will show the available Federal lands and provide

online tools for identifying and printing your selection:

<https://www.blm.gov/alaska/2019AKNativeVetsLand>.

§ 2569.413 How will I receive Notices and Decisions?

- (a) The BLM will provide all Notices and Decisions by Certified Mail with Return Receipt to your address of record.
- (b) Where these regulations specify that you must take a certain action within a certain number of days of receiving a notice or decision, the BLM will determine the date on which you received the notice or decision as follows:
 - 1. If you sign the Return Receipt, the date on which you received the notice or decision will be the date on which you signed the Return Receipt.
 - 2. If the notice or decision is returned as undelivered, or if you refuse to sign the Return Receipt, the BLM will make a second attempt by an alternative method. If the second attempt succeeds in delivering the notice or decision, the BLM will deem the notice or decision to have been received on the date when the notice or decision was delivered according to the mail tracking system.
 - 3. If the notice or decision is returned as undelivered following the second attempt, the BLM may issue a decision rejecting your application.
- (c) You have a duty to keep your address up to date. If your mailing address or other contact information changes during the application process, please notify the BLM by mail at the address provided in §2569.409(a), or by telephone at 907-271-5960, by fax at 907-271-3334, or by the email address provided in the

received notice or decision. If you notify the BLM by mail, fax, or email, please prominently include the words “Change of Contact Information” in your correspondence.

- (d) Any responses to Notices or Decisions will be deemed received when it is physically received at the BLM Alaska State Office; if the response is mailed, on the date it was post-marked; or, if emailed, the date the email was sent.

§ 2569.414 May I request an extension of time to respond to Notices?

The BLM will allow reasonable extensions of deadlines in Notices for good cause. The request for the extension must be received from the Eligible Individual prior to the end of the 60-day period and provide the reason an extension is needed.

PROCESSING THE APPLICATION

§ 2569.501 What will the BLM do with my application after it is received?

After your application is deemed received in accordance with § 2569.411, the BLM will take the following steps:

- (a) The BLM will enter your selection onto the Master Title Plat (MTP) to make the public aware that the land has been segregated from the public land laws.
- (b) The BLM will then determine whether the selection includes only available Federal lands or if the selection conflicts with any other applicant’s selection. The BLM will also review its records and aerial imagery to identify, to the extent it can, any valid existing rights that exist within the selection.
- (c) The BLM may make minor adjustments to the shape and description of your selection to match existing property boundaries, roads, or meanderable waterbodies, or to reduce the number of corners or curved boundary segments.

The BLM will attempt to retain the acreage requested in the selection, but the adjustment may cause a reduction or addition in the acreage (not to exceed 160 acres).

- (d) After any adjustments have been made, the BLM will send you a Notice of Survey to inform you of the shape and location of the lands the BLM plans to survey. The Notice of Survey will include:
 - (1) Your original land description;
 - (2) The adjusted land description plotted onto a Topographic Map and a MTP;
 - (3) Imagery of your original land description with the adjusted land description projected onto it;
 - (4) a Draft Plan of Survey; and
 - (5) A list of valid existing rights that the BLM has identified within the selection.
- (e) The Notice of Survey will provide you an opportunity to challenge, in writing, the Draft Plan of Survey of the adjusted land description within 60 days of receipt of the BLM's notice. If no challenge is received within 60 days, the BLM will deem the Draft Plan of Survey to have been accepted.
- (f) The BLM will finalize the Plan of Survey based on the Draft Plan of Survey in the Notice of Survey or the adjustment you provide pursuant to paragraph (e).
- (g) The BLM will survey the selection based on the Plan of Survey.

- (h) After survey, the BLM will mail you a document titled Conformance to Plat of Survey. That document will:
 - (1) Show the selection as actually surveyed;
 - (2) Plot the survey onto imagery; and
 - (3) If you found an error in the way the BLM surveyed the selection based on the Plan of Survey, provide an opportunity to dispute the survey in writing within 60 days of receipt of the Conformance of Plat of Survey. If no notice of dispute is received within 60 days, the BLM will deem the survey to have been accepted.
- (i) The BLM will issue a Certificate of Allotment. No right or title of any sort will vest in the selection until the Certificate of Allotment is issued.
- (j) If an application is rejected for any reason, the BLM will remove the corresponding selection from the MTP to make the public aware that the land is no longer segregated from the public land laws.

§ 2569.502 What if more than one Eligible Individual applies for the same lands?

- (a) If two or more Eligible Individuals select the same lands, in whole or part, the BLM will:
 - (1) Give preference to the application bearing the earliest receipt date;
 - (2) If two or more applications bear an identical receipt date, and one or more application bears a legible postmark or shipping date, give preference to the application with the earliest postmark or shipping date; or

- (3) Assign to any applications for the same land that are still tied after the criteria in paragraphs (a)(1) and (a)(2) of this section are applied a number in sequence, and run a random number generator to pick the application that will receive preference.
 - (4) For purposes of paragraphs (a)(1) and (2), an application received, postmarked, or shipped before [INSERT EFFECTIVE DATE OF FINAL RULE] will be deemed to have been received, postmarked, or shipped on [INSERT EFFECTIVE DATE OF THE FINAL RULE].
- (b) The BLM will issue a decision to all applicants with conflicting selections setting out the BLM's determination of preference rights. Applicants who do not have preference must make one of the following choices:
- (1) Provide the BLM a substitute selection within 60 days of receipt of the BLM's decision. The substitute selection may consist of either an adjustment to the original selection that avoids the conflict, or a new selection located somewhere else. The substitute selection will be considered a new application for purposes of preference, as set forth in § 2569.411(c), but the applicant will not need to resubmit any portions of the application other than the land description and map; or,
 - (2) If only a portion of the selection is in conflict, the applicant may request that the BLM continue to adjudicate the portion of the selection that is not in conflict. The BLM must receive the request within 60 days of your receipt of the BLM's decision. Each applicant

is allowed only one selection of land under this act and will not be allowed to apply for more acreage later.

- (c) If the BLM finds your application conflicts with an application which has technical errors, the BLM will provide you the option of selecting a substitute parcel prior to that application being corrected under the procedures of (b)(1) above.
- (d) If you receive a decision finding your application does not have preference under paragraph (b) of this section and the BLM does not receive your choice within 60 days of receipt of the notice, the BLM will issue a decision rejecting your application. If your application is rejected, you may file a new application for different lands before the end of the five-year application period.

§ 2569.503 What if my application includes lands that are not available Federal lands?

- (a) If your selection includes lands that are not available Federal lands, the BLM will issue you a decision informing you of the unavailable land selection and give you the following choices:
 - (1) Provide the BLM a substitute selection within 60 days of your receipt of the decision. The substitute selection may consist of either an adjustment to your original selection that avoids the unavailable lands, or a new selection located somewhere else. Your substitute selection will be considered a new application for purposes of preference, as set

forth in § 2569.411(c), but you will not need to resubmit any portions of your application other than the land description and map; or,

(2) If only a portion of your selection is unavailable, you may request that the BLM continue to adjudicate the portion of the selection that is within available Federal lands. The BLM must receive your request within 60 days of your receipt of the BLM's decision. You are allowed only one parcel of land under this act, and you will not be allowed to apply for more acreage later.

(b) If you receive a decision finding your selection includes unavailable lands under paragraph (a) of this section and the BLM does not receive your choice within 60 days of receipt of the notice, the BLM will issue a decision rejecting your application. If your application is rejected, you may file a new application for different lands before the end of the five-year application period.

§ 2569.504 Once I file, can I change my land selection?

(a) Once your application is received in accordance with § 2569.411, you will only be allowed to amend your selection until 60 days after you receive the Notice of Survey as set forth in § 2569.501(e). Your amended selection will be considered a new application for purposes of preference, as set forth in § 2569.411(c), but you will not need to resubmit any portions of your application other than the land description and map

(b) Otherwise, you will not be allowed to change your selection except as set forth in § 2569.502 or § 2569.503.

- (c) If an applicant relinquishes their application more than 60 days after they receive the Notice of Survey as set forth in § 2569.501(e), the applicant will only be able to submit a new application for a new selection if their original selection is no longer available.

§ 2569.505 Does the selection need to be surveyed before I can receive title to it?

Yes. The land in your selection must be surveyed before the BLM can convey it to you.

The BLM will survey your selection at no charge to you, as set forth in § 2569.501(g).

§ 2569.506 How will the BLM convey the land?

- (a) The BLM will issue a Certificate of Allotment which includes language similar to the language found in Certificates of Allotment issued under the Act of May 17, 1906 (34 Stat. 197, chapter 2469), providing that the land conveyed will be deemed the homestead of the allottee and his or her heirs in perpetuity, and will be inalienable and nontaxable until otherwise provided by Congress or until the Secretary of the Interior or his or her delegate approves a deed of conveyance vesting in the purchaser a complete title to the land.
- (b) The Certificate of Allotment will be issued subject to valid existing rights.
- (c) The United States will reserve to itself all minerals in the Certificate of Allotment.
- (d) If the Eligible Individual is deceased, the Certificate of Allotment will be issued in the name of the heirs, devisees, and/or assigns of the deceased Eligible Individual.

§ 2569.507 What should I do if the Eligible Individual dies or becomes incapacitated during the application process?

- (a) If an Eligible Individual dies during the application process, another individual may continue the application process as a personal representative of the estate of the deceased Eligible Individual by providing to the BLM the materials described in § 2569.404(b)(2).
- (b) If an Eligible Individual becomes incapacitated during the application process, another individual may continue the application process as a court-appointed guardian or conservator or as an attorney-in-fact for the Eligible Individual by providing to the BLM the materials described in § 2569.404(b)(3) or (4).
- (c) If a deceased or incapacitated Eligible Individual has received a notice from the BLM that requires a response within 60 days, as described in § 2569.410, § 2569.501(e), § 2569.501(h)(3), § 2569.502(b), or § 2569.503(a), and no personal representative, guardian, or conservator has been appointed, or no attorney-in-fact has been designated, the individual who receives the notice, or an employee of the BIA or a Realty Service Provider, may respond to the notice in order to request that the BLM extend the 60-day period to allow for a personal representative, guardian, or conservator to be appointed. The BLM will extend a 60-day period under this subparagraph for up to two years.
- (d) If the BLM has completed a Draft Plan of Survey as described in § 2569.501(d) or a survey as described in § 2569.501(g), and the estate of the deceased Eligible Individual does not wish to dispute the Draft Plan of Survey as described in § 2569.501(e) or the results of the survey as described in § 2569.501(h), then the BLM will not require a personal representative to be appointed. The BLM will continue to process the application.

(e) Other than as provided in paragraphs (b), (c), and (d) of this section, the BLM will not accept any correspondence on behalf of a deceased or incapacitated Eligible Individual from an individual who has not provided the materials described in § 2569.404(b)(2), (3), or (4).

Available Federal Lands - General

§ 2569.601 **What lands are available for selection?**

You may receive title only to lands identified as available Federal land. You can review the available Federal lands on the mapping tool available at

<https://www.blm.gov/alaska/2019AKNativeVetsLand>. If you do not have access to the internet, a physical copy of the map of available Federal lands can be requested by either:

- a) Calling the BLM Alaska Public Room, the BIA Regional Realty Office or Fairbanks Agency Office, or your local Realty Service Provider. The map will be current as of the date it is printed and mailed to the mailing address provided at the time of request; or
- b) Requesting a physical copy in person at any of the offices listed above.

§ 2569.602 **How will the BLM certify that the land is free of known contaminants?**

The BLM will review land for contamination by using current contaminated site database information in the Alaska Department of Environmental Conservation database, the U.S. Army Corps of Engineers Formerly Used Defense Sites database, the U.S. Air Force database, and the Federal Aviation Administration database, or any equivalent databases if any of these databases are no longer available. Any land found to have possible contamination based on these searches will not be available for selection.

§ 2569.603 **Are lands that contain minerals available?**

Yes the lands are available for selection, however, the minerals will be reserved to the United States and will not be conveyed to Eligible Individuals or to the devisees and/or assigns of Eligible Individuals.

§ 2569.604 What happens if new lands become available?

- (a) New lands may become available during the application period. As additional lands become available, the BLM will review the lands to determine whether they are free of known contaminants as described in § 2569.602.
- (b) After review, the BLM will update the online web maps of available Federal lands to include these additional lands during the five-year application period.

NATIONAL WILDLIFE REFUGE SYSTEM

§ 2569.701 If Congress makes lands available within a National Wildlife Refuge, what additional rules apply?

Any Certificate of Allotment for lands within a National Wildlife Refuge will contain provisions that the lands remain subject to the laws and regulations governing the use and development of the Refuge.

APPEALS

§ 2569.801 What can I do if I disagree with any of the Decisions that are made about my allotment application?

- (a) You may appeal all Decisions to the Interior Board of Land Appeals under 43 CFR part 4.
- (b) On appeals of Decisions made pursuant to § 2569.502(b):

1. Unless the BLM's decision is stayed on appeal pursuant to 43 CFR 4.21, the BLM will continue to process the conflicting applications that received preference over your application.
 2. Within 60 days of receiving a decision on the appeal, the losing applicant may exercise one of the two options to select a substitute parcel pursuant to § 2569.502(b).
- (c) On appeals of Decisions which reject the application or of a decision made pursuant to § 2569.503(a):
1. Unless the BLM's decision is stayed on appeal pursuant to 43 CFR 4.21, the BLM will lift the segregation of your selection and the land will be available for all future entries.
 2. If you win the appeal and the decision was not stayed, your selection will be considered received as of the date of the Interior Board of Land Appeals decision for purposes of preference under § 2569.502(a).